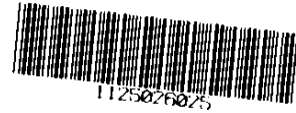


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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1125026025 Fee: \$112.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/07/2011 08:56 AM Pg: 1 of 39

Report Mortgage Fraud
800-532-8785

Green

The property identified as: **PIN: 07-13-101-013-0000**

Address:

Street: 915-935 AND 955 NATIONAL PARKWAY

Street line 2:

City: SCHAUMBURG

State: IL

ZIP Code: 60173

Lender: U.S. BANK NATIONAL ASSOCIATION

Borrower: JANKO ALCION SCHAUMBURG, LLC

Loan / Mortgage Amount: \$6,998,014.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7770 et seq. because it is commercial property.

Certificate number: 9BDE4DF3-1DE3-43A6-A5CC-159C1437FB2A

Execution date: 08/29/2011

S Y
P 39
S N
SC Y
INT cf.

BOX 333-CT

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**PREPARED BY AND
WHEN RECORDED MAIL TO:**
HALLORAN & SAGE LLP
ONE GOODWIN SQUARE
225 ASYLUM STREET
HARTFORD, CONNECTICUT 06103
ATTENTION: JAMES P. MAHER, ESQ.

This space reserved for Recorder's use only.

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING is made this 31st, day of August, 2011, by **JANKO ALCION SCHAUMBURG LLC**, a Delaware limited liability company (hereinafter referred to as "**Mortgagor**"), whose address is c/o Janko Group, LLC, 1650 Lake Cook Road, Suite 130, Deerfield, Illinois, 60015, Attn: Gary Janko, for consideration received to its full satisfaction from **U.S. BANK NATIONAL ASSOCIATION**, a national banking association (as hereinafter defined) (hereinafter referred to as "**Mortgagee**"), whose address is One Post Office Square, Boston, Massachusetts 02109, Attention: Real Estate Banking Group does give, grant, bargain, sell, assign and confirm unto Mortgagee, its successors and assigns, pursuant to this Mortgage forever, the following:

THE MORTGAGED PROPERTY

(A) The following described premises situated in the City of Schaumburg, County of Cook, State of Illinois, to wit: The land described in detail in Schedule A (the "**Land**") which is attached hereto and incorporated herein and made a part of this document for all purposes.

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(B) **TOGETHER WITH** (1) all the buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and (2) all building materials, supplies and other property stored at or delivered to the Land or any other location for incorporation into any of the aforesaid buildings, structures and improvements, and (3) all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever owned by Mortgagor and located in or on, or attached to, and used or intended to be used in connection with or with the operation of, the Land, any such buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon (including, but not limited to, any and all such appliances; furniture; carpeting; floor coverings; draperies; window coverings; furnishings; fences; partitions; generators; doors; windows; millwork; overhead doors; screens; storm windows and doors; locks; hardware; shades; awnings; motors; engines; boilers; tanks; water heaters; pumps; furnaces; heat registers; radiators; thermostats; plumbing; sinks; water closets; basins; faucets; elevators; switchboards; cleaning, vacuum and sprinkler systems; fire extinguishing apparatus and equipment; water tanks; lighting, heating, ventilating, air conditioning and air cooling systems, facilities, units, apparatus and equipment; incinerating, communicating and refrigerating equipment; water, gas, telephone and electric supply fixtures, machinery, ducts, piping, wiring, conduits, appurtenances and equipment; alarm and security systems; electronic intercommunication system; maintenance and cleaning equipment and supplies; lumber, insulation, structural steel, roofing, flooring, concrete panels, cement, blocks, bricks, stone, paint, nails, screws, and all other construction and building materials (including, but not limited to, those acquired by Mortgagor and stored in warehouses with Mortgagee's approval) and parking lot lighting), and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, and all right, title and interest of Mortgagor in and to such personal property and fixtures, whether as owner, chattel lessee or otherwise, it being understood and agreed that all such personal property and fixtures are and at all times shall be part and parcel of the real property encumbered hereby and appropriated to the use thereof and, whether or not affixed or annexed to such real property, to the fullest extent permitted by law, are and at all times shall be conclusively deemed to be fixtures, a part of the real property and a part of the security provided hereby (all of the property described in this paragraph (B) being hereinafter collectively called the "Improvements"; together with the Land, the "Premises").

(C) **TOGETHER WITH** all estate, right, title and interest of Mortgagor, of whatever character, whether now owned or hereafter acquired, in and to (1) all streets, roads and public places, open or proposed, in front of or adjoining the Land, and the land lying in the bed of such streets, roads and public places, and (2) all other sidewalks, alleys, ways, passages, water courses, strips and gores of land adjoining or used or intended to be used in connection with any of the property described in paragraphs (A) and (B) hereof, or any part of such property.

(D) **TOGETHER WITH** all easements, rights-of-way and rights of use or passage, public or private, and all estates, interests, benefits, powers, rights (including, without limitation, any and all lateral support, drainage, slope, sewer, water, air, mineral, oil, gas and subsurface rights), privileges, licenses, profits, royalties, tenements, hereditaments, reversions and subreversions, remainders and subremainders and appurtenances whatsoever in any way belonging, relating or appertaining to any of the property described in paragraphs (A), (B) and (C) hereof, or any part of such property, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor.

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(E) **TOGETHER WITH** (1) any and all judgments, settlements, claims, awards, insurance proceeds and other proceeds and compensation, and interest thereon (collectively, "**Compensation**"), hereafter made or to be made or hereafter payable in connection with any casualty or other damage to the property described in paragraphs (A), (B), (C) and (D) hereof, any part of such property or any rights appurtenant thereto, or in connection with any condemnation proceedings affecting such property or rights or any taking under power of eminent domain (or any conveyance in lieu of or under threat of any such taking) of such property or rights, including, without limitation, any and all Compensation for change of grade of streets or any other injury to or decrease in the value of such property or rights, (2) any and all proceeds of any sales, assignments or other dispositions of such property or rights, (3) any and all refunds of insurance premiums, taxes, assessments, water charges, sewer rents or other impositions in respect of such property or rights, (4) all accounts receivable, contract rights, general intangibles, permits, licenses, approvals, actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned or refunded insurance premiums arising from or relating to (a) any such property or rights, and (b) all rights, benefits and privileges of Mortgagor from time to time existing under or with respect to any and all contracts and agreements for planning or design of the Improvements, construction of the Improvements or supply of materials in connection with such construction (including but not limited to all soil tests, reports, appraisals, feasibility studies and engineering reports relating to the Land or the Improvements), and (5) all proceeds, products, replacements, additions, substitutions, renewals, accessions, accretions and relictions of and to such property or rights.

(F) **TOGETHER WITH** all rents, royalties, issues, profits, revenues, income and other benefits to which Mortgagor may now or hereafter be entitled from the property described in paragraphs (A), (B), (C), (D) and (E) hereof or any part of such property, to be applied against the Indebtedness and other sums secured hereby; provided, however, that permission is hereby given to Mortgagor, so long as no Event of Default (as hereinafter defined) shall have occurred, to collect and use such rents, royalties, issues, profits, revenues, income and other benefits as they become due and payable, but not in advance thereof. The foregoing assignment shall be fully operative without any further action on the part of either party, and specifically Mortgagee shall be entitled, at its option upon the occurrence of an Event of Default, to all such rents, royalties, issues, profits, revenues, income and other benefits whether or not Mortgagee takes possession of such property. Upon the occurrence of an Event of Default, the permission hereby given to Mortgagor to collect such rents, royalties, issues, profits, revenues, income and other benefits shall terminate. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, royalties, issues, profits, revenues, income or other benefits to the Indebtedness and other sums secured hereby, shall cure or waive any Event of Default or notice of any Event of Default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

The foregoing provisions hereof shall constitute an absolute and present assignment of the rents, royalties, issues, profits, revenues, income and other benefits of or from the property described in paragraphs (A), (B), (C), (D), (E) and (F) hereof, or any part of such property, subject, however, to the conditional permission given to Mortgagor to collect and use such rents, royalties, issues, profits, revenues, income and other benefits as hereinabove provided; and the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor,

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and any such subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder.

(G) **TOGETHER WITH** all right, title and interest of Mortgagor in and to any and all leases, subleases, occupancy, purchase and sale or similar agreements (collectively, "leases") now or hereafter on or affecting the property described in paragraphs (A), (B), (C), and (D) hereof, or any part of such property, together with all security therefor (including, without limitation, any and all right, title and interest of Mortgagor in and to property of any tenant or other party under any such lease, and all cash or security deposits, advance rentals and deposits or payments of a similar nature thereunder) and together with all moneys payable thereunder, and all books and records which reflect payments made under the leases and all security therefor, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rents, income and other benefits arising under any such lease. Mortgagee shall have and is hereby granted the right, at any time and from time to time after the occurrence and during the continuance of an Event of Default, to notify any lessee, sublessee, licensee, occupant or purchaser of the rights of Mortgagee as provided by this paragraph.

(H) **TOGETHER WITH** any and all further or greater estate, right, title, interest, claim and demand whatsoever of Mortgagor, whether now owned or hereafter acquired, in or to any of the property described in the foregoing paragraphs or any rights or interests appurtenant thereto.

All of the property described in paragraphs (A), (B), (C), (D), (E), (F), (G) and (H) above, and each item of property therein described, is herein referred to as the "**Mortgaged Property.**"

TO HAVE AND TO HOLD the Mortgaged Property, with the privileges and appurtenances thereof, unto Mortgagee, its successors and assigns forever, to its and their own proper use and behoof; the Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

AND ALSO, Mortgagor, for itself and its successors and assigns, covenants with and warrants to, Mortgagee, its successors and assigns, that at and until the sealing of these presents, Mortgagor is well seized of the Land, those Improvements constituting real property and all other real property intended to be encumbered by this Mortgage as a good and defeasible estate in fee simple, that Mortgagor has good and absolute title to all other Mortgaged Property, that Mortgagor has good right to give, grant, bargain, sell, assign and confirm the Mortgaged Property in manner and form as is above written, and that the Mortgaged Property is free and clear of all liens, encumbrances and exceptions to title whatsoever (except as set forth in **Schedule B** attached hereto and made a part hereof, and such other matters of title which constitute "Permitted Encumbrances" as such term is defined in the Loan Agreement (as hereinafter defined) (hereinafter referred to as "**Permitted Encumbrances**"));

AND FURTHERMORE, Mortgagor does by these presents bind itself, its administrators and its successors and assigns forever to **WARRANT AND DEFEND** the Mortgaged Property to Mortgagee, its successors and assigns, against all claims and demands whatsoever, except for the Permitted Encumbrances.

