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*Remed*

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 1213904104 Fee: \$80.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/18/2012 01:29 PM Pg: 1 of 22

8881428

Report Mortgage Fraud  
800-532-8785

The property identified as: P.N. 24-35-100-036-0000

**Address:**

**Street:** 3701 W. 128TH PLACE

**Street line 2:**

**City:** ALSIP

**State:** IL

**ZIP Code:** 60803

**Lender:** SYMETRA LIFE INSURANCE COMPANY

**Borrower:** 3701 W. 128TH LLC, AN ILLINOIS LIMITED LIABILITY COMPANY

**Loan / Mortgage Amount:** \$5,000,000.00

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

S Y  
P 22  
S N  
SCY  
INT

**Certificate number:** 867C7648-646A-42EF-94CF-9EC4DA98B7A3

**Execution date:** 05/07/2012

**BOX 333-CT**

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**Recorded at the Request of and  
After Recording Return To:**

Symetra Life Insurance Company  
Mortgage Loan Department  
PO Box 84066  
Seattle, WA 98124-8466  
Loan No. 3246

ABOVE SPACE FOR RECORDER'S USE ONLY

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## MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING ("**Mortgage**") made as of this 7<sup>th</sup> day of May, 2012, by 3701 W. 128TH LLC, an Illinois limited liability company, ("**Mortgagor**"), whose address is 2340 River Road, Des Plaines, IL 60018, to SYMETRA LIFE INSURANCE COMPANY, a Washington corporation, ("**Mortgagee**"), whose address is Mortgage Loan Department, PO Box 84066, Seattle, WA 98124-8466.

**FOR GOOD AND VALUABLE CONSIDERATION**, including the indebtedness herein recited, the receipt of which is hereby acknowledged, Mortgagor hereby irrevocably mortgages, grants, bargains, transfers, pledges and conveys to Mortgagee, its successors and assigns, under and subject to the terms and conditions hereinafter set forth, all of Mortgagor's right, title and interest, whether now owned or hereafter acquired, in, to and derived from the certain pieces, parcels or tracts of real property and related rights situated in the City of Alsip, Cook County, State of Illinois, more particularly described on attached Exhibit "A" and by this reference incorporated herein and using the street address of: 3701 W. 128th Place, Alsip, IL 60803

*(if there is conflict between the legal description and the street address, the legal description shall prevail)*

(which is hereinafter referred to as the "**Real Property**").

**TOGETHER WITH** all buildings, structures, fixtures and improvements now or hereafter erected or placed thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges, and appurtenances thereunto belonging now or hereafter used or enjoyed with said real property, or any part thereof, and all other estate, property and rights hereinafter described, including without limitation, (a) all land lying in streets and road adjoining the Real Property, and all access rights and easements pertaining to the Real Property; (b) all the lands, privileges, reversions, remainders, and water, water rights and stock, oil and gas rights, royalties, minerals and mineral rights in any way pertaining to the Real Property; (c) all property now or hereafter attached to or used in the operation of the Real Property which shall be deemed part of the realty and not severable wholly or in part without material injury to the Real Property; (d) all rents, issues and profits of the Real Property, all existing and future leases of the Real Property (including extensions, renewals and subleases), all agreements for use and occupancy

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of the Real Property (all such leases and agreements whether written or oral, are hereafter referred to as the "Leases"), all proceeds payable as a result of a tenant's exercise of an option to purchase the Real Property, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, and all proceeds from any rights and claims of any kind which Mortgagor may have against any tenant under the Leases or any occupants of the Real Property (all of the above are hereafter collectively referred to as the "Rents"); (e) all compensation, awards, damages, causes of action and proceeds (including insurance proceeds and any interest on any of the foregoing) arising out of or relating to a taking or damaging of the Property by reason of any public or private improvement, condemnation proceeding, fire, earthquake or other casualty, injury or decrease in the value of the Property; and (f) all additions, accessions, replacements, substitutions, and proceeds of the property described in this section and any after-acquired interest therein. All of the foregoing estate, rights and interests conveyed to Mortgagee including the Real Property is hereinafter collectively referred to as the "Property".

**TO HAVE AND TO HOLD** the Property and the rights hereby granted for the use and benefit of Mortgagee, its successor and assigns, in fee simple.

#### FOR THE PURPOSE OF SECURING:

- (a) repayment of the indebtedness in the total principal amount of FIVE MILLION AND NO/100 U.S. DOLLARS (\$5,000,000.00) with interest thereon (the "Loan"), evidenced by that certain Real Estate Note of even date herewith and having a maturity date of June 1, 2032, and all modifications, extensions, renewals and replacements thereof (collectively, the "Note") executed by Mortgagor made payable to the order of and delivered to Mortgagee, the terms and conditions of which are incorporated herein by this reference;
- (b) payment of all sums advanced by Mortgagee, its successors and assigns, to protect the Property, or any part thereof, with interest thereon at the default rate specified in the Note;
- (c) observance, performance and discharge of every obligation, covenant and agreement of Mortgagor contained herein or in the Note;
- (d) observance, performance and discharge of every obligation, covenant and agreement of Mortgagor contained in any document, instrument or agreement now or hereafter executed by Mortgagor which recites that the obligations thereunder are secured by this Mortgage, including without limitation, payment of all other sums, with interest thereon, which may hereafter be loaned to Mortgagor, or its successors or assigns, by Mortgagee, or its successors or assigns, when evidenced by a note or notes reciting that they are secured by this Mortgage;
- (e) compliance with and performance of each and every material provision of any declaration of covenants, conditions and restrictions pertaining to the Property or any part thereof;

However, the maximum amount secured by this Mortgage shall not exceed TEN MILLION and No/100 U.S. dollars (\$10,000,000.00).

As used in this Mortgage, the "Loan Documents" shall mean the Note, this Mortgage, the separate Assignment of Leases and Rents (the "Assignment of Leases and Rents"), and the other documents and instruments evidencing or securing the Loan.

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PROVIDED, HOWEVER, if the Mortgagor shall pay the Note in full, and any renewals or extensions thereof, and shall comply with all of the covenants, terms and conditions contained in this Mortgage, and in the Note, Assignment of Leases and Rents, and all other Loan Documents, then this Mortgage and the estates and interests hereby granted and created shall cease, terminate and be null and void, and shall be discharged of record at the expense of Mortgagor.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY REPRESENTS, COVENANTS AND AGREES AS FOLLOWS:

1. **Personal Property Security.** Mortgagor hereby grants to the Mortgagee a security interest in that portion of the Property which is not real property for the purpose of securing performance of all of Mortgagor's obligations under the Loan Documents.

2. **Security Agreement.** This Mortgage creates a security interest in the Property and shall be a Security Agreement as that term is used in the Illinois Uniform Commercial Code ("UCC") with respect to any Property which is not real property which is either referred to or described herein, or in any way connected with the use and enjoyment of the Property, and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be the remedies specified in the UCC. Mortgagor authorizes Mortgagee to file one or more financing statements (and renewals and extensions thereof) under the UCC with Mortgagor as "Debtor" and Mortgagee as "Secured Party" and their respective addresses are set forth in the preamble of this Mortgage and the collateral being the Property. Mortgagor and Mortgagee agree that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing the lien of this Mortgage.

3. **Performance of Obligations.** Mortgagor shall pay all sums when due under the terms of the Note and the Loan Documents without deduction or credit for taxes, insurance or other charges paid by Mortgagor, and strictly comply with, observe and perform all the terms and conditions of the Loan Documents. If a default occurs in the payment of any amount due under the Note or this Mortgage, and such payment is not made within ten (10) days after the date due, then, upon demand of Mortgagee, Mortgagor shall pay to Mortgagee the entire amount payable under the Note, and if Mortgagor fails to pay such amount upon such demand, the entire unpaid amount shall be accelerated and Mortgagee shall be entitled to sue for and recover judgment for the entire amount payable together with costs, which shall include reasonable compensation, expenses and disbursements of Mortgagee's agents and attorneys.

