

# UNOFFICIAL COPY

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 1318441075 Fee: \$166.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 07/03/2013 12:22 PM Pg: 1 of 64

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 06-01-200-015-0000

**Address:**

**Street:** 2300 N. Barrington Road

**Street line 2:**

**City:** Hoffman Estates

**State:** IL

**ZIP Code:** 60192

**Lender:** Aetna Life Insurance Company

**Borrower:** TR Greenspoint LLC

**Loan / Mortgage Amount:** \$14,000,000.00

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.

**Box 400-CTCC**

**Certificate number:** C30383B6-A2E7-4890-89A5-807CEED11CC1

**Execution date:** 06/10/2013

S  
P  
S  
SC  
INT

8933449  
Hoffman 21 14-3

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Property of Cook County Clerk's Office

---

SPACE ABOVE LINE RESERVED FOR OFFICIAL RECORDER'S USE

**THIS INSTRUMENT WAS PREPARED BY  
AND UPON RECORDING SHOULD BE  
RETURNED TO:**

**R. Jeffrey Smith, Esq.  
Bingham McCutchen, LLP  
One State Street  
Hartford, Connecticut 06103**

**Aetna Loan No.: 1-004-362**

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

**THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** made as of June 14, 2013 (as amended, extended, renewed, consolidated, spread or otherwise modified from time to time, this "**Mortgage**"), by **TR GREENSPPOINT LLC**, a Delaware limited liability company, having a place of business and a mailing address c/o LPC Realty Advisors I, LP, 120 N. LaSalle Street, Suite 1750, Chicago, Illinois 60602 ("**Mortgagor**") to **AETNA LIFE INSURANCE COMPANY**, a Connecticut corporation having a place of business and a mailing address, c/o Aetna Investment Group, at 151 Farmington Avenue, RTAA, Hartford, Connecticut 06156 ("**Mortgagee**").

# UNOFFICIAL COPY

## BACKGROUND

1. Mortgagor is justly indebted to Mortgagee in the principal amount of **FOURTEEN MILLION AND NO/100 DOLLARS (\$14,000,000.00)** (the "**Greenspoint I Loan**"), as evidenced by Mortgagor's Promissory Note dated as of the date hereof, in said principal amount, bearing interest and payable to the order of Mortgagee as provided therein, with final maturity on July 1, 2016 (the "**Maturity Date**"), subject, however, to earlier demand as provided therein (as amended, extended, renewed, consolidated or otherwise modified from time to time, and any and all notes that may be given from time to time in exchange, substitution or replacement therefor, the "**Greenspoint I Note**").

2. Mortgagor is also justly indebted to Mortgagee in the principal amount of **FOUR MILLION AND NO/100 DOLLARS (\$4,000,000.00)** (the "**Greenspoint III Loan**", and together with the Greenspoint I Loan, collectively, the "**Loan**") as evidenced by Mortgagor's Promissory Note dated as of the date hereof, in said principal amount, bearing interest and payable to the order of Mortgagee as provided therein, with final maturity on the Maturity Date, subject, however, to earlier demand as provided therein (as amended, extended, renewed, consolidated or otherwise modified from time to time, and any and all notes that may be given from time to time in exchange, substitution or replacement therefor, the "**Greenspoint III Note**", and together with the Greenspoint I Note collectively, the "**Note**").

3. As a condition to making the Loan, Mortgagor has executed and delivered to Mortgagee (i) this Mortgage, and (ii) a certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated the date hereof from Mortgagor to Mortgagee (the "**Greenspoint III Mortgage**"), encumbering certain property known as Greenspoint III, located at 2895 Greenspoint Parkway, Hoffman Estates, Illinois (the "**Greenspoint III Property**").

4. Mortgagor is the owner, in fee simple, of that certain land located in the City of Hoffman Estates, County of Cook, and State of Illinois (the "**Land**"), which Land is more particularly described on **Exhibits A-1 and A-2** attached hereto and made a part hereof.

5. To induce Mortgagee to make the Loan, Mortgagor has agreed to execute and deliver this Mortgage to secure the following:

(a) payment the indebtedness from time to time evidenced by the Note and all other present and future debts, obligations and liabilities of Mortgagor under this Mortgage, any of the other Loan Documents (as hereinafter defined), including, but not limited to, all principal, interest, future advances, prepayment premiums, late charges, fees, reimbursements, indemnities, costs and expenses (including court costs and attorneys' fees) (said indebtedness, debts, obligations and liabilities being collectively referred to in this Mortgage as the "**Indebtedness**"); and

(b) the keeping, performance and observance of, and compliance with, all provisions required to be kept, performed, observed and complied with by Mortgagor under the Note, this Mortgage, a certain Assignment of Leases and Rents relating to the Property (as hereafter defined) of even date herewith (as amended from time to time, the "**Assignment of Leases**"), a certain Loan Agreement dated as of the date hereof by and between Mortgagor and

# UNOFFICIAL COPY

Mortgagee, all other Loan Documents (as defined in the Greenspoint III Mortgage) and such other documents and instruments executed in connection with the Loan (being collectively referred to in this Mortgage as the "**Loan Documents**") or any other document or instrument now or hereafter evidencing or securing all or any part of the Indebtedness or otherwise governing the responsibilities of Mortgagor in connection with such Indebtedness or in connection with the Property (as hereinafter defined) or in connection with any other security for such Indebtedness; and

(c) any and all other obligations secured by this Mortgage, as more particularly provided herein.

**NOW, THEREFORE**, to secure payment of the Indebtedness and the keeping, performance and observance of, and compliance with the aforesaid provisions, and in consideration of the sum of Ten Dollars (\$10) paid to Mortgagor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby **IRREVOCABLY AND UNCONDITIONALLY GRANTS, MORTGAGES, WARRANTS, CONVEYS, BARGAINS, TRANSFERS AND ASSIGNS TO MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER, WITH RIGHT OF ENTRY AND POSSESSION, AND GRANTS TO MORTGAGEE**, its successors and assigns forever, all of the following (collectively, the "**Property**"):

**A.** all right, title and interest of Mortgagor, whether vested or contingent and whether now owned or hereafter acquired, in and to (1) the Land, (2) all buildings, structures and other improvements now or hereafter situated on the Land (collectively, the "**Buildings**"), (3) all fixtures now or hereafter situated in or on, or attached to, the Land or any of the Buildings (collectively, the "**Fixtures**"), and (4) all trees, shrubbery, crops and other plantings now or hereafter grown on the Land; and

**B.** all right, title and interest of Mortgagor (as owner, chattel lessee or otherwise), whether vested or contingent and whether now owned or hereafter acquired, in and to (1) all building materials, supplies and other property now or hereafter stored at or delivered to the Land or any other location for installation in or on the Land or any of the Buildings, (2) all equipment, machinery, appliances, furniture, furnishings, fittings, apparatus, supplies and other tangible personal property now or hereafter situated in or on, or attached to, the Land or any of the Buildings (all of the property described in this clause (2) or in the immediately preceding clause (1) being collectively referred to in this Mortgage as the "**Equipment**") (the Buildings, the Fixtures and the Equipment being collectively referred to in this Mortgage as the "**Improvements**"), (3) any and all oil, gas and other minerals now or hereafter situated in, on, under or about, or produced from or allocated to, the Land, and (4) any and all plans, specifications, drawings, books, records and similar items now or hereafter relating to the Land, the Improvements or any business or other operations now or hereafter conducted therein or thereon; and

**C.** all right, title and interest of Mortgagor, whether vested or contingent and whether now owned or hereafter acquired, in and to all streets, roads, sidewalks, alleys, ways, passages, public places, vaults, water courses, levees, ditches, wells, reservoirs, strips and gores adjoining or otherwise providing access to, or used or intended to be used in connection with, the

# UNOFFICIAL COPY

Land, any of the Improvements or any other part of the Property, and the land lying in the bed thereof; and

**D.** all right, title and interest of Mortgagor, whether vested or contingent and whether now owned or hereafter acquired, in and to all easements, rights-of-way and other rights of use or passage (whether public or private), estates, interests, benefits, powers, rights (including development, declarant, lateral support, drainage, slope, riparian, littoral, sewer, water, air, oil, gas, mineral and subsurface rights), privileges, claims, franchises, licenses, profits, tenements, hereditaments, reversions, remainders and appurtenances now or hereafter belonging, relating, appertaining or allocated to the Land, the Improvements or any other part of the Property; and

**L.** all right, title and interest of Mortgagor, in and to, and all rights, powers, privileges and benefits of Mortgagor in, to and under:

(1) all leases, subleases, lettings, sublettings, concessions, licenses, occupancy and use agreements and similar arrangements, whether oral or written, now or hereafter relating to all or any part of the Land, any of the Improvements or any other part of the Property (collectively, the "**Leases**") (all present and future lessees, tenants, concessionaires, licensees, occupants and other users of all or any part of the Property under any of the Leases being collectively referred to in this Mortgage as the "**Tenants**"), including any subleases under any of the Leases, any tenancies following attornment and any use and occupancy arrangements created pursuant to Section 365 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (as amended from time to time, the "**Bankruptcy Code**"), or pursuant to any other provision of the Bankruptcy Code or any other present or future law relating to bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, conservatorship, receivership or similar relief for debtors (the Bankruptcy Code and each such other law being sometimes referred to in this Mortgage as an "**Insolvency Law**"); and

(2) any and all presently effective and future guaranties and other surety arrangements of, for or otherwise relating to any of the Leases (collectively, the "**Lease Guaranties**") (all present and future guarantors and other sureties under any of the Lease Guaranties being collectively referred to in this Mortgage as the "**Lease Guarantors**"); and

(3) leases, licenses, easements and/or other rights in or to and/or agreements relating to any off-site parking necessary, required or desirable in connection with Leases or for use of the Property.

**F.** all right, title and interest of Mortgagor in and to, and all rights, powers, privileges and benefits of Mortgagor with respect to, any and all present and future security for, under or otherwise relating to any of the Leases or any of the Lease Guaranties, whether arising by statute, by agreement or otherwise (collectively, the "**Security**"), including property of any Tenant or any Lease Guarantor and cash deposits, advance rentals and deposits and payments of a similar nature, together with all rights of Mortgagor and any other person claiming under

# UNOFFICIAL COPY

Mortgagor to collect, hold, return and retain the Security; provided, however, that Mortgagor shall be permitted, and is hereby granted a revocable license, until the occurrence of any Event of Default (as hereinafter defined), to collect, hold, return and retain the Security, but only in accordance with applicable laws and agreements (subject, however, to the provisions of any lockbox, escrow, rental collection, cash management, direct pay or similar agreements relating to the Security now or hereafter in effect), which permission and license shall automatically and immediately terminate, without notice to Mortgagor and without the necessity of any other action by any person, upon the occurrence of any Event of Default; and

**G.** all right, title and interest of Mortgagor, whether vested or contingent and whether now owned or hereafter acquired, in and to all rents, royalties, issues, profits, revenues, income and other money and benefits (including non-cash consideration) of and from the Land, any of the Improvements, any other part of the Property or any business or other operations now or hereafter conducted therein or thereon by or on behalf of or for the benefit of Mortgagor, whether now or hereafter payable or accruing and whether now or hereafter deliverable (collectively, the **"Rents"**), including (1) all money and other consideration from time to time paid, payable or accruing, or from time to time delivered or deliverable, to or for the benefit of Mortgagor, or to which Mortgagor otherwise may be entitled, under or in connection with any of the Leases or any of the Lease Guaranties (including cancellation or termination payments and damages payable in connection with any default), and (2) all money and other consideration from time to time paid, payable or accruing, or from time to time delivered or deliverable, by or on behalf of any other licensees, invitees, guests, customers, occupants or other users of any such Property, together with all rights of Mortgagor and any other person claiming under Mortgagor to collect and use the Rents; provided, however, that Mortgagor shall be permitted, and is hereby granted a revocable license, until the occurrence of any Event of Default, to collect the Rents as, but not before, they become due and payable (subject, however, to the provisions of any lockbox, escrow, rental collection, cash management, direct pay or similar agreements relating to the Rents now or hereafter in effect), which permission and license shall automatically and immediately terminate, without notice to Mortgagor and without the necessity of any other action by any person, upon the occurrence of any Event of Default; and

**H.** all right, title and interest of Mortgagor (whether as seller, purchaser or otherwise) in and to (1) all presently effective and future agreements for purchase and sale or other transfer of all or any part of the Property, (2) all down payments, earnest money deposits and other money or security paid or payable or deposited or to be deposited in connection with any such agreement, (3) all proceeds of any sale, assignment or other disposition of all or any part of the Property or any rights thereto or any interest therein, and (4) all proceeds of any other conversion of any such Property, rights or interest into cash or any liquidated claim; and

**I.** all right, title and interest of Mortgagor in and to (1) all judgments, settlements, claims, awards, insurance proceeds and other proceeds and compensation, and any interest thereon (collectively **"Compensation"**), made or payable at any time in connection with any fire, casualty or other damage or loss to all or any part of the Property, or in connection with any condemnation or eminent domain proceeding relating to all or any part of the Property (any such proceeding being referred to in this Mortgage as a **"Condemnation Proceeding"**) or any damage to or taking of all or any part of the Property or any rights thereto or any interest therein in connection with any condemnation or exercise of the power of eminent domain (or any

# UNOFFICIAL COPY

conveyance in lieu of or under threat of any such taking), including any Compensation for change of grade of streets or any other injury to or decrease in value (any such damage, taking or conveyance being referred to in this Mortgage as a "Taking"), (2) all refunds and rebates of, or with respect to, any Insurance Premiums (as hereinafter defined), Impositions (as hereinafter defined) or other utility charges relating to the Property, and any interest thereon, and (3) all unearned or prepaid Insurance Premiums, Impositions and other utility charges, any deposits with respect thereto and any interest thereon; and

**J.** all right, title and interest of Mortgagor, whether vested or contingent and whether now owned or hereafter acquired, in and to all accounts, accounts receivable, books and/or records (whatever form) option rights, contract rights, general intangibles, permits, licenses, approvals, bonuses, actions, rights in action and other intangible personal property now or hereafter arising from or relating to all or any part of the Property or any business or other operations now or hereafter conducted therein or thereon by or on behalf of or for the benefit of Mortgagor (including all rights of Mortgagor in and to any and all contracts and bonds relating to operation, maintenance, construction, renovation, restoration, repair, management or security of all or any part of the Property or any such business or other operations); and

**K.** all right, title and interest of Mortgagor, whether vested or contingent and whether now owned or hereafter acquired, in and to all proceeds, products, extensions, additions, improvements, betterments, renewals, substitutions, replacements, accessions, accretions and relictions of or to all or any part of the Property or any interest therein; and

**L.** all further or greater estate, right, title, interest, claim and demand of Mortgagor, of whatever character (whether vested or contingent and whether now owned or hereafter acquired), in and to any of the Property described above and any rights or interests appurtenant thereto.

**FOR THE PURPOSE OF SECURING** the performance of each agreement of Mortgagor contained herein, or under any of the other Loan Documents, including but not limited to, the payment of any Indebtedness evidenced by the Note, and to protect the security of this Mortgage, Mortgagor represents, warrants, covenants and agrees as follows:

## ARTICLE 1

### COVENANTS OF MORTGAGOR

**1.1 Performance of Obligations.** Mortgagor shall keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all provisions required to be kept, performed, observed and complied with by or on behalf of Mortgagor from time to time under each of the Loan Documents. Without limiting the generality of the immediately preceding sentence, Mortgagor shall pay or cause to be paid to Mortgagee, when due, the Indebtedness and all parts thereof.

**1.2 General Representations, Covenants and Warranties.**

(a) Mortgagor does and will warrant generally the Property, and Mortgagor will forever defend the title to the Property against the claims of all persons whomsoever

# UNOFFICIAL COPY

claiming or who may claim the same or any part thereof, subject to the matters described in **Exhibit B** attached hereto (collectively, the “**Permitted Exceptions**”) and the Leases listed in the rent roll attached to a certain Closing Certificate of even date herewith executed by Mortgagor in connection with the Loan (the “**Rent Roll**”) (the Leases listed in the Rent Roll being collectively referred to in this Mortgage as the “**Existing Leases**”). Without limiting the generality of the immediately preceding sentence, Mortgagor represents, warrants and covenants that:

(i) subject only to the Permitted Exceptions, Mortgagor is seized of an indefeasible estate in fee simple in and to the Land, the Buildings and all other parts of the Property constituting real property;

(ii) subject only to the Permitted Exceptions, Mortgagor has good and absolute title to the Equipment, the Fixtures and all other parts of the Property constituting personal property, except Equipment owned by any Tenant (other than Mortgagor) and Equipment leased by any Tenant from any person other than Mortgagor;

(iii) the Property is free and clear of any and all liens, security interests, charges, encumbrances and claims of other persons, other than the Permitted Exceptions;

(iv) all costs incurred prior to the date hereof in connection with any construction of, in or on any Improvements or in connection with the purchase of any Fixtures or Equipment have been or will be paid in full when due;

(v) no parcel forming part of the Land is included within a tax parcel, for *ad valorem* or local real estate tax purposes, that also includes real property not encumbered by this Mortgage;

(vi) no Leases or Lease Guaranties are in effect other than the Existing Leases and any Lease Guaranties listed in the Rent Roll; all of the Existing Leases and such Lease Guaranties are presently in effect; and, to Mortgagor’s knowledge, no default exists under any of the Existing Leases or such Lease Guaranties;

(vii) the Land has frontage on, and direct access for ingress from and egress to, physically open, public and dedicated street(s), as described in a survey submitted to Mortgagee in connection with the Loan;

(viii) electric, gas, sewer, water and telephone facilities and any and all other necessary utilities are available in sufficient capacity to service the Property satisfactorily until the Indebtedness shall have been paid in full, and any easements legally required to assure the continuation of such utility service to the Property have been obtained and duly recorded; and

(ix) to Mortgagor’s knowledge, the Property and its current use comply with the Permitted Exceptions, with all other applicable agreements and restrictive covenants (including all insurance policies maintained with respect to the Property) and with all applicable laws, ordinances, rules, regulations, orders, judgments, injunctions and decrees (collectively, “**Governmental Requirements**”) (including all zoning and subdivision



# UNOFFICIAL COPY

ordinances and building codes and all Environmental Laws, as hereinafter defined), and all licenses, permits, approvals and authorizations required in connection therewith have been duly obtained and are in effect.

(b) Mortgagor also represents, warrants and covenants that:

(i) (A) Mortgagor is a duly organized and validly existing limited liability company under the laws of the State of Delaware and is in good standing under those laws and is duly qualified to do business in the State of Illinois, including, but not limited to, owning and operating the Property, as a foreign entity; (B) Mortgagor's federal tax identification number is 90-0940767; and (C) Mortgagor's entity identification number as assigned to it by the State of Delaware is 5275225.

(ii) Mortgagor has duly obtained all licenses, permits, approvals and authorizations, and has duly completed all filings, required for the conduct of its business, and all such licenses, permits, approvals, authorizations and filings are in effect;

(iii) the manager of Mortgagor is LPC Realty Advisors I, LP;

(iv) Mortgagor has good right, full power and lawful authority, without the joinder or consent of any person, to grant, convey, pledge and assign the Property pursuant to and as provided in this Mortgage, and Mortgagor will maintain and preserve the lien of this Mortgage until the Indebtedness shall have been paid in full;

(v) all necessary company action has been taken by Mortgagor to make and constitute the Loan Documents, and the Loan Documents do constitute, legal, valid and binding obligations of Mortgagor, enforceable in accordance with their respective terms, subject to the effect of Insolvency Laws and other laws affecting creditors' rights generally;

(vi) there are no provisions in any indenture, contract, agreement or other document or instrument affecting Mortgagor or any member or manager of Mortgagor, or to which Mortgagor or any member or manager of Mortgagor is a party or by which Mortgagor or any member or manager of Mortgagor or Mortgagor's properties are bound, which prohibit or limit the execution of any of the Loan Documents or Mortgagor's keeping, performance and observance of, or Mortgagor's compliance with, any provisions set forth in any of the Loan Documents, and such actions by Mortgagor will not violate any Governmental Requirement presently in effect or the adoption, issuance or imposition of which is known to Mortgagor to be presently under consideration;

(vii) Mortgagor has not retained or engaged the services of any broker or agent for the purpose of seeking financing secured by the Property other than Holliday Fenoglio Fowler, L.P. and that any and all commissions, charges or fees payable in connection with the Loan will be paid at the closing of the Loan;

(viii) Mortgagor is now able to meet its debts as they mature, the fair market value of its assets exceeds its liabilities and no bankruptcy or insolvency cases or

# UNOFFICIAL COPY

proceedings are pending, or to the knowledge of Mortgagor contemplated, by or against Mortgagor;

(ix) there are no actions, suits or proceedings pending, or to the knowledge of Mortgagor threatened, against or affecting Mortgagor or the Property in any court or before any governmental authority, nor is Mortgagor in default with respect to any order of any court or governmental authority;

(x) none of Mortgagor nor any member or manager of Mortgagor has received any notice of default, or any notice of the existence of any state of facts which, with notice or the passage of time, or both, would constitute a default if not cured or corrected, under any document or instrument evidencing or securing any indebtedness of any of them, which default or state of facts, if it were to become a default, would have a material adverse effect on the Property or the Loan Documents;

(xi) all reports, statements and other data furnished to Mortgagee by or on behalf of Mortgagor, any member or manager of Mortgagor are accurate and complete in all material respects and do not fail to state any fact or circumstance necessary to make the statements contained therein not misleading, and no material adverse change (including the incurring of any indebtedness not approved by Mortgagee) has occurred in their respective financial conditions since the dates of their respective financial statements most recently furnished to Mortgagee;

(xii) Mortgagor is not a "foreign person" within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended, or any other pertinent provision of said Code; and

(xiii) The Loan, during the term hereof, will not constitute a "prohibited transaction", as defined in the Employee Retirement Income Security Act of 1974, as amended.