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THE CONDITION OF THIS MORTGAGE IS SUCH that:

WHEREAS, Mortgagee has agreed to make to Mortgagor a loan in the original principal amount of up to **Six Million Nine Hundred Ninety Eight Thousand Fourteen and 00/100 Dollars (\$6,998,014.00)** (the "Loan"), or so much thereof as may be advanced pursuant to the terms of that certain Loan Agreement of even date herewith between Mortgagor and Mortgagee (as the same may be amended, restated or supplemented from time to time, the "Loan Agreement"); which Loan is evidenced by that certain Promissory Note of even date herewith in the stated principal amount of \$6,998,014.00 (as the same may be amended, restated or supplemented from time to time, and together with any notes given in substitution or replacement thereof, the "Note"), executed by Mortgagor in favor of Mortgagee, with interest at a variable rate equal to the Loan Rate, as determined in accordance with the Loan Agreement, both principal and interest being payable as therein provided and maturing on August 31, 2014, subject to being extended to August 31, 2015 and to August 31, 2016, pursuant to Section 1.10 of the Loan Agreement:

WHEREAS, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement;

WHEREAS, this Mortgage is granted to secure payment of the Loan, together with interest thereon to be paid according to the terms of the Loan Agreement and the Note, together with all other sums recoverable by Mortgagee under the terms of the Loan Documents (as defined herein), including, without limitation, interest, default interest, late charges, prepayment premiums, attorney's fees and any sums advanced by Mortgagee to protect or preserve the Mortgaged Property, together with all existing and future liabilities of Mortgagor to Mortgagee under the Loan Documents, together with all existing and future liabilities of Mortgagor to Mortgagee, if any, under any instrument, document or agreement which now or hereafter evidences a Bank-Provided Hedging Transaction (said indebtedness and interest due under the Note and all other sums due hereunder, under the Note and the other Loan Documents, or under any Bank-Provided Hedging Transaction are herein being hereinafter collectively referred to as the "Indebtedness").

WHEREAS, Mortgagor represents and warrants that it has full power and authority to execute and deliver the Loan Agreement, the Note, this Mortgage and all other documents and instruments required of it by Mortgagee in connection with the making or giving of the Loan; and

AND WHEREAS, Mortgagor covenants and agrees with Mortgagee as follows:

ARTICLE 1. GENERAL COVENANTS AND WARRANTIES

1.1 Performance of Mortgagor's Obligations. Mortgagor shall duly, punctually and fully pay, do and perform all obligations and things on its part to be paid, done or performed under the Note, under this Mortgage, under the Loan Agreement and under any other instrument which refers to or secures the Note and, if applicable, under any instrument, document or agreement which now or hereafter evidences a Bank-Provided Hedging Transaction. Mortgagor

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shall promptly pay to Mortgagee when due all Indebtedness for which the Mortgagor is liable. Time is of the essence hereof.

1.2 **Representations and Warranties by Mortgagor.** Mortgagor represents and warrants to Mortgagee, as follows:

(a) Mortgagor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and qualified and authorized to do business in all jurisdictions in which the conduct of its business and affairs requires it to be so qualified.

(b) Mortgagor has good, marketable and insurable fee simple title to the Land, and good title to the rest of the Mortgaged Property, subject to no Lien, charge, mortgage, deed of trust, restriction or encumbrance, except Permitted Encumbrances. Mortgagor has good right and lawful authority to grant, bargain, sell, convey, warrant, assign and confirm the same as provided herein. Mortgagor warrants and will defend the title to the Mortgaged Property against all claims and demands whatsoever, except Permitted Encumbrances.

(c) There is no provision in any indenture, contract or agreement, to which Mortgagor is a party or by which it is bound, or any law, statute, ordinance, governmental rule, regulation or restriction, or any order of any court or administrative agency, to which Mortgagor is subject or by which Mortgagor is bound, which prohibits the execution and delivery by Mortgagor of this Mortgage, the Note, the Loan Agreement or any Loan Document, or the performance or observance by Mortgagor of any of the terms, covenants or conditions of this Mortgage, the Note, the Loan Agreement or any other Loan Document.

(d) Mortgagor has all power, authority, permits, consents, authorizations and licenses necessary to carry on its business, to renovate, equip, own and operate the Mortgaged Property and to execute, deliver and perform its obligations under this Mortgage, the Note, the Loan Agreement and the other Loan Documents; all consents necessary to authorize Mortgagor's execution, delivery and performance of Mortgage, the Note, the Loan Agreement and the other Loan Documents have been duly adopted and are in full force and effect, and this Mortgage, the Note, the Loan Agreement and the other Loan Documents have been duly executed and delivered by Mortgagor.

(e) The Premises are neither agricultural property, property in agricultural use, nor the homestead of Mortgagor.

(f) To the extent that any franchises, licenses, permits, certificates, authorizations, approvals or consents from any federal, state or local (domestic or foreign) government, commission, bureau or agency are material to the present conduct of the business and operations of Mortgagor or are required for the acquisition, ownership, operation or maintenance by Mortgagor of properties it now owns, operates or maintains, including the Mortgaged Property, or the present conduct of its businesses and operations, to Mortgagor's actual knowledge, such franchises, licenses, permits, certificates, authorizations, approvals and consents have been validly granted, are in full force and effect and constitute valid and sufficient authorization therefor.

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(g) Except as specifically disclosed in that certain Phase I Environmental Assessment, dated November 29, 2010, prepared by Partner Engineering and Science Inc., (a) Mortgagor has received no actual notice of any Environmental Liability relating to the Mortgaged Property which would individually or in the aggregate constitute a Material Adverse Occurrence as to Mortgagor arising in connection with (i) any non-compliance or alleged non-compliance with or violation of the requirements of any Environmental Law, or (ii) the Release or threatened Release of any Hazardous Substance, or other substance into the environment; (b) Mortgagor has no knowledge of any threatened or actual liability in connection with the Release or threatened Release of any Hazardous Substance, or other substance into the environment relating to the Mortgaged Property which would individually or in the aggregate constitute a Material Adverse Occurrence; (c) Mortgagor has received no actual notice of any federal or state investigation evaluating whether any remedial action is needed to respond to a Release or threatened Release of any Hazardous Substances into the environment where such liability individually or in the aggregate for all such liabilities would constitute a Material Adverse Occurrence as to Mortgagor, or (d) to Mortgagor's knowledge, (i) the Premises have not ever been used for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing purposes, or a gasoline service station, (ii) no underground storage tank is now located in the Premises or has previously been located therein but has been removed therefrom, and (iii) the Mortgaged Property is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency. Mortgagor has received no actual notice of any violation or alleged non-compliance of any Environmental Laws relating to the Mortgaged Property where such violation would constitute a Material Adverse Occurrence as to Mortgagor.

1.3 **Maintenance of Existence.** Mortgagor agrees to maintain its existence as a limited liability company under the laws of the State of Delaware, and its authorization to transaction business in the State of Illinois, and not to dissolve, liquidate, wind-up, consolidate or merge during the term hereof, without the prior written consent of Mortgagee.

1.4 **Further Assurances; Security Agreement.**

(a) Mortgagor will procure, do, execute, acknowledge and deliver each and every further act, deed, conveyance, transfer, document and assurance necessary or proper for the carrying out more effectively of the purpose of this Mortgage and, without limiting the foregoing, for granting, bargaining, selling, conveying, warranting, assigning and confirming unto Mortgagee all of the Mortgaged Property, or property intended so to be, whether now owned or hereafter acquired by Mortgagor, including, without limitation, the preparation, execution and filing of any documents, such as financing statements and continuation statements, deemed advisable by Mortgagee, acting in its reasonable discretion, for perfecting and maintaining its lien on the Mortgaged Property.

(b) This Mortgage shall further constitute and be deemed to be a Security Agreement under the Uniform Commercial Code of the State of Illinois (the "Uniform Commercial Code"), now in force and as hereafter amended, and Mortgagor hereby grants to Mortgagee a present and continuing security interest in any property, fixtures, equipment, leases, rents, issues, income, profits, personal property, instruments, general intangibles, accounts,

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contract rights and claims included within or related to the Mortgaged Property, and in all deposits made pursuant to **Section 1.10** hereof and all insurance policies and unearned premiums prepaid thereon, insurance proceeds, and awards, payments or consideration for the taking of the Mortgaged Property, or any portion thereof, by condemnation or exercise of the power of eminent domain, or from any sale in lieu or in anticipation thereof, assigned by Mortgagor to Mortgagee hereunder, to the extent that a security interest may be granted therein under the terms of the Uniform Commercial Code.

(c) Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to time to file in any filing office any initial financing statements and amendments thereto that (a) indicate the collateral as the Mortgaged Property as defined in this Mortgage and (b) contain any other information required by part 5 of Article 9 of the Uniform Commercial Code of any such filing office for the sufficiency or filing office acceptance of any initial financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organizational identification number issued to Mortgagor. Mortgagor agrees to provide any such information to Mortgagee promptly upon request. Mortgagor also ratifies its authorization for Mortgagee to have filed in any filing office in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto relating to the lien and security interest created by this Mortgage if filed prior to the date hereof. Mortgagor shall pay to Mortgagee, from time to time, within ten (10) Business Days after demand, any and all costs and expenses incurred by Mortgagee in connection with the filing of any such initial financing statements and amendments, including attorneys' fees and all disbursements. Such costs and expenses shall bear interest at the Default Rate from the date due, as set forth in the preceding sentence until the date repaid by Mortgagor, and such costs and expenses, together with such interest, shall be part of the obligations and shall be secured by this Mortgage.

(d) Mortgagor shall at any time and from time to time take such steps as Mortgagee may reasonably request for Mortgagee to obtain "control" of any personal property for which control is a permitted or required method to perfect, or to insure priority of, the security interest in such personal property granted herein.

(e) If Mortgagor shall at any time acquire a commercial tort claim relating to the Mortgaged Property, Mortgagor shall grant to Mortgagee a security interest therein and in the proceeds thereof.

1.5 Uniform Commercial Code Remedies. Mortgagee shall have all the rights, remedies and recourses with respect to the personal property, fixtures, the Leases (as defined in **Section 1.16** hereof) and rents afforded to a "Secured Party" by the Uniform Commercial Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded by law, equity and the Loan Documents.

1.6 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the aforesaid Article 9 of the Uniform Commercial Code. All or part of the Mortgaged Property is or is to become fixtures.

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1.7 **Foreclosure of Security Interest.** If an Event of Default shall occur and remain outstanding, Mortgagee may elect, in addition to exercising any and all other rights, remedies and recourses set forth in Section 3.2, to proceed in the manner set forth in the Uniform Commercial Code, relating to the procedure to be followed when a security agreement covers both real and personal property.

1.8 **Defined Terms.** Terms defined in the Uniform Commercial Code and not otherwise defined in this Mortgage shall have the same meanings for purposes hereof as are set forth in the Uniform Commercial Code. In the event that a term is used in Article 9 of the Uniform Commercial Code and also in another Article of the Uniform Commercial Code, the term used in Sections 1.4 through 1.7 is that used in Article 9 of the Uniform Commercial Code. The term "control" as used herein has the meaning given in UCC §§ 9-104, 9-105, 9-106, 9-107, as applicable.