4. **Warranty of Title.** Mortgagor represents and warrants to and covenants with Mortgagee that (a) Mortgagor is indefeasibly seized of the Real Property, (b) the Real Property is free and clear of all liens and encumbrances of any kind, nature or description, except easements of record and recorded declarations, restrictions, reservations and covenants, if any, set forth in the schedule of exceptions to coverage approved by Mortgagee in the title insurance policy insuring Mortgagee's interest in the Real Property (the "Permitted Exceptions") and real property taxes for the current year, (c) neither the Permitted Exceptions nor the real estate taxes are delinquent or in default, and (d) Mortgagor has the right to convey the Real Property in fee simple to Mortgagee, and the right to grant a security interest in the personal property. Mortgagor will warrant and defend title to the Property and will defend the validity and priority of the lien of this Mortgage and the security interest granted herein against the claims or demands of every person whomsoever, except for the Permitted Exceptions.

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5. **Prohibited Liens.** Mortgagor shall not permit any governmental or statutory liens (including tax and mechanic's and materialmen's liens) to be filed against the Property except for real property taxes and assessments not yet due.

6. **Payment of Fees, Taxes, Liens and Assessments; Contest.** Mortgagor shall pay all filing, registration and recording fees, stamp and documentation taxes, and other fees, taxes, duties, imposts, and other charges incident to, arising from, or in connection with the making, disbursement or administration of the Loan or the preparation, execution, delivery or recording of each Loan Document. Mortgagor shall also pay the real property taxes and any assessments at least ten (10) days prior to delinquency unless otherwise agreed to in writing by Mortgagee. Mortgagor shall have the right to contest in good faith diligently pursued by appropriate proceedings any real property tax or special assessment on the Property so long as (a) no default has occurred and is continuing under the Note, this Mortgage or any of the other Loan Documents; (b) Mortgagor makes any payment or deposit or posts any bond as and when required as a condition of pursuing such contest; (c) Mortgagor commences such contest prior to such tax or assessment becoming delinquent, and continuously pursues same in good faith with due diligence; (d) such contest or any bond furnished by Mortgagor stays the foreclosure and enforcement of any lien securing the payment of any such tax or assessment; and (e) Mortgagor pays any tax or assessment within ten (10) days following the resolution of such contest. All other encumbrances, charges and liens affecting the Property, whether prior to or subordinate to the lien of this Mortgage, shall be paid when due and shall not be in default. On request, Mortgagor shall furnish evidence of payment of these items in a form acceptable to Mortgagee.

7. **Maintenance; No Waste.** Mortgagor shall protect and preserve the Property and maintain it in good condition and repair, ordinary wear and tear from proper use alone excepted. Mortgagor shall do all acts and take all precautions which, from the character and use of the Property, are reasonable, proper or necessary. Mortgagor shall not commit or permit any waste of the Property or any condition which will (i) increase the risk of fire or other hazard to the Property or (ii) invalidate or allow cancellation of any insurance policy covering the Property.

8. **Alterations, Removal and Demolition.** Mortgagor shall not, nor permit tenants or others to, structurally alter, remove or demolish any building or improvement on the Real Property without Mortgagee's prior written consent. Mortgagor shall not remove any fixture or other item or property which is part of the Property without Mortgagee's prior written consent unless the fixture or item of property is replaced immediately by an article of equal value and utility owned by Mortgagor free and clear of any lien or security interest.

9. **Completion, Repair and Restoration.** Mortgagor shall at its sole cost promptly complete or repair and restore in good workmanlike manner any building or improvement on the Real Property which may be constructed or damaged or destroyed.

10. **Compliance with Laws.** The Property is zoned for Mortgagor's proposed use, and is in present compliance with all zoning and subdivision laws, codes, rules, regulations and ordinances applicable to the Property. Mortgagor shall assure that the Real Property shall at all times constitute one or more legal lots capable of being conveyed without violation of any applicable subdivision laws, codes, ordinances, rules, regulations and other laws relating to the division or separation of real property. Mortgagor shall comply with all laws, ordinances, regulations, codes, rules, covenants, conditions, and restrictions affecting the Property and shall not commit or permit any act upon or concerning the Property in violation of any such laws, ordinances, regulations, covenants, and restrictions. Without limiting the generality of the foregoing,

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Mortgagor represents and covenants that the Property is in present compliance with, and in the future shall fully comply with, as applicable, the Americans With Disabilities Act of 1990 (42 USC 12101, et seq.), as amended from time to time, and the rules and regulations adopted pursuant thereto.

11. **Impairment of Property.** Mortgagor shall not, without Mortgagee's prior written consent, change the general nature of the use of the Property, initiate, acquire or permit any change in any public or private restrictions (including a zoning reclassification) limiting the uses which may be made of the Property, or take or permit any action which would impair the value of the Property or Mortgagee's lien or security interest in the Property.

12. **Inspection of Property.** Mortgagee or its authorized representative shall have the right to inspect the Property and its condition and use during normal business hours after reasonable notice.

13. **Mortgagor's Defense of Property.** Mortgagor shall appear in and defend with counsel reasonably acceptable to Mortgagee any action or proceeding which may affect the Property or the rights or powers of Mortgagee.

14. **Mortgagee's Right to Protect the Property.** Mortgagee may commence, appear in, and defend any action or proceeding which may affect the Property or the rights or powers of Mortgagee after ten days' notice to Mortgagor. Mortgagee may (but is not obligated to) pay, purchase, contest or compromise any encumbrance, charge or lien not listed as an Permitted Exception which in its judgment appears to be prior or superior to the lien of this Mortgage. If Mortgagor fails to make any payment or do any act required under the Loan Documents, including without limitation, payment of taxes and assessments and maintenance of insurance on the Property, Mortgagee, without any obligation to do so, without notice to or demand upon Mortgagor, and without releasing Mortgagor from any obligations under the Loan Documents, may make the payment or cause the act to be performed in such manner and to such extent as Mortgagee may deem necessary to protect Mortgagee's interest in the Property. Mortgagee is authorized to enter upon the Property for such purposes. In exercising any of these powers Mortgagee may incur such expenses, in its discretion, it deems necessary which shall be payable by Mortgagor and be secured by this Mortgage.

15. **Repayment of Mortgagee's Expenditures.** Mortgagor shall pay within 10 days after written notice from Mortgagee all sums expended by and all costs and expenses incurred by Mortgagee in taking any actions pursuant to the Loan Documents including attorneys' fees, appraisal and inspection fees, and the costs for title reports. Expenditures by Mortgagee shall bear interest from the date of such advance or expenditure until paid at the default rate specified in the Note, but not greater than the highest rate permitted by applicable law, shall constitute advances made under this Mortgage and shall be secured by and have the same priority as the lien of this Mortgage. If Mortgagor fails to pay any such expenditures, costs and expenses and interest thereon, Mortgagee may, at its option, without foreclosing the lien of this Mortgage, commence an independent action against Mortgagor for the recovery of the expenditures and advance any undisbursed Loan proceeds to pay the expenditures.

16. **Due on Sale or Transfer; Change of Control.**

16.1 **General Rule – Prohibition on Conveyance or Change of Control.** Mortgagor understands that Mortgagee will have the opportunity to examine, and is entitled to rely upon, the creditworthiness, financial strength, reputation, experience and managerial ability of Mortgagor (and its

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owners and managers) with respect to owning, leasing and operating the Property in approving the Loan to Mortgagor, and will continue to rely on Mortgagor (and its owners and managers) as a means of preserving the value of the Property as security for the Loan. If (i) the Property or any part thereof or interest therein is sold, transferred, leased (other than a space lease without option to purchase), conveyed, traded, exchanged, assigned, or otherwise alienated ("**Conveyance**"), or (ii) there is a Change of Control of Mortgagor (defined below) without the prior written consent of Mortgagee, then, except as otherwise expressly provided below, and regardless of whether or not an event of default shall otherwise have occurred and be continuing under the Note or this Mortgage or any other Loan Document, Mortgagee may, at its option, declare the then outstanding principal balance evidenced by the Note plus accrued interest thereon, and any applicable late fee or prepayment fee or premium, immediately due and payable, or, at its sole option, it may consent to the Conveyance or Change of Control in writing and may increase the interest rate on the Note to the interest rate on which Mortgagee would then commit to make a first priority mortgage loan of similar size and quality with like terms and security, as determined by Mortgagee in its sole discretion, and impose whatever other terms and conditions it may deem necessary to compensate it for or protect it from the increased risk resulting from the Conveyance or Change of Control. Any increase in interest rate shall entitle Mortgagee to increase monthly payments under the Note so that the increased monthly payments will fully amortize the outstanding balance of the indebtedness over the unexpired amortization term of the Note. Any joint venture agreement, partnership agreement, declaration or revocation of trust, real estate installment sale contract, option agreement or other agreement (other than a space lease without option to purchase) whereby any other person or entity other than Mortgagor may become entitled, directly or indirectly, to the possession or enjoyment of the Property, or the income or other benefits of the Property, shall, in each case, be deemed to be a Conveyance or Change of Control for the purposes of this paragraph, and shall require prior written consent from the Mortgagee.