(c) Mortgagor also represents, warrants and covenants that, to Mortgagor's knowledge, except as disclosed in those Phase I Environmental Assessments by LM Consultants (LM Project No. 396.012.01 and LM project No. 396.012.02), each dated March 26, 2013:

(i) no proceedings have been commenced against, and no written notice, order, claim or demand has been received by, Mortgagor or any other person or entity having a direct ownership interest in Mortgagor concerning any actual or alleged violation of any Environmental Law (as hereinafter defined) or concerning the actual or alleged release of any Hazardous Substances (as hereinafter defined) in, on, under, or about (A) the Land and Buildings, or (B) any other property previously owned or operated in common with all or any part of the Land and Buildings, which other property shall have been combined with all or any part of the Land and Buildings in a single property description;

# UNOFFICIAL COPY

(ii) to Mortgagor's knowledge, neither the Property nor any such other property is under investigation by any governmental or quasi-governmental authority or instrumentality with respect to any Environmental Law or any Hazardous Substances;

(iii) to Mortgagor's knowledge, the Property has not been the subject of any threatened, proposed or actual cleanup or other removal or remedial action relating to any Hazardous Substances, whether pursuant to any Environmental Law or otherwise;

(iv) there are no Hazardous Substances in, on, under, or about the Property or any such other property, except for (i) Hazardous Substances of such types and in such quantities as are customarily used or stored or generated or transported for offsite disposal in or at properties of the relevant property type, and in compliance with all applicable Environmental Laws and with permits issued pursuant thereto, (ii) cleaning materials, maintenance materials, pre-packaged supplies, personal medical products and devices for consumer use in such quantities and types as are customarily used or stored in or at properties of the relevant property type, and in compliance with all applicable Environmental Laws, (iii) petroleum products used in the operation of motor vehicles from time to time located on the Property, so long as the foregoing are used in compliance with all applicable Environmental Laws, or (iv) such other Hazardous Substances fully disclosed to and approved by Mortgagee in writing;

(v) no release, discharge, spillage, or seepage of any Hazardous Substances has occurred in, on, under, about, or from the Property or any such other property in concentrations or quantities that exceed applicable regulatory standards (including any migration of Hazardous Substances from neighboring land);

(vi) the Property is not being used or, to the best of Mortgagor's knowledge, has been used, for the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use or disposal of any Hazardous Substances except in material compliance with all applicable Environmental Laws; and

(vii) there are no active, dormant or closed underground storage tanks or receptacles for Hazardous Substances in, on, under or about the Property.

(d) As used in this Mortgage, the term "**Environmental Law**" means any present or future Governmental Requirement relating to Hazardous Substances, contamination or other pollution or relating to environmental protection, cleanup or remediation (including, but not limited to: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, as amended, 42 U.S.C. Section 11001 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601, et seq.; and the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 5101 et seq.; all amendments and supplements thereto, all administrative interpretations thereof and any

# UNOFFICIAL COPY

official publication promulgated or issued pursuant thereto; and all other comparable state and local laws, administrative orders, regulations, and interpretations promulgated thereunder.

(e) As used in this Mortgage, the term “**Hazardous Substances**” means (i) any and all petroleum products, natural gas liquids, asbestos (whether or not friable) and asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls and lead-containing materials, (ii) any and all other pollutants, contaminants and other toxic, harmful or hazardous wastes, substances or materials (A) which, because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or contribute to (or are reasonably expected to constitute or contribute to) a danger or hazard to public health, welfare or the environment, (B) the remediation of which may be required by any Environmental Law, or (C) the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, or seepage of which is or shall be restricted, regulated, prohibited or penalized by any Environmental Law, including, without limitation, any substances which are “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances,” “regulated substances,” “industrial solid wastes,” or “pollutants” under Environmental Law, as described above, and/or other applicable environmental laws, ordinances and regulations, (iii) any chemical known to cause cancer or reproductive toxicity, the exposure to which is limited or regulated by any governmental authority having jurisdiction over human health and safety, natural resources or the environment because of such chemical’s quantity, concentration, or physical or chemical characteristics, or (iv) toxic mold.

**1.3 PATRIOT Act Compliance.** Mortgagor hereby represents, warrants and covenants that, as of the date hereof and until such time as the Indebtedness shall be paid in full:

(i) None of Mortgagor or any direct or indirect affiliate of Mortgagor that is wholly owned by Teachers’ Retirement System of the State of Illinois, and, to Mortgagor’s knowledge, any of Mortgagor’s brokers or investment advisors acting or benefiting in any capacity in connection with the Loan, is or will be a Prohibited Person (as hereinafter defined);

(ii) None of Mortgagor or any direct or indirect affiliate of Mortgagor that is wholly owned by Teachers’ Retirement System of the State of Illinois (A) to Mortgagor’s knowledge, has conducted or will conduct any business or has engaged or will engage in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (B) to Mortgagor’s knowledge, has dealt or will deal in, or otherwise has engaged or will engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order (as hereinafter defined); or (C) to Mortgagor’s knowledge, has engaged or will engage in or has conspired or will conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the requirements or prohibitions set forth in the Executive Order (as hereinafter defined) or the PATRIOT Act (as hereinafter defined);

(iii) To Mortgagor’s knowledge, none of the brokers or investment advisors of Mortgagor acting for Mortgagor in connection with the Loan or any direct or indirect

# UNOFFICIAL COPY

affiliate of Mortgagor that is wholly owned by Teachers' Retirement System of the State of Illinois (A) has conducted or will conduct any business or has engaged or will engage in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (B) has dealt or will deal in, or otherwise has engaged or will engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (C) has engaged or will engage in or has conspired or will conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the requirements or prohibitions set forth in the Executive Order or the PATRIOT Act;

(iv) Mortgagor covenants and agrees to deliver to Mortgagee any certification or other evidence reasonably requested from time to time by Mortgagee, confirming Mortgagor's compliance with this Section;

(v) Mortgagor represents and warrants that to its knowledge Mortgagor and all of its direct and indirect affiliates that are wholly owned by Teachers' Retirement System of the State of Illinois (including any officers and directors of any of the foregoing) are in full compliance with all applicable orders, rules and regulations issued by, and recommendations of the U.S. Department of the Treasury and OFAC (as hereinafter defined) pursuant to the PATRIOT Act, other legal requirements relating to money laundering or terrorism and any executive orders related thereto;

(vi) At all times throughout the term of the Loan, Mortgagor and all of its direct and indirect affiliates that are wholly owned by Teachers' Retirement System of the State of Illinois (including any officers and directors of any of the foregoing) shall be in full compliance with all applicable orders, rules and regulations issued by, and recommendations of, the U.S. Department of the Treasury and OFAC pursuant to the PATRIOT Act, other legal requirements relating to money laundering or terrorism and any executive orders related thereto;

(vii) Mortgagor is advised that, by law, Mortgagee may be obligated to "freeze its account" or any account of Mortgagor's investors, such as prohibiting the deposit of additional funds, declining any withdrawal, redemption, funding or transfer request(s) and/or segregating assets in compliance with governmental regulations, and Mortgagee may also be required to report such action to governmental or regulatory authorities, including OFAC;

(viii) Mortgagor covenants that it will adopt policies, procedures and internal controls to be fully compliant with any additional laws, rules or regulations relating to money laundering and/or terrorism, including the PATRIOT Act, to which it may become subject;

(ix) Mortgagor does not believe, and has no reason to believe, that any of the holders of any direct or indirect interests as a member in Mortgagor is a "Prohibited Foreign Shell Bank" (as defined in the PATRIOT Act), or is named on any available lists of known or suspected terrorists, terrorist organizations or of other sanctioned persons

# UNOFFICIAL COPY

issued by the United States government and/or the government(s) of any jurisdiction(s) in which Mortgagor is doing business; provide, however, Mortgagor makes no representations and warranties as to the individual teachers who have interests in the Teachers' Retirement System of the State of Illinois;

(x) Mortgagor does not believe, and has no reason to believe, that the person or entity from whom Mortgagor acquired the Property is a Prohibited Foreign Shell Bank, or is named on any available lists of known or suspected terrorists, terrorist organizations or of other sanctioned persons issued by the United States government and/or the government(s) of any jurisdiction(s) in which Mortgagor is doing business;

(xi) Mortgagor will advise Mortgagee immediately of any material change that would affect the representations, covenants and warranties provided in this Section.

As used herein, the following terms shall have the following respective meanings:

**"Prohibited Person"** means any individual or entity:

(a) listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "**Executive Order**");

(b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of the Executive Order;

(c) with whom Mortgagee is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering legal requirements, including the PATRIOT Act and the Executive Order;

(d) that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;

(e) that is named as a "specifically designated national (SDN)" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/tllsdn.pdf> or at any replacement website or other replacement official publication of such list or is named on any other U.S. or foreign government or regulatory list issued after September 11, 2001;

(f) that is covered by OFAC or any other law, regulation or executive order relating to the imposition of economic sanctions against any country, region or individual pursuant to United States law or United Nations resolution; or

(g) that is an affiliate (including any principal, officer, immediate family member or close associate) of a person or entity described in one or more of clauses (a) - (f) of this definition of "Prohibited Person".

# UNOFFICIAL COPY

“OFAC” means the U.S. Department of Treasury’s Office of Foreign Asset Control.

“PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56 (The USA Patriot Act)), as the same may be amended and/or replaced from time to time.

None of the representations, warranties or covenants set forth in Sections 1.2 and 1.3 are intended to limit the generality of any other representations, warranties or covenants set forth in this Mortgage, any of the other Loan Documents or any other documents delivered in connection with the Loan.

**1.4 Compliance with Requirements.** Mortgagor shall cause the Property and the use thereof to comply at all times in all material respects with the Permitted Exceptions, with all other applicable agreements and restrictive covenants (including all insurance policies maintained with respect to the Property) and with all applicable Governmental Requirements (including all zoning and subdivision ordinances and building codes and all Environmental Laws), whether now or hereafter in effect. Mortgagor shall obtain and maintain all licenses, permits, approvals, authorizations and filings from time to time required in connection with the Property and the use thereof.

**1.5 Discharge of Liens.** If any mechanic’s, laborer’s, materialman’s, statutory or other lien or any other security interest, charge or encumbrance (other than the Permitted Exceptions, any lien for Impositions (as hereinafter defined) not yet due and payable or any lien for Impositions being contested and remaining unpaid in accordance with Section 1.6) shall be filed or otherwise imposed upon or against all or any part of the Property, then Mortgagor shall, within thirty (30) days after being given notice of (or otherwise becoming aware of) such filing or Imposition, cause such lien, security interest, charge or encumbrance to be endorsed over, vacated or discharged of record by payment, deposit, bond, final order of a court of competent jurisdiction or otherwise. If any such lien, security interest, charge or encumbrance shall not be so vacated or discharged, then, in addition to any other right or remedy of Mortgagee, Mortgagee shall be entitled, but shall not be obligated, to discharge such lien, security interest, charge or encumbrance in such manner as Mortgagee may select, and Mortgagee shall be entitled, if Mortgagee shall so elect, to compel the prosecution of an action for the foreclosure of such lien, security interest, charge or encumbrance by the lienor and to pay the amount of any judgment in favor of such lienor, with interest, costs and allowances. Upon Mortgagee’s request, Mortgagor shall reimburse Mortgagee for all such payments and for all costs, expenses and liabilities (including reasonable attorneys’ fees) incurred by Mortgagee or Mortgagor in connection therewith, together with interest thereon at the Default Rate (as hereinafter defined) from the date paid or incurred by Mortgagee until the date of such reimbursement.

**1.6 Taxes Affecting Property.**

(a) Except as provided for in Section 1.9, Mortgagor shall pay or cause to be paid, on or before the last day when they may be paid without interest, penalty or increase (except to the extent otherwise provided in paragraph (b) of this Section), all taxes, assessments, rates, dues, charges, fees, levies, excises, duties, fines, impositions, liabilities, obligations and encumbrances, general or special, ordinary or extraordinary, foreseen or unforeseen, of every

# UNOFFICIAL COPY

kind whatsoever, now or hereafter imposed, levied or assessed by any public or quasi-public authority or instrumentality upon or against all or any part of the Property or the use, occupancy or possession thereof, or upon or against this Mortgage, the Indebtedness or the interest of Mortgagee or Mortgagor in the Property, as well as all income taxes, assessments and other governmental charges imposed, levied or assessed upon or against Mortgagor or in respect of all or any part of the Property, and any and all interest, costs and penalties on or with respect to any of the foregoing (collectively, the "**Impositions**"). Upon Mortgagee's request, Mortgagor shall deliver to Mortgagee original receipts or other satisfactory proof of payment of any and all Impositions, unless Mortgagee is escrowing for said Impositions.

(b) After prior written notice to Mortgagee, Mortgagor shall have the right, at its sole expense, to contest the validity, applicability or amount, in whole or in part, of any asserted Imposition and to seek a reduction in the valuation of all or any part of the Property as assessed for tax purposes, by appropriate proceedings diligently conducted in good faith to final determination, but only after payment of the asserted Imposition, unless such payment would operate as a bar to such contest or would interfere materially with the prosecution of such contest, in which event payment of the asserted Imposition may be postponed if, and only so long as:

(i) Mortgagor provides prior written notice to Mortgagee of Mortgagor's intent to contest any asserted Impositions if such contest shall include the withholding of any payments by the Mortgagor;

(ii) Mortgagor shall have paid any minimum amount required by applicable law to be paid in connection with such contest (which payment may be made under protest if required or permitted by applicable law);

(iii) neither Mortgagee nor Mortgagor would, in Mortgagee's sole judgment, be in danger of being subjected to any liability, penalty or charge of any kind in connection with such contest or in connection with such postponement or nonpayment;

(iv) neither the Property nor any part thereof or any interest therein would, in Mortgagee's sole judgment, be in danger of being forfeited or lost by reason of such contest or by reason of such postponement or non-payment (whether due to the foreclosure of any lien securing any asserted Imposition or otherwise); and

(v) Mortgagor shall have established an escrow acceptable to Mortgagee in an amount estimated by Mortgagee to be adequate to cover (A) the unpaid amount of the asserted Imposition, (B) all interest, penalties and similar charges which reasonably can be expected to accrue by reason of such contest or by reason of such postponement or nonpayment, and (C) all costs, fees and expenses (including attorneys' fees) that reasonably can be expected to be incurred in connection therewith by Mortgagee or Mortgagor, which escrow shall be maintained in effect throughout such contest and the amount of which shall be increased from time to time if required by Mortgagee.

(c) Upon termination of any such contest (whether by entry of a final judgment or otherwise), or at any time during the course of any such contest when the conditions



# UNOFFICIAL COPY

permitting postponement of payment of the asserted Imposition are no longer satisfied or are discovered to be unsatisfied, Mortgagor shall pay the then-unpaid portion of such asserted Imposition, together with all interest, penalties and similar charges and all costs, fees and expenses (including attorneys' fees) incurred in connection therewith. At Mortgagee's option, the escrow established pursuant to paragraph (b) of this Section may be applied at such time to payment of all or any part of such Imposition, interest, penalties, charges, costs, fees and expenses. Upon payment of the full amount of such asserted Imposition and such interest, penalties, charges, costs, fees and expenses, Mortgagor shall deliver to Mortgagee evidence of such payment reasonably satisfactory to Mortgagee. Thereafter, the amount then remaining in the escrow established pursuant to paragraph (b) of this Section shall be returned to Mortgagor.

(d) Mortgagor shall not claim, demand or be entitled to receive any reduction of, or credit toward, any Impositions on account of the Indebtedness. No deduction shall be claimed from the taxable value of all or any part of the Property by reason of the Indebtedness, any of the Loan Documents or the interest of Mortgagee in the Property.

## 1.7 Taxes Affecting Mortgagee's Interest.

(a) If existing laws or procedures governing the taxation of mortgages, deeds of trust or debts secured by mortgages or deeds of trust shall be changed in any manner after the date hereof so as to impair the security of this Mortgage or to reduce the net income to Mortgagee in respect of the Indebtedness, then, upon Mortgagee's request, Mortgagor shall pay to Mortgagee or to the taxing authority (if so directed by Mortgagee) all taxes, charges and related costs for which Mortgagee may be liable as a result thereof; provided, however, that, if (in Mortgagee's reasonable opinion) payment by Mortgagor of any such taxes, charges or related costs is prohibited by applicable law or would subject Mortgagee to any liability, penalty or charge of any kind or would render the Note usurious, then, in any such event, Mortgagor shall not make such payment, and the entire balance of the Indebtedness, with notice, shall be due and payable forthwith at the option of Mortgagee. Notwithstanding the foregoing, Mortgagor shall not be liable for the payment of any income tax to be paid by Mortgagee or as a result of any increase in the income tax rate applicable to Mortgagee.

(b) Mortgagor shall pay, when due, any and all recording, intangible property and documentary stamp taxes, all similar taxes, and all filing, registration and recording fees, now or hereafter payable in connection with the Indebtedness, this Mortgage or any of the other Loan Documents. Mortgagor shall pay, when due, any and all excise, transfer and conveyance taxes now or hereafter payable in connection with the Indebtedness, this Mortgage or any of the other Loan Documents or in connection with the exercise or enforcement of Mortgagee's rights, powers, privileges and remedies with respect thereto. Without limiting the generality of the foregoing, Mortgagor shall pay, when due, any and all such taxes payable in connection with any foreclosure of this Mortgage, any so-called deed in lieu of foreclosure of this Mortgage, any transfer of all or any part of the Property (or any interest therein) pursuant to the Bankruptcy Code or any other Insolvency Law or any other transfer of all or any part of the Property (or any interest therein) in extinguishment or satisfaction of all or any part of the Indebtedness or any related obligations of Mortgagor. Any such foreclosure, sale, deed in lieu or other transfer is sometimes referred to in this Mortgage as a "Foreclosure." The purchaser, grantee or other person succeeding to ownership of all or any part of the Property (or any interest therein)

# UNOFFICIAL COPY

pursuant to any Foreclosure is sometimes referred to in this Mortgage as the “Subsequent Owner.”

## 1.8 Insurance.

(a) Mortgagor, at its sole expense, shall obtain for, deliver to, assign to, and maintain for the benefit of Mortgagee, for so long as this Mortgage shall remain in effect, insurance policies (including renewals as provided below) in such amounts as Mortgagee may reasonably require, insuring the Property against all insurable hazards, casualties and contingencies (including, but not limited to, loss of rentals, business interruption, earthquake and terrorism) as Mortgagee may reasonably require. Mortgagor shall pay all premiums on such insurance policies and all other fees and charges payable in connection with such insurance policies (such premiums, fees and charges being collectively referred to in this Mortgage as “Insurance Premiums”) not later than the due date thereof. During the progress of any construction, renovation, restoration or repair in or on the Property, Mortgagor shall maintain or cause to be maintained such insurance in builder’s risk, completed value, non-reporting form, with permission to complete and occupy, together with workers’ compensation coverage. All such policies shall be issued by a company or companies acceptable to Mortgagee, shall be in form acceptable to Mortgagee and shall contain such provisions and endorsements as Mortgagee may reasonably require. Without limiting the generality of the foregoing, each such policy shall contain noncontributory standard mortgagee and lender’s loss payable endorsements making all losses payable to Mortgagee, shall provide that no act or omission of Mortgagor shall invalidate such policy as against Mortgagee and shall provide that such policy shall not be canceled, terminated, denied renewal or materially altered without at least thirty (30) days’ prior written notice to Mortgagee. Certificates of insurance with respect to all such policies and (if requested by Mortgagee) duplicate originals of all such policies shall be delivered to Mortgagee. At least thirty (30) days prior to the expiration date of each such policy, a replacement or renewal of such policy satisfactory to Mortgagee shall be delivered to Mortgagee. Within fifteen (15) days after the effective date of each such policy (including each such renewal), Mortgagor shall deliver to Mortgagee a satisfactory receipt evidencing the prepayment of all Insurance Premiums relating to such policy for a period of not less than one (1) year. In the event of any Foreclosure, all right, title and interest of Mortgagor in and to all such policies then in force shall pass to the Subsequent Owner. Mortgagee’s acceptance or approval of any insurer or of any insurance coverage shall not be construed as a representation, warranty or agreement concerning the financial capability or reliability of such insurer or concerning the adequacy of such coverage for any purpose other than compliance with the requirements of this Section, and Mortgagee shall not be responsible or accountable to Mortgagor or any other person for the selection of any such insurer or any such coverage.

(b) Mortgagor, at its sole expense, shall obtain for, deliver to, and maintain for the benefit of Mortgagee, for so long as this Mortgage shall remain in effect, liability insurance policies relating to the Property, in such amounts, with such companies and in such form as Mortgagee may reasonably require. Each such policy shall name Mortgagee as an additional insured and shall provide that such policy may not be cancelled, terminated, denied renewal or materially altered without at least thirty (30) days’ prior written notice to Mortgagee. Mortgagor shall pay all premiums on such insurance policies when due and, promptly thereafter, shall deliver to Mortgagee satisfactory evidence of such payment.

# UNOFFICIAL COPY

(c) Mortgagor shall not carry, and shall not cause, permit or suffer to be carried, any additional or separate insurance concurrent in form or contributing in the event of loss with any insurance required to be maintained pursuant to this Mortgage, or in excess of the amounts of insurance coverage required to be maintained pursuant to this Mortgage, unless such insurance shall comply with the provisions of this Section (including the loss payable provisions set forth above). Mortgagor shall immediately notify Mortgagee if any such additional, separate or excess insurance shall be carried and, promptly thereafter, shall deliver to Mortgagee duplicate originals of all policies of such insurance (including all renewals thereof).

