

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1321110045 Fee: \$180.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 07/30/2013 12:55 PM Pg: 1 of 72

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 17-10-302-027-0000

Address:

Street: One East Wacker Drive

Street line 2:

City: Chicago

State: IL

ZIP Code: 60601

Lender: The Variable Annuity Life Insurance, Chartis Special Insurance Company and American Home Assurance Company

Borrower: One East Wacker Partners LLC

Loan / Mortgage Amount: \$69,000,000.00

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: B2A7DF7A-1D14-43BF-B4BC-4C34E0A31D79

Execution date: 07/18/2013

Property of Cook County Clerk's Office

2933368

JY,JK

CT4

2015

UNOFFICIAL COPY*Prepared by,*Recording requested by:
And when recorded mail to:Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, California 90067
Attention: Adam Engel, Esq.

SPACE ABOVE THIS LINE FOR RECORDER'S USE.

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

MORTGAGOR: ONE EAST WACKER PARTNERS LLC
a Delaware limited liability company
250 Broadway, Suite 3001
New York, New York 10007
Attention: Nathan Aber

MORTGAGEE: THE VARIABLE ANNUITY LIFE INSURANCE
COMPANY, a Texas corporation,
CHARTIS SPECIALTY INSURANCE COMPANY, an
Illinois corporation, and
AMERICAN HOME ASSURANCE COMPANY, a New
York corporation.
c/o AIG Asset Management
1999 Avenue of the Stars, 38th Floor
Los Angeles, California 90067-6022
Attention: Director - Mortgage Lending and Real Estate

AMOUNT SECURED: \$69,000,000.00

GOVERNING LAW: See Section 9.19

LOCATION: One East Wacker Drive, Chicago

COUNTY: Cook County, Illinois

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THIS MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING, FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "**Mortgage**") is executed as of July 25, 2013, by ONE EAST WACKER PARTNERS LLC, a Delaware limited liability company ("**Mortgagor**"), having an address at 250 Broadway, Suite 3001, New York, New York 10007, in favor of, and for the use and benefit of THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, a Texas corporation ("**VALIC**"), CHARTIS SPECIALTY INSURANCE COMPANY, an Illinois corporation ("**CSIC**"), and AMERICAN HOME ASSURANCE COMPANY, a New York corporation ("**AHAC**", and their respective successors and assigns collectively, the "**Mortgagee**"), having an address at c/o AIG Asset Management, 999 Avenue of the Stars, 38th Floor, Los Angeles, California 90067-6022, Attention: Director - Mortgage Lending and Real Estate.

ARTICLE 1

PARTIES, PROPERTY, AND DEFINITIONS

The following terms and references shall have the meanings indicated:

1.1 Access Agreement: Any reciprocal easement agreement, access agreement, right of way agreement or similar agreement affecting the Land or the Improvements.

1.2 Affiliate: With respect to a specified Person, (a) a Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person, (b) any Person that is an officer, director, partner, manager, employee, or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner, manager or trustee, or with respect to which the specified Person serves in a similar capacity, (c) any Person that, directly or indirectly, has an ownership interest in the specified Person, (d) any Person (excluding any entities whose stock is publicly traded) in which the specified Person has an ownership interest, (e) the spouse, issue, sibling or parent of the specified Person, (f) Guarantor, if the specified Person is Mortgagor or any Mortgagor Owner Person, (g) Mortgagor, if the specified Person is Guarantor or any Mortgagor Owner Person, (h) any Mortgagor Owner Person, if the specified Person is Mortgagor, Guarantor or any other Mortgagor Owner Person, and (i) any Person that would constitute an Affiliate of any such Person described in subdivisions (a) through (h) above.

1.3 AHAC: As defined in the introduction section of this Mortgage.

1.4 AHAC Note: Means the Promissory Note of even date herewith from Mortgagor, payable to the order of American Home Assurance Company in the original principal amount of \$11,109,000.00, together with all amendments, modifications, supplements, renewals, extensions and modifications thereof. All terms and provisions of the Note are incorporated by this reference in this Mortgage. The entire outstanding principal balance, and all other amounts due under the Note, this Mortgage and the other Loan Documents, together with all accrued and unpaid interest thereon, shall be due and payable in full on the Maturity Date.