16.2 **"Change of Control" Defined.** Except as otherwise expressly provided herein, a "Change of Control" for purposes hereof means the transfer over the term of the Loan of more than 25% of the equity interests, directly or indirectly, in Mortgagor, or any change in the identity of the general partner(s) of any general or limited partnership that is the Mortgagor. If Mortgagor consists of more than one entity, such 25% limitation shall apply to each such entity. If Mortgagor is a trust, the revocation of the trust shall be a Change of Control for purposes hereof, but a change in the make-up of the trustees of the trust as the result of death or resignation of a trustee, shall not constitute a Conveyance or Change in Control requiring written consent of Mortgagee.

16.3 **Death of Individual Mortgagor.** If Mortgagor is a natural person and dies, the transfer of the Property because of such death shall not be deemed a Conveyance for purposes hereof provided that Mortgagee is promptly notified of such death and within ninety (90) days after written request by Mortgagee, one or more other persons or entities having credit standing and financial resources equal to or better than those of the decedent, as determined by Mortgagee in its reasonable discretion, and management abilities satisfactory to Mortgagee shall assume the Loan, by executing and delivering to Mortgagee an assumption agreement satisfactory to Mortgagee, providing Mortgagee with recourse substantially identical to that which Mortgagee had against the decedent and granting Mortgagee liens on any and all interests of the decedent in the Property; provided further that (i) Mortgagee shall be provided, at Mortgagor's expense, with a title endorsement as required below in connection with an assumption of the Loan, and (ii) Mortgagee shall be paid an administrative fee in the amount of \$3,000.

16.4 **Transfer of Interest for Estate Planning Purposes.** Natural persons may, for estate planning purposes, transfer their direct or indirect interest in Mortgagor (other than general partnership interests), notwithstanding that such transfer may be of a Controlling Interest, if such transfer is

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to immediate family members or lineal descendants, or to entities controlled by or trusts for the benefit of, immediate family members or lineal descendants of the transferor, provided each of the following conditions have been satisfied: 1) There have been no events of defaults under the Loan Documents, 2) Mortgagee receives written notice of the transfer along with all appropriate documentation of the transfer satisfactory to Mortgagee within 30 days after the transfer, 3) the liability of Mortgagor under the Note and of any guarantors under their guaranty of Mortgagor's obligations shall remain in full force and effect, 4) managerial control over the Property and the Mortgagor shall remain acceptable to Mortgagee; and 5) Mortgagor shall pay all of Mortgagee's reasonable out of pocket costs associated with the transfer plus a \$500 administrative fee.

**16.5. Death of Guarantor or General Partner.** The death of (i) a natural person who is a guarantor of the Loan whether or not such person owns any interest in Mortgagor, or (ii) a general partner of a partnership that is the Mortgagor, shall constitute a default under the Loan, unless in the case of (i), the obligations of such decedent are assumed in writing by a replacement guarantor satisfactory to Mortgagee within ninety (90) days after such guarantor's death, or in the case of (ii), Mortgagee must be satisfied with any replacement general partner, in terms of such general partner's management experience and creditworthiness, or Mortgagee must otherwise be provided with a new guaranty from a satisfactory guarantor in substitution for the obligations of the deceased general partner. In addition, any change in the day-to-day management of the Property or Mortgagor resulting from a death as described herein shall be subject to Mortgagee's approval. In addition, Mortgagor shall pay all of Mortgagee's reasonable out of pocket costs associated with the foregoing transaction plus an administrative fee of \$1,000.

**16.6. Other Transfers of Interest on Death.** The transfer, on the death of a natural person, of an interest in Mortgagor, whether a Controlling Interest or not, where such person is not the Mortgagor nor a Guarantor nor a general partner of Mortgagor, shall not constitute a Change of Control or require the notification to or consent of Mortgagee, or payment of any fee.

**16.7. Trust as Mortgagor.** If the Mortgagor is a trust, a change in the make-up of the trustees of the trust as the result of death or resignation shall not constitute a Conveyance or Change of Control requiring written consent of the Mortgagee. However, the transfer of part or all of the interest of the trust in the Property to a member or members of the family of the trustees pursuant to the terms of the trust shall be subject to Mortgagee's approval, which shall not be unreasonably withheld provided that Mortgagee is provided with copies of any deed or other conveyance instrument. Mortgagee is provided at Mortgagor's expense with an endorsement to its title policy insuring that the transfer of title does not affect the validity or priority of the lien of this Mortgage; the transferee of title to the Property executes and delivers to Mortgagee an assumption agreement with respect to the Loan in form and content satisfactory to Mortgagee, and Mortgagee is paid an administrative fee of \$1,000.

**16.8. No Discharge of Obligated Parties.** No Conveyance or Change of Control or other transfer of any interest in the Property shall operate to discharge or diminish in any way the liability of Mortgagor or any guarantor with respect to the Loan Documents except as otherwise expressly provided herein.

**16.9. Assumption of Loan; New Master Lease.** Notwithstanding the foregoing provisions, and provided no event of default has occurred and is continuing under the Note, this Mortgage or any of the other Loan Documents, Mortgagor shall have a one-time only right (subject to the further terms hereof) upon prior written notice to Mortgagee and payment of all Mortgagee's expenses plus an assumption fee equal to three-quarters of one percent (.75%) of the original principal amount of the Note to convey the entire interest in the Premises held by all persons comprising Mortgagor to a transferee whose creditworthiness, financial strength, reputation, experience and property management ability with respect to



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the ownership, operation and leasing of properties similar to the Property (together with that of any new proposed guarantors of the Loan) are equal to or greater than Mortgagor and the original guarantors in the judgment of Mortgagee, which approval shall not be unreasonably withheld or delayed. If Mortgagor transfers the Premises to the Affiliated Entity and such transferee assumes the Loan as provided herein, then the Affiliated Entity, as the original Mortgagor's successor, shall have one further right to transfer the Premises and to have its transferee assume the Loan on the same terms and conditions as are set forth herein. If Mortgagee withholds its approval because of the proposed transferee's or proposed new guarantors' lack of creditworthiness, reputation, experience, property management ability or financial strength or other reasonable basis which leads Mortgagee to reasonably believe the Loan or the security would be impaired, Mortgagee shall not be deemed to have unreasonably withheld its approval. Any transferee must fully assume Mortgagor's obligations under the Note and the Loan Documents, and Mortgagor and any guarantors of the Loan shall remain fully bound after the transfer. Mortgagor shall pay for an endorsement to Mortgagee's title policy insuring that this Mortgage remains a first and prior lien on the Property and shall pay all expenses and fees, including outside counsel legal fees, incurred in connection with the transfer and assumption. Any approval given by Mortgagee shall not constitute approval of any other or future Conveyance or Change of Control. If ownership of the Property or any part thereof or interest therein becomes vested in a person or an entity other than Mortgagor, whether or not Mortgagee has given written approval, Mortgagee may deal with such successor or successors in interest with reference to this Mortgage and the Loan, in the same manner as with Mortgagor, without in any way diminishing or discharging Mortgagor's obligations.