## 1.9 Deposits.

(a) In order to assure compliance with Mortgagor's obligations under Section 1.6, but not in lieu of such obligations, Mortgagor shall pay to Mortgagee (or Mortgagee's loan correspondent, if any), each month and with each regularly scheduled payment under the Note (or at such other time or times as Mortgagee may request), an amount equal to one-twelfth (1/12) of the annual Impositions, next becoming due and payable (as estimated or determined by Mortgagee). In addition, upon Mortgagee's request, Mortgagor shall pay to Mortgagee (or Mortgagee's loan correspondent, if any) such additional funds as Mortgagee may estimate or determine to be necessary to enable Mortgagee (or Mortgagee's loan correspondent, if any) to pay any Impositions then due and payable or to pay, when due, any or all of the Impositions next becoming due and payable after the date of such request.

(b) No deposits paid to Mortgagee pursuant to this Section shall be deemed to be trust funds, and any and all such deposits may be commingled with the general funds of Mortgagee. No interest shall be required to be paid to Mortgagee in respect of any such deposits. Mortgagor shall deliver to Mortgagee, promptly after the receipt thereof, all bills for Impositions for which Mortgagee shall have collected, or shall be collecting, deposits pursuant to this Section. Mortgagor also shall deliver to Mortgagee, upon Mortgagee's request or at such other time or times as may be required, any and all other documents and instruments that may be required to enable Mortgagee to pay such Impositions when due. Mortgagor further acknowledges that Mortgagee may, in its sole discretion, engage the services of a tax service company to verify the status of taxes and assessments on the Property. Mortgagor shall promptly reimburse Mortgagee for the reasonable costs of said tax service company. In paying any Imposition, Mortgagee shall be entitled to rely, notwithstanding whether or not Mortgagee engages a tax service company, upon any certificate, advice or bill from any authority (or any official thereof) or from any other person to which such Imposition may be payable, and Mortgagee shall have no duty to inquire as to the validity or accuracy of any such certificate, advice or bill or to make any protest in connection with any such payment or any such certificate, advice or bill. Upon the occurrence of any Event of Default, Mortgagee, at its option, may apply all or any part of any such deposits then remaining to Mortgagor's credit, in such manner as Mortgagee may determine, to reduce the Indebtedness then outstanding.

(c) Nothing contained in this Section shall be deemed to affect any right, power, privilege or remedy of Mortgagee or Mortgagor, under any provision of this Mortgage or under any statute or rule of law, to pay any amount required to be paid by Section 1.6 or Section 1.8, to add the amount so paid to the Indebtedness and to require Mortgagor to reimburse Mortgagee for such amount, together with interest thereon at the Default Rate from the date so

# UNOFFICIAL COPY

paid until the date so reimbursed. Although Mortgagee intends to use reasonable efforts to make payments in a timely fashion with any deposits collected pursuant to this Section, the arrangements described in this Section are solely for the added protection of Mortgagee and shall entail no responsibility on Mortgagee's part beyond the allowing of due credit, without interest, for deposits actually received by Mortgagee. In the event of any transfer of Mortgagor's right, title and interest in or to all or any part of the Property, Mortgagee shall be entitled to treat such transfer as also effecting an assignment to the transferee of all right, title and interest of Mortgagor in and to any and all such deposits relating to the transferred portion of the Property, subject, however, to the rights of Mortgagee under this Mortgage. After any assignment by Mortgagee of its interest in this Mortgage, any such deposits on hand shall be turned over to the assignee or returned to Mortgagor, and all responsibility of Mortgagee with respect to such deposits shall terminate.

## **1.10 Casualty and Condemnation.**

(a) Mortgagor shall promptly notify Mortgagee, in writing, of (i) the occurrence of any fire, casualty damage or loss of the type covered (or required to have been covered) by any insurance policy relating to all or any part of the Property (any such occurrence being referred to in this Mortgage as a "Casualty"), other than any Minor Casualty (as hereinafter defined) not involving loss of life or serious bodily injury, (ii) Mortgagor's receipt of any notice of any contemplated, threatened or pending Condemnation Proceeding, (iii) the commencement of any Condemnation Proceeding, and (iv) the occurrence of any Taking. Thereafter, Mortgagor shall cooperate with Mortgagee in evaluating the nature and extent of such event and shall promptly provide Mortgagee with such information concerning such event as Mortgagee may request. As used in this Mortgage, the term "Minor Casualty" means any Casualty that could not reasonably be expected to yield Compensation from any insurance policy in an amount greater than \$250,000 and which could not reasonably be expected to require the expenditure of more than \$250,000 in restoration, repair and replacement costs. For the avoidance of doubt, notwithstanding anything contained to the contrary in this Section 1.10, so long as no Event of Default exists, Mortgagor may make proof of loss, collect and retain the Compensation in connection with any Minor Casualty (and settle and compromise any claim with respect to any Minor Casualty) in each case without the consent of and any involvement of Mortgagee who will promptly pay over any Compensation received in connection with any Minor Casualty to Mortgagor.

(b) Mortgagee may make proof of loss with respect to any Casualty (other than any Minor Casualty) if Mortgagor shall not have done so promptly after the occurrence of such Casualty. Mortgagor hereby irrevocably authorizes and appoints Mortgagee the agent and attorney-in-fact of Mortgagor, at Mortgagee's option, to (i) adjust or compromise the loss arising from any Casualty, (ii) commence, appear in and prosecute in its own or Mortgagor's name any Condemnation Proceeding and settle or compromise any claim in connection therewith, (iii) collect and receive all Compensation in respect of any Casualty (other than a Minor Casualty), Condemnation Proceeding or Taking, and (iv) give proper receipts and acquittances for all Compensation so collected and received. Such appointment includes full power of substitution and shall be deemed to be coupled with an interest and such appointment shall be irrevocable so long as any Indebtedness remains outstanding. Mortgagor shall promptly deliver to Mortgagee any and all documents, instruments and authorizations that Mortgagee may request to enable

# UNOFFICIAL COPY

Mortgagee to take any such action. If Mortgagee shall not elect to prosecute any Condemnation Proceeding as provided above, then Mortgagor, at its sole expense, shall prosecute such Condemnation Proceeding diligently and in good faith and shall consult with Mortgagee and keep Mortgagee fully informed in connection therewith. Mortgagee shall have the right, at its option, to participate in such Condemnation Proceeding.

(c) Each insurer issuing any insurance policy maintained pursuant to this Mortgage or otherwise relating to the Property is hereby irrevocably authorized and directed to pay all Compensation payable in connection with any Casualty (other than a Minor Casualty) directly to Mortgagee alone (and not to Mortgagor, Mortgagee and any other person or persons jointly). Mortgagor shall take all steps necessary to assure that all Compensation payable in connection with any Casualty (other than a Minor Casualty), Condemnation Proceeding or Taking shall be paid to Mortgagee alone (and not to Mortgagor, Mortgagee and any other person or persons jointly), and that all such Compensation at all times shall be free and clear of any and all liens, security interests, charges, encumbrances and claims of other persons, of any kind whatsoever. Mortgagor shall promptly pay over to Mortgagee any such Compensation received by Mortgagor, except as contemplated by paragraph (d) of this Section. Mortgagor hereby irrevocably authorizes and appoints Mortgagee as Mortgagor's attorney-in-fact to endorse Mortgagor's name on any instrument in payment of any such Compensation, which appointment includes full power of substitution and shall be deemed to be coupled with an interest and such appointment shall be irrevocable so long as any Indebtedness remains outstanding. Although Mortgagee intends to use reasonable efforts to collect such Compensation in a timely fashion, Mortgagee shall not be responsible for any failure to collect such Compensation, regardless of the cause of such failure. After any event giving rise to the payment of Compensation, Mortgagor shall continue to pay interest, at the applicable rate and at the times provided in the Note, on the entire outstanding principal amount of the Indebtedness.

(d) No Compensation received by Mortgagee as contemplated by this Section shall be deemed to be trust funds, and any and all such Compensation may be commingled with the general funds of Mortgagee. No interest shall be required to be paid to Mortgagor in respect of any such Compensation. After deducting from such Compensation any expenses (including reasonable attorneys' fees) incurred by Mortgagee in connection with the collection or handling of such Compensation (including any expenses incurred in the adjustment or compromise of any loss and any expenses incurred in connection with any Condemnation Proceeding), Mortgagee may apply such net Compensation, in such manner as Mortgagee may determine in accordance with customary construction loan practices, either toward restoring or repairing the Improvements or building new Improvements in their place or to reduce the Indebtedness then outstanding, whether then matured or to mature in the future. Alternatively, Mortgagee, at its option, may pay over to Mortgagor from time to time all or any part of such net Compensation for the purpose of restoring or repairing the Improvements or building new Improvements in their place, or for any other purpose satisfactory to Mortgagee, without affecting the lien of this Mortgage as security for the full Indebtedness secured by this Mortgage before such payment to Mortgagor took place. Notwithstanding the foregoing, after deducting expenses as provided above, Mortgagee shall, if requested by Mortgagor within thirty (30) days after Mortgagee's receipt of such Compensation, make such net Compensation available for restoring or repairing the Improvements or building new Improvements in their place, all in accordance with terms, conditions and procedures customarily followed by prudent institutional lenders in making

# UNOFFICIAL COPY

construction loans in similar amounts and in accordance with such other terms, conditions and procedures as Mortgagee may reasonably require to assure the proper application of such Compensation and the continuing performance by Mortgagor of its obligations under the Loan Documents, provided (i) no Event of Default shall then exist and no state of facts shall then exist which, with notice or the passage of time, or both, would constitute an Event of Default if not cured or corrected, (ii) Mortgagee shall be reasonably satisfied that such net Compensation, together with any additional funds made available for such purpose by Mortgagor and deposited with Mortgagee, or with a depository acceptable to Mortgagee pursuant to instructions acceptable to Mortgagee, shall be sufficient to restore or repair the Improvements or build new Improvements in their place, as the case may be, free and clear of any and all liens, security interests, charges and encumbrances, except the lien of this Mortgage and any other liens expressly permitted pursuant to this Mortgage, (iii) if such net Compensation is greater than \$250,000, Mortgagee shall have approved the budget and the plans and specifications for such restoration, repair or rebuilding and be satisfied that such restoration, repair or rebuilding can be completed within any applicable time limit imposed by law or agreement, (iv) Mortgagee shall be satisfied, in its sole discretion, that, after such restoration, repair or rebuilding (taking into account the status of leasing of the Property and any restrictions imposed by law or agreement on such restoration, repair or rebuilding or on the use of the Property after such restoration, repair or rebuilding), the remaining Property shall constitute adequate security for the Indebtedness, (v) the Rents, together with the proceeds of any business interruption insurance, exceed the sum of (x) the amount necessary to service the monthly debt service of the Loan, and (y) the amount of the operating expenses of the Property, until such time as the Improvements are restored, repaired or rebuilt and Rents will thereafter exceed said amounts and (vi) no tenant(s) which in the aggregate represent greater than ten percent (10%) of the net rentable area of the Property shall have terminated its Lease as a result of such Casualty.

## **1.11 Care and Management of Property.**

(a) Mortgagor shall keep the Property in good and safe condition and repair and in working order and shall cause all repairs, replacements and improvements to be made as and when required to keep the Property in such condition and repair and in working order. Mortgagor shall not threaten, cause, permit or suffer (i) any abandonment or waste of all or any part of the Property or any material impairment or deterioration of all or any part of the Property, (ii) the conduct of any nuisance in or on the Property, or (iii) any act or omission that would materially increase the risk that any Casualty could occur. Mortgagor shall pay or cause to be paid, when due, all charges for utilities serving or intended to serve the Property, as well as all assessments and charges payable from time to time under the Permitted Exceptions or any other agreements or covenants, whether public or private, affecting the Property.

(b) Mortgagor hereby authorizes Mortgagee, or any agent, independent contractor or other representative of Mortgagee, upon reasonable written notice to Mortgagor and subject to the rights of tenants under any Leases, to enter upon the Property for the purpose of examining and copying the books and records of Mortgagor and the property manager related to the Property and for performing, or causing to be performed (i) environmental inspections of the Property (including, but not limited to, the investigations and testing necessary to conduct and complete Phase I investigations) if (A) Mortgagee has a good faith basis for suspecting that there are Hazardous Substances present on, or are otherwise being handled or discharged from,

# UNOFFICIAL COPY

the Property in violation of applicable law or (B) an Event of Default has occurred, (ii) engineering and structural inspections, testing, investigations and analysis, (iii) property valuation appraisals, and (iv) any other acts that Mortgagee is expressly authorized to perform under the terms of this Mortgage. All commercially reasonable costs and expenses incurred by Mortgagee in the exercise of its rights under this subsection shall be paid by Mortgagee, provided that if (1) Mortgagee has a good faith basis for suspecting that a material deterioration in the physical condition of the Property has or is occurring, or (2) Mortgagee has a good faith basis for suspecting that there are Hazardous Substances present on, or are otherwise being handled or discharged from, the Property in violation of applicable law, or (3) the examination of such books and records reveals that any financial information submitted to Mortgagee is incorrect, incomplete or misleading in any material respect or (4) an Event of Default hereunder or under the Loan Documents exists, then the costs and expenses of such inspection shall be secured by this Mortgage and shall be payable by Mortgagor upon written demand.

(c) If the Property shall be physically damaged or destroyed by any Casualty or other cause, then Mortgagor shall promptly give written notice of such damage or destruction to Mortgagee. Thereafter, Mortgagor shall promptly commence and diligently pursue to completion the restoration or repair of the Property to the equivalent or better of its condition immediately prior to such damage or destruction (or, in the case of any Taking, to such condition as shall be reasonably satisfactory to Mortgagee), whether or not there shall be any Compensation therefor (so long as Mortgagee makes any Compensation available to Mortgagor that is required to be made available to Mortgagor pursuant to the terms of this Mortgage).

(d) No work required to be performed pursuant to this Section (other than routine maintenance and repairs) shall be undertaken until plans and specifications for such work, have been prepared and signed by an architect or engineer satisfactory to Mortgagee, have been approved by all governmental authorities whose approval is required, and have been submitted to and approved in writing by Mortgagee.

(e) No material part of the Improvements shall be removed, demolished or materially altered, without the prior written consent of Mortgagee. Notwithstanding the foregoing, Mortgagor shall have the right, without the consent of Mortgagee, to remove and dispose of, free from the lien of this Mortgage, material items of Equipment that have become worn out or obsolete; provided, however, that, either simultaneously with or prior to such removal or disposition, each such item shall be replaced with another item or items of equal utility and of a value at least equal to that of the replaced item when first acquired, which item or items shall be owned by Mortgagor and shall be free from any lien, security interest, charge, encumbrance, ownership interest or other right or claim of any other person. By such removal and replacement, Mortgagor shall be conclusively deemed to have elected to subject said replacement item to the lien of this Mortgage.

(f) The Property shall at all times be managed by Lincoln Property Company Commercial, Inc., or by such other management company as may be approved in writing by Mortgagee in its reasonable discretion. In the event the Property is managed by a Person other than Mortgagor, such management shall be conducted pursuant to and in accordance with a management agreement approved in writing by Mortgagee. Such management agreement shall not be materially amended, terminated or canceled without the prior written consent of

# UNOFFICIAL COPY

Mortgagee, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary contained herein, Mortgagee shall have the right to require a change in the property manager upon the occurrence of an Event of Default. Payments due under any management agreement after an Event of Default shall be subordinate to the payments becoming due under the Loan.

## 1.12 Use of Property.

(a) The Property shall be used as an office building and for no other purpose except as otherwise permitted by Mortgagee in its sole and reasonable discretion. Without limiting the generality of the immediately preceding sentence, Mortgagor shall not cause, permit or suffer any drilling or exploration for, or extraction, removal or production of, oil, gas or minerals from the surface or subsurface of the Land. Mortgagor shall not declare, advertise or market all or any part of the Property as an existing or proposed condominium, cooperative or other common interest community.

(b) Mortgagor shall not, without the prior written consent of Mortgagee, (i) request or otherwise initiate, consent to or acquiesce in any zoning classification or reclassification of the Property or the adoption, issuance, imposition or amendment of any other Governmental Requirement relating to the use, occupancy, operation, development or disposition of the Property, (ii) request or otherwise initiate, consent to or acquiesce in the annexation of all or any part of the Property by or into any municipality or other governmental or quasi-governmental unit, or (iii) execute, file or record any subdivision plat affecting the Property or request or otherwise initiate, consent to or acquiesce in any subdivision affecting the Property.

(c) Mortgagor shall not, without the prior written consent of Mortgagee, (i) enter into, consent to or otherwise cause, permit or suffer the Property to become subject to any covenant, agreement or other arrangement restricting or limiting the use, occupancy, operation, development or disposition thereof, (ii) execute, file or record any map, plat or replat affecting the Property, or (iii) except as otherwise specifically permitted pursuant to this Mortgage, cause, permit or suffer the Property to become subject to any easement, right-of-way, privilege, claim, franchise, license or profit or any other estate, interest, benefit, power or right.

(d) Mortgagor shall not cause, permit or suffer the Property to be used by the public without restriction or in any manner that might tend to impair Mortgagor's right, title and interest in and to all or any part of the Property or in any manner that might make possible any claim of adverse usage or adverse possession by the public or any claim of implied dedication of all or any part of the Property.

(e) If, pursuant to any Governmental Requirement, the existing or any future use, occupancy or operation of the Property is or shall be permitted only so long as such use, occupancy or operation shall continue, then Mortgagor shall not cause, permit or suffer such use, occupancy or operation to be discontinued without the prior written consent of Mortgagee.

(f) Mortgagor shall not cause, permit or suffer the installation of any underground storage tank or receptacle or, other than in connection with the normal or customary operation of an office building and otherwise in diminimus quantities typically present in the



# UNOFFICIAL COPY

operation of an office building, the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage or filtration of any Hazardous Substances, in, on, under, about or from the Property.

## 1.13 Leases.

(a) Mortgagor shall keep, perform, observe and comply with all of its obligations as landlord under all Leases from time to time in effect, and Mortgagor shall use its commercially reasonable efforts to require the Tenant under each Lease to keep, perform, observe and comply with Tenant's obligations thereunder. Upon written request of Mortgagee, Mortgagor shall deliver to Mortgagee accurate and complete original or certified copies of all Leases and all amendments thereto promptly upon the execution thereof.

(b) Mortgagor shall not, without Mortgagee's prior written consent, (i) enter into any new Lease, (ii) except as otherwise contained in Leases, permit or suffer any amendment, termination, cancellation or surrender of any Lease from time to time in effect, or (iii) permit or suffer any renewal or extension of any Lease or any assignment of, or sublease under, any Lease (other than any renewal, extension, assignment or sublease which does not require Mortgagor's consent or approval under the terms of the pertinent Lease). Without in any way limiting the foregoing, any new Lease executed and/or agreed upon by Mortgagor subsequent to the execution of this Mortgage, or any amendment, renewal, extension, modification, or other change to any Lease executed subsequent to the execution of this Mortgage, shall (i) be in writing, and with respect to Leases entered into after the date hereof, in a form substantially similar to the form of Lease approved in writing by Mortgagee (the "**Standard Lease Form**"), and (ii) require the written approval of Mortgagee as to the identity of the Tenant and the financial terms of any Lease. If Mortgagee's approval is required, Mortgagor shall submit biographical and financial information to Mortgagee on any prospective Tenant for Mortgagee's approval.

(c) Notwithstanding the foregoing, Mortgagee's approval shall not be required for any new Lease (each, an "**Approved Lease**"), which (a) is on a triple net basis with a Minimum Base Rent (as hereinafter defined), with annual increases of not less than two percent (2%), (b) has a minimum term of not less than three (3) years, (c) provides not more than one (1) month of free rent per year of its lease term, and (d) such Lease substantially conforms to the Standard Lease Form. As used herein, "**Minimum Base Rent**" means \$11.00 per rentable square foot for any Lease commencing in the year 2013, \$11.22 per rentable square foot for any Lease commencing in the year 2014, \$11.44 per rentable square foot for any Lease commencing in the year 2015 and \$11.67 per rentable square foot for any Lease commencing in the year 2016. Notwithstanding the foregoing, a Lease that meets the requirements of an Approved Lease except for the Minimum Base Rent requirement will nonetheless be considered an Approved Lease if such Lease provides for a base rent of not less than \$9.00 per rentable square foot.

(d) Provided further, and notwithstanding the foregoing, Mortgagee's approval shall not be required for any amendment, renewal, extension or modification of any Existing Lease which provides for an annual rent equal to or greater than (i) the existing rent, or (ii) the Minimum Base Rent, with annual increases of not less than two percent (2%).

# UNOFFICIAL COPY

(e) Notwithstanding the foregoing, the aggregate square footage of (i) new Leases entered into after the date of this Mortgage that meet the requirements of an Approved Lease but have a base rent of not less than \$9.00 per rentable square foot and (ii) any amendment, renewal, extension or modification entered into after the date of this Mortgage of any Existing Leases that reduce the existing rent below the Minimum Base Rent but not less than \$9.00 per rentable square foot shall not exceed 70,000 square feet of net rentable space at the Property unless approved in writing by Mortgagee.

Mortgagor shall not, without the prior written consent of Mortgagee, (i) accelerate or accept the payment of Rents under any Lease more than thirty (30) days in advance of the due date thereof, (ii) except as otherwise provided in Leases, grant any reduction, deferral or abatement of the Rents payable under any Lease, (iii) except as otherwise provided in Leases, grant any rights of termination or cancellation in favor of the Tenant under any Lease, (iv) except as otherwise provided in Leases, shorten the term of any Lease, or (v) change the terms of any renewal or extension provision under any Lease. Mortgagor shall hold all such security deposits and advance payments as trust funds for the benefit of Tenants and subsequent owners and operators of the Property.