1.9 **Care and Maintenance of Mortgaged Property; Leases.** Mortgagor shall not commit or permit intentional, physical waste or deterioration upon the Mortgaged Property and shall cause the Mortgaged Property and every part thereof, including, but not limited to, parking areas, Improvements and all ingress and egress easements, if any, to be continually maintained, preserved and kept in safe and good repair, working order and condition (except as may be required in connection with the redevelopment of the Mortgaged Property in accordance with the Loan Agreement). Mortgagor shall promptly and faithfully comply with, conform to and obey all present and future Governmental Requirements, including but not limited to all Environmental Laws, where failure to so do might have a material adverse effect on Mortgagor; provided, however, that Mortgagor shall have the ability to contest any alleged failure to conform to or comply with such Governmental Requirements so long as such obligations shall be contested by appropriate proceedings pursued in good faith and any penalties or other adverse effect of its nonperformance shall be stayed or otherwise not in effect, or a cash escrow deposit equal to all such contested payments and potential penalties or other charges shall have been established with Mortgagee. Mortgagor will from time to time make all necessary and proper restorations, rebuildings, repairs, renewals, replacements, additions and betterments to the Mortgaged Property, whether required as the result of casualty or otherwise, and whether or not insurance proceeds or condemnation proceeds exist, are made available or are sufficient therefor, in a good and workmanlike manner, so that the existing use thereof shall be fully preserved and maintained, and so that all Governmental Requirements shall be complied with. Mortgagor shall give Mortgagee notice, promptly after obtaining actual knowledge thereof, of any material violation of any Governmental Requirements, or if any material damage or destruction occurs to the Mortgaged Property. Except in accordance with the terms of the Loan Agreement, Mortgagor agrees not to (i) make any use of the Mortgaged Property, other than as a commercial office project and appurtenances thereto; (ii) demolish, remove, make additions to or alter the Improvements or, without Mortgagor's prior written consent, to seek, participate or acquiesce in any change in zoning affecting the Mortgaged Property; (iii) remove from the Premises or Improvements any of the Mortgaged Property, unless immediately replaced with like property of at least equal value; or (iv) add any new Improvements or Mortgaged Property, unless all of such replacements and additions shall be free of any vendor's lien, title reservation or other security interest prior hereto. All such replacements and additions shall be subject to the lien hereof and the security interest created hereby, which shall be prior to all other liens or security interests thereon and therein, excepting Permitted Encumbrances. Mortgagee or its agents may enter

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upon the Mortgaged Property to inspect the same and for the purpose of protecting its security and preserving its rights hereunder in accordance with the terms of the Loan Agreement, but shall not be liable to any person, party or entity for failure to do so (unless expressly provided to the contrary in the Loan Agreement). Except in accordance with the terms of the Loan Agreement, Mortgagor covenants and agrees (i) not to commence construction of any new buildings or Improvements upon the Premises, or any additions to existing Improvements, without the prior written consent of Mortgagee; (ii) to promptly complete with due diligence any buildings, Improvements and additions for which Mortgagee's consent is obtained hereunder in good and workmanlike manner, free and clear of all liens, charges and encumbrances, except the lien hereof and Permitted Encumbrances; (iii) to keep and perform each and every term, condition and covenant of any and all Leases (hereinafter defined) upon the Mortgaged Property or any portion thereof, to be kept and performed by Mortgagor, so as to keep the Leases at all times in full force and effect, and agrees not to anticipate or collect Rents (hereinafter defined) more than one (1) month in advance under any Lease without, in each instance, the prior written consent of Mortgagee. Mortgagee shall not be liable to either Mortgagor or the tenants for the performance of any of the terms, covenants and conditions of the Leases. Mortgagor shall not seek, petition for, make, consent to or acquiesce in any change in the Governmental Requirements relating to the Mortgaged Property, including, but not limited to, zoning and building codes and ordinances, without Mortgagee's prior written consent.

1.10 Impositions and Liens. (a) Mortgagor shall, at least ten (10) days before any penalty or interest attaches thereto because of delinquency in payment, pay and discharge, or cause to be paid and discharged, all taxes, assessments, sewer rents, water rates, levies and governmental charges imposed upon or against the Mortgaged Property or upon or against the Note or the Indebtedness or upon or against the interest of Mortgagee in the Mortgaged Property or in the Note or the Loan Agreement or the Indebtedness (hereinafter referred to as "Impositions") and will thereafter deliver the paid receipts therefor to Mortgagee within thirty (30) days after payment of any such Imposition is due. In the event of any legislative enactment or judicial decision after the date of this Mortgage, imposing upon Mortgagee the obligation to pay any such Imposition, or deducting the lien of this Mortgage from the value of the Mortgaged Property for the purpose of taxation, or changing in any way the laws now in force for the taxation of mortgages or debts secured thereby, or the manner, operation or method of collection of any such Imposition, so as to affect the interests of Mortgagee, then, and in such event, Mortgagor shall bear and promptly pay the full amount of such Imposition or any substituted tax; provided, however, that, if (1) for any reason payment thereof by Mortgagor would be unlawful or unenforceable, or if payment thereof by Mortgagor would constitute usury or would render the Loan or the Indebtedness wholly or partially usurious under any of the terms or provisions of the Note or of this Mortgage, or otherwise, Mortgagee may declare the whole sum secured by this Mortgage, with interest thereon, to be immediately due and payable, and (2) notwithstanding anything in this Section 1.10 to the contrary, Mortgagee shall not be entitled to receive any amounts under this Section 1.10 that it would not have been entitled receive under the Loan Agreement; for the avoidance of doubt, Mortgagor shall not be responsible for: (i) any Excluded Taxes (as defined in the Loan Agreement), (ii) any taxes or assessments imposed as a result of an assignment or grant of a participating interest, or (iii) any taxes or assessments with respect to which Mortgagee has already received payment per the Loan Agreement. Mortgagor shall not suffer to exist and shall promptly pay and discharge any mechanic's, statutory or other lien or

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encumbrance on the Mortgaged Property or any part thereof (hereinafter referred to as "Liens"), except for Permitted Encumbrances.

(b) Notwithstanding the foregoing, Mortgagor shall not be in default hereunder in respect to the payment of any Impositions or Liens which Mortgagor shall be required by any provision hereof to pay, so long as Mortgagor shall first notify Mortgagee, in writing, at least thirty (30) days prior to the due date thereof, if any, or otherwise at least ten (10) days before commencement of any contest thereof, of its intention to contest the amount, applicability and/or validity of such Imposition or Lien and shall thereafter, in good faith, in compliance with all applicable statutes, and in a commercially reasonable manner, diligently contest the same, and Mortgagor may postpone or defer payment of a portion of said Impositions or Liens, if, but only if, permitted by statute, and if neither the Mortgaged Property, nor any portion thereof, would, by reason of such postponement or deferment, be in danger of being forfeited or lost; provided, however, that Mortgagor shall furnish to Mortgagee, prior to commencing any such contest, cash or other security reasonably satisfactory to Mortgagee to indemnify Mortgagee against any loss or liability by reason of any such contest and to pay any such Imposition or Lien, together with interest and penalties thereon, if any, if such contest should fail. Upon a final adjudication of any such contest, and, in any event, at least thirty (30) days prior to the date on which the interest of Mortgagee in the Mortgaged Property would otherwise be forfeited by reason of the nonpayment of any such Imposition or Lien, Mortgagor shall pay the amount thereof then due, including any penalties and interest thereon. Mortgagee may, at its option, make such payment from the security deposited by Mortgagor, if Mortgagor fails to so pay the same.

(c) At Mortgagee's written request, during the continuance of an Event of Default, in order to further secure the payment of the sums and the performance of the obligations secured hereby, Mortgagor shall pay to Mortgagee, monthly, in addition to, concurrently with, and at the same time as each monthly payment of principal and/or interest required hereunder, or under the Note, a sum equivalent to one-twelfth (1/12th) (or such greater fraction as may be necessary to accumulate sufficient funds to make any payment due less than thirteen (13) months after the date thereof) of the amount estimated by Mortgagee to be sufficient to enable Mortgagee to pay, at least thirty (30) days before they become due, all Impositions and the premiums upon all insurance required to be maintained by Mortgagor hereunder. All such funds shall be held in the name of Mortgagee. No interest shall be payable by Mortgagee upon the amounts so paid. Said payments shall not be, or be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee. Upon demand by Mortgagee, Mortgagor shall deliver and pay over to Mortgagee such additional sums as are required to make up any deficiency in the amount necessary to enable Mortgagee to fully pay any of the items hereinabove mentioned. Any excess sums so paid shall be retained by Mortgagee and shall be applied to pay said items, as and when they become due in the future, unless all amounts secured hereby have been paid in full, in which case all excess sums so paid shall be refunded to Mortgagor. At Mortgagor's written request, Mortgagee shall use, or, at Mortgagee's option, permit Mortgagor to use, all sums paid by Mortgagor pursuant to this paragraph to pay the items hereinabove mentioned prior to delinquency. Mortgagee shall not be required to pay any such items in an amount in excess of the sums deposited or paid over by Mortgagor to Mortgagee pursuant to this paragraph. In the event of an acceleration of the Indebtedness, Mortgagee may apply against the Indebtedness, in such a manner as Mortgagee

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may determine, any funds of Mortgagor then held under this paragraph, in which funds Mortgagor hereby grants to Mortgagee a security interest.

(d) In addition, upon request of Mortgagee (but in no event more frequently than annually), or upon the occurrence of an Event of Default, Mortgagor shall provide to Mortgagee a title report with respect to the Mortgaged Property. In the event any lien, encumbrance or other matter objectionable to Mortgagee is disclosed by such title report, Mortgagor, at its sole cost and expense, shall provide to Mortgagee an endorsement to the title policy issued in connection with the Loan insuring that the lien of this Mortgage is and remains a first priority lien on the Mortgaged Property, and Mortgagor shall bond over or otherwise have removed any such lien or encumbrance within thirty (30) days of the imposition thereof, in either instance to the satisfaction of Mortgagee.

1.11 **Insurance.** (a) Mortgagor shall obtain, maintain and keep in full force and effect during the term of the Loan, with all premiums paid thereon, all insurance required by Exhibit I of the Loan Agreement as applicable to the Mortgaged Property.

(b) Mortgagor will, if requested by Mortgagee in its discretion as a commercially reasonable senior secured lender, provide Mortgagee with evidence of the full replacement cost of the Mortgaged Property in a form reasonably acceptable to Mortgagee. Mortgagor shall promptly notify Mortgagee and the appropriate insurer in writing of any loss covered by any of the above-mentioned types of insurance.

(c) All insurance provided for in this Section 1.11 shall be (i) effected under a valid and enforceable policy or policies of insurance in form and substance reasonably approved by Mortgagee, (ii) issued by insurers of recognized responsibility, which are licensed to do business in the State of Illinois and which are reasonably acceptable to Mortgagee and (iii) satisfactory to Mortgagee in all other respects.

(d) All hazard and casualty insurance policies maintained by Mortgagor pursuant to the foregoing provisions of this Section 1.11 shall comply with the Loan Agreement. If this Mortgage is foreclosed, the purchaser at the foreclosure sale shall, after the expiration of any statutory period of redemption, become the sole and absolute owner of any and all such policies, with the sole right to collect and retain all unearned premiums thereon and, for this purpose, Mortgagor hereby assigns and grants a security interest in said policies and unearned premiums to Mortgagee.