Mortgagor has represented to Mortgagee that Mortgagor intends to transfer the Property to a newly formed limited liability company (the "**Transferee Entity**") with a newly formed Delaware Statutory Trust (the "**DST**") as its sole member; and that the signatory trustee of the DST will be BIG Midwest Portfolio I Signatory Trustee, LLC, of which Brennan Investment Group or its affiliates (subject to the reasonable consent of Mortgagee) ("**Brennan**") will be the sole member. Mortgagee will not unreasonably withhold its consent to such transfer, subject to satisfaction of the following conditions and such other reasonable conditions as Mortgagee may deem necessary: Mortgagee shall have approved the trust instrument for the DST and the organizational documents of the Transferee Entity, including without limitation approval of the management structure of the Transferee Entity; the Transferee Entity will agree, as part of the loan assumption transaction, that the signatory trustee of the DST will not be changed without Mortgagee's written consent, nor will any material terms of the governing documents of the Transferee Entity and the DST be amended in a manner that could reasonably be expected to materially adversely affect the interests of Mortgagee.

Mortgagor has further represented to Mortgagee that Mortgagor (which term, for purposes of this paragraph, shall include Transferee Entity, as applicable) intends to enter into a master lease of the Property (the "**Master Lease**"), with an entity that is a subsidiary of Brennan (the "**Master Lessee**"). Mortgagee will not unreasonably withhold its consent to such Master Lease, subject to satisfaction of the following conditions and such other reasonable conditions as Mortgagee may deem necessary: Mortgagee shall have approved the ownership and management structure of the Master Lessee and the Master Lessee shall agree to not permit material changes to its ownership or management structure without Mortgagee's consent in Mortgagee's discretion; Master Lessee shall agree with Mortgagor and Mortgagee that all space leases of the Property shall provide that upon any termination of the Master Lease, such leases shall become direct leases from Mortgagor; Mortgagor shall agree that any material default under the Master Lease is a default under the Loan Documents; Master Lessee shall subordinate its right, title and interest in the Property to the lien of this Mortgage and shall assign to Mortgagee, as collateral security for the Loan, its

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interest in all rents and income of the Property; Master Lessee shall agree to be bound by certain terms and conditions of this Mortgage and the separate Assignment of Leases and Rents, compliance with which is within Master Lessee's control, including those pertaining to the operation and maintenance of the Property; and Mortgagor shall agree that a Master Lessee's default under such covenants shall be a default under the Loan.

Mortgagor shall pay all fees and costs, including without limitation outside counsel fees, incurred by Mortgagee in the review of Mortgagor's request for Mortgagee's consent to any transfer of the Property and any master lease, and the documentation of any loan assumption and modification relating thereto. In addition, Mortgagor shall pay to Mortgagee an administrative fee in the amount of \$1500 in consideration of the review of the request for approval of the Master Lease.

**16.16 Collateral Assignment of Membership Interests.** Notwithstanding anything herein to the contrary, Mortgagee acknowledges and consents to that certain Collateral Assignment of Membership Interests Including Negative Pledge Agreement dated February 5, 2012, by McKibben Holdings LLC, Mandarin Holdings LLC, John Daley LLC, Voshel Investments LLC and Gerald Nudo in favor of Hinsdale Bank & Trust Company; provided, however, that Mortgagor shall provide written evidence to Mortgagee, no later than the two year anniversary of the date of recording of this Mortgage that the pledge of membership interests in Mortgagor provided for under the foregoing instrument and related loan documents (the "**Mezzanine Loan Documents**") has been fully released. In no event shall Mortgagee's consent to the pledge described in the Mezzanine Loan Documents constitute Mortgagee's consent to any Change of Control of Mortgagor pursuant to any realization on such pledge or otherwise.

**17. No Other Encumbrances; Due on Encumbrance.** Mortgagor shall not create, assume or permit to exist on the Property any mortgage, lien, encumbrance, pledge or security interest to any person other than Mortgagee (an "**Encumbrance**"), and should the Property or any part thereof at any time be or become subject to the lien of any other mortgage or subject to any other encumbrance, pledge, or security interest (except with the prior written consent of Mortgagee), the whole of the principal and interest secured hereby shall, at the option of the Mortgagee, become immediately due and payable. Whether or not the consent of Mortgagee has been obtained, Mortgagor, for itself and for all future owners of the Property, agrees that this Mortgage may be modified, varied, extended, renewed or reinstated at any time by agreement between the holder of this Mortgage and Mortgagor, or the then owner of the Property, without notice to, or the consent of, any subordinate mortgagee, beneficiary or lienor, and any such modifications, variance, extension, renewal, or reinstatement shall be binding upon such subordinate mortgagee, beneficiary or lienor with the same force and effect as if such subordinate mortgagee, beneficiary or lienor had consented thereto. This clause shall be self-operative, and no instrument of subordination shall be required from any subordinate mortgagee, beneficiary or lienor.

**18. Insurance.** Without limiting the generality of any other provision contained in this Mortgage, Mortgagor shall procure and continuously maintain while this Mortgage remains in effect "all risk" property insurance on the Property with premiums prepaid providing 100% replacement cost coverage on an agreed amount basis insuring against loss by fire, explosion, smoke, wind, lightning, hail, windstorm, vandalism and other risks covered by the broadest form of extended coverage endorsement available from time to time, loss of rents/income or business interruption (if owner occupied) coverage in amounts sufficient to compensate Mortgagor for all rents and income from the Property for a period of at least one year, earthquake to the extent required by Mortgagee now or in the future in the exercise of its business judgment in light of commercial real estate practices by institutional lenders in the general vicinity where the Property is located at the time the insurance is issued, and coverage for such other perils and risks as may be

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reasonably required by Mortgagee from time to time. If the Property is ever designated as having special flood hazards or any other designation which would make the Property subject to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, each as amended, replaced or supplemented from time to time, or any similar law, Mortgagor shall do everything reasonably necessary to comply with the requirements of said law and related regulations in order that flood insurance will be available to said Mortgagor, and to obtain and maintain for the benefit of Mortgagee such an insurance policy in form, deductibles and content satisfactory to Mortgagee. Mortgagor shall also procure and maintain occurrence form commercial general liability insurance against bodily injury or death or property damage occurring in, upon or about, or resulting from, the Property or Mortgagor's use and occupancy of the Property with limits acceptable to Mortgagee, but in no event less than \$2,000,000 combined single limit per occurrence and \$2,000,000 general aggregate, naming Mortgagee as an additional insured on a primary/non-contributory basis. Each policy must provide no less than thirty (30) days prior written notice to Mortgagee of any cancellation, non-renewal or material change. All insurance shall be with companies satisfactory to Mortgagee having an A.M. Best rating of A VI or better with limits and deductibles acceptable to Mortgagee and lender's loss payable clauses in favor of and in form satisfactory to Mortgagee. At least 30 days prior to the expiration of the term of any insurance policy, Mortgagor shall furnish Mortgagee with written evidence of renewal or issuance of a satisfactory replacement policy. If requested Mortgagor shall deliver copies of all policies to Mortgagee. In the event of foreclosure of this Mortgage all interest of Mortgagor in any insurance policies pertaining to the Property and in any claims against the policies and in any proceeds due under the policies shall pass to Mortgagee.