(f) Neither the assignment of the Leases and the Lease Guaranties under this Mortgage nor any acts or omissions of Mortgagee or Mortgagor in connection therewith shall be deemed or construed to (i) cause Mortgagee or Mortgagor to be or to become a mortgagee-in-possession of the Property, (ii) impose upon Mortgagee or Mortgagor any obligations, duties or liabilities of Mortgagor under or in respect of any Lease or any Lease Guaranty (including any liability under any covenant of quiet enjoyment in the event that any Tenant shall have been barred and foreclosed as a result of any Foreclosure), or (iii) impose on Mortgagee any responsibility for the control, management, operation, care, repair or maintenance of the Property, for any waste or dangerous or defective condition of the Property or for any environmental contamination of or emanating from the Property. Without limiting or otherwise affecting the foregoing, Mortgagor shall assign to Mortgagee (if so directed by Mortgagee), as additional security for the Indebtedness, by a written document approved by Mortgagee, all right, title and interest (presently, absolutely, and unconditionally and not merely collaterally) of Mortgagor in and to any and all Leases and Lease Guaranties then in effect, together with all Rents payable or accruing thereunder as set forth below and further described in the Assignment of Leases.

(g) Without limiting the generality of the foregoing, each Lease entered into on or after the date hereof, and any amendment, modification, renewal, or extension of any Lease entered into on or after the date hereof, and all rights of the Tenants thereunder, shall be subject and subordinate to this Mortgage, except to the extent, if any, such Lease or Leases shall be made superior to the lien of this Mortgage as provided for in this subsection (d). At any time and from time to time, Mortgagee or Mortgagor (acting at Mortgagee's request) may, by written notice to the Tenant under any Lease otherwise subordinate to the lien of this Mortgage, cause such Lease to be made superior to the lien of this Mortgage, subject to and in accordance with the terms of this paragraph, whether or not any such Lease shall have been entered into after the date hereof. From and after such written notice, the Lease or Leases described therein shall be superior to the lien of this Mortgage and shall not be extinguished by any Foreclosure; provided, however, that the aforesaid subordination shall not apply to, and neither the lien of this Mortgage

# UNOFFICIAL COPY

nor any of Mortgagee's rights under this Mortgage shall be subordinate to, (i) any purchase option or any first refusal, first offer or similar option set forth in any such Lease or entered into in connection therewith, (ii) any extension, renewal or similar option set forth in any such Lease or entered into in connection therewith (unless Mortgagee shall specifically agree to the contrary in writing), (iii) any modifications or amendments of any such Lease (unless Mortgagee shall specifically agree to the contrary in writing), or (iv) any lien, security interest, charge, encumbrance or other interest of any kind (other than the Lease or Leases specifically identified in such notice) in or on the Property (whether superior or subordinate to any such Lease or Leases); provided, further, that the aforesaid subordination shall not affect the priority of Mortgagee's rights under this Mortgage in and to any Compensation and shall not subject Mortgagee or any Subsequent Owner to liability for any act, omission, representation or warranty of Mortgagor or any other previous landlord under any Lease, to any offsets or defenses which the Tenant under any Lease might have against Mortgagor or any other previous landlord or to liability for return of any security deposits under any Lease.

(h) At Mortgagee's option, after an Event of Default hereunder, Mortgagor shall deposit with Mortgagee or Mortgagee's mortgage loan correspondent (if any) all tenant security deposits or reasonable security (such as a letter of credit) therefor.

## **1.14 Assignment of Rents.**

(a) The assignment of the Rents and the Security under this Mortgage is intended to be and, to the fullest extent permitted by law, is an absolute and unconditional present assignment of the Rents and the Security, and not merely the grant or other creation of a lien or security interest in or on the Rents and the Security; provided, however, that Mortgagor shall be permitted and is hereby granted a revocable license, until the occurrence of any Event of Default, to collect the Rents as, but not before, they become due and payable subject to the provisions of any lockbox, escrow, rental collection, cash management, direct pay or similar agreements relating to the Rents now or hereafter in effect; provided further, however, that, if a court of competent jurisdiction shall construe such assignment to be unenforceable or otherwise ineffective as an absolute and unconditional present assignment, then such assignment shall be deemed and construed to be a collateral assignment of the Rents and the Security, creating a lien and security interest therein which shall be deemed to have been perfected upon recording of this Mortgage in the real estate records of the recording jurisdiction in which the Land is located. Neither the existence nor the exercise of such conditional permission shall cause such assignment or Mortgagee's interest in the Rents or the Security to be or to become subordinate to any other assignment by Mortgagor (whether absolute, conditional or otherwise). The assignment of the Rents and the Security under this Mortgage shall be fully operative without any further action by any person. Mortgagee is hereby irrevocably authorized, at its option, to notify any and all Tenants, any and all Lease Guarantors and any and all other licensees, invitees, guests, customers, occupants and other users of the Property of the aforesaid assignment and the rights of Mortgagee with respect thereto, subject (if applicable) to Mortgagor's revocable license as described above. Mortgagor hereby irrevocably consents to the entry upon and taking physical possession of the Property by Mortgagee in connection with the exercise of its rights with respect to the aforesaid assignment during the continuance of any Event of Default, whether or not any foreclosure or other enforcement action shall have been commenced. No exercise of

# UNOFFICIAL COPY

any such rights shall cure, waive or invalidate any default, any Event of Default or any act done pursuant to this Mortgage or any of the other Loan Documents.

(b) At any time during the continuance of any Event of Default, Mortgagee shall have the right, with or without taking possession of the Property, to demand, collect, receive and enforce payment of any and all Rents (including any Rents then past due and unpaid) directly from tenants, Lease Guarantors and other licensees, invitees, guests, customers, occupants and users of the Property or, in the case of any such Rents thereafter paid to Mortgagor or any other person, from Mortgagor or such other person. In addition, Mortgagee thereafter shall have the right to collect, hold, return and retain the Security and to give receipts, releases and satisfactions for any such Rents paid to Mortgagee or to any person designated by Mortgagee as provided below and for any Security collected by Mortgagee. Without limiting the generality of the foregoing, at any time during the continuance of any Event of Default, Mortgagee shall have the right to make written demand on any Tenant, any Lease Guarantor or any such other licensee, invitee, guest customer, occupant or user, notifying such person that an Event of Default has occurred and directing such person to make all subsequent payments of Rents (including any Rents then past due and unpaid) directly to Mortgagee or to any person designated by Mortgagee in such demand. Each such written demand shall be sufficient, without the necessity of any further direction or consent from Mortgagee, to warrant and require such Tenant, Lease Guarantor or other licensee, invitee, guest, customer, occupant or user to make all such payments directly to Mortgagee to any such person designated by Mortgagee. All tenants, Lease Guarantors and other licensees, invitees, guests, customers, occupants and users (i) are hereby irrevocably authorized and directed to rely on and comply with any and all such written demands received by them, and (ii) are hereby irrevocably relieved of any responsibility to make any inquiry regarding the existence of any Event of Default claimed by Mortgagee or regarding Mortgagee's right to demand, collect, receive and enforce payment of the Rents and to collect, hold, return and retain the Security. After making any such written demand, Mortgagee shall be entitled and is hereby irrevocably authorized, at its option, to enforce payment of the pertinent Rents by appropriate action or proceeding, whether brought in the name of Mortgagor or otherwise. Any and all amounts so collected by Mortgagee shall be applied to the Indebtedness in such order and manner as Mortgagee shall determine.

## **1.15 Security Agreement and Fixture Filing.**

(a) Mortgagor (as Debtor) hereby grants and assigns to Mortgagee (as Creditor and Secured Party), in order to secure the obligations secured by this Mortgage, a security interest in all personal property and fixtures included within the definition of the term "Property" set forth above, and in any and all other personal property and fixtures now or hereafter constituting part of the Property. All references in this Mortgage to the lien of this Mortgage shall be deemed to refer also to the aforesaid security interest. It is the intention of the parties hereto that this Mortgage shall constitute a security agreement within the meaning of the Uniform Commercial Code as in effect in the State of Illinois, as amended and recodified from time to time (the "UCC"). In addition to all rights, powers, privileges and remedies specified in this Mortgage, Mortgagee shall have all the rights, powers, privileges and remedies of a secured party under the UCC and under other applicable law. To the extent any notice of sale of any such personal property may be required by law in connection with any exercise of such rights, powers, privileges and remedies, notice of the time and place of any public or private sale given

# UNOFFICIAL COPY

at least ten (10) days in advance thereof shall constitute reasonable notification. Mortgagee shall not be required to make any sale of any such personal property regardless of any notice of sale having been given. Mortgagee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it shall have been so adjourned. Notwithstanding the foregoing, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor unless Mortgagee shall make an express written election of said remedy under Section 9.620 and 9.621 of the UCC.

(b) This Mortgage, when filed for record in the real estate records of the recording jurisdiction in which the Land is located, shall be effective, from the date of recording, as a financing statement filed as a fixture filing under the UCC, with respect to all fixtures included within the definition of the term "Property" set forth above. This Mortgage, when so filed for record, also shall be effective, from the date of recording, as a financing statement covering minerals or the like (including oil and gas) to the extent the same constitute as-extracted collateral (as defined in the UCC). A carbon, photographic or other reproduction of this Mortgage or any financing statement relating to this Mortgage (provided the financing statement includes all information required under the UCC) shall be sufficient to be effective as a financing statement. The filing of any other financing statement relating to any personal property rights or interests described herein shall not be construed to diminish any rights or priority hereunder.

(c) It is hereby expressly declared and agreed that, to the fullest extent permitted by law, all items of Equipment, all accessions, renewals, substitutions and replacements of and to any such items and all other parts of the Property are, and at all times and for all purposes shall be deemed to be, part and parcel of the real property encumbered by this Mortgage and appropriated to the use of such real property, whether or not any such item is affixed or annexed to such real property and whether or not any such item is or shall be identified by serial number or otherwise referred to or reflected in any recital or list set forth in this Mortgage or in any financing statement filed or recorded in connection with the transaction of which this Mortgage is a part. Neither anything set forth in this Section nor the filing or recording of any such financing statement in the records for personal property security interests shall be construed as in any way derogating from or otherwise impairing the effectiveness of the aforesaid declaration. The mention in any such financing statement of any particular part of the Property shall not be construed as in any way altering the rights of Mortgagee or Mortgagor under this Mortgage with respect to such Property or as in any way altering or otherwise affecting the perfection or priority of the lien of this Mortgage with respect to such Property. Any and all such financing statements are intended to be for the protection of Mortgagee in the event that any court shall determine that the perfection or priority of the lien of this Mortgage with respect to any part of the Property requires the recording or filing of notice in the records for personal property security interests.

**1.16 After-Acquired Property.** To the fullest extent permitted by and subject to applicable law, the lien of this Mortgage shall attach automatically, without the necessity of any action by Mortgagor or any other person, to all right, title and interest of Mortgagor in and to any and all after-acquired property of the character or type included within the definition of the term "Property" set forth above. Mortgagor shall promptly execute and deliver to Mortgagee such documents and instruments as Mortgagee may request to confirm such lien. Mortgagor hereby

# UNOFFICIAL COPY

irrevocably authorizes and appoints Mortgagee as its agent and attorney-in-fact to execute all such documents and instruments on behalf of Mortgagor, which appointment includes full power of substitution and shall be deemed to be coupled with an interest.

**1.17 Further Assurances.** Upon Mortgagee's request, Mortgagor shall make, execute and deliver to Mortgagee or any other person designated by Mortgagee (or shall cause to be made, executed and delivered to Mortgagee or any such other person) any and all further mortgages, deeds of trust, assignments, security agreements, financing statements, instruments of further assurance, notices, certificates and other documents and instruments that Mortgagee may consider reasonably necessary to correct any errors in or omissions from any of the Loan Documents or to effectuate, complete, perfect, continue or preserve the obligations of Mortgagor under or in connection with the Loan Documents, the lien of this Mortgage upon all or any part of the Property or any other rights or interests of Mortgagee or Mortgagor under this Mortgage. In addition to its other rights, powers, privileges and remedies under this Mortgage, Mortgagee is hereby irrevocably authorized to make, execute and deliver any and all such documents and instruments for and in the name of Mortgagor. Mortgagee is hereby irrevocably authorized to record, file, re-record or refile, at such times and in such offices and places as Mortgagee may consider necessary or desirable, any or all of the Loan Documents and any or all such other documents and instruments. Mortgagor hereby irrevocably authorizes and appoints Mortgagee as its agent and attorney-in-fact to take all actions authorized by this Section, which appointment includes full power of substitution and shall be deemed to be coupled with an interest.

**1.18 Maintenance of Existence.** Mortgagor shall at all times maintain (a) its existence, franchises, qualification to transact business, and other rights and privileges as a limited liability company under the laws of the State of Illinois, and (b) a duly authorized registered agent for service of process in the State of Illinois. Upon any failure by Mortgagor to do so, Mortgagee may appoint any person as Mortgagor's agent for service of process, and Mortgagor hereby irrevocably authorizes and appoints Mortgagee as its agent and attorney-in-fact to do so, which appointment includes full power of substitution and shall be deemed to be coupled with an interest. Upon Mortgagee's request, Mortgagor shall provide to Mortgagee satisfactory evidence of Mortgagor's compliance with the terms of this Section.

**1.19 Books and Records.**

(a) Mortgagor shall at all times keep and maintain, or cause to be kept and maintained, complete and accurate books of accounts and records reflecting the results of the operation of the Property and any business or other operations conducted in or on the Property by or on behalf of or for the benefit of Mortgagor. Mortgagor shall deliver to Mortgagee (to be held by Mortgagee on a confidential basis):

(1) During the first two (2) years of the term of the Loan (which, for purposes of clarity shall include the fiscal quarter ending on June 30, 2015), and thereafter following Mortgagee's written request, within thirty (30) after the end of each fiscal quarter of Mortgagor, (i) a current rent roll for the Property, consistent in format with the certified rent roll submitted to and approved by Mortgagee in connection with the making of the Loan to Mortgagor (the "Approved Form of Rent Roll"), (ii) Mortgagor's internally prepared financial

# UNOFFICIAL COPY

statements for such quarter, including a balance sheet as of the end of such quarter and an income statement and a cash flow statement for such quarter, and (iii) a report of the Property's capital and leasing costs for such quarter, in each case certified by an authorized representative of Mortgagor as being true and complete;

(2) Within ninety (90) days after the end of each fiscal year of Mortgagor, (i) a current rent roll for the Property, consistent in format with the Approved Form of Rent Roll, (ii) Mortgagor's internally prepared financial statements for such year, including a balance sheet as of the end of such year and an income statement and a statement of cash flows for such year, and (iii) a report of the Property's capital and leasing costs for such year, in each case certified by an authorized representative of Mortgagor as being true and complete;

(3) Within thirty (30) days prior to the commencement of each fiscal year of Mortgagor, an operating and capital budget for the Property for such fiscal year, in such detail as Mortgagee may reasonably require and certified by an authorized representative of Mortgagor as being true and complete; and

(4) Within ten (10) days after its submission to the Internal Revenue Service, a copy of Mortgagor's signed federal tax return (including all supporting schedules and forms) if applicable.

(b) Promptly upon Mortgagee's request, Mortgagor shall deliver, or cause to be delivered, to Mortgagee (to be held by Mortgagee on a confidential basis) such interim financial statements and other financial information as Mortgagee may reasonably require with respect to Mortgagor or the Property and any business or other operations conducted in or on the Property by or on behalf of or for the benefit of Mortgagor, in each case certified by an authorized representative of Mortgagor or the person or entity on whose behalf the information is submitted, as being true and complete. Mortgagee and its designated agents shall have the right to inspect and copy Mortgagor's books and records with respect to the Property at all reasonable times, upon reasonable prior notice to Mortgagor. The costs and expenses of any such inspection shall be borne by Mortgagee, provided that if such inspection reveals that any financial information submitted to Mortgagee is incorrect, incomplete or misleading, in any material respect or that a default or Event of Default exists, the costs and expenses of such inspection shall be secured by this Mortgage and shall be payable by Mortgagor, upon written demand.

**1.20 Use of Information.** Mortgagor shall not use Mortgagee's name or the name of any person, firm or corporation controlling, controlled by or under common control with Mortgagee in connection with any of Mortgagor's activities, except as such use may be required by applicable law or regulation of any governmental body, or by any financing institution with which Mortgagor may be doing business. Mortgagee agrees that it shall not use Mortgagor's name, the name of any person, firm or corporation controlling, controlled by or under common control with Mortgagor in connection with any of Mortgagee's activities, except as such use may be required by applicable law or regulation of any governmental body or by any financing institution with which Mortgagee may be doing business and except for any publicity article concerning Mortgagor's financing of the Property (which such publicity shall require the prior written consent of Mortgagor); provided, Mortgagor hereby consents to Mortgagee's

# UNOFFICIAL COPY

participation, sale (including, but not limited to securitization), assignment, transfer or other disposition (any of such events being referred to as a "Sale"), at any time or times hereafter of all, or any part of, its interest in the Indebtedness and the Loan Documents (provided, however, that in the event of a sale, Mortgagor shall not be obligated to notify or communicate with more than one party as Mortgagee) and, in connection therewith, hereby consents to Mortgagee's dissemination of any of the foregoing information, on a confidential basis, to Mortgagee's advisers, underwriters and placement agents, as well as rating agencies and prospective purchasers, in connection with a prospective Sale; provided that all such persons to whom Mortgagee proposes to provide any such information shall agree in writing to keep such information confidential and to use it only for the purpose of considering a purchase of Mortgagee's interest in the Indebtedness and the Loan Documents or a portion thereof and in connection with such prospective Sale. Mortgagor shall provide such cooperation and additional information as Mortgagee may reasonably request in connection with a prospective Sale; provided, that if Mortgagee proposes to sell any interest in the Indebtedness to a person that is not a United States citizen or company, then, as a condition to such Sale, such person shall provide Mortgagor with two original signed copies of Internal Revenue Service Form 4224 certifying such person's entitlement to a complete exemption from United States withholding tax.

**1.21 Estoppel Certificates.** Upon Mortgagee's request, Mortgagor shall deliver to Mortgagee a written statement, duly acknowledged, setting forth the then-outstanding principal of and interest on the Indebtedness, and stating whether or not any offsets, claims or defenses exist against enforcement of any of the Loan Documents or against collection of the Indebtedness and, if any such offsets, claims or defenses are claimed, identifying the same in reasonable detail, or if any default exists under the Loan Documents. Mortgagor shall use commercially reasonable efforts to deliver to Mortgagee, promptly after Mortgagee's request no more frequently than one (1) time every twelve (12) months, a lease ratification and estoppel certificate as to any Lease then in effect, in form and substance satisfactory to Mortgagee, which shall be executed by Mortgagor and by each Tenant, stating, if such be the case, that the Lease is in full force and effect, that it has not been amended, that there is no default thereunder (or, if there is any default, identifying the same in reasonable detail), that the Tenant has accepted and is in possession and occupancy of the leased premises, that the Tenant is paying the full rental called for in the Lease on a current basis, that no rental payments have been made more than one month in advance, that there are no offsets, claims or defenses to payment of the rent or enforcement of the terms of the Lease (or, if there is any such offset, claim or defense, identifying the same in reasonable detail), that all work required to be performed by the landlord under the Lease has been completed, and stating the dates of commencement and termination of the original term thereof and the terms of any renewals or extensions of such term.

**1.22 Expenses and Indemnification.**

(a) Subject to the provisions of Section 1.11(b) and Section 1.19(b), Mortgagor shall pay, when due, and upon Mortgagee's request shall reimburse Mortgagee or Mortgagor for, all appraisal fees, filing and recording fees, taxes, brokerage fees and commissions resulting from any agreement made by Mortgagor with the broker to whom such fee or commission is to be paid, abstract and search fees, title insurance fees and premiums, escrow fees, attorneys' fees, court costs, fees of inspecting architect(s) and engineer(s) and all



# UNOFFICIAL COPY

other costs and expenses of every character that have been incurred by Mortgagee or Mortgagor, or that may be incurred by Mortgagee or Mortgagor after the date hereof, in connection with any of the following: (i) issuance of Mortgagee's commitment to make the Loan; (ii) preparation, execution and recording of the Loan Documents; (iii) funding of the Loan; (iv) preparation for enforcement of this Mortgage or any of the other Loan Documents after the occurrence of any Event of Default or any state of facts which, with notice or the passage of time, or both, would constitute an Event of Default if not cured or corrected, whether or not any suit or other action shall be commenced or undertaken; (v) communications and negotiations with Mortgagor, or with its officers, employees, agents, contractors, attorneys or other representatives, concerning any such occurrence; (vi) preparation for, and actions taken in connection with, the prevention or cure of any such occurrence; (vii) enforcement or attempted enforcement of this Mortgage or any of the other Loan Documents; (viii) court or administrative proceedings of any kind to which Mortgagee or Mortgagor may become a party, whether as plaintiff, defendant or otherwise, by reason of the Indebtedness or any of the Loan Documents (including all attorneys' fees, court costs and other expenses incurred in consultation, litigation and bankruptcy or administrative proceedings and all appeals therefrom); (ix) defending and upholding the lien of this Mortgage or otherwise defending or asserting any rights or claims of Mortgagee or Mortgagor under this Mortgage or under any of the other Loan Documents; (x) preparation for, and actions taken in connection with, Mortgagee's taking possession of all or any part of the Property; (xi) any prepayment or proposed prepayment of all or any part of the Indebtedness; (xii) any refinancing or payment of the entire Indebtedness or any proposed refinancing or payment of the entire Indebtedness; (xiii) any actual or proposed release, satisfaction, discharge or other extinguishment of this Mortgage or any of the other Loan Documents; (xiv) any transfer or proposed transfer of all or any part of the Property in lieu of foreclosure; or (xv) any consent or approval (whether conditional or unconditional) or any withholding of consent or approval to any matter for which Mortgagee's consent or approval is required pursuant to any of the Loan Documents or pursuant to any Governmental Requirement or judicial decision.