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1.5 Assignment of Leases: The Assignment of Leases and Rents of even date herewith executed by Mortgagor for the benefit of Mortgagee, as the same may be modified, amended and/or supplemented from time to time.

1.6 Business Day: As defined in the Notes.

1.7 Cash Collateral Agreement: The Cash Collateral Agreement of even date herewith by and among Mortgagor, Mortgagee and Servicer, as the same may be modified, amended and/or supplemented from time to time.

1.8 Chattels: All goods (including, without limitation, all “Goods” as defined in the UCC, fixtures (including, without limitation, all “Fixtures” as defined in the UCC), inventory (including, without limitation, all “Inventory” as defined in the UCC), equipment (including, without limitation, all “Equipment” as defined in the UCC), building and other materials, supplies, and other tangible personal property of every nature (but excluding all chattels, “trade” fixtures and personal property of the tenants under Leases that do not become the property of Mortgagor under the Leases and all personal property leased or licensed by Mortgagor pursuant to equipment leases or license agreements with third parties), whether now owned or hereafter acquired by Mortgagor, used, intended for use, or reasonably required in the construction, development or operation of the Property, together with all accessions thereto, replacements and substitutions therefor, and proceeds thereof.

1.9 Collateral: As defined in Section 2.2 hereof.

1.10 Contracts: Any and all agreements entered into by or on behalf of Mortgagor in connection with the use, maintenance, furnishing, equipping, ownership and operation of the Property, including, but not limited to, any and all contracts, licenses, permits, warranties and approvals for and in respect of the Property.

1.11 Control: With respect to any Person, either (i) ownership, directly or indirectly, of greater than fifty percent (50%) of all equity interests in such Person or (ii) the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities by contract or otherwise. The definition is to be construed to apply equally to variations of the word “Control” including “Controlled”, “Controlling” or “Controlled by”.

1.12 CSIC: As defined in the introduction section of this Mortgage.

1.13 CSIC Note: Means the Promissory Note of even date herewith from Mortgagor, payable to the order of Chartis Specialty Insurance Company in the original principal amount of \$11,661,000.00, together with all amendments, modifications, supplements, renewals, extensions and modifications thereof. All terms and provisions of the Note are incorporated by this reference in this Mortgage. The entire outstanding principal balance, and all other amounts due under the Note, this Mortgage and the other Loan Documents, together with all accrued and unpaid interest thereon, shall be due and payable in full on the Maturity Date.

1.14 Debt Service Coverage Ratio: The ratio, as reasonably determined by Mortgagee, of (i) Net Operating Income for the Property for the preceding twelve (12) calendar

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months, to (ii) the annual debt service payments due under the Loan Documents (calculated assuming (x) a thirty (30) year amortization schedule and (y) the maximum principal amount of the Loan has been disbursed) and on all other Indebtedness secured, or to be secured, by a lien on all or any part of the Property or on any direct or indirect interest in Mortgagor for the twelve (12) calendar months following such period, where "Net Operating Income" shall mean all Gross Revenue generated by the Property (excluding loans or contributions to capital), less operating expenses (other than debt service payments due under the Loan Documents), as determined on a cash basis of accounting, as of the date of such calculation for the preceding twelve (12) calendar month period in question (that is, the twelve (12) month period ending on the last day of the month preceding the date of determination), adjusted, however, so that (A) operating expenses shall be deemed to include a management fee equal to the greater of the actual management fee for the Property or three percent (3%) of Gross Revenue generated by the Property, (B) payments of operating expenses, including property taxes and assessments and insurance expenses, are to be spread out over the period during which they accrued and shall be adjusted for any known future changes to any such expenses, (C) prepaid Rents and other prepaid payments received are to be spread out over the periods during which such rents or payments are earned or applicable, (D) security deposits shall not be included as items of income until duly applied or earned, (E) Gross Revenue shall be based on a lease-in-place analysis that reflects then current Leases in place as of the date of determination (provided, however, that such Gross Revenue shall, for the purposes of calculating the Debt Service Coverage Ratio, be deemed to include rent from tenants during any "free-rent" period, provided that in the event such "free-rent" period for any Lease exceeds six (6) months of "free-rent" during such calculation period, then such deemed rent shall equal six (6) month's rent), as determined by Mortgagee, in its reasonable discretion, in accordance with Mortgagee's standard underwriting criteria, consistently applied, and excluding extraordinary, or one time items, and (F) any refunds or rebates to operating expenses are to be applied and credited against the applicable operating expenses for the period that such operating expenses were incurred. Debt Service Coverage Ratio shall be calculated on a cash flow basis.