19. **Condemnation and Insurance Proceeds** All insurance proceeds and condemnation awards with respect to the Property are assigned to Mortgagee as additional security for the Loan. Mortgagor shall give immediate notice to Mortgagee of any condemnation proceeding or material loss or damage to the Property exceeding the sum of \$25,000 ("**Material Loss**"). Provided no event of default has occurred and is continuing under the Loan Documents, Mortgagor shall have the right to settle and receive the proceeds payable with respect to a condemnation, loss or damage except for a Material Loss. With respect to a Material Loss, Mortgagor authorizes Mortgagee, at Mortgagee's option, to make a claim for and enter into a compromise or settlement with respect to any proceeds payable as a result of the condemnation, loss or damage. All proceeds payable as a result of a Material Loss shall be paid to Mortgagee and applied to repair or restore the Property, provided no default shall have occurred and be continuing under this Mortgage or the other Loan Documents, the repair or restoration is economically feasible, and the security of this Mortgage is not impaired. Upon a Material Loss to the Property to such extent as would make repair uneconomical, or if a default shall have occurred and be continuing under this Mortgage at the time of such loss or condemnation, or if less than two years remain on the unexpired term of the Note, Mortgagee shall, at its option, after deducting its expenses including reasonable attorney's fees, (a) apply all or part of the insurance proceeds against the sums owed under the Loan Documents including the Note whether or not (i) the sums are actually due or (ii) the security for the Note is impaired, and without affecting the due dates or amount of payments thereafter due under the Note, or (b) release all or any part of the proceeds to Mortgagor, or (c) permit all or any part of the proceeds to be used for repair and restoration of the Property on such conditions as Mortgagee may impose including evidence of sufficient funds to complete the work, approval of the plans and specifications and periodic disbursement of the proceeds during the course of repair and restoration. Except to the extent that proceeds of insurance required of Mortgagor hereunder are received by Mortgagee and applied to the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Property as provided in this Mortgage or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not

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there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Mortgagee of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice. No prepayment fee or premium shall be applicable to any insurance or condemnation proceeds received by Mortgagee under this Section 19.

20. **Leases.** Mortgagor shall fully comply with all of the terms, conditions and provision of the Leases so that no breach shall occur and do all that is necessary to preserve all the Leases in force. Any proceeds or damages resulting from a tenant's default under any such Lease, at Mortgagee's option, shall be paid to Mortgagee and applied against sums owed under the Loan Documents even though such sums may not be due and payable. Except for real estate taxes and assessments, Mortgagor shall not permit any lien to be created against the Property which may be or may become prior to any Lease. If the Property is partially condemned or suffers a casualty, Mortgagor shall promptly repair and restore the Property in order to comply with the Leases.

21. **Assignment of Lease and Rents; Mortgagor's License to Collect.** Mortgagor has the right to assign the Leases and Rents to Mortgagee. Mortgagor will warrant and defend the validity and priority of this Assignment and the security interest granted herein against the claims or demands of every person whatsoever. Mortgagor hereby absolutely and irrevocably assigns to Mortgagee all of Mortgagor's interest in the Rents and Leases. This assignment shall be subject to the terms and conditions of any separate Assignment of Leases and Rents, whenever executed, in favor of Mortgagee and covering the Property. Unless otherwise provided in any separate Assignment of Leases and Rents, and so long as Mortgagor is not in default under the Loan Documents, Mortgagor shall have a revocable license granted by Mortgagee to collect the Rents as they become due. Mortgagor shall use the Rents to pay normal operating expenses for the Property and sums due and payments required under the Loan Documents before using the Rents for any other purpose. No Rents shall be collected more than one (1) month in advance of the due date. Mortgagor warrants that it has made no prior assignment of the Rents or Leases and will make no subsequent assignment without the prior written consent of Mortgagee. Mortgagor's license to collect the Rents shall not constitute Mortgagee's consent to the use of cash collateral in any bankruptcy proceeding.

22. **Mortgagee's Right to Collect Rents.** If a default has occurred under the Loan Documents and has not been cured after any applicable notice and cure period, Mortgagee or its agents, or a court appointed receiver, may collect the Rents without further notice to Mortgagor. In doing so, Mortgagee may (a) evict tenants for nonpayment of rent, (b) terminate in any lawful manner any tenancy or occupancy, (c) lease the Property in the name of the then owner on such terms as it may deem best and (d) institute proceedings against any tenant for past due rent. The Rents received shall be applied to payment of the costs and expenses of collecting the Rents, including a reasonable fee to Mortgagee, a receiver or an agent, operating expenses for the Property and any sums due or payments required under the Loan Documents, in such amounts as Mortgagee may determine. Any excess shall be paid to Mortgagor, however, Mortgagee may withhold from any excess a reasonable amount to pay sums anticipated to become due which exceed the anticipated future Rents. Mortgagee's failure to collect or discontinuing collection at any time shall not in any manner affect the subsequent enforcement by Mortgagee of its rights to collect the Rents. The collection of the Rents shall not cure or waive any default under the Loan Documents. Mortgagee or a receiver shall have no obligation to perform any of Mortgagor's obligations under the Leases. In exercising its rights under this section Mortgagee shall be liable only for the proper application of and accounting for the Rents actually collected by Mortgagee or its agents. Any Rents paid to Mortgagee or a receiver shall be credited against the amount due from the tenant under the Lease. In the event any tenant under the Lease becomes the subject of any proceeding under the Bankruptcy Code or any other federal, state or local statute

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which provides for the possible termination or rejection of the leases assigned hereby, Mortgagor covenants and agrees that in the event any of the Leases are so rejected, no damages settlement shall be made without the prior written consent of Mortgagee; any check in payment of damages for rejection or termination of any such Lease will be made payable to both the Mortgagor and Mortgagee; and Mortgagor hereby assigns any such payment to Mortgagee and further covenants and agrees that upon request of Mortgagee, it will duly endorse to the order of Mortgagee any such check, the proceeds of which will be applied to the indebtedness under the Loan Documents in such manner as Mortgagee may elect.

23. **Fixture Filing.** To the extent permitted by applicable law, this Mortgage shall also serve as a financing statement filed for record in the real estate records as a fixture financing statement pursuant to the UCC, as amended, covering any Property which is now or may hereafter become fixtures with respect to the Real Property. For the purpose of this fixture filing, Mortgagor shall be deemed to be the "Debtor" and the Mortgagee shall be deemed to be the "Secured Party" and the addresses of Mortgagor and Mortgagee are as set forth in the preamble of this Mortgage, and the collateral shall be any fixtures on the Property. Mortgagor is the record owner of the Real Property.

24. **Late Charge.** In the event that any payment or portion thereof is not paid within five (5) days commencing with the date it is due, Mortgagee may collect, and Mortgagor agrees to pay a "late charge" of 10% of the delinquent payment, but not to exceed the highest such charge permitted by applicable law. This late charge shall apply individually to each payment past due. Payment of a late charge shall not relieve Mortgagor of the obligation to make payments on or before the date on which they are due, or cure any default, or delay or affect in any way the exercise of Mortgagee's remedies.

25. **Default; Remedies.** TIME IS OF THE ESSENCE HEREOF. If (a) Mortgagor fails to pay any installment of principal or interest on the Note within ten (10) days of the date the same is due and payable, or (b) any representation or warranty made by Mortgagor or any guarantor of the Loan was materially false or misleading at the time it was made or (c) Mortgagor or any guarantor fails to disclose any material fact, or (d) Mortgagor fails to provide or maintain the insurance required by this Mortgage, or (e) Mortgagor makes an assignment for the benefit of creditors, or if a petition in bankruptcy is filed by or against Mortgagor and not dismissed within sixty (60) days, or (f) any guarantor of the Loan revokes, or attempts to revoke, its guaranty, or is the subject of a petition in bankruptcy or other insolvency proceeding, or fails to perform any covenant or agreement contained in his, her or its guaranty of the indebtedness hereby secured, or (g) a Conveyance or Encumbrance occurs without the prior written consent of Mortgagee, or (h) a dissolution, merger or Change of Control occurs with respect to Mortgagor or any guarantor without the prior written consent of Mortgagee, or (i) Mortgagor fails to comply with, perform or observe any other covenant or agreement of Mortgagor contained in this Mortgage or in the Note or in the other Loan Documents and not referenced in this section, for more than thirty (30) days after receipt of written notice specifying such default, THEN AND IN ANY SUCH EVENT (each of such events being a default by Mortgagor under this Mortgage and for the purposes of the acceleration provisions contained in the Note), the whole sum of the indebtedness secured hereby with all accrued interest thereon, at the option of the Mortgagee or the holder of the indebtedness, shall become immediately due and payable and Mortgagee may exercise its rights and remedies under this Mortgage, the Loan Documents and applicable law, including without limitation, immediate foreclosure of this Mortgage. Mortgagee may enter upon the Real Property, exclude Mortgagor and its employees therefrom, and having and holding same, may use, operate, manage and control the Real Property and conduct the business thereof. Upon entry, Mortgagee may maintain and restore the Real Property, and make repairs and improvements as Mortgagee may deem necessary. With or without entry, pursuant to the procedures provided by law, Mortgagee may sell the Property and all its estate, right, title and interest therein, and right of redemption thereof, at one or more