(e) In the event of loss, Mortgagor shall immediately give written notice thereof to Mortgagee, and Mortgagee is authorized and empowered (but not obligated or required) to make proof of loss, to settle, adjust or compromise any claims for loss, damage or destruction under, and to collect and receive all proceeds of, any policies of hazard and casualty insurance maintained pursuant hereto. Mortgagor shall reimburse Mortgagee, on demand, for all costs and expenses, including, but not limited to, court costs and reasonable attorneys' fees, incurred by Mortgagee in connection therewith, plus interest thereon from the date actually incurred at the Default Rate specified in the Loan Agreement (hereinafter referred to as "Default Rate"). All proceeds of such insurance are hereby absolutely and unconditionally assigned, and shall be paid, to Mortgagee. Such proceeds shall, at Mortgagee's option, be applied first to the

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payment of all costs and expenses incurred by Mortgagee in obtaining such proceeds, and second, at Mortgagee's option, either to the reduction of the Indebtedness in such order as Mortgagee may elect, whether then due and payable or not, or to the restoration or repair of the Mortgaged Property, without affecting the lien of this Mortgage or the obligations of Mortgagor hereunder. Interest upon the entire Indebtedness shall continue until any such proceeds are received and applied to such Indebtedness by Mortgagee. Pending a decision as to the proper use and application of any insurance proceeds, and during any such restoration or repair, Mortgagor shall not be liable for interest on such proceeds (but, to avoid doubt, shall be liable for interest on the Indebtedness as set forth above), and Mortgagee shall not be liable to pay any interest on such proceeds. If Mortgagee elects to apply any such insurance proceeds to the restoration or repair of the Mortgaged Property, it shall not be liable for supervising such restoration or repair or for supervising the disbursement of such insurance proceeds therefor, but such disbursement shall proceed in accordance with the procedures generally followed by Mortgagee in making construction loan advances. In such event, Mortgagor shall deposit with Mortgagee, prior to commencing any such restoration or repair, the amount, if any, by which the cost of such restoration or repair, as determined by Mortgagee, exceeds the amount of such insurance proceeds, which amount shall be disbursed to pay costs of such restoration and repair prior to, and in the same manner as, such insurance proceeds. Any surplus which may remain after payment of all costs of restoration or repair may, at the option of Mortgagee, be applied to reduction of the Indebtedness, in any order which Mortgagee may determine, whether then due and payable or not, or be paid to Mortgagor, as its interest may appear, the choice of application to be solely at the discretion of Mortgagee. In no event shall Mortgagee be held responsible for failure to pay for any insurance required hereby or for any loss or damage growing out of a defect in any policy thereof or growing out of any failure of any insurance company to pay for any loss or damage insured against or for failure by Mortgagee to obtain such insurance or to collect the proceeds thereof.

1.12 **Utilities and Services.** Mortgagor shall pay or cause to be paid promptly, when due, all charges or fees for utilities or services, including, but not limited to, electricity, water, gas, telephone, sanitary sewer, and trash and garbage removal, supplied to the Mortgaged Property, and, upon request of Mortgagee, shall furnish receipts or other customary evidence of payment to Mortgagee showing such payment.

1.13 **Books, Records and Financial Statements.** Mortgagor covenants and agrees with Mortgagee, as long as any amount secured hereby remains unpaid, at Mortgagor's sole cost and expense, to:

(a) at all times keep proper and accurate records and books of account relative to the Mortgage Property and permit Mortgagee and its representatives to inspect such books and records and to make copies thereof, in accordance with Section 5.6 of the Loan Agreement; and

(b) furnish to Mortgagee, the financial statements and tax returns and other information required under Section 5.13 of the Loan Agreement.

1.14 **Cure of Defaults by Mortgagee.** If Mortgagor shall fail to observe, comply with or perform any of the terms, covenants and conditions herein with respect to the procuring and delivery of insurance, the payment of Impositions, ground rent or Liens, the keeping of the

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Mortgaged Property in repair, the furnishing of financial and operating statements, the performance of Mortgagor's obligations under any other term, covenant or condition contained herein, in the Note, in the Loan Agreement or in any other Loan Document, Mortgagee may itself, following reasonable notice to and cure periods for Mortgagor, observe, comply with or perform the same, may make such advances to observe, comply with or perform the same as Mortgagee shall deem appropriate, and may enter the Mortgaged Property for the purpose of observing, complying with or performing any such term, covenant or condition. Mortgagee may expend such sums, including reasonable attorneys' fees (prior to trial, at trial and on appeal), to sustain the lien of this Mortgage or its priority, or to protect or enforce, or to obtain the right to enforce, its rights, powers and remedies hereunder, including the payment of any prior liens, ground rent, claims and encumbrances, other than Permitted Encumbrances which are not in default, or to protect the Mortgaged Property, as it may deem desirable. Mortgagor agrees to repay all sums so advanced or expended upon demand, with interest thereon at the Default Rate from the date of advancement or expenditure, and all sums so advanced or expended, with interest, shall be secured hereby, but no such advance or expenditure shall be deemed to relieve Mortgagor from any default hereunder. Mortgagee shall not be bound to inquire into the validity of any Imposition or Lien which Mortgagor fails to pay as and when required hereby and which Mortgagor does not contest in strict accordance with the terms hereof.

1.15 Sale, Transfer or Encumbrance. If Mortgagor shall voluntarily, involuntarily or by operation of law agree to, cause, suffer or permit (a) any sale, transfer, lease or conveyance of any interest of Mortgagor, legal or equitable, in the Mortgaged Property; (b) any change in the ownership of a controlling interest of the ownership interests of Mortgagor; or (c) any mortgage, pledge, encumbrance or lien to be outstanding against the Mortgaged Property or any portion thereof, or any security interest to exist therein (beyond any applicable cure period provided herein, if any), except as created by this Mortgage and the other documents which secure the Note, and except Permitted Transfers and Permitted Encumbrances, without, in each instance, the prior written consent of Mortgagee, Mortgagee may, at its election, declare the entire Indebtedness for which the Mortgagor is liable to be immediately due and payable, without notice to Mortgagor (which notice Mortgagor hereby expressly waives), and upon such declaration the entire Indebtedness for which the Mortgagor is liable shall be immediately due and payable, anything hereinabove or in the Note or the Loan Agreement to the contrary notwithstanding.

No transfer, conveyance, lease, sale or other disposition shall relieve Mortgagor from personal liability for its obligations hereunder or under the Note, whether or not the transferee assumes this Mortgage. Mortgagee may, without notice to Mortgagor, deal with any successor owner of all or any portion of the Mortgaged Property in the same manner as with Mortgagor, without in any way discharging the liability of Mortgagor hereunder or under the Note.

1.16 Assignment of Leases and Rents. (a) As a source of future repayment of the Indebtedness, Mortgagor hereby absolutely and presently assigns to Mortgagee all Rents and hereby collaterally assigns to Mortgagee all of Mortgagor's rights in and interest as landlord under the Leases (subject to the appointment of Mortgagor as agent for Mortgagee and the license granted to Mortgagor as set forth below); together with the immediate and continuing right to collect and receive all of the Rents now due or which may become due or to which

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Mortgagor may now or shall hereafter (including the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Mortgaged Property or any part thereof. It is the intention hereby to establish a choate, present, absolute transfer and assignment of the Rents now due to or which may become due to Mortgagee and not merely the granting of a security interest.

(b) Notwithstanding the foregoing, Mortgagee hereby (i) appoints Mortgagor as the agent of Mortgagee to collect and receive all of the Rents and apply them as set forth herein and (ii) grants to Mortgagor a license to carry out any and all of the terms and conditions of the Leases and to manage the Mortgaged Property, as hereinafter provided, such appointment and license terminable at the sole election of Mortgagee upon the occurrence of an Event of Default; provided, however that if the applicable Event of Default shall at any time be cured, and no other Event of Default shall then be continuing, such appointment and license shall be immediately reinstated without the execution of any further instrument or document or taking of any further action.

(c) Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor, without any obligation to determine whether a default has in fact occurred and regardless of whether Mortgagee has taken possession of any portion of the Mortgaged Property, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payment to Mortgagee shall constitute payment to Mortgagor under the Leases.

(d) Mortgagor irrevocably constitutes and appoints Mortgagee as its lawful attorney, in its name and stead, to do all things which Mortgagor might otherwise do with respect to the Mortgaged Property and the Leases thereon, including, without limitation, (i) leasing, in the name of Mortgagor, the whole or any part of the Mortgaged Property which may become vacant, (ii) employing agents therefor and paying such agents reasonable compensation for their services; provided, however, that the Mortgagee's powers hereinabove described shall be subject to Mortgagor's license to carry out any and all of the terms of the Leases and to manage and operate the Mortgaged Property as provided herein, (iii) collecting and receiving all of the Rents and applying them as set forth herein, and (iv) carrying out any and all of the terms and conditions of the Leases and managing the Mortgaged Property, as hereinafter provided.

(e) Nothing contained in the foregoing paragraph shall be construed to impose any obligation upon Mortgagee to exercise any power or right granted in this paragraph or to assume any liability under any Lease of any part of the Mortgaged Property and no liability shall attach to Mortgagee for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section shall become null and void upon the release of this Mortgage.

(f) As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Mortgagor's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Mortgaged Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, agreement or guaranty; and (ii) "Rents" means all of the rents, revenue, income, profits and proceeds

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derived and to be derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any Lease, including, but not limited to, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Mortgaged Property, all of Mortgagor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable law, together with any sums of money that may now or at any time hereafter be or become due and payable to Mortgagor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Mortgaged Property or any part thereof, and all proceeds and other amounts paid or owing to Mortgagor under or pursuant to any and all contracts and bonds relating to the improvement, construction or renovation of the Mortgaged Property.

1.17 **Additional Advances.** Without limiting any other provisions of this Mortgage, this Mortgage shall also secure additional loans and other future advances hereafter made by Mortgagee to Mortgagor, or for the benefit of Mortgage but in no event shall the total outstanding Indebtedness secured hereby at any such time exceed (i) twice the amount of the original principal indebtedness of the Note plus (ii) all accrued and unpaid interest. Each such additional loan or future advance shall be evidenced by a note or other evidence of indebtedness and shall be automatically secured hereby without the necessity of the note or other evidence of indebtedness identifying such additional loan or future advance as part of the Indebtedness secured by this Mortgage. Nothing herein contained shall imply any obligation on the part of Mortgagee to make any such additional loan(s) or future advance(s) except as may be otherwise set forth in the Loan Agreement.

1.18 **Estoppel Certificate.** At any time and from time to time, within ten (10) business days after receipt from Mortgagee of a written request therefor, Mortgagor shall prepare, execute and deliver to Mortgagee, and/or any other party which Mortgagee may designate, an estoppel certificate stating: (a) the amount of the unpaid principal balance and accrued interest secured by this Mortgage on the date thereof; (b) the date upon which the last payment secured by this Mortgage was made and the date the next payment secured by this Mortgage is due; and (c) that the provisions of the Note, this Mortgage and the other Loan Documents described in said request have not been amended or changed in any manner, that there are no defaults or Events of Default then existing under the terms of the Note, this Mortgage or the other Loan Documents described in said request, and that Mortgagor has no defenses, claims or offsets against full enforcement hereof and thereof according to the terms hereof and thereof, or listing and describing any such amendments, changes, defaults, Events of Default, defenses, claims or offsets which do exist.

1.19 **Hazardous Substances.** The provisions of Section 2 of that certain Indemnification Agreement, of even date herewith, from Mortgagor and Guarantors in favor of Mortgagee are incorporated herein, mutatis mutandis.