(b) Mortgagor shall indemnify and hold Mortgagee and Mortgagor harmless from and against, and shall reimburse Mortgagee or Mortgagor (as the case may be) for, any and all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses (including reasonable attorneys' fees) that may be imposed upon, asserted against, or incurred or paid by Mortgagee or Mortgagor by reason of, on account of or in connection with any or all of the following: (i) any bodily injury, death or property damage occurring in or on or in the vicinity of the Property through any cause whatsoever; (ii) prior to foreclosure and the unopposed possession of the Property by Mortgagee, any transaction, suit, action or proceeding arising out of or in any way connected with the ownership, use, operation, maintenance or repair of the Property; (iii) the exercise of any rights, powers, privileges or remedies of Mortgagee or Mortgagor under this Mortgage or any of the other Loan Documents (including any actions contemplated by Section 2.3); (iv) the breach of any warranty or representation set forth in any of the Loan Documents; and (v) the breach of any warranty or representation set forth in Section 1.2(b), any violation or any alleged violation of any Environmental Law, any proceedings relating to any such violation or alleged violation of any Environmental Law, the presence of any Hazardous Substances in, on, under or about all or any part of the Property, any actual or threatened release, discharge, spillage or seepage of any Hazardous Substances in, on, under, about or from the Property, the generation, manufacture, refining, production, processing,

# UNOFFICIAL COPY

treatment, storage, handling, transportation, transfer, use or disposal of any Hazardous Substances in, on, under, about or from all or any part of the Property, or any threatened, proposed or actual cleanup or other removal or remedial action relating to any Hazardous Substances, whether pursuant to any Environmental Law or otherwise. Notwithstanding anything to the contrary contained herein, the obligations and liability of Mortgagor with respect to the matters set forth in clause (v) above shall not be subject to or limited by any nonrecourse or exculpation provisions set forth in this Mortgage or any of the other Loan Documents, and said obligations and liability survive any Foreclosure and any payment, release, satisfaction, discharge or other extinguishment of this Mortgage or the Indebtedness. The obligations and liability of Mortgagor with respect to said matters shall run in favor of and benefit Mortgagee and any affiliate of Mortgagee which may succeed to Mortgagee's position under this Mortgage or which may acquire all or any part of the Property. The obligations and liability of Mortgagor under this Section 1.22 are in addition to, and not in lieu or a restatement of, any of Mortgagor's obligations or liability under the Indemnification Agreement. Notwithstanding anything to the contrary contained herein, Mortgagor shall not indemnify and hold Mortgagee harmless from or against any and all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses which arise or are incurred by Mortgagee as a result of Mortgagee's, or its agents', employees' or contractors' gross negligence or willful misconduct.

(c) All costs, expenses and other obligations required to be paid or reimbursed by Mortgagor pursuant to this Section, and all other indemnification obligations of Mortgagor under this Mortgage, shall bear interest at the Default Rate from the date the amount thereof shall have been paid by Mortgagee until the date of such payment or reimbursement by Mortgagor.

**1.23 Security for Advances.** All amounts advanced by Mortgagee or Mortgagor pursuant to this Mortgage, all amounts otherwise advanced by Mortgagee or Mortgagor to protect the security of this Mortgage, all costs, expenses and liabilities paid or incurred by Mortgagee or Mortgagor and reimbursable or payable by Mortgagor pursuant to this Mortgage and all indemnification obligations of Mortgagor under this Mortgage, together with interest thereon as provided in this Mortgage or as otherwise provided by law, shall be deemed to be a part of the Indebtedness and, to the fullest extent permitted by law, shall be secured by this Mortgage equally with all other portions of the Indebtedness.

**1.24 Revival.** If all or any part of any payment on account of the Indebtedness shall be invalidated, set aside, declared or found to be void or voidable or required to be refunded or otherwise returned to or for the benefit of Mortgagor or any trustee, custodian, receiver, conservator, master, liquidator or other person (whether pursuant to any Insolvency Law, any other law, any equitable cause or otherwise), then, to the fullest extent permitted by law, but only to the extent of such invalidation, set aside, voidness, voidableness or required refund or return, (a) neither the Indebtedness nor the lien of this Mortgage shall be deemed to have been paid, cancelled, extinguished, released, satisfied or discharged, (b) the Indebtedness and the lien of this Mortgage shall be immediately and automatically revived without the necessity of any action by any person, and (c) the lien of this Mortgage thereafter shall continue in full force and effect in accordance with the terms hereof as if it had never been paid, cancelled, extinguished, released, satisfied or discharged.

**1.25 Required Notices.**

# UNOFFICIAL COPY

(a) Mortgagor shall give written notice to Mortgagee of any of the following occurrences, in each case promptly after the occurrence thereof:

(i) Mortgagor's receipt of any notice from any governmental authority or instrumentality concerning (A) lack of compliance of the Property, or any business or other operations conducted in or on the Property, with any Governmental Requirement or with the conditions or other requirements of any license, permit, approval or authorization (including notice of any violation or alleged violation of any Environmental Law and notice of any threatened, proposed or actual cleanup or other protective, removal or remedial action relating to any Hazardous Substances, whether pursuant to any Environmental Law or otherwise), or (B) the actual or threatened revocation or suspension of, any license, permit, approval or authorization relating to the Property or any business or other operations conducted, or proposed to be conducted, in or on the Property;

(ii) Mortgagor's receipt of any notice concerning a material lack of compliance of all or any part of the Property, or any business or other operations conducted in or on the Property, with any covenant, agreement or other arrangement restricting or limiting the use, occupancy, operation, development or disposition of the Property;

(iii) Mortgagor's receipt of any notice from any tenant under any Lease concerning any default, alleged default or any other material matter in respect of such Lease which would permit, if such default or other material matter is not cured within the applicable grace period provided for therein, the tenant under such Lease to terminate the Lease or reduce the amount of any rent payable thereunder;

(iv) Mortgagor's receipt of any notice from the Tenant under any Lease, or from the holder or grantee of any lien, security interest, charge or encumbrance on all or any part of the Property, concerning any default or any other material matter in respect of such Lease, lien, security interest, charge or encumbrance;

(v) Mortgagor's receipt of any notice concerning (A) any contemplated, threatened or pending cancellation of any insurance coverage relating to the Property, (B) any refusal by any insurance company to provide or continue any insurance coverage relating to the Property, or (C) any increase in the cost of any insurance coverage relating to the Property due to the condition of the Property or due to any business or other operations conducted, or proposed to be conducted, in or on the Property;

(vi) commencement of any judicial or administrative proceedings by or against, and which reasonably can be expected to have a material adverse effect on, Mortgagor or the Property;

(vii) commencement by any creditor of any action or proceeding for default under the terms of any loan or other extension of credit to Mortgagor; or

# UNOFFICIAL COPY

(viii) any change in the name of Mortgagor or in the location of Mortgagor's chief executive office, principal place of business or residence.

(b) Mortgagor also shall give written notice to Mortgagee of any other material occurrence requiring the giving of notice to Mortgagee pursuant to this Mortgage or pursuant to any of the other Loan Documents. Each notice to Mortgagee pursuant to this Section shall be accompanied by accurate and complete copies of any and all notices received by Mortgagor which are the subject of such notice to Mortgagee (whether or not Mortgagee may have received, or may be entitled to receive, such notice directly from the person giving such notice to Mortgagor).

**1.26 Single Purpose Nature of Mortgagor.** Mortgagor further represents, warrants and covenants as follows:

(a) Mortgagor does not own and will not own any asset or property other than (i) the Property, (ii) the Greenspoint III Property, and (iii) incidental personal property necessary for the ownership, management or operation of the Property;

(b) Mortgagor will not engage in any business other than the ownership, management and operation of the Property and the Greenspoint III Property and activities incidental thereto;

(c) Mortgagor will not enter into any contract or agreement with any affiliate of Mortgagor, any constituent party of Mortgagor or any affiliate of any constituent party, except upon the terms and conditions that are commercially reasonable;

(d) Mortgagor does not have and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Indebtedness, (ii) trade and operational debt incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, and (iii) debt incurred in the financing of equipment and other personal property used on the Property and/or on the Greenspoint III Property;

(e) Mortgagor will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party;

(f) Mortgage shall maintain its books, records, resolutions and agreements according to applicable law; and

(g) Mortgagor will not commingle the funds and other assets of Mortgagor with those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

# UNOFFICIAL COPY

## ARTICLE 2

### DEFAULTS AND REMEDIES

**2.1 Event of Default.** As used in this Mortgage, the term “**Event of Default**” means any one or more of the following events:

(a) Failure by Mortgagor to pay (i) any periodic installment of interest or principal, or both, when due under the Note, (ii) the outstanding principal balance of the Note, together with interest accrued on such principal balance, at maturity, (iii) any deposits for Impositions or Insurance Premiums when due under this Mortgage, or (iv) any other sums required to be paid by Mortgagor pursuant to the Note, this Mortgage or pursuant to any of the other Loan Documents, on or before the fifth (5th) day following written notice and demand for the payment of such other sums.

(b) Failure by Mortgagor to comply with any of its obligations (i) under Section 1.5 (“**Discharge of Liens**”), or (ii) Section 1.8 (“**Insurance**”), or (iii) Section 1.25 (“**Required Notices**”) in accordance with the terms thereof.

(c) The occurrence of an Event of Default (as defined in the Greenspoint III Mortgage) under the Greenspoint III Mortgage.

(d) Failure by Mortgagor to comply with any order or other notice of violation relating to all or any part of the Property that may be issued by any governmental authority or instrumentality claiming jurisdiction over the Property, within the time specified by such authority or instrumentality or (if no such time is so specified) within thirty (30) days after the issuance of such order or notice; provided, however, that, if no such time is so specified and if such noncompliance is not reasonably susceptible to being cured within the aforesaid thirty (30) day period, then such noncompliance shall not be an Event of Default unless and until it shall have continued for an additional period of ninety (90) days, provided (i) Mortgagor shall commence such cure within the aforesaid thirty (30) day period and thereafter shall diligently and continuously pursue its efforts in that regard until such noncompliance has been cured, (ii) no hazardous condition shall continue or be created as a result of such noncompliance, (iii) no part of the Property, or the interest therein of Mortgagor, Mortgagee, or any Tenant would (in the reasonable judgment of Mortgagee) be in danger of being forfeited or lost as a result of such noncompliance, (iv) no governmental authority or instrumentality shall threaten to carry out any work to cure such noncompliance or threaten to impose, file or foreclose, as a result of any such noncompliance, any lien against all or any part of the Property or the interest therein of Mortgagor, Mortgagee or any Tenant, and (v) none of Mortgagee or any officer, employee, agent, contractor, attorney or other representative of either of them would (in the reasonable judgment of Mortgagee) be in danger of being subjected to any criminal or civil liability or penalty, or any charge of any kind, as a result of such noncompliance.

(e) Failure by Mortgagor to duly keep, perform, observe or comply with, or to cause to be duly kept, performed, observed or complied with, any provision required to be kept, performed, observed or complied with by or on behalf of Mortgagor pursuant to this Mortgage or pursuant to any of the other Loan Documents (other than any provision that is the subject of a

# UNOFFICIAL COPY

separate Event of Default pursuant to this Section); provided, however, that such failure shall not be an Event of Default unless and until written notice of such failure shall have been given to Mortgagor and such failure shall not have been cured before expiration of (i) the period of thirty (30) days next following the giving of such notice, or (ii) in the case of any such failure that is not reasonably susceptible to being cured within such thirty (30) day period, such longer period of time (not to exceed an additional ninety (90) days) after the giving of such notice as may be reasonably required to complete such cure, provided Mortgagor shall commence such cure within such thirty (30) day period and thereafter shall diligently and continuously pursue its efforts in that regard until such failure shall have been cured.

(f) Discovery of any material inaccuracy in any financial statement, certificate, affidavit or other information furnished to Mortgagee pursuant to this Mortgage or pursuant to any of the other Loan Documents or in any financial statement, certificate, affidavit or other information furnished to Mortgagee, before or after the date hereof, by Mortgagor.

(g) Discovery of any material breach or material inaccuracy of any warranty or representation of Mortgagor set forth in this Mortgage or any of the other Loan Documents.

(h) The filing by Mortgagor, any member or manager of Mortgagor, of a petition, or the commencement by any such person of a case or proceeding seeking relief, under any Insolvency Law; the entry of any order for relief with respect to any such person; any general assignment for the benefit of creditors by any such person; the admission in writing by any such person of its inability, or the failure by any such person, to pay its debts generally as they become due; the consent or acquiescence by any such person to or in the appointment of a trustee, custodian, receiver, conservator, master or liquidator of such person or of all or any part of its property; the adjudication of any such person as a bankrupt or insolvent; or the insolvency of any such person (*i.e.*, such person shall be or shall have become unable to pay its debts as they become due or such person's aggregate liabilities shall exceed the fair market value of its assets).

(i) The filing against Mortgagor, any member or manager of Mortgagor, if applicable, of a petition, or the commencement against any such person of a case or proceeding, under any Insolvency Law, unless such petition, case or proceeding shall be dismissed within thirty (30) days after the filing or commencement thereof; or the appointment of a trustee, custodian, receiver, conservator, master or liquidator of any such person or of all or any part of the property of any such person or the sequestration of all or any part of the property of any such person by court order, if such appointment or sequestration shall remain in effect for more than thirty (30) days.

(j) The occurrence of any Taking that materially impairs the security of this Mortgage; provided, however, that such a Taking shall not be considered a default if Mortgagee requires Mortgagor to repay the Indebtedness in full.

(k) The occurrence of any default under any encumbrance now or hereafter affecting all or any part of the Property, and the continuation of such default beyond any applicable grace or cure period, or any other event permitting acceleration of the maturity of any indebtedness secured by any such encumbrance or permitting any such indebtedness to be declared immediately due and payable.

# UNOFFICIAL COPY

(l) Dissolution or termination of Mortgage.

(m) The occurrence of any other cause for accelerating the maturity of the Indebtedness (subject to the expiration of any applicable notice and cure periods), or for declaring the Indebtedness to be immediately due and payable, pursuant to the express provisions of the Note or this Mortgage.

**2.2 Acceleration of Maturity.** At any time during the continuance of any Event of Default, Mortgagee, at its option and without demand or notice, may declare the outstanding Indebtedness (or, at Mortgagee's option, any part of the outstanding Indebtedness that may be designated by Mortgagee) to be immediately due and payable. Upon such declaration, the Indebtedness (or such part thereof) shall become immediately due and payable without demand or notice. To exercise this option, Mortgagee may invoke the power of sale and any other remedies permitted by law.

## **2.3 Enforcement.**

(a) At any time during the continuance of any Event of Default, Mortgagee may proceed by any appropriate judicial action or proceeding to (i) enforce payment of all or any part of the Indebtedness in accordance with the Loan Documents, (ii) enforce performance of any provision of this Mortgage or any of the other Loan Documents, (iii) enforce any other rights with respect to the Indebtedness or the Property; (iv) foreclose this Mortgage and sell or cause the sale of the Property, as an entirety or in separate parts, pursuant to the judgment, order, writ of execution or decree of any court of competent jurisdiction and take such other action as permitted under the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. (the "Act"), (v) to the fullest 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 rights, powers, privileges and remedies available to Mortgagee, at law or in equity, in connection with the Indebtedness, the Property or any other security for the Indebtedness, including, without limitation, any and all of the remedies granted Mortgagee as a secured party under the UCC. Mortgagee may pursue any or all such actions or proceedings separately or concurrently and in such order as Mortgagee may elect, either with or without entry or taking possession and whether or not all or any part of the Indebtedness 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 and without prejudice to the rights of Mortgagee to proceed by any other action or proceeding to enforce any rights, powers, privileges or remedies with respect to the Indebtedness, the Property or any other security for the Indebtedness, whether or not the basis for any such subsequent action or proceeding shall be a default or an Event of Default existing at the time such earlier action or proceeding was commenced.

(b) Mortgagee may bid for and purchase all or any part of the Property at any sale or pursuant to any judgment, order, writ of execution or decree of any court of competent jurisdiction 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 for the proper application of the purchase money. In paying the purchase price in connection with any such

# UNOFFICIAL COPY

sale, Mortgagee, after allowing for the costs and expenses, compensation and other charges of such sale, may in paying the purchase price, to the fullest extent permitted by law, apply all or any part of the Indebtedness, in lieu of cash, as a credit against such purchase price and any other amounts payable in connection therewith.

(c) Any Foreclosure may, at Mortgagee's option, be subject to any or all Leases and the rights of Tenants thereunder. No failure to make any Tenant a defendant in any foreclosure proceedings or to foreclose or otherwise terminate any Lease and the rights of any Tenant in connection with any Foreclosure shall be, or be asserted to be, a defense or hindrance to any Foreclosure, any foreclosure proceedings or to any proceedings seeking collection of all or any part of the Indebtedness (including any deficiency remaining unpaid after completion of any Foreclosure).

**2.4 Proceeds of Foreclosure.** From the proceeds of any Foreclosure, Mortgagee shall be reimbursed for (a) all costs and expenses of sale, including reasonable attorneys' fees provided by law, advertising costs, an auctioneer's allowance, costs of title searches, the expense of correcting any title irregularities, inspection fees and appraisal costs; and (b) all currently payable Impositions and Insurance Premiums. The balance of said proceeds shall be paid to Mortgagee to the extent required to pay the entire then-outstanding Indebtedness. Any remaining surplus shall be paid to Mortgagor or to any other person entitled to such surplus as determined by a court of competent jurisdiction.

**2.5 Right To Enter and Take Possession.**

(a) At any time during the continuance of any Event of Default, whether or not foreclosure proceedings shall have been instituted, Mortgagee, to the fullest extent permitted by law, may enter and take possession of all or any part of the Property, may exclude Mortgagor and its members, officers, employees, agents, contractors, attorneys and other representatives therefrom and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor and of any manager of the Property. Upon Mortgagee's request at any time during the continuance of any Event of Default, Mortgagor shall peaceably and quietly vacate, surrender and deliver possession of the Property (or any part of the Property that may be designated by Mortgagee) to Mortgagee. If Mortgagor shall not vacate, surrender and deliver possession of the Property (or such part of the Property) to Mortgagee as provided above, then, without limiting any other right to enter and take possession of the Property (or such part of the Property), Mortgagee may resort to any and all legal and equitable remedies required to evict and dispossess Mortgagor therefrom (including one or more summary proceedings or actions for forcible entry and detainer, trespass to try title or restitution), and Mortgagee may obtain a judgment, order, writ of execution or decree of any court of competent jurisdiction conferring on Mortgagee the right to immediate possession and requiring Mortgagor to immediately vacate, surrender and deliver possession of the Property (or such part of the Property) to Mortgagee. Mortgagor hereby specifically and irrevocably consents to the entry of any such judgment, order, writ of execution or decree. Upon Mortgagee's request, Mortgagor shall pay to Mortgagee, or to any other person that Mortgagee may designate, all costs, expenses and liabilities (including reasonable attorneys' fees) incurred by Mortgagee in connection with any such failure to vacate, surrender and deliver possession or in connection with any such judgment, order, writ of execution or decree or the exercise of any such remedies, together with interest thereon at the



# UNOFFICIAL COPY

Default Rate from the date incurred by Mortgagee until the date so paid to, or as directed by, Mortgagee.

(b) Intentionally omitted.

(c) After any such entry into possession, Mortgagee, acting in Mortgagor's name or otherwise, may hold, store, use, operate, manage and control the Property (or any part of the Property which then is in the possession of Mortgagee or Mortgagor) and may conduct the business and operations thereof. In doing so, Mortgagee may:

(i) take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property;

(ii) carry out any and all necessary and desirable maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements of or to the Property (or such part of the Property);

(iii) purchase or otherwise acquire and install in or on the Property (or such part of the Property) additional fixtures, personal property and other property of the type encumbered by this Mortgage;

(iv) insure the Property or keep the Property insured;

(v) manage, operate and exercise all rights and powers of Mortgagor with respect to the Property (or such part of the Property) and the management and operation thereof (including 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);

(vi) enter into agreements with others to exercise the rights and powers of Mortgagee and Mortgagor under this Mortgage;

(vii) collect and receive all Rents (including those past due as well as those accruing thereafter), and apply the money so received, in such priority as Mortgagee may determine, to pay (1) the 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 and Insurance Premiums, (3) the cost of insurance, Impositions and other expenses of holding, storing, using, operating, managing, controlling, maintaining, repairing, altering and improving the Property (including any leasing commissions and rental collecting commissions payable to any agent, contractor or other representative of Mortgagee), (4) the 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) In the event of any such entry into possession, Mortgagee shall be liable to account only for Rents actually received by Mortgagee while in possession of the Property. In the event of any foreclosure, subject to applicable law, Mortgagee may remain in possession of

# UNOFFICIAL COPY

all or any part of the Property until the foreclosure sale and thereafter during any period of redemption. In the absence of any foreclosure, subject to applicable law, Mortgagee may remain in possession of all or any part of the Property as long as there exists an Event of Default. Subject to applicable law, the same right of taking possession shall exist during the continuance of any subsequent Event of Default. Subject to applicable law, Mortgagee shall not be obligated, by virtue of this Section or by virtue of any actions contemplated by this Mortgage or any of the other Loan Documents, to perform or discharge any obligation, duty or liability of Mortgagor under any Lease or other agreement relating to all or any part of the Property or under any Governmental Requirement relating to the Property. Mortgagee shall not incur any 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 Property (except for damages directly caused by Mortgagee's own gross negligence or intentional wrongful acts). Mortgagor hereby expressly and irrevocably waives, releases, discharges and relinquishes all such liabilities, claims and rights of set off.

(e) Upon Mortgagee's request, Mortgagor shall pay to Mortgagee, or to any other person that Mortgagee may designate, all costs, expenses and liabilities (including reasonable attorneys' fees) incurred by Mortgagee in connection with the holding, storage, use, operation, management, control, maintenance, repair, alteration or improvement of all or any part of the Property (except to the extent such costs, expenses and liabilities shall have been paid out of collections from the 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.