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sales, and at such time and place upon such terms and after such notice as may be required or permitted by applicable law. Mortgagee may institute proceedings to enforce the lien of this Mortgage, or take steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in the Assignment of Leases and Rents or in this Mortgage, or in aid of the execution of any power herein granted, or for foreclosure of this Mortgage, or for the enforcement of any appropriate legal or equitable remedy or otherwise as Mortgagee shall elect. Upon sale or sales of the Property by Mortgagee under this section, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the purchaser or purchasers a good and sufficient instrument conveying, assigning and transferring all estate, right, title and interest in and to the Property. Mortgagee is hereby appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property and related rights and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute shall lawfully do by virtue hereof. This power of attorney shall be deemed to be a power coupled with an interest and not subject to revocation. Any sale under this Mortgage or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the Property and the related rights, and shall be a perpetual bar both at law and in equity, against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, through or under Mortgagor. Mortgagor expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of all other persons, it being the intent hereof that any and all such rights of redemption are and shall be deemed to be voluntarily and knowingly waived to the full extent permitted by the Illinois Mortgage Foreclosure Act, Section 5/15-1601 et seq. and all other provisions of applicable law. The proceeds of any sale made under or by virtue of this paragraph, together with any other sums which may then be held by Mortgagee under this Mortgage shall be applied as follows: (i) to the payment of all costs and expenses of such sale, and any judicial proceedings, including reasonable attorneys fees, together with interest at the default rate specified in the Note; (ii) to the payment of the indebtedness; (iii) to the payment of any other sums required to be paid by Mortgagor under this Mortgage; and (iv) to the payment of any surplus, if any, to whomsoever may be lawfully entitled to receive the same. Upon sale made under or by virtue of this paragraph, Mortgagee may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness the net sales price after deducting therefrom the expenses of the sale and the cost of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage. Mortgagor agrees to surrender possession of the Property to the purchaser at the sale, immediately after such sale, in the event such possession has not previously been surrendered by Mortgagor. Mortgagee's exercise of any of its rights and remedies shall not constitute a waiver or cure of a default. Mortgagee's failure to enforce any default shall not constitute a waiver of the default or any subsequent default. Mortgagor shall pay all Mortgagee's costs and expenses, including reasonable attorneys' fees, incurred in instituting, prosecuting or defending any court action in which Mortgagor does not prevail, if such action involves the interpretation hereof, or performance hereunder by any party hereto or the breach of any provision hereof by any party hereto, including without limitation, an action to obtain possession of the Property after default, (including attorneys' fees for (x) any appeal, (y) relief from stay motions, cash collateral disputes, assumption/rejection motions and disputes regarding proposed disclosure statements and plans in any bankruptcy proceeding or (z) for any other judicial or nonjudicial proceeding or arbitration).

26. **Cumulative Remedies.** All Mortgagee's rights and remedies specified in the Loan Documents are cumulative, not mutually exclusive and not in substitution for any rights or remedies available at law, in equity or provided by statute. In order to obtain performance of Mortgagor's obligations under the Loan

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Documents, without waiving its rights in the Property, Mortgagee may proceed against Mortgagor or may proceed against any other security or guaranty for the Note, in such order and manner as Mortgagee may elect. The commencement of proceedings to enforce a particular remedy shall not preclude the discontinuance of the proceedings and the commencement of proceedings to enforce a different remedy.

27. **Sale of Property after Default.** The Property may be sold separately or as a whole, at the option of Mortgagee. In the event of a Mortgagee's sale of all the Property, Mortgagee hereby assigns its security interest in the personal property to the Mortgagee. Mortgagee may also realize on the personal property in accordance with the remedies available under the UCC or at law. In the event of a foreclosure sale, Mortgagor and the holders of any subordinate liens or security interest waive any equitable, statutory or other right they may have to require marshaling of assets or foreclosure in the inverse order of alienation.

28. **Appointment of Receiver.** In the event of a default and the failure to cure following the expiration of any applicable notice and cure period specified in the Loan Documents, Mortgagee shall be entitled, without further notice, without bond, and without regard to the adequacy of the Property, to the appointment of a receiver for the Property. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by a receiver, all the rights and powers granted to Mortgagee by the Loan Documents.

29. **Foreclosure of Tenant's Rights, Subordination.** Mortgagee shall have the right, at its option, to foreclose this Mortgage subject to the rights of any tenants of the Property. Mortgagee's failure to foreclose against any tenant shall not be asserted as a claim against Mortgagee or as a defense against any claim by Mortgagee in any action or proceeding. Mortgagee at any time may subordinate this Mortgage to any or all of the Leases except that Mortgagee shall retain its priority claim to any condemnation or insurance proceeds.

30. **Release after Payment.** Upon payment in full of the indebtedness and written request of Mortgagor stating that all obligations secured by this Mortgage have been paid, Mortgagee shall release the lien of this Mortgage and the Loan Documents. The recitals in any release of any matters of fact shall be conclusive proof of the truthfulness thereof. Mortgagor shall pay any Mortgagee's costs and fees in connection with the preparation and recording of the release.

31. **Release of Parties or Property.** Without affecting the obligations of any party under the Loan Documents (including any guarantor, surety or endorser of Mortgagor's obligations) or any subsequent purchaser of the Property, and without affecting the lien of this Mortgage and Mortgagee's security interest in the Property, Mortgagee may, without notice (a) release Mortgagor and any other party now or hereafter liable for the payment or performance of any obligations under the Loan Documents, including any guarantors of the indebtedness, (b) release all or any part of the Property, (c) subordinate the lien of this Mortgage or Mortgagee's security interest in the Property, (d) take or release any other security or guaranty, (e) grant an extension of time or accelerate the time for performance of the obligations owed under the Loan Documents, (f) modify, waive, forbear, delay or fail to enforce any obligations owed under the Loan Documents, (g) sell or otherwise realize on any other security or guaranty prior to, contemporaneously with or subsequent to a sale of all or any part of the Property, (h) make advances pursuant to the Loan Documents including advances in excess of the Note amount, (i) consent to the making of any map or plat of the Property, and (j) join in the grant of any easement on the Property. Any subordinate lienholder shall be subject to all such releases, extensions or modifications without notice to or consent from the subordinate

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lienholder. Mortgagor shall pay any Mortgagee's or attorneys fees, title insurance premiums or recording fees in connection with any of the foregoing.

32. **Nonwaiver of Terms and Conditions.** Time is of the essence with respect to performance of the obligations of Mortgagor under the Loan Documents. Mortgagee's failure to require prompt enforcement of any required obligations shall not constitute a waiver of the obligations due or any subsequent required performance of the obligation. No term or condition of the Loan Documents may be waived, modified or amended except by a written agreement signed by Mortgagor and Mortgagee. Any waiver of any term or condition of the Loan Documents shall apply only to the time and occasion specified in the waiver and shall not constitute a waiver of the term or condition at any subsequent time or occasion.

33. **Business Use.** Mortgagor represents and warrants to Mortgagee the proceeds of the loan evidenced by the Note and secured by this Mortgage will be used for business purposes within the meaning of the Illinois Interest Act (815 ILCS 205/1 et seq.), and the Property does not include agricultural real estate (as defined in Section 201 of the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 et seq.) or residential real estate (as defined in the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1219).

34. **Joint and Several Liability.** If there is more than one Mortgagor of this Mortgage, their obligations shall be joint and several.