1.20 **Indemnity.** Mortgagor agrees to indemnify, protect, hold harmless and defend Mortgagee from and against any and all losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses (including

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reasonable attorneys' fees, disbursements and court costs prior to trial, at trial and on appeal) which may be imposed on, actually incurred or paid by, or asserted against Mortgagee by reason or on account of, or in connection with, (i) any willful misconduct of Mortgagor or any default or Event of Default hereunder, (ii) any construction, reconstruction or alteration of the Mortgaged Property in violation of the Loan Documents, (iii) any negligence of Mortgagor or any of its agents, contractors, subcontractors, servants, directors, officers or employees, or (iv) any accident, injury, death or damage to any person or property occurring in, on or about the Mortgaged Property or any street, drive, sidewalk, curb or passageway adjacent thereto, except to the extent that the same results directly from the gross negligence or willful misconduct of Mortgagee. Any amount payable to Mortgagee under this Section 1.20 shall be due and payable upon demand therefor and receipt by Mortgagor of a statement from Mortgagee setting forth in reasonable detail the amount claimed and the basis therefor. Mortgagor's obligations under this Section 1.20 shall survive the repayment or any other satisfaction of the Note and shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal of any insurance carrier to perform any obligation on its part under any such policy of insurance. If any claim, action or proceeding is made or brought against Mortgagee which is subject to the indemnity set forth in this Section 1.20, the terms of Section 9.2(b) of the Loan Agreement, setting forth the procedure for indemnification, shall govern.

1.21 **Re-Appraisal of Mortgaged Property.** Mortgagee may obtain a reappraisal of the Mortgaged Property or any part thereof in accordance with Section 5.12 of the Loan Agreement.

ARTICLE 2. **TAKING OF PROPERTY**

2.1 **Condemnation or Sale in Lieu Thereof.** In case of a taking of or damage to all or any part of the Mortgaged Property as a result of, or a sale thereof in lieu of or in anticipation of, the exercise of the power of condemnation or eminent domain, or the commencement of any proceedings or negotiations which might result in such a taking, damage or sale, Mortgagor shall promptly give Mortgagee written notice thereof, generally describing the nature of such taking, damage, sale, proceedings or negotiations and the nature and extent of the taking, damage or sale which has resulted or might result therefrom, as the case may be, together with a copy of each and every document reasonably relating thereto received by Mortgagor, and Mortgagee shall have the right to participate in such proceedings or negotiations. Should any of the Mortgaged Property be taken or damaged by exercise of the power of condemnation or eminent domain, or be sold by private sale in lieu or in anticipation thereof, Mortgagor does hereby irrevocably assign, set over and transfer to Mortgagee any award, payment or other consideration for the property so taken, damaged or sold and any claim or cause of action therefor. Such award, payment or consideration shall, at Mortgagee's option, be applied first to the payment of all costs and expenses incurred by Mortgagee in obtaining and preserving such award, payment or consideration, and second, at Mortgagee's option, either to the reduction of the Indebtedness by application thereof to said indebtedness, in such order as Mortgagee may elect, whether then due and payable or not, or to the restoration or repair of the Mortgaged Property, without affecting the lien of this Mortgage or the obligations of Mortgagor hereunder. Mortgagee is authorized, at its option, in the name of Mortgagor or in its own name, to compromise, settle, collect and receive all awards, payments or consideration for the property so taken, damaged or sold.

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Mortgagor shall reimburse Mortgagee, on demand, for all costs and expenses, including, but not limited to, court costs and reasonable attorneys' fees, incurred by Mortgagee in connection therewith, plus interest thereon from the date incurred at the Default Rate. Interest upon the entire Indebtedness shall continue until any such award, payment or consideration is received and applied by Mortgagee to said Indebtedness. Pending a decision as to the proper application of said award, payment or consideration, and pending the completion of any such repairs or restoration, Mortgagor shall not be liable to pay any interest on said award, payment or consideration (but, to avoid doubt, shall be liable for interest on the Indebtedness as set forth above), and Mortgagee shall not be liable to pay any interest on said award, payment or consideration. Mortgagor will, make commercially reasonable efforts to, file and prosecute what would, absent this assignment, be its claims for any such award, payment or consideration and will cause the same to be collected and paid over to Mortgagee. In the event Mortgagor fails to so act or is otherwise in default hereunder, Mortgagee may, at its option, file and prosecute said claims, and Mortgagor agrees to pay all costs and expenses reasonably and actually incurred by Mortgagee in connection therewith, on demand, which costs and expenses shall also be secured hereby and shall bear interest from the date paid at the Default Rate, but Mortgagee shall not be liable to Mortgagor for any failure by Mortgagee to collect or to exercise diligence in collecting any such award, payment or consideration. If Mortgagee elects to apply any such award, payment or consideration to the restoration or repair of the Mortgaged Property, it shall not be liable to supervise such restoration or repair or to supervise the disbursement of such award, payment or consideration therefor, but disbursement thereof shall proceed in accordance with the procedures generally followed by Mortgagee in making construction loan advances. In such event, Mortgagor shall deposit with Mortgagee, prior to commencing any such restoration or repair, the amount, if any, by which the cost of such restoration or repair, as determined by Mortgagee, exceeds the amount of such award, payment or consideration, which amount shall be disbursed to pay costs of such restoration and repair prior to, and in the same manner as, such award, payment or consideration. Any surplus which may remain after payment of all costs of restoration or repair may, at the option of Mortgagee, be applied in reduction of the Indebtedness, in any order which Mortgagee may determine, whether then due and payable or not, or be paid to Mortgagor, as its interest may appear, the choice of application to be solely at the discretion of Mortgagee. If any such taking or sale includes any portion of the Improvements, or more than ten percent (10%) by area of the Premises, or so much of the Premises that the remainder thereof cannot be used in the same manner and to the same extent as prior to said taking without violating some applicable Governmental Requirement or Private Restriction, including, but not limited to, those relating to parking, Mortgagee may, at its option, declare the principal of and all accrued interest on the Note and all sums advanced hereunder, with interest, to be forthwith due and payable.

ARTICLE 3.

DEFAULT AND REMEDIES THEREFOR

3.1 **Events of Default.** Any of the following events shall constitute an Event of Default under this Mortgage (each and "Event of Default"):

(a) Mortgagor shall default in any payment of principal or interest due according to the terms hereof or of the Note, and such default shall remain uncured for a period

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of five (5) days after the payment became due, provided, however, there is no cure period for payments due on the Maturity Date;

(b) Mortgagor shall default in the payment of fees or other amounts payable to Mortgagee hereunder or under any other Loan Document other than as set forth in subsection (a) above, and such default continues unremedied for a period of ten (10) days after written notice from Mortgagee to Mortgagor thereof;

(c) Mortgagor shall default in the performance or observance of any agreement, covenant or condition required to be performed or observed by Mortgagor under the terms of this Mortgage or any other Loan Document, other than a default described elsewhere in this Section 3.1, and such default continues unremedied for a period of thirty (30) days after written notice from Mortgagee to Mortgagor thereof; provided, however, that if such default is susceptible of cure but cannot reasonably be cured within such 30-day period, and Mortgagor (or Guarantor, if applicable) shall have commenced to cure such default within such thirty (30) day period, and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for Mortgagor (and Guarantors, if applicable) to cure such default, but, in any event, not to exceed ninety (90) days;

(d) Any representation or warranty made by Mortgagor in this Mortgage or by Mortgagor or an Affiliate, or a Guarantor, if made in connection with the Loan, in any of the other Loan Documents, or in any certificate or document furnished in connection with the Loan, shall be untrue or incomplete in any material respect when made or deemed made or restated hereunder; provided, that if such breach is reasonably susceptible of cure, then no Event of Default shall exist so long as Mortgagor shall cause such breach and adverse consequences to Mortgagee to be cured within thirty (30) days after notice from Mortgagee; provided further that if such breach or adverse consequences are susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and Mortgagor (or Guarantor, if applicable) shall have commenced to cure such breach or adverse consequences within such 30-day period, and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for Mortgagor (and Guarantors, if applicable) to cure such breach or adverse consequences, but, in any event, not to exceed ninety (90) days;

(e) Mortgagor and/or Guarantor shall be in default under any term, covenant or condition of any of the Note or of any of the other Loan Documents to which Borrower or Guarantor, as applicable, is a party, other than a default described elsewhere in this Section 3.1, after the expiration of any notice or grace period, if any, provided therein

(f) Any judgment is entered in any court against Mortgagor or Guarantor and is not satisfied in full within sixty (60) days after all rights to appeal from the same have expired, or any writ of execution or attachment or similar process is issued or levied against any part of the Mortgaged Property or any interest therein.

(g) Any of Mortgagor or any Guarantor, shall commit an act of bankruptcy; or shall apply for, consent to or permit the appointment of a receiver, custodian, trustee or liquidator

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for it or any of its property or assets; or shall generally fail to, or admit in writing its inability to, pay its debts as they mature; or shall make a general assignment for the benefit of creditors or shall be adjudicated bankrupt or insolvent; or shall take other similar action for the benefit or protection of its creditors; or shall give notice to any governmental body of insolvency of pending insolvency or suspension of operations; or shall file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, rearrangement, dissolution, liquidation or other similar debtor relief law or statute; or shall file an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or statute; or shall be dissolved, liquidated, terminated or merged; or shall effect a plan or other arrangement with creditors; or a trustee, receiver, liquidator or custodian shall be appointed for it or for any of its property or assets and shall not be discharged within sixty (60) days after the date of his appointment; or a petition in involuntary bankruptcy or similar proceedings is filed against it and is not dismissed within sixty (60) days after the date of its filing;

(h) There shall occur an event which would constitute an "Event of Default" (without duplication) under the Loan Agreement.

3.2 Mortgagee's Power of Enforcement. After the occurrence of any Event of Default, Mortgagee, at its option, may proceed by any appropriate action or proceeding to: (i) enforce payment of the Indebtedness for which the Mortgagor is liable pursuant to the Loan Documents, (ii) enforce performance of any term of this Mortgage or any of the other Loan Documents, (iii) enforce any other rights of Mortgagee with respect to the Indebtedness for which the Mortgagor is liable or the Mortgaged Property, (iv) foreclose this Mortgage in accordance with Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 *et seq.*, Illinois Compiled Statutes) (as may be amended from time to time, the "Mortgage Foreclosure Law") and sell the Mortgaged Property, as an entirety or in separate portions, pursuant to the judgment, order or decree of any court of competent jurisdiction, (v) to the extent permitted by law, pursue the partial foreclosure of this Mortgage for any part of the Indebtedness then due and payable, subject to the continuing encumbrance of this Mortgage as security for the balance of the Indebtedness not then due, and (vi) pursue any other right, power or remedy available to Mortgagee at law or in equity. Mortgagee may pursue any and all such actions or proceedings, at Mortgagee's option, either with or without entry or taking possession and whether or not the Indebtedness or any part thereof shall have been declared to be immediately due and payable or shall otherwise be due. Mortgagee may pursue any and all such actions or proceedings without prejudice to Mortgagee's right thereafter to foreclose this Mortgage or to bring any other action or proceeding to enforce Mortgagee's rights, powers and remedies with respect to the Indebtedness for which the Mortgagor is liable or the Mortgaged Property, whether or not the basis for any such subsequent action or proceeding shall be a default or Event of Default existing at the time such earlier action or proceeding was commenced.