## **2.6 Appointment of Receiver.**

(a) At any time during the continuance of any Event of Default (either before or after any foreclosure or any sale in connection therewith), Mortgagee, to the fullest extent permitted by law and without regard to the value, adequacy or occupancy of the Property (whether as a homestead or otherwise) or the solvency of Mortgagor, shall be entitled as a matter of right and without notice, if it so elects, to the appointment of a receiver to enter upon and take possession of the Property, collect the Rents and apply the Rents so collected as the court making such appointment may direct or as otherwise permitted by law. To the fullest extent permitted by law, the receiver's powers shall continue during the pendency of any foreclosure proceedings and throughout any statutory period of redemption, whether there be redemption or not. Mortgagor hereby specifically and irrevocably consents to such appointment and waives notice of any motion or application therefor. Without limiting the generality of the foregoing, Mortgagor agrees that any failure of Mortgagor to pay any Insurance Premiums or Impositions (except to the extent permitted in connection with any contest pursuant to Section 1.6) or to maintain any insurance required with respect to the Property justifies the appointment of a receiver to the fullest extent permitted by law. The receiver shall have all rights and powers permitted by the laws of the State of Illinois (including, to the fullest extent permitted by law, all rights and powers for the protection, possession, management and operation of the Property that an absolute owner would have) and such other rights and powers as the court making such appointment shall confer. The receiver shall be liable to account only for Rents actually received by the receiver. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled to maintain possession and control of any cash, deposits or instruments held by or for Mortgagee, as pledgee or depository, at the time of such appointment or payable or

# UNOFFICIAL COPY

deliverable to Mortgagee, as pledgee or depository, from time to time pursuant to this Mortgage or any of the other Loan Documents.

(b) Upon Mortgagee's request, Mortgagor shall pay, or reimburse Mortgagee and any such receiver for, all costs, expenses and liabilities incurred by Mortgagee or such receiver in connection with the appointment of such receiver and the exercise of the rights and powers of such receiver (including reasonable attorneys' fees, receivers' fees, agents' compensation and the fees of any manager retained by such receiver), except to the extent such costs, expenses and liabilities shall have been paid out of collections from the Property, together with interest thereon at the Default Rate from the date paid by Mortgagee or such receiver (as the case may be) until the date of such reimbursement.

**2.7 Performance of Defaulted Obligations.** If Mortgagor shall fail to make any payment or perform any obligation of Mortgagor under this Mortgage or any of the other Loan Documents, then, without prior notice or demand, Mortgagee may, but shall not be obligated to, make any payment or perform any obligation (in Mortgagor's name or otherwise) in such manner and to such extent as Mortgagee may deem necessary or appropriate under the circumstances to preserve or protect Mortgagee's rights and interests under the Loan Documents, specifically including, but not limited to, the value and condition of any collateral. If Mortgagor shall fail to perform any other obligation of Mortgagor under this Mortgage or any of the other Loan Documents then, upon notice, Mortgagee may, but shall not be obligated to, perform any obligation (in Mortgagor's name or otherwise) in such manner and to such extent as Mortgagee may deem necessary or appropriate under the circumstances to preserve or protect Mortgagee's rights and interests under the Loan Documents, specifically including, but not limited to, the value and condition of any collateral. Mortgagee shall be subrogated to all rights against Mortgagor of the person or persons benefiting from such payment or performance. No such payment or performance shall (a) release Mortgagor from any obligation under any of the Loan Documents, (b) cure, waive or invalidate any obligation, any Event of Default or any breach or default by Mortgagor under any of the Loan Documents, or (c) waive or relinquish any right, power, privilege or remedy of Mortgagee or Mortgagor under or in connection with any of the Loan Documents. Upon Mortgagee's request, Mortgagor shall pay, or reimburse Mortgagee for, all expenditures (including reasonable attorneys' fees) made or incurred by Mortgagee in making any such payment or performing any such obligation, together with interest thereon at the Default Rate from the date paid by Mortgagee until the date of such reimbursement. Mortgagee is hereby irrevocably authorized to enter upon, and to authorize others to enter upon, the Property for the purpose of performing any such obligation, without thereby becoming liable to Mortgagor or to any person in possession holding under Mortgagor.

**2.8 Waivers of Certain Rights.** Mortgagor agrees, to the fullest 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 law now or hereafter in force pertaining to the rights of sureties or providing for any appraisal, valuation, stay, notice of election to accelerate maturity or to declare the Indebtedness due, extension, redemption, moratorium, homestead or exemption from execution, levy or sale, in order to prevent or hinder the foreclosure of this Mortgage during the continuance of any Event of Default, the final and absolute sale of all or any part of the Property, or any interest therein, or the final and absolute putting into possession thereof, immediately after any such sale, of the purchaser or purchasers at

# UNOFFICIAL COPY

such sale or the enforcement of any other rights, powers, privileges or remedies of Mortgagee or Mortgagor under this Mortgage or under any of the other Loan Documents. Mortgagor, for itself and for any and all persons who may at any time claim through or under Mortgagor hereby irrevocably waives and releases, to the fullest extent permitted by law, all benefit of any and all such laws, any and all rights of redemption from sale pursuant to the power of sale provided under this Mortgage, any and all rights of redemption from sale pursuant to any judgment, order or decree of foreclosure of this Mortgage or any writ of execution relating to the Indebtedness (including any equity of redemption and any statutory right of redemption), any and all dower, curtesy and homestead rights, and any and all right to have the assets constituting the Property or any other security for the Indebtedness marshaled upon any foreclosure or other enforcement of this Mortgage or any of the other Loan Documents. Without limiting the foregoing provisions of this Section 2.8, Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. Pursuant to Section 5/15-1601(b) of the Act, Mortgagor, to the full extent permitted by law, hereby waives any and all right to redemption. Mortgagee shall not be required to (i) release any part of the Property or any other security for the Indebtedness or be prevented from foreclosing this Mortgage or enforcing any of the other Loan Documents unless the Indebtedness shall have been fully, finally and indefeasibly paid and satisfied in accordance with the Loan Documents, (ii) accept any part or parts of the Property or any other security for the Indebtedness in satisfaction of all or any part of the Indebtedness, or (iii) accept any apportionment of the Indebtedness to or among any part or parts of the Property or any other security for the Indebtedness. If any law now in force of which Mortgagor might take advantage despite this Section shall be repealed or shall cease to be in force after the date hereof, then such law shall not thereafter be deemed to preclude the application of this Section.

**2.9 Suits To Protect Property.** Mortgagee and Mortgagor (acting at Mortgagee's request) are hereby irrevocably authorized by Mortgagor, at Mortgagee's option, to institute and maintain any and all suits and proceedings that Mortgagee may deem advisable (a) to prevent any impairment of the 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 of any of the other Loan Documents, (c) to foreclose this Mortgage (after the occurrence of any Event of Default), (d) to preserve and protect Mortgagee's and Mortgagor's interests in the Property, and (e) to restrain the enforcement of, or compliance with, any Governmental Requirement that may be unconstitutional or otherwise invalid, if such enforcement or compliance might (in Mortgagee's judgment) impair the Property or the security of this Mortgage or be prejudicial to Mortgagee's or Mortgagor's interests.

**2.10 Proofs of Claim.** In the event of any bankruptcy, reorganization, arrangement, composition, readjustment, liquidation, dissolution, insolvency, receivership, conservatorship or other case or proceeding affecting Mortgagor, or any of its creditors or properties, Mortgagee may, to the fullest extent permitted by law, 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 outstanding as of the institution of such case or proceeding (or for any part of such Indebtedness that may be designated by Mortgagee) and for any additional amounts that may thereafter become due and payable in respect of the Indebtedness.

**2.11 No Waiver.**

# UNOFFICIAL COPY

(a) No failure or delay of or by Mortgagee or Mortgagor to insist upon strict performance of any obligation of Mortgagor under or in connection with this Mortgage or any of the other Loan Documents or to exercise any right, power, privilege or remedy under or in connection with this Mortgage or any of the other Loan Documents shall waive, exhaust or impair any such obligation or any such right, power, privilege or remedy. Nor shall any such failure or delay be construed to be a waiver of, or acquiescence in or to, any Event of Default or any breach or default by Mortgagor under this Mortgage or any of the other Loan Documents. Notwithstanding any such failure or delay, Mortgagee or Mortgagor (acting at Mortgagee's request) thereafter shall have the right, from time to time and as often as may be deemed advisable by Mortgagee, to insist upon and enforce strict performance of any and all obligations of Mortgagor under or in connection with this Mortgage or any of the other Loan Documents.

(b) No waiver of any Event of Default or of any breach or default by Mortgagor under this Mortgage or any of the other Loan Documents shall extend to or affect any subsequent Event of Default, breach or default or any other then-existing Event of Default, breach or default. Nor shall any such waiver impair any rights, powers, privileges or remedies available to Mortgagee or Mortgagor after the occurrence of any Event of Default or of any breach or default. After the occurrence of any Event of Default or of any such breach or default (whether or not the Indebtedness or any part thereof shall have been declared to be immediately due and payable), Mortgagee may accept payments of amounts owing in respect of the Indebtedness, and no such acceptance shall waive any such Event of Default, breach or default or result in any stay or reversal of any acceleration of maturity or in any forgiveness of all or any part of the Indebtedness, unless Mortgagee expressly and specifically agrees to the contrary in writing.

**2.12 Remedies Cumulative.** No right, power, privilege or remedy now or hereafter available to Mortgagee, Mortgagor or any receiver under or in connection with this Mortgage or any of the other Loan Documents (whether or not herein or therein specified) or any law or judicial decision is or shall be exclusive of any other right, power, privilege or remedy (whether or not herein or therein specified), all of which shall be cumulative, concurrent and in addition to each and every other right, power, privilege and remedy now or hereafter available under or in connection with this Mortgage. Each and every such right, power, privilege and remedy may be exercised prior to, simultaneously with or subsequent to any other right, power, privilege or remedy and as often as occasion therefor may arise. No single or partial exercise of any such right, power, privilege or remedy shall preclude any other or further exercise of any such right, power, privilege or remedy. No act of Mortgagee or Mortgagor shall be construed as an election to proceed under any one provision of this Mortgage or of any applicable statute or other law to the exclusion of any other such provision, statute or other law.

**2.13 Discontinuance of Proceedings.** If Mortgagee or Mortgagor shall exercise any right, power, privilege or remedy available under or in connection with any of the Loan Documents or under any law or judicial decision, and if such exercise and any related proceedings shall be discontinued or abandoned for any reason, or if any such proceedings shall result in a final determination adverse to Mortgagee or Mortgagor, then, to the fullest extent permitted by law, Mortgagor and Mortgagee thereafter shall be restored to their respective former positions and to their respective rights, powers, privileges and remedies under the Loan Documents or otherwise relating to the Indebtedness, the Property or any other security for the

# UNOFFICIAL COPY

Indebtedness, and all rights, powers, privileges and remedies of Mortgagee shall continue to be available as if no such exercise and no such proceedings had occurred.

**2.14 Additional Security and Guaranty.** If Mortgagee or any trustee or agent for Mortgagee at any time holds additional security for, or any guaranty of, all or any part of the Indebtedness, then Mortgagee or such trustee or agent (acting at Mortgagee's request) may foreclose such security or otherwise enforce its rights, powers, privileges and remedies with respect to, and realize upon, such security or such guaranty (as the case may be), either before or concurrently with or after a foreclosure or other enforcement of this Mortgage or of any of the other Loan Documents, without being deemed to have waived any rights, benefits, liens or security interests evidenced by or arising under or in connection with this Mortgage or any of the other Loan Documents and without being deemed to have made an election thereby or to have accepted the benefits of such guaranty or such additional security (or the proceeds thereof) in full satisfaction and settlement of the Indebtedness and of Mortgagee's or such trustee's or agent's rights with respect thereto. No judgment, order, writ of execution or decree with respect to the Indebtedness or with respect to any such guaranty or security, whether rendered in the State of Illinois or elsewhere, shall in any manner affect the security of this Mortgage, and any deficiency or other debt represented by any such judgment, order, writ of execution or decree shall, to the fullest extent permitted by law, be secured by this Mortgage to the same extent that the Indebtedness shall have been secured by this Mortgage prior to the rendering of such judgment, order, writ of execution or decree. Mortgagor, for itself and for any and all persons 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 Property or any other security for the Indebtedness, hereby irrevocably waives and releases, to the fullest extent permitted by law, all benefit of any and all laws that would limit or prohibit the effectiveness of anything set forth in this Section.

**2.15 Default Rate.** During the continuance of any Event of Default, the principal portion of the Indebtedness shall, at Mortgagee's option, bear interest at the Default Rate set forth in the Note (the "**Default Rate**").

## ARTICLE 3

### TRANSFER OR FURTHER ENCUMBRANCE OF PROPERTY

#### 3.1 Option to Accelerate; Consent of Mortgagee.

(a) Except as otherwise permitted in accordance with this Section 3.1, in the event of (i) any sale or transfer, pledge, grant of security interest, or further encumbrance, by operation of law or otherwise, of all or any part of the Property, or of any interest therein, or the execution of a contract for sale of the Property, or (ii) any change, directly or indirectly, in the ownership, form of business association or composition of Mortgagor (other than a Permitted Transfer, as hereinafter defined), or (iii) any financing, other than the Loan, secured by all or any portion of the Property or any beneficial interest in the Property, or (iv) any change in the nature of the Property's use in whole or in part, or any material structural alteration of the Property or any recording of a condominium declaration affecting the Property, then, at Mortgagee's option, Mortgagee may declare the Indebtedness to be immediately due and payable, and, upon such declaration, the Indebtedness shall be immediately due and payable without demand or notice.

# UNOFFICIAL COPY

Mortgagor covenants and agrees that it shall not, without the prior written consent of Mortgagee, take any of the actions, or suffer any of the events, that would be a cause for declaring the Indebtedness to be immediately due and payable pursuant to this Section and any such actions shall be construed as an Event of Default.

As used herein, "**Permitted Transfer**" shall mean and refer to a transfer of the Property or an ownership interest in Mortgagor, provided (a) the transferee is wholly-owned and controlled by Teachers' Retirement System of the State of Illinois and satisfies the single purpose entity requirements under Section 1.26 of this Mortgage, (b) Mortgagor notifies Mortgagee at least thirty (30) days prior to the closing of such proposed transfer and (c) the Loan Documents are amended, at Mortgagor's expense, as Mortgagee may reasonably require to reflect such transfer.

(b) Except for a Permitted Transfer, Mortgagee may give, withhold or condition any consent contemplated by paragraph (a) of this Section, for any reason or for no reason, in Mortgagee's sole, absolute and unlimited discretion. Except for a Permitted Transfer, without limiting the generality of the immediately preceding sentence, Mortgagee specifically reserves the right to condition its consent upon such matters as Mortgagee may deem appropriate, including (i) Mortgagee's approval of the creditworthiness, financial condition and management ability of the purchaser, transferee, lessee, pledgee or assignee, (ii) modification of any or all of the Loan Documents in any manner that Mortgagee may deem appropriate (which may include, among other things, an increase in the interest rate then in effect under the Note or the maturity date thereof), (iii) assumption of the obligations and liabilities of Mortgagor under any or all of the Loan Documents by the purchaser, transferee, lessee, pledgee or assignee, (iv) receipt of satisfactory guaranties of all or any part of the Indebtedness, (v) receipt of satisfactory additional collateral, and (vi) payment to Mortgagee of an assumption fee in such amount as Mortgagee may deem appropriate.

**3.2 Subsequent Owner.** Each purchaser, transferee, lessee, pledgee and assignee referred to in Section 3.1 shall be deemed to have assumed and agreed, to the extent that its seller, transferor, lessor or pledgor was liable, to pay the Indebtedness and to have assumed and agreed to be bound by and to keep, perform, observe and comply with all provisions required to be kept, performed, observed and complied with by Mortgagor pursuant to this Mortgage (including the terms of this Article), unless Mortgagee shall specifically agree to the contrary in writing. Without limiting the generality of the immediately preceding sentence, each such purchaser, transferee, lessee, pledgee and assignee shall be deemed to have made and agreed to each waiver, consent, authorization, direction and appointment made by and agreed to by Mortgagor pursuant to this Mortgage. If ownership of all or any part of the Property shall become vested in any person other than Mortgagor, then Mortgagee may, without notice to Mortgagor, deal with any such successor in interest in any manner that Mortgagee may deem appropriate, without in any way waiving, releasing, discharging or otherwise vitiating any obligations or liabilities of Mortgagor with respect to the Indebtedness, the Property, any of the Loan Documents or the transaction of which this Mortgage is a part. No sale, conveyance, transfer, pledge, encumbrance, assignment or lease referred to in the immediately preceding Section, and no forbearance, extension or assumption by or to any person with respect to the Indebtedness or any of the Loan Documents, shall change, waive, release, discharge or otherwise

# UNOFFICIAL COPY

affect the liability of Mortgagor, in whole or in part, unless Mortgagee shall specifically agree to the contrary in writing.

## ARTICLE 4

### MISCELLANEOUS

**4.1 Use of Certain Terms.** Each reference in this Mortgage to Mortgagor, Mortgagee or Mortgagor shall be deemed also to include their respective heirs, executors, administrators, personal representatives, successors and assigns. Each reference in this Mortgage to any gender shall be deemed also to include any other gender, and the use in this Mortgage of the singular shall be deemed also to include the plural and vice versa, unless the context clearly requires otherwise. As used in this Mortgage, the term “**person**” means any and all natural persons (whether acting for themselves or in a representative capacity), sole proprietorships, partnerships, joint ventures, associations, trusts, estates, limited liability companies, corporations (non-profit or otherwise), financial institutions, governments (and agencies, instrumentalities and political subdivisions thereof), and other entities, authorities and organizations of every type. As used in this Mortgage, unless the context clearly requires otherwise, (a) the words “**herein**,” “**hereunder**,” “**hereinafter**” and “**hereto**” and words of similar import shall be deemed to refer to this Mortgage as a whole and not to any particular Article, Section, subsection, paragraph or other subdivision, (b) the words “**include**” and “**including**” shall be deemed to be followed by the words “**without limitation**,” and (c) the terms “**Dollars**” and “**\$**” shall be deemed to refer to the lawful currency of The United States of America. Each reference in this Mortgage to the provisions of this Mortgage or the provisions of any of the other Loan Documents shall be deemed to refer to any and all covenants, agreements, terms, conditions and other provisions hereof or thereof. Each reference in this Mortgage to the fees or other compensation of any agents, contractors, attorneys or other representatives of any person shall be deemed also to include expenses and disbursements, as well as fees of paraprofessionals and similar personnel (such as paralegals and legal assistants). Each reference in this Mortgage to any statute shall be deemed to include within such reference any amendments, substitutions or replacements thereof or therefor, and each reference in this Mortgage to any specific provision of the Bankruptcy Code or any other statutory compilation shall be deemed to include within such reference any similar statutory provision that may hereafter be enacted by any governmental authority.

**4.2 Schedules; Recitals; Headings.** The Schedules and Exhibits attached hereto and the paragraphs set forth at the beginning of this Mortgage under the heading “**BACKGROUND**” are incorporated in and made a part of this Mortgage by this reference. The captions and headings of the Articles, Sections, subsection, paragraphs and other subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part of this Mortgage and shall not be deemed or construed to define, modify, limit, expand or otherwise affect any of the provisions of this Mortgage.

**4.3 Notices.** All notices, reports, demands, requests or other communications to be given or delivered to Mortgagor, Mortgagee or Mortgagor under this Mortgage shall be deemed given or delivered to such person, if addressed to such person at its address set forth at the beginning of this Mortgage (or at such other address as such person may designate by notice to such other persons given in accordance with this Section), when delivered at such address by



# UNOFFICIAL COPY

hand or by overnight delivery service or three (3) days after having been deposited in the United States mail as first class certified mail, return receipt requested, postage paid.

**4.4 Binding Effect; Third Parties.** All provisions of this Mortgage shall run with the Land and shall bind and inure to the benefit of Mortgagor, Mortgagee, Mortgagor and their respective heirs, executors, administrators, personal representatives, successors and assigns. Except as otherwise expressly provided in this Mortgage, this Mortgage is for the exclusive benefit of such persons, and nothing set forth herein shall be deemed to be for the benefit of any other person. If there is more than one Mortgagor at any time, all undertakings of Mortgagor under this Mortgage shall be deemed to be joint and several.

**4.5 Applicable Law; Severability.** This Mortgage shall be governed by the internal laws of the State of Illinois, without regard to principles of conflicts of law. All rights, powers, privileges and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, illegal or unenforceable. If any provision of this Mortgage or any of the other Loan Documents shall be invalid, illegal or unenforceable in any respect, then such provision alone shall be deemed to be null and void, and the validity, legality and enforceability of the remaining provisions of this Mortgage and of the other Loan Documents shall remain in full force and effect and shall not in any way be impaired or otherwise affected thereby.

**4.6 Changes.** Neither this Mortgage nor any of the other Loan Documents, nor any provision of any of them, may be changed, waived, released, discharged, withdrawn, revoked, canceled or terminated orally, or by any action or inaction. Any such change, waiver, release, discharge, withdrawal, revocation, cancellation or termination shall be effective only if set forth in a written document signed by the party against whom enforcement of such change, waiver, release, discharge, withdrawal, revocation, cancellation or termination is sought, and then shall be effective only to the extent specifically provided in such document. Any agreement hereafter made by Mortgagor or Mortgagee relating to this Mortgage or to any of the other Loan Documents shall, to the fullest extent permitted by law, be superior to the rights and interests of the holder, owner or Mortgagee of any intervening lien or encumbrance. Neither the modification of this Mortgage or any of the other Loan Documents nor the release of any part of the Property from the lien of this Mortgage shall impair the priority of such lien.