35. **Operating and Financial Statements.** Mortgagor will deliver to Mortgagee upon Mortgagee's request, operating statements and occupancy reports (including a rent roll) for the Property in a form and for periods satisfactory to Mortgagee certified as correct by Mortgagor. Mortgagor shall permit Mortgagee to examine all books and records of Mortgagor pertaining to the Property and deliver to Mortgagee upon request all financial statements, credit reports and other documents in the possession, custody or control of Mortgagor relating to the financial condition of Mortgagor, any tenant of the Property and any guarantor of the Loan, including rental, income and expense statements pertaining to the Property and tax returns and audits. Notwithstanding the foregoing, as long as no Event of Default has occurred hereunder and under the Note and the other Loan Documents, Mortgagee shall not request copies of or access to such statements, books and records more often than once for each of Mortgagor's fiscal quarters.

36. **Maximum Interest Rate.** Mortgagor and Mortgagee intend to comply with the applicable usury laws of the State of Illinois and the United States of America. In no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Mortgagee for the use, forbearance or detention of the money loaned under the Note or otherwise, or for the performance or payment of any indebtedness, exceed the maximum amount permitted under applicable law. If the Loan is subject to a law which sets maximum interest or loan charges, and that law is finally interpreted so that interest or other loan charges collected or to be collected exceed the maximum amount permitted by law, and Mortgagor or any other holder of this Mortgage shall ever receive as interest on the Loan an amount which exceeds the maximum amount of interest permitted by applicable law, such excess amount shall be applied to reduction of the principal amount owing on the Loan so as to fully and strictly comply with such law. No person shall be obligated to pay the amount of such interest to the extent it is in excess of the maximum amount of interest permitted by applicable law. Without limiting the foregoing, all calculations of interest shall be made, to the extent permitted by law, by amortizing, prorating, allocating and spreading all interest in equal parts over the full stated term of the Note.



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37. **Evasion of the Prepayment Fee or Premium.** If Mortgagor is in default, any tender of payment sufficient to satisfy all sums due under the Loan Documents made at any time prior to foreclosure sale shall constitute an evasion of the prepayment terms contained in the Note, if any, and shall be deemed a voluntary prepayment. To the extent permitted by law, such payment shall include any additional sum required by the prepayment privilege in the Note.

38. **Payment of New Taxes.** If any federal, state or local law is passed subsequent to the date of this Mortgage which requires Mortgagee to pay any tax because of this Mortgage or the sums due under the Loan Documents, then Mortgagor shall pay to Mortgagee on demand any such taxes if it is lawful for Mortgagor to pay them. If it is not lawful for Mortgagor to pay such taxes, then at its option Mortgagee may declare the entire unpaid indebtedness with interest thereon to be immediately due and payable under the Loan Documents.

39. **Reserves.** Upon occurrence of an Event of Default, Mortgagor shall pay to Mortgagee, together with and in addition to the monthly payments of principal and interest payable on the Note, on the date set forth in the Note for the making of monthly payments, until the Note is fully paid, a sum, as estimated by Mortgagee, equal to the taxes and special assessments next due on the Property, plus the premiums that will next become due and payable on insurance policies required by this Mortgage, divided by the number of months to elapse before the premiums, taxes and special assessments are due, such sums to be held by Mortgagee to pay said premiums, taxes and special assessments. Such payments ("**Reserves**") are to be held without allowance of interest to Mortgagor (except as required by applicable law) and need not be kept separate and apart from other funds of Mortgagee. Such Reserves shall be applied by Mortgagee to real estate taxes, special assessment and insurance premiums on the Property as the same become due and payable. Collection of the reserves are solely for the added protection of Mortgagee and entails no responsibility on the part of Mortgagee beyond allowance of due credit for sums actually received by Mortgagee and the payment by Mortgagee of such taxes, special assessments and insurance premiums to the extent of the Reserves when statements therefor are actually presented to Mortgagee by Mortgagor. If the total of the Reserves shall exceed the amount of payments actually applied by Mortgagee, such excess may be credited by Mortgagee on subsequent payments to be made by Mortgagor, or at the option of Mortgagee, refunded to Mortgagor.

40. **Property Management.** Mortgagor agrees that Mortgagee shall have and reserves the right to install professional management of the Property at any time following the occurrence of an event of default, if such default remains uncured following the expiration of any applicable cure period. Such professional management shall be at the sole discretion of Mortgagee and nothing herein shall obligate Mortgagee to exercise its right to install professional management. The cost of such management shall be borne by Mortgagor, shall be secured by this Mortgage and shall be treated as an additional advance under the Loan Documents.

41. **Environmental Compliance and Indemnification.** Mortgagor represents and warrants to Mortgagee that to the best of Mortgagor's knowledge after due and diligent inquiry, neither the Property nor any improvements thereon except as disclosed by the Environmental Site Assessment provided to Mortgagee in writing prior to closing the Loan, no hazardous or toxic waste or substances are being stored, used, generated or released on (or located in the soil, groundwater, surface water or waterways) at or under the Property or any adjacent property in quantities or concentrations sufficient to require investigation, removal or remediation under the Environmental Laws (as hereinafter defined) nor have any such quantities or concentrations of waste or substances been stored, generated, released or used on the Property or any

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adjacent property prior to Mortgagor's ownership, possession or control of the Property, nor are any underground storage tanks (whether or not in use) located in, on or under any part of the Property. Mortgagor agrees to provide written notice to Mortgagee immediately upon Mortgagor becoming aware of any underground storage tanks on the Property, or that the Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Mortgagor will not cause nor permit any activities on the Property which directly or indirectly could result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances. For purposes of this Mortgage, the term "**hazardous or toxic waste or substances**" means asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, flammable explosives, radioactive materials, hazardous materials, petroleum and its refined products, and any other substance or material defined, regulated, controlled, limited, prohibited, or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous or toxic substance, or other similar term in Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 USC 9601, et seq.), the Hazardous Materials Transportation Act, as amended, (49 USC 1801, et seq.), the Resource Conservation and Recovery Act, as amended, (42 USC 6901, et seq.) the Clean Water Act, as amended, (33 USC 1251, et seq.), the Clean Air Act, as amended, (42 USC 7401, et seq.), the Toxic Substances Control Act, as amended, (15 USC 2601, et seq.) or in any other applicable federal, state or local environmental statute, regulation or ordinance now or hereafter in effect governing the Property, its business, products or assets, with respect to discharges into the ground or surface water, emissions into ambient air, and generation, control, accumulation, storage, treatment, transportation, removal, labeling, or disposal of waste materials or process by-products, the existence, cleanup, and/or remedy of contamination on property, the protection of the environment from soil, air, or water pollution, or from spilled, deposited or otherwise emplaced contamination (the "**Environmental Laws**"). Mortgagor shall promptly comply with all Environmental Laws which apply to Mortgagor or the Property and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction or by which Mortgagor is bound, relating to the Environmental Laws, at Mortgagor's expense. Mortgagor may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest as Mortgagee, whether or not Mortgagor has actual knowledge of the existence of hazardous or toxic substances in, on or under the Property or any adjacent property as of the date of this instrument. Mortgagor shall reimburse Mortgagee on demand for the full amount of all costs and expenses incurred by Mortgagee in connection with such compliance activities. Mortgagor shall indemnify and hold harmless Mortgagee, its officers, agents and employees from and against any and all loss, damage, expense (including without limitation attorneys fees and the cost of environmental consultants), liability, claims, suits, judgments, fines and penalties or liability associated with or related to the presence, use, manufacture, storage, dumping, discharge, disposal, cleanup or removal of hazardous materials or toxic waste affecting the Property or compliance with the Environmental Laws now or hereafter in effect. This indemnity shall not apply to any claim based solely on harm proximately caused by the willful misconduct or gross negligence of Mortgagee, or its employees, agents and representatives while Mortgagee is in actual possession and control of the Property. These covenants and agreements shall survive any foreclosure, release, discharge or satisfaction of this Mortgage or the indebtedness secured thereby. Reference is made to that certain Environmental Agreement and Indemnity of even date herewith by and among Mortgagor, JOHN M. DALEY and Mortgagee (the "**Environmental Agreement and Indemnity**"). The provisions of the Environmental Agreement and Indemnity are not secured by this Mortgage and are separate and distinct from and in addition to, any and all rights of Mortgagee against Mortgagor, any guarantor or any other person under the Loan Documents, or applicable law, but may be read together to maximize the coverage with respect to the subject matter thereof, as determined by Mortgagee.