Mortgagee may, either with or without entry or taking possession of the Mortgaged Property as provided in this Agreement or otherwise, personally or by its agents or attorneys, and without prejudice to the right to bring an action for foreclosure of the Mortgage, sell the Mortgaged Property or any part thereof pursuant to any procedures provided by applicable law, and all estate, right, title, interest, claim and demand therein, and right of redemption thereof, at

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one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by applicable law.

All notices hereunder or under any applicable law pertaining hereto shall be given in accordance with Section 4.3 hereof.

3.3 Mortgagee's Right To Enter and Take Possession.

(a) While any Event of Default exists, Mortgagor, upon receipt of written notification by Mortgagee, shall forthwith surrender and deliver to Mortgagee the actual possession of the Mortgaged Property or any part thereof designated by Mortgagee, subject to the rights of tenants. To the extent permitted by law, Mortgagee may enter and take possession of all or any part of the Mortgaged Property and may exclude Mortgagor and its officers, employees, agents, contractors, attorneys and other representatives therefrom, and Mortgagee may have joint access with Mortgagor to the books, papers and accounts of Mortgagor and of any manager of the Mortgaged Property. On the first day of each month occurring after any such entry into possession, or after the appointment of any receiver as provided below, Mortgagor shall pay to Mortgagee or to such receiver, as the case may be, in advance, a use and occupancy charge equal to the fair and reasonable rental value for such month of any leasable portion of the Mortgaged Property which shall then be in the possession of or occupied by Mortgagor. If Mortgagor shall fail to make any such payment as provided above, then, upon request by Mortgagee, Mortgagor shall vacate, deliver and surrender possession of such part of the Mortgaged Property to Mortgagee or to such receiver, as the case may be, and, to the extent permitted by law, Mortgagor may be evicted or dispossessed by summary proceedings or otherwise.

(b) While an Event of Default exists, if Mortgagor for any reason shall fail to surrender or deliver to Mortgagee the Mortgaged Property or any part thereof designated by Mortgagee as provided above, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession and requiring Mortgagor to deliver to Mortgagee immediate possession of the Mortgaged Property or such part thereof. Mortgagor hereby specifically and irrevocably consents to the entry of any such judgment or decree. Upon request by Mortgagee, Mortgagor shall pay to Mortgagee, or to any other person that Mortgagee may designate, all reasonable costs, expenses and liabilities (including, without limitation, reasonable attorneys' fees) incurred by Mortgagee in connection with any such failure to surrender or deliver possession and in connection with any such judgment or decree, together with interest thereon at the Default Rate from the date incurred by Mortgagee until the date so paid to, or as directed by, Mortgagee.

(c) After any such entry into possession, Mortgagee, in Mortgagor's name or otherwise, may hold, store, use, operate, manage and control the Mortgaged Property, or the part thereof as to which Mortgagee shall have entered into possession, and may conduct the business thereof. In doing so, Mortgagee from time to time may:

(i) make all necessary and proper maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon

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and purchase or otherwise acquire additional fixtures, personal property and other property of the type encumbered by this Mortgage;

(ii) insure the Mortgaged Property or keep the Mortgaged Property insured;

(iii) manage and operate the Mortgaged Property, or such part thereof, and exercise all the rights and powers of Mortgagor with respect to the Mortgaged Property and the management and operation of the Mortgaged Property (including, without limitation, the right to enter into leases, to cancel, enforce or modify leases, to evict tenants by summary proceedings or otherwise and to take other appropriate steps to enforce leases);

(iv) enter into agreements with others to exercise the powers herein granted to Mortgagee, all as Mortgagee from time to time may determine; and

(v) collect and receive all the rents, royalties, issues, profits, revenues, income and other benefits of and from all or any part of the Mortgaged Property, including those past due as well as those accruing thereafter, and apply the moneys so received, in such priority as Mortgagee may determine, to (1) the payment of interest, principal and other amounts due and payable in respect of the Indebtedness or otherwise payable pursuant to any of the Loan Documents, (2) the deposits payable under this Mortgage for Impositions, (3) the cost of insurance, Impositions and other expenses of operating, maintaining, repairing and improving all or any part of the Mortgaged Property, including, without limitation, reasonable renting commissions and rental collecting commissions paid to any agent of Mortgagee or of any receiver, (4) the reasonable compensation, expenses and disbursements of the agents, contractors, attorneys and other representatives of Mortgagee, and (5) amounts advanced for any purpose recognized under this paragraph (c) or otherwise permitted by law or agreement.

(d) Mortgagee shall be liable to account only for rents, security deposits, royalties, issues, profits, revenues, income and benefits actually received by Mortgagee or its agents while in possession of the Mortgaged Property. In the event of any foreclosure, Mortgagee may remain in possession of all or any part of the Mortgaged Property until the foreclosure sale and thereafter during any period of redemption. In the absence of any foreclosure, Mortgagee may remain in possession of all or any part of the Mortgaged Property as long as there exists an Event of Default. The same right of taking possession shall exist during the continuance of any subsequent Event of Default. Mortgagee shall incur no liability for, nor shall Mortgagor assert any claim or set off as a result of, any acts or omissions of Mortgagee, or its officers, employees, agents, contractors, attorneys or other representatives, while in possession of all or any part of the Mortgaged Property (except for damages directly caused by Mortgagee's own gross negligence or intentional wrongful acts), all such liabilities, claims and rights of set off being hereby expressly waived by Mortgagor.

(e) Upon request by Mortgagee, Mortgagor shall pay to Mortgagee, or to any other person that Mortgagee may designate, all reasonable costs, expenses and liabilities

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(including, without limitation, reasonable attorneys' fees) incurred by Mortgagee in connection with the management, operation, use, control and maintenance of all or any part of the Mortgaged Property, except to the extent such costs, expenses and liabilities shall have been paid out of collections from the Mortgaged Property as provided above, together with interest thereon at the Default Rate from the date incurred by Mortgagee until the date so paid to, or as directed by Mortgagee.

3.4 Appointment of Receiver.

(a) After the occurrence of any Event of Default, Mortgagee, to the extent permitted by law and without regard to the value, adequacy or occupancy of the Mortgaged Property, shall be entitled as a matter of right, if it so elects, to the appointment of a receiver to enter upon and take possession of the Mortgaged Property and to collect all rents, royalties, issues, profits, revenues, income and other benefits of and from the Mortgaged Property and apply the same as the court may direct or otherwise as may be permitted by law. Mortgagor hereby specifically and irrevocably consents to such appointment. Without limiting the generality of the foregoing or any other provision of this Mortgage, Mortgagor agrees that the intentional failure of Mortgagor to pay any Impositions (except to the extent permitted in connection with any contest pursuant to Section 1.10 of this Mortgage) or to maintain any insurance required with respect to the Mortgaged Property or to pay any premiums payable with respect to any such insurance shall constitute waste, justifying the appointment of a receiver. The receiver shall be entitled to hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof as would Mortgagee pursuant to the immediately preceding Section and shall have all rights and powers permitted under the laws of the State of Illinois and such other rights and powers as the court making such appointment shall confer. The receiver shall be liable to account only for rents, royalties, issues, profits, revenues, income and other benefits actually received by such receiver. Notwithstanding the appointment of any receiver or other custodian, Mortgagee, as pledgee or depository, shall be entitled to the possession and control of any cash, deposits or instruments held by Mortgagee at the time of such appointment or payable or deliverable to Mortgagee from time to time under the terms of this Mortgage or any of the other Loan Documents.

(b) Upon request by Mortgagee, Mortgagor shall pay to Mortgagee, or to any other person that Mortgagee may designate, or to any such receiver, all reasonable costs, expenses and liabilities (including, without limitation, reasonable attorneys' fees, receivers' fees and the fees of any manager retained by such receiver) incurred by Mortgagee or by such receiver in connection with the appointment of such receiver and the exercise of the rights and powers of such receiver, except to the extent such costs, expenses and liabilities shall have been paid out of collections from the Mortgaged Property as provided in the immediately preceding Section, together with interest thereon at the Default Rate from the date incurred by Mortgagee or by such receiver until the date so paid to, or as directed by, Mortgagee or to such receiver.

3.5 Waiver of Certain Rights.

(a) Mortgagor agrees, to the extent permitted by law, that neither Mortgagor nor any person at any time claiming through or under Mortgagor shall set up, claim or seek to take advantage of any appraisal, valuation, stay, notice of election to accelerate, mature or

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declare due the Indebtedness, extension, redemption or moratorium laws, or any exemption from execution or sale, now or hereafter in force, in order to prevent or hinder the foreclosure of this Mortgage after the occurrence of any Event of Default, the final and absolute sale of all or any part of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after any such sale, of the purchaser or purchasers at such sale or the enforcement of any other rights or remedies of Mortgagee under this Mortgage or any of the other Loan Documents. Mortgagor, for itself and for all who may at any time claim through or under Mortgagor or who hereafter may otherwise acquire any interest in or title to all or any part of the Mortgaged Property, hereby waives, to the extent permitted by law, all benefit of any such law or laws, any and all rights of redemption from sale pursuant to any judgment, order or decree of foreclosure of this Mortgage, and any and all right to have the assets constituting the Mortgaged Property marshaled upon any foreclosure or other enforcement of this Mortgage, and any and all right to a jury trial in connection with any enforcement of Mortgagee's rights under any of the Loan Documents and any other cause or proceeding arising out of or otherwise relating to the Loan or the transaction of which this Mortgage is a part. Mortgagee or any court having jurisdiction to foreclose this Mortgage may sell the Mortgaged Property in part or as an entirety. Mortgagee shall not be required to accept any part or parts of the Mortgaged Property in satisfaction of all or any part of the Indebtedness. Mortgagee shall not be required to accept any apportionment of the Indebtedness to or among any part or parts of the Mortgaged Property. If any law now in force of which Mortgagor might take advantage despite this Section shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

(b) Notwithstanding anything to the contrary contained in this Mortgage, Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15-1601 or other applicable law or replacement statutes.

3.6 **Leases.** Any foreclosure of this Mortgage and any other transfer of title to the Mortgaged Property in extinguishment of all or any part of the Indebtedness may, at Mortgagee's option, be subject to the rights of any tenants of all or any part of the Mortgaged Property, and any failure to make any such tenants parties defendant to any foreclosure proceedings or to foreclose or otherwise terminate their rights will not be, nor be asserted by Mortgagor to be, a defense to any such foreclosure proceedings or to any proceedings seeking collection of all or any part of the Indebtedness, including, without limitation, any deficiency remaining unpaid after the completion of any such foreclosure, any sale in connection therewith or any other transfer in extinguishment of all or any part of the Indebtedness.

3.7 **Suits To Protect Mortgaged Property.** Mortgagee is hereby irrevocably authorized, at Mortgagee's option, to institute and maintain any and all suits and proceedings as Mortgagee may deem advisable (a) to prevent any impairment of the Mortgaged Property or the security of this Mortgage by any unlawful acts or omissions, (b) to prevent the occurrence or continuance of any violation of this Mortgage or any of the other Loan Documents, (c) to

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foreclose this Mortgage (after the occurrence of an Event of Default), and (d) to preserve and protect its interest in the Mortgaged Property.