**4.7 Discretion.** Each and every decision, determination, estimate, request, consent or similar matter to be made or given by Mortgagee from time to time pursuant to or in connection with this Mortgage shall be within its sole, absolute, unlimited and subjective discretion, except to the extent specifically provided to the contrary in this Mortgage or in any of the other Loan Documents. All conditions to any agreement or obligation of Mortgagee or Mortgagor under or in connection with this Mortgage or any of the other Loan Documents (including any agreement or obligation to make any Compensation or other funds available to Mortgagor) are solely for the benefit of Mortgagee. Any or all such conditions may be waived or relaxed at any time or times by Mortgagee. No such waiver or relaxation in any particular instance shall affect Mortgagee's discretion in dealing with any such condition in any other instance.

# UNOFFICIAL COPY

**4.8 No Release.** No obligation or liability of Mortgagor in connection with the Indebtedness or the Property (whether existing or arising under this Mortgage, any of the other Loan Documents or otherwise) shall be changed, waived, released, discharged, withdrawn, revoked, canceled, terminated or otherwise affected (except to the extent expressly provided in this Mortgage, any of the other Loan Documents or any written agreement executed by Mortgagee) by reason of any of the following: (a) any Casualty, Taking or other damage affecting all or any part of the Property; (b) any restriction or prevention of, or interference with, any use of all or any part of the Property; (c) any title defect, lien or other encumbrance on all or any part of the Property or any eviction or dispossession of any person from all or any part of the Property by paramount title or otherwise; (d) any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, conservatorship, receivership or similar case or proceeding relating to Mortgagor or any action taken with respect to the Indebtedness, the Property or any of the Loan Documents by any trustee, custodian, receiver, conservator, master, liquidator or court in connection with any such case or proceeding; (e) any claim that any person may have against Mortgagee; (f) any default or failure by Mortgagee to perform or comply with any of the provisions of this Mortgage, any of the other Loan Documents or any other agreement with Mortgagor; (g) any consent or approval (whether conditional or unconditional) or any withholding of consent or approval to any matter for which Mortgagee's consent or approval may be required; (h) any failure by Mortgagee or Mortgagor to comply with any request to foreclose this Mortgage, accept a deed or other conveyance or assignment of all or any part of the Property in lieu of foreclosure or otherwise enforce any of Mortgagee's rights, powers, privileges or remedies under this Mortgage or any of the other Loan Documents; (i) any release of all or any part of the Property or any other security for the Indebtedness from the lien of this Mortgage or from the effect of any of the other Loan Documents or any acceptance of other or additional security for all or any part of the Indebtedness; (j) any release of any person from liability for or in connection with all or any part of the Indebtedness; (k) any compromise, settlement, forbearance or extension of time for payment or performance of or in connection with the Indebtedness; (l) any waiver of, or other failure by Mortgagee to exercise, any right, power, privilege or remedy available after the occurrence of any Event of Default or at any other time; (m) any agreement by Mortgagee, or any consent by Mortgagee to any agreement, modifying the terms of this Mortgage or any of the other Loan Documents, modifying the priority of this Mortgage or modifying the obligations or liabilities of any person in connection with the Indebtedness, the Property or any of the Loan Documents; or (n) any other occurrence, whether similar or dissimilar to any of the foregoing occurrences, whether or not Mortgagor shall have notice or knowledge of any of the foregoing occurrences. None of the foregoing occurrences shall preclude Mortgagee from exercising any right, power, privilege or remedy available after the occurrence of any then-existing or subsequent Event of Default, nor shall the priority of the lien of this Mortgage be altered by any such occurrence (except to the extent expressly provided in any document or instrument executed by Mortgagee).

**4.9 Receipt of Copy Acknowledged.** Mortgagor hereby acknowledges that it has received an accurate and complete copy of this Mortgage, as executed.

**4.10 Commercial Transaction.** The transaction of which this Mortgage is a part of a commercial transaction, and this Mortgage is given for commercial purposes.

# UNOFFICIAL COPY

**4.11 Nonrecourse.** Notwithstanding anything to the contrary contained in this Mortgage or any of the other Loan Documents, Mortgagor and Mortgagee agree that in any action or proceeding brought to collect or enforce the Indebtedness or any other obligation of Mortgagor under or arising out of the Note, this Mortgage or any of the other Loan Documents, no deficiency or other monetary judgment or decree in specific performance shall be sought or obtained against Mortgagor or any of their respective partners, members or managers, except any judgment(s) or decree(s), monetary or otherwise, as may be necessary to enforce the rights and remedies of Mortgagee under the Loan Documents, including but not by way of limitation, foreclosure of this Mortgage, in which event any such judgment or decree shall be enforceable against Mortgagor only to the extent of its interest in the Property and any other collateral for the Indebtedness and any such judgment or decree shall not be enforceable by execution on, or be a lien on, the assets of Mortgagor, other than the interest of Mortgagor in the Property or such other collateral; provided, however, the foregoing limitation on Mortgagee's remedies against Mortgagor shall not limit or restrict any of Mortgagee's rights under that certain Indemnification Agreement of even date herewith given by Mortgagor for the benefit of Mortgagee (the "**Indemnification Agreement**"). Nothing contained herein shall be deemed to be a release or impairment of the Indebtedness, the security therefor provided by the Loan Documents, or any guaranty or indemnity delivered in connection therewith (including, without limitation, the Indemnification Agreement), nor shall anything provided herein preclude Mortgagee from foreclosing (judicially) or otherwise realizing on collateral security provided under the Loan Documents, or from obtaining a receiver as and when permitted by applicable law or pursuant to the provisions of the Loan Documents, or from bringing any action during the continuance of an Event of Default to obtain or protect any income, revenues or other equitable rights of Mortgagee arising from the Property, or, subject to the provisions of the preceding sentence, to restrain or enjoin any action by Mortgagor or its successors which would impair Mortgagee's security for the Indebtedness or would otherwise be in violation of the terms of the Note or any of the other Loan Documents or from enforcing any of its other rights under the Loan Documents with respect to the Property, the rents, issues, profits or revenues generated by the Property or any other collateral security provided under the Loan Documents.

**4.12 Counterparts.** This Mortgage may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same Mortgage.

**4.13 Cancellation of Mortgage.** If (a) the Indebtedness shall be fully, finally, and indefeasibly paid (without any deduction or credit for taxes or other charges) in accordance with the Loan Documents, and (b) the provisions of the Loan Documents required to be kept, performed, observed and complied with by or on behalf of Mortgagor shall be so kept, performed, observed and complied with, then, after written request by Mortgagor, the Mortgagee shall reconvey the Property then subject to this Mortgage, all without warranty and all at the expense of Mortgagor. The grantee in such reconveyance may be described as the "person or persons legally entitled thereto."

**4.14 Business Loan.** To induce Mortgagee to disburse the principal amount of the Note, Mortgagor warrants, represents and covenants that the Loan evidenced by the Note and secured hereby is a business loan (as such term is used in 815 ILCS 205/4 (2001)) to Mortgagor, that Mortgagor is involved in a commercial or industrial enterprise which is carried on for the

# UNOFFICIAL COPY

purpose of investment or profit in connection with the Property and that the funds represented by the Note will be used solely to further such commercial or industrial enterprise.

**4.15 Maximum Amount of Indebtedness Secured Hereby.** This Mortgage shall secure not only the Indebtedness but also such amounts and expenses expended or incurred by Mortgagee to protect and preserve its interest in the Property and which are permitted pursuant to this Mortgage and by law, and which are made within twenty (20) years from the date hereof, to the same extent as if such amounts were made on the date of the execution hereof, although there may be no advance made at the time of such execution and although there may be no indebtedness outstanding at the time such amounts are spent. At no time, however, shall the principal amount and other indebtedness secured by this Mortgage, not including sums advanced pursuant hereto to protect the security of this Mortgage, exceed Thirty-Six Million and No/100 Dollars (\$36,000,000).

**4.16 Waiver of Jury Trial.** MORTGAGOR AND MORTGAGEE, FOR THEMSELVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, HEREBY (a) AGREE THAT NONE OF THEM SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, ACTION, PROCEEDING, COUNTERCLAIM (OTHER THAN A MANDATORY OR A OR COMPULSORY COUNTERCLAIM) 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, OR MORTGAGEE (OR EITHER OF THEM) IN CONNECTION THEREWITH, (b) IRREVOCABLY WAIVE ANY AND ALL RIGHT TO ANY SUCH JURY TRIAL, AND (c) AGREE THAT NONE 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 (OTHER THAN A MANDATORY OR A OR COMPULSORY 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.

**4.17 Exculpation.** The provisions of Section 19 of the Note are hereby incorporated by reference herein.

*[Remainder of Page Intentionally Left Blank; Signature Page to Follows]*

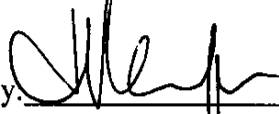
# UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed under seal by a person or persons duly authorized, all as of the day and year first above written.

**TR GREENSPOINT LLC,**  
a Delaware limited liability company

By: LPC Realty Advisors I, LP, a Texas limited partnership, its Manager

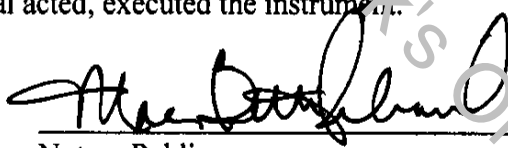
By: LPC Realty Advisors, Inc., a Texas corporation, its General Partner

By:   
Name: Jenifer Ratcliffe  
Its: President

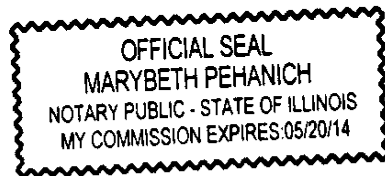
Property of Cook County Clerk's Office

STATE OF ILLINOIS )  
                                  ) ss:  
COUNTY OF COOK )

On the 10<sup>th</sup> day of June in the year 2013, before me, the undersigned, personally appeared Jenifer Ratcliffe, the President of **LPC REALTY ADVISORS, INC.**, a Texas Corporation, the general partner of **LPC REALTY ADVISORS I, LP**, a Texas limited partnership, the manager of **TR GREENSPOINT LLC**, a Delaware limited liability company, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

My Commission Expires: 5/20/14



*[Signature and Acknowledgement Page to Deed of Trust,  
Assignment of Rents, Security Agreement and Fixture Filing  
Greenspoint I & Barrington]*

# UNOFFICIAL COPY

## Exhibit A-1 Legal Description

### PARCEL 1:

LOT 1 IN GREENSPOINT OFFICE PARK, BEING A SUBDIVISION IN THE EAST FRACTIONAL 1/2 OF SECTION 1, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 8, 1988 AS DOCUMENT 88355051, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DECLARATION OF EASEMENT, COVENANTS AND RESTRICTIONS FOR GREENSPOINT OFFICE PARK PROPERTY OWNERS' ASSOCIATION EXECUTED BY LA SALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 15, 1985 AND KNOWN AS TRUST NO. 109650, GREENSPOINT OFFICE PARK PROPERTY OWNER'S ASSOCIATION, AN ILLINOIS NOT-FOR-PROFIT CORPORATION, AND THE FIRST NATIONAL BANK OF CHICAGO, DATED JULY 25, 1989, AND RECORDED JULY 26, 1989, AS DOCUMENT NO. 89342002, AND AMENDED BY AMENDMENT RECORDED AS DOCUMENT NUMBER 96338822, CERTIFICATE RECORDED AS DOCUMENT NUMBER 96338824 AND SECOND AMENDMENT RECORDED AS DOCUMENT NUMBER 98754779 IN, ON, OVER, UPON AND UNDER CERTAIN REAL PROPERTY MORE PARTICULARLY DESCRIBED THEREIN FOR PUBLIC AND PRIVATE UTILITY PURPOSES, INGRESS AND EGRESS FOR THE BENEFIT OF THE INDIVIDUAL PARCEL OWNERS AND THEIR GUESTS AND INVITEES, OVER, UPON AND ACROSS DRIVEWAYS, PRIVATE STREETS AND PATHS.

Address: 2800 W. Greenspoint Parkway (a/k/a 2800 W. Higgins Road),  
Hoffman Estates, Illinois  
PIN: 06-01-200-021-0000

# UNOFFICIAL COPY

## Exhibit A-2 Legal Description

### PARCEL 4:

LOT 1 IN BARRINGTON POINTE SUBDIVISION IN THE EAST 1/2 OF FRACTIONAL SECTION 1, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 24, 1987 AS DOCUMENT 87106425, IN COOK COUNTY, ILLINOIS.

### PARCEL 5:

EASEMENT FOR INGRESS AND EGRESS IN FAVOR OF PARCEL 4 AS CREATED BY DEED RSCORDED DECEMBER 27, 1985 AS DOCUMENT 85341166, AND AS SHOWN ON THE PLAT OF BARRINGTON POINTE SUBDIVISION AFORESAID OVER AND ACROSS THE FOLLOWING DESCRIBED LAND: THAT PART OF THE EAST 1/2 OF THE EAST 1/2 OF FRACTIONAL SECTION 1, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHEASTERLY LINE OF HIGGINS ROAD AS DEDICATED BY INSTRUMENT RECORDED MARCH 27, 1941 AS DOCUMENT 12647603, WITH THE WEST LINE OF BARRINGTON ROAD AS DEDICATED BY INSTRUMENT RECORDED JULY 8, 1932 AS DOCUMENT 11113016; THENCE NORTHERLY ALONG SAID WESTERLY LINE OF BARRINGTON ROAD BEING A LINE 50.0 FEET, AS MEASURED AT RIGHT ANGLES, WEST OF AND PARALLEL WITH THE EAST LINE OF SAID FRACTIONAL SECTION 1, 446.91 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF THE PERPETUAL EASEMENT FOR HIGHWAY PURPOSES AS PER WARRANTY DEED DATED MAY 31, 1957 AND RECORDED JUNE 10, 1957, AS DOCUMENT 16916933; THENCE WESTERLY ALONG SAID LAST DESCRIBED LINE, BEING A LINE AT RIGHT ANGLES TO SAID WEST LINE OF BARRINGTON ROAD, 30.0 FEET TO THE WEST LINE OF SAID PERPETUAL EASEMENT; THENCE NORTHERLY ALONG SAID LAST DESCRIBED LINE BEING A LINE 80.0 FEET, AS MEASURED AT RIGHT ANGLES, WEST OF AND PARALLEL WITH THE EAST LINE OF SAID FRACTIONAL SECTION 1, 195.60 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTHERLY ALONG SAID LAST DESCRIBED PARALLEL LINE 54.0 FEET; THENCE WESTERLY AT RIGHT ANGLES TO SAID LAST DESCRIBED PARALLEL LINE 13 0.03 FEET; THENCE SOUTHERLY AT RIGHT ANGLES TO SAID LAST DESCRIBED LINE, 54.0 FEET; THENCE EASTERLY AT RIGHT ANGLES TO SAID LAST DESCRIBED LINE 130.03 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

### PARCEL 6:

THE NON-EXCLUSIVE EASEMENT FOR DETENTION, RETENTION AND STORM SEWERS, DRIVEWAY, PARKING AND INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 4 AND OTHER PROPERTY AS CONTAINED IN THE DECLARATION OF EASEMENTS RECORDED AS DOCUMENT 87105425 AND SUPPLEMENTAL DECLARATION RECORDED AS DOCUMENT 87310605.

# UNOFFICIAL COPY

PARCEL 7:

OUTLOT A IN BARRINGTON POINTE RESUBDIVISION NO. 1 IN THE EAST 1/2 OF FRACTIONAL SECTION 1, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 23, 1996 AS DOCUMENT NO. 96808122, IN COOK COUNTY, ILLINOIS.

Address: 2300 N. Barrington Road, Hoffman Estates, Illinois

PIN: 06-01-200-015-0000

06-01-200-031-0000

Property of Cook County Clerk's Office

Exhibit A-2-2



# UNOFFICIAL COPY

## Exhibit B

### Permitted Exceptions

1. TAXES FOR THE YEAR(S) 2012 AND 2013  
2013 TAXES ARE NOT YET DUE OR PAYABLE.

1A. NOTE: 2012 FINAL INSTALLMENT NOT YET DUE OR PAYABLE  
 PERM TAX#: 06-01-200-015-0000  
 06-01-200-021-0000  
 06-01-200-031-0000

2. PERPETUAL EASEMENTS FOR HIGHWAY PURPOSES CREATED BY DEED DATED MAY 31, 1957 AND RECORDED JUNE 10, 1957 AS DOCUMENT 16926933 FROM FRANK J. JIRKA AND ELLA C. JIRKA, HIS WIFE, TO THE ILLINOIS STATE TOLL HIGHWAY COMMISSION OVER THE FOLLOWING DESCRIBED PREMISES:

ALL THAT PART OF FRACTIONAL SECTION 1, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF FRACTIONAL SECTION 1, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, THENCE SOUTHERLY ALONG THE EAST LINE OF SAID FRACTIONAL SECTION 1, A DISTANCE OF 304.65 FEET FOR A POINT OF BEGINNING; THENCE TURNING AN ANGLE RIGHT OF 90 DEGREES 05 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING WESTERLY A DISTANCE OF 100.0 FEET TO A POINT; THENCE TURNING AN ANGLE LEFT OF 90 DEGREES 05 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING SOUTHERLY A DISTANCE OF 363.50 FEET TO A POINT, THENCE TURNING AN ANGLE LEFT OF 120 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING NORTHEASTERLY A DISTANCE OF 28.80 FEET TO A POINT; THENCE TURNING AN ANGLE RIGHT OF 120 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING SOUTHERLY A DISTANCE OF 115.47 FEET TO A POINT; THENCE TURNING AN ANGLE RIGHT OF 60 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING SOUTHWESTERLY A DISTANCE OF 5.77 FEET TO A POINT; THENCE TURNING AN ANGLE LEFT OF 60 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING SOUTHERLY A DISTANCE OF 1007.57 FEET TO A POINT; THENCE TURNING AN ANGLE LEFT OF 90 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING EASTERLY A DISTANCE OF 80.0 FEET TO A POINT ON THE EAST LINE OF SAID FRACTIONAL SECTION 1; THENCE NORTHERLY A DISTANCE OF 1475.0 FEET TO THE POINT OF BEGINNING.

ALL THAT PART OF FRACTIONAL SECTION 1, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF FRACTIONAL SECTION 1, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SECTION 1, A DISTANCE OF 54.65 FEET TO A POINT; THENCE TURNING AN ANGLE RIGHT OF 90 DEGREES 05 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING WESTERLY A

Exhibit B-1

# UNOFFICIAL COPY

DISTANCE OF 75.0 FEET TO A POINT; THENCE TURNING AN ANGLE RIGHT OF 89 DEGREES 55 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING NORTHERLY A DISTANCE OF 54.65 FEET TO A POINT ON THE NORTH LINE OF SECTION 1; THENCE EASTERLY ALONG THE SAID NORTH LINE A DISTANCE OF 75.0 FEET TO THE POINT OF BEGINNING ALSO ALL THAT PART OF FRACTIONAL SECTION 1, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE EAST FRACTIONAL HALF OF FRACTIONAL SECTION 1, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID EAST FRACTIONAL HALF, A DISTANCE OF 306.06 FEET TO A POINT; THENCE TURNING AN ANGLE LEFT OF 90 DEGREES 16 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING EASTERLY A DISTANCE OF 1592.45 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING EASTERLY 50.0 FEET TO A POINT; THENCE TURNING AN ANGLE RIGHT OF 90 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING SOUTHERLY A DISTANCE OF 100.0 FEET TO A POINT; THENCE TURNING AN ANGLE RIGHT OF 90 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING WESTERLY A DISTANCE OF 50.0 FEET TO A POINT; THENCE TURNING AN ANGLE RIGHT OF 90 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING NORTHERLY A DISTANCE OF 100.0 FEET TO THE POINT OF BEGINNING; ALSO ALL THAT PART OF FRACTIONAL SECTION 1, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF FRACTIONAL SECTION 1, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; THENCE SOUTHERLY ALONG THE EAST LINE OF SECTION 1, A DISTANCE OF 304.65 FEET TO A POINT; THENCE TURNING AN ANGLE RIGHT OF 90 DEGREES 05 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING WESTERLY A DISTANCE OF 100.0 FEET TO A POINT; THENCE TURNING AN ANGLE LEFT OF 90 DEGREES 05 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING SOUTHERLY A DISTANCE OF 363.50 FEET TO A POINT; THENCE TURNING AN ANGLE LEFT OF 120 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING NORTHEASTERLY A DISTANCE OF 28.86 FEET FOR A POINT OF BEGINNING; THENCE TURNING AN ANGLE RIGHT OF 120 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING SOUTHERLY A DISTANCE OF 115.47 FEET TO A POINT; THENCE TURNING AN ANGLE RIGHT OF 60 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING SOUTHWESTERLY, A DISTANCE OF 486.72 FEET TO A POINT; THENCE TURNING AN ANGLE LEFT OF 14 DEGREES 22 MINUTES 30 SECONDS WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING SOUTHWESTERLY A DISTANCE OF 193.74 FEET TO A POINT; THENCE TURNING AN ANGLE LEFT OF 14 DEGREES 22 MINUTES 30 SECONDS WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING SOUTHWESTERLY A DISTANCE OF 278.77 FEET TO A POINT; THENCE TURNING AN ANGLE RIGHT OF 90 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING NORTHWESTERLY A DISTANCE OF 100.0 FEET TO A POINT; THENCE TURNING AN ANGLE RIGHT OF 90 DEGREES 00 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING NORTHEASTERLY A DISTANCE