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42. **Representations of Mortgagor.** Mortgagor represents and warrants to Mortgagee that Mortgagor (a) is (1) an individual of legal age and capacity, or (2) a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, duly organized, validly existing and in good standing under the laws of its creation, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such authorization; (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Mortgage and the other Loan Documents.

43. **Mortgagor Not a Foreign Person.** Mortgagor is not a "foreign person" as that term is defined by Section 1445(f)(3) of the U.S. Internal Revenue Code of 1986, as amended.

44. **Notices.** Except for any notice required by law to be given in another manner, any notice given by Mortgagor, Mortgagee or Mortgagee shall be in writing and shall be effective (i) on personal delivery to the party receiving the notice or (ii) on the third day after deposit in the United States mail, certified and postage prepaid with return receipt requested, addressed to the party at the address set forth in the preamble of this Mortgage, or with respect to the Mortgagor, to the address at which Mortgagee customarily or last communicated with Mortgagor.

45. **Successors and Assigns.** This Mortgage applies to, inures to the benefit of, and binds the parties and their respective heirs, representatives, successors and assigns.

46. **Controlling Document.** In the event of a conflict or inconsistency between the terms and conditions of this Mortgage and the terms and conditions of any other of the Loan Documents (except for any separate Assignment of Leases and Rents which shall prevail over this Mortgage), the terms and conditions of this Mortgage shall prevail.

47. **Invalidity of Terms and Conditions.** If any term or condition of this Mortgage is found to be invalid, the invalidity shall not affect any other term or condition of this Mortgage and this Mortgage shall be construed as if not containing the invalid term or condition.

48. **Rules of Construction.** This Mortgage shall be construed so that whenever applicable, the use of the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders and shall include corporations, partnerships, trusts, limited liability companies, limited partnerships and other entities.

49. **Section Headings.** The heading to the various sections has been inserted for convenience of reference only and shall not be used to construe this Mortgage.

50. **Applicable Law.** This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Illinois, including laws governing the creation, perfection, enforceability and priority of the liens and security interests created by this Mortgage and the procedures for foreclosure and for enforcement of the rights and remedies of Mortgagee under this Mortgage. In the event that any provision of this Mortgage shall be inconsistent with any provision of the laws of Illinois, provided that such state law provision is applicable to the rights and obligations of the parties to this Mortgage, such state law provisions shall take precedence over the provisions of this Mortgage, but shall not invalidate or

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render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with applicable state law.

51. **Compliance With Illinois Mortgage Foreclosure Law.** If any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 110, Sections 15-1101 et seq., Illinois Revised Statutes) (the "IMFL"), the provisions of the IMFL 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 IMFL. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under IMFL in the absence of said provision, Mortgagee shall be vested with the rights granted in the IMFL to the full extent provided by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the IMFL, whether incurred before or after decree or judgment foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured hereby.

52. **Indemnification.** Mortgagor shall indemnify, defend and hold harmless Mortgagee from all losses, injuries, damages and expenses, including reasonable attorney's fees, incurred in connection with any suit or proceeding in or to which Mortgagee may be made a party for the purpose of protecting the lien of this Mortgage.

53. **Partial Release.** Mortgagor shall not be entitled to the partial release of any of the Real Property unless a specific provision provided therefor is included in this Mortgage. In the event a partial release provision is included in this Mortgage, Mortgagor must strictly comply with the terms thereof. Notwithstanding anything herein contained, Mortgagor shall not be entitled to any release of the Real Property unless Mortgagor is not then in default and is in full compliance with all the terms and provisions of the Note, this Mortgage, and the other Loan Documents.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK)

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54. **Request For Notice.** Mortgagor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address hereinabove set forth.

**IN WITNESS WHEREOF**, the Mortgagor has executed this Mortgage as of the day and year above written.

**MORTGAGOR:**

3701 W. 128TH LLC, an Illinois limited liability company

By:   
Scott D. McKibben, Manager


*(signatures must be acknowledged)*

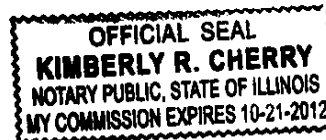
**This Instrument Prepared by:**

Casey Bradley  
Symetra Life Insurance Company  
Mortgage Loan Department  
PO Box 84066  
Seattle, WA 98124-8466

STATE OF ILLINOIS            )  
  ) ss.  
COUNTY OF Cook            )

I, Kimberly R. Cherry, a Notary Public in and for said county in the state aforesaid, do certify that **SCOTT D. MCKIBBEN**, personally known to me to be the Manager of 3701 W. 128<sup>th</sup> LLC, an Illinois limited liability company, and personally known to be the same person who name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as the Manager of 3701 W. 128<sup>th</sup> LLC, an Illinois limited liability company, as his voluntary act and deed and the voluntary act and deed of the limited liability company for the uses and purposes therein mentioned. Witness my hand and official stamp or notarial seal, this 1<sup>st</sup> day of May, 2012.

  
Notary Public  
Residing at: 1045 Davis Dr. Bensenville, IL  
My Commission expires: 10/21/12



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## EXHIBIT A

### *(Legal Description of Property)*

Land and improvements situated in Cook County, Illinois:

#### PARCEL 1:

THE NORTH 364 FEET OF THE FOLOWING, TAKEN AS A TRACT:

LOT 9, EXCEPT THE WEST 67.58 FEET THEREOF AND LOTS 10, 11 AND 12 IN BLUE ISLAND GARDENS SUBDIVISION OF THE FOLLOWING DESCRIBED TRACT:

THE NORTHWEST QUARTER (EXCEPT THE EAST 20 ACRES THEREOF AND EXCEPT THE WEST 1/11 FEET OF THAT PART OF SAID NORTHWEST QUARTER LYING WEST OF SAID EAST 20 ACRES), IN SECTION 35, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

LOT 3 IN ALSIP INDUSTRIAL PARK UNIT 2 BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF THE NORTH WEST 1/4 OF SECTION 35, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

A PARCEL OF LAND IN PART OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 35, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 3 IN ALSIP INDUSTRIAL PARK UNIT 2, BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SAID SECTION 35, ACCORDING TO THE PLAT THEREOF RECORD APRIL 19, 1968 AS DOCUMENT 20464384; THENCE NORTH 00 DEGREES 00 MINUTES WEST ON AN ASSUMED BEARING ALONG THE WEST LINE OF SAID LOT 3, A DISTANCE OF 441.63 FEET TO THE NORTHWEST CORNER OF SAID LOT 3, SAID POINT ALSO BEING ON THE SOUTH LINE OF WEST 128TH PLACE IN SAID ALSIP INDUSTRIAL PARK UNIT 2; THENCE NORTH 89 DEGREES 27 MINUTES 40 SECONDS WEST ALONG SAID SOUTH LINE OF WEST 128TH PLACE, A DISTANCE OF 6.97 FEET; THENCE SOUTH 11 DEGREES 17 MINUTES 20 SECONDS WEST, A DISTANCE OF 158.51 FEET TO A POINT 38.00 FEET OF THE WEST LINE OF SAID LOT 3; THENCE SOUTH 00 DEGREES 00 MINUTES EAST ALONG A LINE PARALLEL WITH AND 38.00 FEET WEST OF THE WEST LINE OF SAID LOT 3, A DISTANCE OF 285.92 FEET TO THE SOUTH LINE OF SAID LOT 3 EXTENDED WEST (ALSO BEING THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTHWEST 1/2 OF SAID SECTION 35); THENCE SOUTH 89 DEGREES 29 MINUTES 30 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT 3 EXTENDED WEST, A DISTANCE OF 38.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**PROPERTY TAX INDEX #** 24-35-100-036-0000; 24-35-100-091-0000; 24-35-101-034-0000; 24-35-101-036-0000; 24-35-101-038-0000; 24-35-101-040-0000.