3.8 **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial case or proceeding affecting Mortgagor, Mortgagee, to the extent permitted by law, is hereby irrevocably authorized, at Mortgagee's option, to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such case or proceeding for the entire Indebtedness for which the Mortgagor is liable, at the date of the institution of such case or proceeding, and for any additional amounts that may become due and payable under any of the Loan Documents after such date.

3.9 **Application of Moneys by Mortgagee.** Any moneys collected or received by Mortgagee in connection with the enforcement of its rights or remedies following any Event of Default shall be applied, in such priority as Mortgagee may determine, to the payment of reasonable compensation, expenses and disbursements of the agents, contractors, attorneys and other representatives of Mortgagee, to the payment of all or any part of the Indebtedness or for any other purpose authorized by any of the Loan Documents or by law.

3.10 **No Waiver.**

(a) No delay or omission of Mortgagee to insist upon strict performance of any obligations of Mortgagor or any Guarantor under or in connection with this Mortgage or any of the other Loan Documents or to exercise any right, power or remedy available after the occurrence of any Event of Default shall waive, exhaust or impair any such obligation or any such right, power or remedy, nor shall any such delay or omission be construed to waive any such Event of Default or to constitute acquiescence therein. Notwithstanding any such delay or omission, Mortgagee thereafter shall have the right, from time to time and as often as may be deemed expedient by Mortgagee, to insist upon and enforce strict performance of any and all obligations of Mortgagor and any Guarantor under or in connection with this Mortgage or any of the other Loan Documents. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

(b) No waiver of any Event of Default shall extend to or affect any subsequent Event of Default or any other Event of Default then existing, nor shall any such waiver impair any rights, powers or remedies consequent upon any Event of Default. After the occurrence of any Event of Default (whether or not the Indebtedness shall have been declared to be due and payable immediately), Mortgagee may accept payments of amounts owing in respect of the Indebtedness, and no such acceptance shall waive any such Event of Default or result in any Indebtedness which shall have been declared to be due and payable no longer being due and payable.

3.11 **Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Mortgagee or to any receiver by any of the Loan Documents, by law or by any court, is or shall be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to each and every other right,

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power and remedy given under any of the Loan Documents or now or hereafter existing at law, in equity or by statute.

3.12 **Purchase by Mortgagee.** Upon any foreclosure sale, Mortgagee may bid for and purchase all or any part of the Mortgaged Property and, upon compliance with the terms of sale, may hold, retain, possess and dispose of such property in its own absolute right without further accountability. Upon any foreclosure sale, Mortgagee may, if permitted by law, and after allowing for costs and expenses of the sale, compensation and other charges, in paying the purchase price, apply all or any part of the Indebtedness in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable in connection therewith.

3.13 **Discontinuance of Proceedings.** If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or if such proceedings shall have resulted in a final determination adverse to Mortgagee, then and in every such case, to the extent permitted by law and any determination of such proceedings, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred or had been taken.

3.14 **Additional Security and Guaranty.** If Mortgagee at any time holds additional security for, or any guaranty of, all or any part of the Indebtedness, Mortgagee may, to the extent permitted by law, foreclose such security or otherwise enforce Mortgagee's rights with respect to, or realize upon, such security or such guaranty (as the case may be), at Mortgagee's option, either before or concurrently with or after a foreclosure or other enforcement of this Mortgage, without being deemed to have made an election thereby or to have accepted the benefits of such guaranty, the security of this Mortgage or such additional security (or the proceeds of such security) in full settlement of the Indebtedness and Mortgagee's rights with respect thereto. Any judgment, order or decree with respect to the Note or with respect to any such guaranty or security, shall not in any manner affect the security of this Mortgage, and any deficiency or other debt represented by said judgment, order or decree shall, to the extent permitted by law, be secured by this Mortgage to the same extent that the Indebtedness was secured hereby prior to the rendering of such judgment.

3.15 **Default Rate.** After the occurrence of any Event of Default until cured, the principal portion of the Indebtedness for which the Mortgagor is liable shall, at Mortgagee's option, bear interest at the Default Rate.

3.16 **Compliance with Illinois Mortgage Foreclosure Law.**

(a) If any provision in this Mortgage shall be inconsistent with any provision of the Mortgage Foreclosure Law, provisions of the Mortgage Foreclosure Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Mortgage Foreclosure Law.

(b) If any provision of this Mortgage shall grant to the Mortgagee (including the Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 3.4 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which

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are more limited than the powers, rights or remedies that would otherwise be vested in the Mortgagee or in such receiver under the Mortgage Foreclosure Law in the absence of said provision, the Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Mortgage Foreclosure Law to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Mortgage Foreclosure Law, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated elsewhere in this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

(d) Purpose. The proceeds of the indebtedness secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured by this Mortgage constitutes (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1).

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

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

(2) Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon 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 the Mortgagee as judgment creditor or mortgagee until confirmation of sale;

(3) In addition to any provision of this Mortgage authorizing the 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 15-1701 and 15-1702 of the Act, to be placed in the 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 and provisions for in Sections 15-1701 and 15-1703 of the Act;

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(4) Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act; and

(5) Mortgagor hereby voluntarily and knowingly waives its statutory rights to reinstatement and redemption pursuant to 735 ILCS Section 5/15-1601(b) to the extent permitted under the Act.

(f) Protective Advances. 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 any of the other Loan Documents or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to:

(1) All advances by Mortgagee in accordance with the terms of the Mortgage or any of the other Loan Documents to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1102 of the Act;

(2) Payments by Mortgagee of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior Liens; (ii) Taxes of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (iii) other obligations authorized by the Mortgage or any of the other Loan Documents; or (iv) with court approval, any other amounts in connection with other Liens or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(3) Advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior Liens;

(4) Reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of the Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the Mortgaged Property;

(5) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearings as referred to in Section 5/15-1508(b)(1) of the Act;

(6) Expenses deductible from proceeds of sale as referred to in Section 5/15-1512(a) and (b) of the Act; and

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(7) Expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Mortgagor's interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property imposed by Section 5/15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit or of affecting the Mortgaged Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (vii) reserved; (viii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Mortgaged Property; and (ix) if the Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.

(8) All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note.

(9) 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.

(g) Additional Advances. This Mortgage secures payment of such additional sums with interest thereon which may hereafter be loaned to or on behalf of Mortgagor by Mortgagee or advanced under any of the Loan Documents securing or evidencing the Loan, even though the aggregate amount outstanding at any time may exceed the original principal balance stated herein and in the Note (provided, however, that the indebtedness secured hereby shall in no event exceed an amount equal to two hundred percent (200%) of the face amount of the Note).

(h) Collateral Protection Act. Pursuant to the Collateral Protection Act (815 ILC§ 180/1 *et seq.*), Mortgagor is hereby notified that:

"UNLESS MORTGAGOR PROVIDES MORTGAGEE WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS MORTGAGE, MORTGAGEE MAY PURCHASE INSURANCE AT MORTGAGOR'S EXPENSE TO PROTECT MORTGAGEE'S INTERESTS IN THE MORTGAGED PROPERTY, WHICH INSURANCE MAY, BUT NEED

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NOT, PROTECT THE INTERESTS OF MORTGAGOR. THE COVERAGE PURCHASED BY MORTGAGEE MAY NOT PAY ANY CLAIM MADE BY MORTGAGOR OR ANY CLAIM MADE AGAINST MORTGAGOR IN CONNECTION WITH THE MORTGAGED PROPERTY. MORTGAGOR MAY LATER CANCEL ANY INSURANCE PURCHASED BY MORTGAGEE, BUT ONLY AFTER PROVIDING MORTGAGEE WITH EVIDENCE THAT MORTGAGOR HAS OBTAINED THE INSURANCE AS REQUIRED HEREUNDER. IF MORTGAGEE PURCHASES INSURANCE, THE MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF SUCH INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES IMPOSED IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE TOTAL OBLIGATION SECURED HEREBY. THE COSTS OF SUCH INSURANCE MAY BE GREATER THAN THE COST OF INSURANCE MORTGAGOR MAY BE ABLE TO OBTAIN FOR ITSELF.”

ARTICLE 4. MISCELLANEOUS

4.1 **Binding Effect; Survival; Number; Gender.** Whenever any of the parties hereto is referred to, such reference shall be deemed to include and apply to the successors and assigns of such party, subject to the provisions of Section 1.15 hereof; and all covenants, promises and agreements by or on behalf of Mortgagor in this Mortgage contained shall bind Mortgagor and also its successors and assigns and shall inure to the benefit of Mortgagee and its successors and assigns, whether elsewhere herein so expressed or not. All representations and warranties contained herein or otherwise heretofore made by Mortgagor or any Guarantor to Mortgagee shall survive the execution and delivery hereof. The singular of all terms used herein shall include the plural, the plural shall include the singular, and the use of any gender herein shall include all other genders, where the context so requires or permits.

4.2 **Severability.** The unenforceability or invalidity of any provision or provisions of this Mortgage as to any persons or circumstances shall not render that provision nor any other provision or provisions herein contained unenforceable or invalid as to any other persons or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable. Mortgagee shall be subrogated for further security to the lien, whether or not released of record, of any and all encumbrances paid out of the proceeds of the Note or the Loan Agreement or out of any advances made by Mortgagee hereunder.

4.3 **Notices.** All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a “Notice”) required, permitted or desired to be given hereunder shall be in writing and shall be sent by (a) registered or certified mail, postage prepaid, return receipt requested, (b) Federal Express, UPS or another reputable overnight courier, or (c) by hand by commercial courier service, addressed to the party to be so notified at its address set forth below, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 4.3:

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If to Mortgagor: Janko Alcion Schaumburg LLC
 c/o Janko Group, LLC
 1650 Lake Cook Road, Suite 130
 Deerfield, IL 60015
 Attn: Gary Janko

with a copy to: Goodwin Procter LLP
 Exchange Place
 53 State Street
 Boston, Massachusetts 02109
 Attn: Michael H. Glazer, Esq.

and to: Alcion Real Estate Partners Master Fund GP II, LLC
 c/o Alcion Ventures L.P.
 One Post Office Square, Suite 3520
 Boston, MA 02109
 Attn: Eugene F DeFavero

If to Mortgagee: U.S. Bank National Association
 One Post Office Square, 29th Floor
 Boston, Massachusetts 12109
 Attention: Real Estate Banking Group

with a copy to: Halloran & Sage LLP
 One Goodwin Square
 225 Asylum Street
 Hartford, Connecticut 06103
 Attn: James P. Maher, Esq.

Any Notice shall be deemed to have been received upon either (a) actual receipt of such Notice, or (b) any rejection or other refusal to accept such Notice. Notices shall be deemed effective if given by counsel to either party, as if given directly by such party. Any party may change the address to which any such Notice is to be delivered by furnishing ten (10) days prior written notice of such change to the other parties in accordance with the provisions of this Section 4.3. Notices shall be deemed to have been given on the date as set forth above, even if there is an inability to actually deliver any such Notice because of a changed address of which no Notice was given, or there is a rejection or refusal to accept any Notice offered for delivery.