Exhibit B-2

# UNOFFICIAL COPY

- OF 404.39 FEET TO A POINT; THENCE TURNING AN ANGLE RIGHT OF 28 DEGREES 45 MINUTES WITH THE LAST DESCRIBED LINE EXTENDED AND RUNNING NORTHEASTERLY A DISTANCE OF 669.08 FEET TO THE POINT OF BEGINNING. (AFFECTS PARCEL 1)
3. NOTICE OF REQUIREMENTS FOR STORM WATER DETENTION FOR GREENSPPOINT OFFICE PARK DATED NOVEMBER 26, 1986 AND RECORDED JANUARY 30, 1987 AS DOCUMENT 87061581. (AFFECTS PARCELS 1 AND 2)
  4. EASEMENT IN, UPON, UNDER, OVER AND ALONG THE AREA SHOWN ON THE SKETCH ATTACHED THERETO MARKED EXHIBIT "A" AND BEING A PART OF THE LAND TO INSTALL AND MAINTAIN ALL EQUIPMENT FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH TELEPHONE AND ELECTRIC SERVICE, TOGETHER WITH RIGHT OF ACCESS TO SAID EQUIPMENT, AS CREATED BY GRANT TO COMMONWEALTH EDISON COMPANY AND ILLINOIS BELL TELEPHONE COMPANY RECORDED JUNE 6, 1988 AS DOCUMENT 88242134.(AFFECTS PARCELS 1 AND 2)
  5. EASEMENT FOR SERVING THE SUBDIVISION AND OTHER PROPERTY WITH SANITARY SEWER, WATER MAINS, STORM SEWER AND DRAINAGE SERVICE, RESERVED FOR AND GRANTED TO THE VILLAGE OF HOFFMAN ESTATES, ITS SUCCESSORS AND ASSIGNS, TO INSTALL, OPERATE, MAINTAIN AND REMOVE, FROM TIME TO TIME, FACILITIES USED IN CONNECTION WITH STORM SEWERS AND DRAINAGE IN, OVER, UNDER, ACROSS, ALONG AND UPON THE SURFACE OF THE PROPERTY SHOWN WITHIN THE DASHED LINES ON THE PLAT THEREON DRAWN AND MARKED "V. E. " (VILLAGE EASEMENT) , TOGETHER WITH ALL OF THE PROPERTY SHOWN THEREON AS OUTLOT "F", TOGETHER WITH THE RIGHT TO CUT, TRIM OR REMOVE TREES, BUSHES AND ROOTS AS MAY BE REASONABLY REQUIRED INCIDENT TO THE RIGHTS GIVEN AND THE RIGHT TO ENTER UPON THE SUBDIVIDED PROPERTY FOR ALL SUCH PURPOSES. OBSTRUCTIONS SHALL NOT BE PLACED OVER GRANTEE'S FACILITIES OR IN, UPON OR OVER SAID DESIGNATED EASEMENT WITHOUT THE PRIOR WRITTEN CONSENT OF GRANTEE'S. AFTER INSTALLATION OF ANY SUCH FACILITIES, THE GRADE OF SUBDIVIDED PROPERTY SHALL NOT BE ALTERED IN A MANNER SO AS TO INTERFERE WITH THE PROPER OPERATION AND MAINTENANCE THEREOF; AS SHOWN ON THE PLAT OF GREENSPPOINT OFFICE PARK RECORDED AUGUST 8, 1988 AS DOCUMENT 88355051. (AFFECTS PARCELS 1 AND 2)
  6. EASEMENT FOR SERVING THE SUBDIVISION AND OTHER PROPERTY WITH ELECTRIC AND COMMUNICATIONS SERVICES, SOUNDS AND SIGNALS, CABLE TELEVISION, SANITARY SEWER, GAS MAINS, WATER SUPPLY AND DISTRIBUTION, STREET LIGHTING, STORM SEWERS AND DRAINAGE, RESERVED FOR AND GRANTED TO THE VILLAGE OF HOFFMAN ESTATES, THE COMMONWEALTH EDISON COMPANY, THE ILLINOIS BELL TELEPHONE COMPANY, NORTHERN ILLINOIS GAS COMPANY AND CABLE TELEVISION COMPANIES OPERATING UNDER FRANCHISE FROM THE VILLAGE OF HOFFMAN ESTATES, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, JOINTLY AND SEVERALLY, TO INSTALL, OPERATE, MAINTAIN AND REMOVE FROM TIME TO TIME, FACILITIES USED IN CONNECTION WITH TRANSMISSION AND DISTRIBUTION OF ELECTRICITY AND SOUNDS AND

# UNOFFICIAL COPY

SIGNALS, CABLE TELEVISION, GAS MAINS, SANITARY SEWERS, WATER MAINS, STORM SEWERS AND DRAINAGE IN, OVER, UNDER, ACROSS, ALONG AND UPON THE SURFACE OF THE PROPERTY SHOWN WITHIN THE DASHED LINES ON THE PLAT THEREON DRAWN AND MARKED "U. E. " (UTILITY EASEMENT) , AND THE PROPERTY DESIGNED ON THE PLAT FOR STREETS, TOGETHER WITH THE RIGHT TO INSTALL REQUIRED SERVICE CONNECTIONS OVER AND UNDER THE SURFACE OF EACH LOT TO SERVE IMPROVEMENTS THEREON, AND THE RIGHT TO CUT, TRIM OR REMOVE TREES, BUSHES AND ROOTS AS MAY BE REASONABLY REQUIRED INCIDENT TO THE RIGHTS GIVEN AND THE RIGHT TO ENTER UPON THE SUBDIVIDED PROPERTY FOR ALL SUCH PURPOSES. OBSTRUCTIONS SHALL NOT BE PLACED OVER GRANTEE'S FACILITIES OR IN, UPON OR OVER SAID DESIGNATED EASEMENT WITHOUT THE PRIOR WRITTEN CONSENT OF GRANTEE'S. AFTER INSTALLATION OF ANY SUCH FACILITIES, THE GRADE OF SUBDIVIDED PROPERTY SHALL NOT BE ALTERED IN A MANNER SO AS TO INTERFERE WITH THE PROPER OPERATION AND MAINTENANCE THEREOF. ALL INSTALLATIONS SHALL BE UNDERGROUND OR ON THE SURFACE BUT NOT OVERHEAD; AS SHOWN ON THE PLAT OF GREENSPPOINT OFFICE PARK RECORDED AUGUST 8, 1988 AS DOCUMENT B8355051. (AFFECTS PARCELS 1 AND 2)

7. EASEMENT FOR SERVING THE SUBDIVISION AND OTHER PROPERTY WITH ELECTRIC AND COMMUNICATIONS SERVICES, RESERVED FOR AND GRANTED TO THE COMMONWEALTH Edison COMPANY AND THE ILLINOIS BELL TELEPHONE COMPANY, THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, JOINTLY AND SEVERALLY, TO INSTALL, OPERATE, MAINTAIN AND REMOVE, FROM TIME TO TIME, FACILITIES USED IN CONNECTION WITH OVERHEAD AND UNDERGROUND TRANSMISSION AND DISTRIBUTION OF ELECTRICITY AND SOUNDS AND SIGNALS, IN, OVER, UNDER, ACROSS, ALONG AND UPON THE SURFACE OF THE PROPERTY SHOWN WITHIN THE DOTTED LINES ON THE PLAT AND MARKED "U. E. ", AND THE PROPERTY DESIGNED ON THE PLAT FOR STREETS AND ALLEYS, TOGETHER WITH THE RIGHT TO INSTALL REQUIRED SERVICE CONNECTIONS OVER OR UNDER THE SURFACE OF EACH LOT TO SERVE IMPROVEMENTS THEREON, THE RIGHT TO OVERHANG ALL LOTS WITH AERIAL SERVICE WIRES TO SERVE ADJACENT LOTS, THE RIGHT TO CUT, TRIM OR REMOVE TREES, BUSHES AND ROOTS AS MAY BE REASONABLY REQUIRED INCIDENT TO THE RIGHTS THEREIN GIVEN, AND THE RIGHT TO ENTER UPON THE SUBDIVIDED PROPERTY FOR ALL SUCH PURPOSES. OBSTRUCTIONS SHALL NOT BE PLACED OVER GRANTEE'S FACILITIES OR IN, UPON OR OVER THE PROPERTY WITHIN THE DOTTED LINES MARKED "U. E. " WITHOUT THE PRIOR WRITTEN CONSENT OF GRANTEE'S. AFTER INSTALLATION OF ANY SUCH FACILITIES, THE GRADE OF SUBDIVIDED PROPERTY SHALL NOT BE ALTERED IN A MANNER SO AS TO INTERFERE WITH THE PROPER OPERATION AND MAINTENANCE THEREOF; AS SHOWN ON THE PLAT OF GREENSPPOINT OFFICE PARK RECORDED AUGUST 8, 1988 AS DOCUMENT 88355051. (AFFECTS PARCELS 1 AND 2)
  
8. COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS CONTAINED IN DECLARATION OF EASEMENTS, RESTRICTIONS, AND COVENANTS FOR GREENSPPOINT OFFICE PARK PROPERTY OWNERS' ASSOCIATION RECORDED JULY 26, 1989 AS DOCUMENT 89342002. SAID DECLARATION CONTAINS PROVISIONS FOR ASSESSMENTS WHICH SHALL BE A LIEN UPON THE LAND.

# UNOFFICIAL COPY

AMENDMENT RECORDED MAY 3, 1996 AS DOCUMENT 96338822.

CERTIFICATE RECORDED MAY 3, 1996 AS DOCUMENT 96338824.

SECOND AMENDMENT RECORDED AUGUST 25, 1998 AS DOCUMENT 98754779.

THIS POLICY INSURES THE INSURED THAT THE COVENANTS, CONDITIONS AND RESTRICTIONS AS SET FORTH IN SAID AGREEMENT WILL NOT INTERFERE WITH THE CURRENT USE OF THE PREMISES, THAT THERE ARE NO VIOLATIONS OF THE SAME AND THAT ANY VIOLATIONS WILL NOT RESULT IN A FORFEITURE OR REVERSION OF TITLE.

THIS POLICY HEREBY INSURES THAT ANY AND ALL COSTS OR ASSESSMENTS INCURRED RELATING TO SUCH AGREEMENT HAVE BEEN PAID AND THERE ARE NO COSTS OR ASSESSMENTS OUTSTANDING OR ANY LIENS POSTED TO SAID LAND.  
(AFFECTS PARCELS 1 AND 2)

9. EASEMENT AGREEMENT DATED JULY 25, 1989 AND RECORDED JULY 26, 1989 AS DOCUMENT 89342004, MADE BY THE NATIONAL BANK OF WASHINGTON, AS TRUSTEE OF THE NATIONAL BANK OF WASHINGTON MULTI-EMPLOYER PROPERTY TRUST, LA SALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 15, 1985 AND KNOWN AS TRUST NUMBER 109650, AND HOFFMAN ESTATES BUSINESS PARK, AN ILLINOIS LIMITED PARTNERSHIP. (AFFECTS PARCELS 1 AND 2)
10. EASEMENTS 10 FEET IN WIDTH AS SHOWN ON THE PLAT OF BARRINGTON POINTE SUBDIVISION RECORDED FEBRUARY 24, 1987 AS DOCUMENT 87106425 FOR TELEPHONE AND ELECTRIC, PUBLIC UTILITIES AND DRAINAGE AND WATER MAIN OVER THE EAST 10 FEET, THE NORTH 10 FEET OF THE SOUTH 19 FEET, THE SOUTHWESTERLY 10 FEET OF THE SOUTHERLY 330 FEET AND OTHER 10 FOOT STRIPS THROUGH THE CENTER OF LOT 4 AFORESAID. NOTE: REFERENCE SHOULD BE MADE TO THE PLAT OF SUBDIVISION FOR EXACT LOCATION OF SAID EASEMENTS. (AFFECTS PARCEL 4)
11. EASEMENTS FOR DETENTION/RETENTION AND STORM SEWERS, DRIVEWAY, PARKING AND INGRESS AND EGRESS AS CONTAINED IN THE DECLARATION OF EASEMENTS RECORDED FEBRUARY 24, 1987 AS DOCUMENT 87106425 TOGETHER WITH THE MAINTENANCE PROVISIONS ASSESSMENT FEES AND ADDITIONAL TERMS AND CONDITIONS CONTAINED THEREIN AND AS AMENDED BY SUPPLEMENTAL DECLARATION OF EASEMENTS DATED JUNE 4, 1987 AND RECORDED ON JUNE 8, 1987 AS DOCUMENT NUMBER 87310605 WHEREIN ANY AND ALL SUCH UTILITY EASEMENTS DESCRIBED IN THE DECLARATION OF EASEMENTS AND OR THE PLAT ARE FOR THE BENEFIT OF THE OWNER OF LOT 5 THEREOF AND ITS SUCCESSORS AND ASSIGNS INCLUDING BUT NOT LIMITED TO BOND DRUG COMPANY OF ILLINOIS UPON THE CONVEYANCE BY LASALLE NATIONAL BANK TRUST NUMBER 109437.

# UNOFFICIAL COPY

THIS POLICY HEREBY INSURES THE INSURED THAT ANY AND ALL COSTS OR ASSESSMENTS INCURRED RELATING TO SUCH AGREEMENT HAVE BEEN PAID AND THERE ARE NO COSTS OR ASSESSMENTS OUTSTANDING OR ANY LIENS POSTED TO SAID LAND. (AFFECTS PARCELS 4, 5 AND 6)

12. EASEMENT FOR PUBLIC UTILITIES OVER, UNDER AND UPON PARCEL 5 AS SHOWN ON THE PLAT OF SAID SUBDIVISION RECORDED FEBRUARY 24, 1987 AS DOCUMENT 87106425.(AFFECTS PARCEL 5)
13. EASEMENT FOR PUBLIC UTILITIES OVER THE SOUTH 25 FEET OF THE NORTH 80 FEET OF PARCEL 6 AS SHOWN ON THE PLAT OF SAID SUBDIVISION RECORDED FEBRUARY 24, 1987 AS DOCUMENT 87106425. (AFFECTS PARCEL 6)
14. EASEMENT 10 FEET IN WIDTH IN FAVOR OF THE ILLINOIS BELL TELEPHONE COMPANY AND THE COMMONWEALTH EDISON COMPANY, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, TO INSTALL, OPERATE AND MAINTAIN ALL EQUIPMENT NECESSARY FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY, TOGETHER WITH THE RIGHT OF ACCESS TO SAID EQUIPMENT, AND THE PROVISIONS RELATING THERETO CONTAINED IN THE GRANT RECORDED AS DOCUMENT NO. 86149990.

(AFFECTS THE EAST 10 FEET PART OF THE SOUTHWESTERLY 10 FEET AND OTHER AREAS OF LOT 1; SEE DRAWING ATTACHED TO DOCUMENT FOR EXACT LOCATION.)(AFFECTS PARCEL 4)

15. EASEMENT FOR SIGN AND MAINTENANCE THEREOF CREATED BY AGREEMENT RECORDED FEBRUARY 24, 1987 AS DOCUMENT 87106392 AND RE-RECORDED SEPTEMBER 28, 1988 AS DOCUMENT 88146130 IN FAVOR OF LA QUINTA MOTOR INNS, INC., A CORPORATION OF TEXAS OVER THE WEST 10 OF THE EAST 20 FEET OF THE NORTH 6 FEET OF APPROXIMATELY THE SOUTH 23 FEET OF THE LAND AND OVER SO MUCH OF THE REMAINDER OF LOT 1 AS IS REASONABLY NECESSARY FOR ACCESS TO THE SIGN EASEMENT AREA . DURING CONSTRUCTION, REPLACEMENT ET AL AND FOR INSTALLATION OF AND MAINTENANCE OF UNDERGROUND ELECTRICAL LINE SERVING THE SIGN AND EASEMENT RIGHTS AS SET FORTH IN DOCUMENT 87106425. FOR PARTICULARS SEE DOCUMENTS.

THIS POLICY HEREBY INSURES THE INSURED THAT ANY AND ALL COSTS OR ASSESSMENTS INCURRED RELATING TO SUCH AGREEMENT HAVE BEEN PAID AND THERE ARE NO COSTS OR ASSESSMENTS OUTSTANDING OR ANY LIENS POSTED TO SAID LAND. (AFFECTS PARCEL 4)

16. EASEMENT IN FAVOR OF ILLINOIS BELL TELEPHONE AND COMMONWEALTH EDISON, AND ITS/THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, TO INSTALL, OPERATE AND MAINTAIN ALL EQUIPMENT NECESSARY FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY, TOGETHER WITH THE RIGHT OF ACCESS TO SAID EQUIPMENT, AND THE PROVISIONS RELATING THERETO CONTAINED IN THE GRANT RECORDED ON APRIL 22, 1988 AS DOCUMENT NO. 88170020, AFFECTING THOSE PORTIONS OF THE LAND

# UNOFFICIAL COPY

AS SHOWN ON THE SKETCH ATTACHED TO THE DOCUMENT AND MARKED EXHIBIT B. (AFFECTS PARCEL 6)

17. EASEMENT IN FAVOR OF COMMONWEALTH EDISON, AND ITS/THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, TO INSTALL, OPERATE AND MAINTAIN ALL EQUIPMENT NECESSARY FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY, TOGETHER WITH THE RIGHT OF ACCESS TO SAID EQUIPMENT, AND THE PROVISIONS RELATING THERETO CONTAINED IN THE GRANT RECORDED AS DOCUMENT NO. 89164083, AFFECTING THOSE PORTIONS OF THE LAND AS SHOWN ON THE SKETCH ATTACHED TO SAID DOCUMENT MARKED AS EXHIBIT B. (AFFECTS PARCEL 6)
18. EASEMENT IN FAVOR OF VILLAGE OF HOFFMAN ESTATES, AND ITS/THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, TO INSTALL, OPERATE AND MAINTAIN ALL EQUIPMENT NECESSARY FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY, TOGETHER WITH THE RIGHT OF ACCESS TO SAID EQUIPMENT, AND THE PROVISIONS RELATING THERETO CONTAINED IN THE GRANT RECORDED AS DOCUMENT NO. 89540841, AFFECTING PORTIONS OF THE LAND AS CROSS HATCHED ON THE EXHIBIT ATTACHED TO THE DOCUMENT. (AFFECTS PARCEL 6)
19. EASEMENT IN FAVOR OF ILLINOIS BELL TELEPHONE COMPANY, AND ITS/THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, TO INSTALL, OPERATE AND MAINTAIN ALL EQUIPMENT NECESSARY FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY, TOGETHER WITH THE RIGHT OF ACCESS TO SAID EQUIPMENT, AND THE PROVISIONS RELATING THERETO CONTAINED IN THE GRANT RECORDED AS DOCUMENT NO. 88027466. (AFFECTS PARCEL 6)
20. EASEMENT IN FAVOR OF THE COMMONWEALTH EDISON COMPANY, AND ITS/THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, TO INSTALL, OPERATE AND MAINTAIN ALL EQUIPMENT NECESSARY FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY, TOGETHER WITH THE RIGHT OF ACCESS TO SAID EQUIPMENT, AND THE PROVISIONS RELATING THERETO CONTAINED IN THE GRANT RECORDED/FILED AS DOCUMENT NO. 97196534, AFFECTING THE SHOWN ON EXHIBIT A OF THE LAND. (AFFECTS PARCEL 4)
21. EASEMENT IN FAVOR OF THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING THE IMPROVEMENTS OF HASSELL AT BARRINGTON ROADS RECORDED/FILED DECEMBER 12, 2002 AS DOCUMENT NO. 0021374334, AND THE TERMS AND PROVISIONS CONTAINED THEREIN. (AFFECTS PARCEL 4)
22. ENCROACHMENT OF THE COMMONWEALTH EDISON TRANSFORMER LOCATED ONTO THE PROPERTY SOUTHWESTERLY AND ADJOINING AS DISCLOSED BY SURVEY MADE BY EDWARD J. MOLLOY AND ASSOCIATES LTD., DATED MAY 9, 2013 AND LAST REVISED MAY 30, 2013, ORDER NO. 130011.1. (AFFECTS PARCEL 4)
23. ENCROACHMENT OF THE SOUTHWESTERLY PORTION OF THE BUILDING ONTO THE EASEMENT RECORDED AS DOCUMENT NUMBER 86149990 AS DISCLOSED BY SURVEY MADE BY EDWARD J. MOLLOY AND ASSOCIATES

Exhibit B-7

# UNOFFICIAL COPY

LTD., DATED MAY 9, 2013 AND LAST REVISED MAY 30, 2013, ORDER NO. 130011.1. (AFFECTS PARCEL 4)

24. NOTHING CONTAINED HEREIN SHOULD BE CONSTRUED AS INSURING THE EXACT LOCATION OR DIMENSIONS OF THE EASEMENT DESCRIBED AS PARCEL 6 OF SCHEDULE A.
25. NON-EXCLUSIVE EASEMENT FOR DETENTION, RETENTION AND STORM SEWERS, PARKING AND INGRESS AND EGRESS OVER OUTLOT A IN BARRINGTON POINTE RESUBDIVISION NO.1, AS CONTAINED IN THE DECLARATION OF EASEMENTS RECORDED AS DOCUMENT 87106425.
26. EASEMENT FOR INGRESS AND EGRESS IN FAVOR OF LOT 1, OVER OUTLOT A, IN BARRINGTON POINTE SUBDIVISION AS CREATED BY DEED RECORDED DECEMBER 27, 1985 AS DOCUMENT 85341166. (AFFECTS PARCEL 7)
27. EASEMENT FOR INGRESS AND EGRESS AND PUBLIC UTILITIES OVER OUTLOT A IN BARRINGTON POINTE RESUBDIVISION NO. 1, AS SHOWN ON PLAT RECORDED OCTOBER 23, 1996 AS DOCUMENT NO. 96808122.

Exhibit B-8