4.4 Litigation.

(a) **Generally.** Mortgagor, at its sole cost and expense, shall appear in and defend any dispute, action, suit or proceeding purporting to relate to or affect the Note, the Loan Agreement or the security therefor, including, but not limited to, this Mortgage. If any action or proceeding relating to or affecting the Note, this Mortgage, the Loan Agreement or the Mortgaged Property is commenced or threatened, to which action or proceeding Mortgagee is made a party, or in which it becomes necessary or desirable, in Mortgagee's opinion, to defend or uphold, or to consider defending or upholding, the lien of this Mortgage, or to protect the

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Mortgaged Property or any part thereof, or to exercise, or to obtain the right to exercise, any of Mortgagee's rights, powers and remedies hereunder, including any foreclosure or commencement of foreclosure proceedings, probate proceedings, and bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceedings, or with respect to which Mortgagee otherwise incurs costs or expenses, all sums paid by Mortgagee in order to determine the merits thereof, to establish or defend the rights and lien of this Mortgage, to protect the Mortgaged Property or any part thereof and to exercise, or to obtain the right to exercise, any of Mortgagee's rights, powers and remedies hereunder, and/or otherwise incurred by Mortgagee in connection therewith (including attorneys' fees and costs and allowances prior to trial, at trial and on appeal), and whether suit be brought or not, and whether or not Mortgagee prevails therein, shall be paid, upon demand, to Mortgagee by Mortgagor, together with interest thereon at the Default Rate from the date incurred, and any such sum or sums shall be secured hereby.

(b) Waiver of Trial by Jury. MORTGAGOR AND MORTGAGEE, FOR THEMSELVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, HEREBY **(a) AGREE THAT NEITHER OF THEM SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF OR OTHERWISE RELATING TO THE INDEBTEDNESS, THIS MORTGAGE, ANY OF THE OTHER LOAN DOCUMENTS, ANY RELATED INSTRUMENT OR AGREEMENT, ANY COLLATERAL FOR ALL OR ANY PART OF THE INDEBTEDNESS, OR THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG MORTGAGOR, MORTGAGEE AND GUARANTOR (OR ANY OF THEM) IN CONNECTION THEREWITH, (b) IRREVOCABLY WAIVE ANY AND ALL RIGHT TO ANY SUCH JURY TRIAL, AND (c) AGREE THAT NEITHER OF THEM SHALL SEEK TO CONSOLIDATE ANY SUCH LAWSUIT, ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION PROCEDURE AS TO WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER LAWSUIT, ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION PROCEDURE AS TO WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS SECTION HAS BEEN FULLY DISCUSSED BY MORTGAGOR AND MORTGAGEE, EACH OF WHOM HAS BEEN REPRESENTED BY COUNSEL. THIS SECTION SHALL NOT BE SUBJECT TO ANY EXCEPTIONS, AND NO SUCH PERSON HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PERSON THAT THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.**

4.5 Acts of Mortgagee. In the event Mortgagee (a) grants any extension of time or forbearance with respect to the payment of any Indebtedness; (b) takes other or additional security for the payment thereof; (c) waives or fails to exercise any right, power or remedy granted herein, in the Note or in any other Loan Document; (d) grants any release, with or without consideration, of the whole or any part of the security for the payment of the Indebtedness or the release of any person, party or entity liable for payment of said indebtedness; and/or (e) amends or modifies in any respect any of the terms and provisions hereof, of the Note (including substitution of another note) or of any other Loan Document; then, and in any such event, such act or omission to act shall not release Mortgagor under any covenant of this Mortgage, of the Note, or of any other Loan Document, nor preclude Mortgagee from exercising any right, power or privilege herein or therein granted or intended to be granted, and shall not in

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any way impair or affect the lien or priority of this Mortgage. In the event any additional real property, improvements, leases, fixtures or personal property not herein specifically identified shall be or become a part of the Mortgaged Property, then this Mortgage shall immediately attach to and constitute a lien against or security interest in such additional items, as appropriate, without further act or deed of either party hereto.

4.6 **Applicable Law.** This instrument shall be governed by and interpreted in accordance with the laws of the State of Illinois, whether expressly set forth herein, or otherwise existing at law or in equity, including, without limitation, prejudgment remedies, judicial receivership and/or receivers of rent, foreclosure, and enforcement of this Mortgage and the Guaranties. Notwithstanding any provision herein, in the Note or in any other Loan Document, the total liability for payments in the nature of interest hereunder and thereunder shall not exceed interest at the maximum rate permitted by the laws of State of Illinois on the Indebtedness, if any, and any amounts paid in excess of said maximum rate shall be applied to the principal balance of the Indebtedness, unless said principal balance has been paid in full, in which event any such excess amounts shall be refunded to Mortgagor. This instrument shall be construed in accordance with its intent and with the fair meaning of its provisions, and without regard to any presumption or other rule requiring construction against the party which caused the same to be drafted.

4.7 **Counterparts.** This Mortgage may be executed simultaneously in two (2) or more identical counterparts, each of which, standing alone, shall be an original, but all of which shall constitute but one (1) agreement.

4.8 **Financing Statement.** This instrument shall be deemed to be a Fixture Financing Statement within the meaning of the Uniform Commercial Code:

- (a) Name and address of Debtor:

Janko Alcion Schaumburg LLC
c/o Janko Group, LLC
1650 Lake Cook Road, Suite 130
Deerfield, IL 60015
Attn: Gary Janko

- (b) Name and address of Secured Party:

U.S. Bank National Association
One Post Office Square, 29th Floor
Boston, Massachusetts 02109
Attention: Real Estate Banking Group

- (c) Description of the types (or items) of property covered by this Financing Statement:

See pages 4 through 7 above.

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(d) Description of real estate to which the collateral is attached or upon which it is or will be located:

See Schedule A hereto.

Some of the above-described collateral is or is to become fixtures upon the above-described real estate, and this Financing Statement is to be filed for record in the public real estate records.

4.9 **Effective as a Financing Statement.** This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Mortgaged Property and is to be filed for record in the real estate records of each town or city where any part of the Mortgaged Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to § 9-104 of the Uniform Commercial Code, and is to be filed for record in the real estate records of each town or city where any part of the Mortgaged Property is situated. This Mortgage shall also be effective as a financing statement covering any other Mortgaged Property and may be filed in any other appropriate filing or recording office. The mailing address of Mortgagor is the address of Mortgagor set forth in this Mortgage and the address of Mortgagee from which information concerning the security interests hereunder may be obtained is the address of Mortgagee set forth in this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

4.10 **Release of Mortgage.** If all of the Indebtedness be paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, and all obligations, if any, of Mortgagee for further advances have been terminated, then, and in that event only, all rights under this Mortgage shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Mortgaged Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and this Mortgage, such liens and security interests, and all rights herein granted to Mortgagee, shall be promptly released and terminated by Mortgagee in due form at Mortgagor's cost. Without limitation, all provisions herein for indemnity of Mortgagee or Mortgagee shall survive discharge of the Indebtedness and any foreclosure, release or termination of this Mortgage.

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

4.12 **Successors and Assigns.** Subject to Section 9.11 of the Loan Agreement, the terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor, and the heirs, devisees, representatives, successors and assigns of Mortgagor, and shall inure to the benefit of Mortgagee, and the heirs, devisees, representatives, successors and assigns of Mortgagee, and shall constitute covenants running with the Premises and the leasehold estate.

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All references in this Mortgage to Mortgagor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Mortgagor. All references in this Mortgage to Mortgagee shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Mortgagee.

4.13 **No Partnership, Etc.** The relationship between Mortgagee and Mortgagor is solely that of lender and borrower. Mortgagee has no fiduciary or other special relationship with Mortgagor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Mortgagor and Mortgagee or in any way make Mortgagee a co-principal with Mortgagor with reference to the Mortgaged Property. All agreed contractual duties between or among Mortgagee, Mortgagor and Mortgagee are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

NOW THEREFORE, if Mortgagor shall pay or cause to be paid (i) the principal and the premium, if any, and interest on the Note and (ii) all other Indebtedness and sums payable hereunder for which Mortgagor is liable, and if Mortgagor shall comply with all the terms, conditions and requirements hereof, then this Mortgage shall be null and void and of no further force and effect and shall be released by Mortgagee upon the written request of Mortgagor with all reasonable costs relating to the recording of such release paid by Mortgagor, otherwise to remain in full force and effect. If any original note is lost or destroyed, Mortgagee shall provide a lost note affidavit, which shall provide that Mortgagee shall have no liability for such loss or destruction. Mortgagor shall pay Mortgagee's reasonable costs incurred in discharging or assigning this Mortgage, as applicable.

[Remainder of page intentionally left blank; signature page follows.]

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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing to be executed as of the day and year first above written.

JANKO ALCION SCHAUMBURG LLC, a Delaware limited liability company

By: _____

Name: Eugene F. DeFavero
Its Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS :
: SS
COUNTY OF SUFFOLK :

On August 29, 2011, before me, the undersigned officer, personally appeared Eugene F. DeFavero Authorized Signatory of Janko Alcion Schaumburg LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on the instrument the entity upon behalf of which he acted, executed the instrument.

Witness my hand and official seal.



Joan D. Allard

Name: Joan D. Allard
Notary Public

My Commission Expires: 8-3-2018

[Signature / acknowledgment page to Mortgage, Assignment of Leases and Rents, Security Agreement, Fixture Filing]

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SCHEDULE A

[Legal Description]

PARCEL 1:

LOT 2 IN OXFORD CAPITAL PARTNER'S RESUBDIVISION, BEING A RESUBDIVISION OF LOT 1 IN ANDERSON'S THIRD RESUBDIVISION, A RESUBDIVISION OF PART OF LOT 2 IN ANDERSON'S SECOND RESUBDIVISION, A RESUBDIVISION OF ANDERSON'S RESUBDIVISION OF PART OF LOT 11 IN ANDERSON'S WOODFIELD PARK, A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 2 AFORESAID; THENCE NORTH ALONG THE WEST LINE OF SAID LOT, 20.00 FEET; THENCE SOUTHEASTERLY TO A POINT ON THE SOUTH LINE OF SAID LOT 20.00 FEET EAST OF THE SOUTHWEST CORNER THEREOF; THENCE WEST, ALONG SAID SOUTH LINE, 20.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

A PERMANENT, NON-EXCLUSIVE RECIPROCAL EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS AND PARKING AS DESCRIBED IN THE RECIPROCAL EASEMENT AGREEMENT FOR ACCESS AND PARKING RECORDED IN DOCUMENT NO. 0408918051, COOK COUNTY RECORDER OF DEEDS, COOK COUNTY, ILLINOIS.

PARCEL 3:

A PERMANENT, NON-EXCLUSIVE, IRREVOCABLE AND PERPETUAL EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS TO AND FROM EAST WOODFIELD ROAD AS DESCRIBED IN THE EASEMENT AGREEMENT RECORDED IN DOCUMENT NO. 0010457075, COOK COUNTY, RECORDER OF DEEDS, COOK COUNTY, ILLINOIS.

PIN 07-13-101-013-000

Commonly known as:

915-935 and 955 National Parkway
Schaumburg, IL 60173

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SCHEDULE B

[Permitted Encumbrances]

Reference is made to those certain Exceptions from Coverage as set forth on Schedule B – Part I and Schedule B – Part II to that certain Chicago Title Insurance Company Loan Policy No.: 1410-008862001-UL.

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____