1.15 Default: Any matter that, with the giving of notice, passage of time, or both, would constitute an Event of Default.

1.16 Default Rate: The Default Rate specified in the Notes

1.17 Environmental Indemnity Agreement: The Environmental Indemnity Agreement of even date herewith made by Mortgagor and Guarantor for the benefit of Mortgagee, as the same may be modified, amended and/or supplemented from time to time.

1.18 ERISA: The Employee Retirement Income Security Act of 1974, as amended, together with all rules and regulations issued thereunder.

1.19 Event of Default: As defined in Article 6.

1.20 Family Members: Collectively, George Karfunkel and Michael Karfunkel and any of their respective descendants and spouses of such descendants. Each of the foregoing shall be referred to herein, individually, as a "**Family Member**".

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1.21 Family Entity: (1) Any Family Trust, or (2) any corporation, partnership, limited liability company or other entity that is (x) directly or indirectly controlled by a Family Member or Family Trust and (y) in which all of the issued and outstanding equity interests are owned through one or more intermediaries by one or more Family Members, another Family Entity or Family Trusts.

1.22 Family Trust: Any trust in which the trustee(s) and beneficiary(ies) consist only of Family Members, Family Entities or another Family Trust.

1.23 Gross Revenue: Means all payments and other revenues (exclusive, however, of any payments attributable to sales taxes) received by or on behalf of Mortgagor from all sources related to the ownership or operation of the Property, including, but not limited to, rents, income, receipts, revenues, issues, profits, advances, rebates, prepaid rents, lease termination payments, parking fees, interest, security deposits (to the extent that such security deposits are applied to tenant obligations or are no longer subject to being returned to the applicable tenant), business interruption insurance proceeds, other insurance proceeds to the extent covering deficits in tenant reimbursements and other revenues, operating expense pass-through revenues, direct expense reimbursements and common area maintenance charges, for the relevant period for which the calculation of Gross Revenue is being made.

1.24 Guarantor or Guarantors: Individually or collectively, as the case may be, Michael Karfunkel and George Karfunkel or such replacement Guarantor approved by Mortgagee in accordance with Section 4.30 hereof.

1.25 Guaranty: The Guaranty Agreement, dated as of the date hereof, executed by Guarantor for the benefit of Mortgagee as the same may be modified, amended, supplemented or replaced from time to time.

1.26 Improvements: Collectively, all buildings, structures, and improvements now or hereafter located on the Land.

1.27 Indebtedness: As of the date of any determination thereof, (i) all indebtedness for borrowed money or purchase money financing, (ii) all indebtedness evidenced by a note, bond, debenture or similar instrument, (iii) the face amount of all letters of credit and, without duplication, all unreimbursed amounts drawn thereunder, (iv) all payment obligations under any interest rate protection agreements and currency swaps and similar agreements (if any), and (v) all other indebtedness.

1.28 Indemnified Parties: As defined in Section 4.28 hereof.

1.29 Insurance Agreement: The Agreement Concerning Insurance Requirements of even date herewith executed by Mortgagor for the benefit of Mortgagee, as the same may be modified, amended and/or supplemented from time to time.

1.30 Intangible Personalty: The trademarks and trade names and symbols or logos, or any modifications or variations thereof, used in connection with the operation of the Improvements, together with all accounts, deposit accounts, letter of credit rights, investment property, monies in the possession of Mortgagee (including without limitation proceeds from

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insurance, retainages and deposits for taxes and insurance), Permits, contract rights (including, without limitation, rights to receive insurance proceeds) and general intangibles (whether now owned or hereafter acquired, and including proceeds thereof) relating to or arising from Mortgagor's ownership, use, operation, leasing or sale of all or any part of the Property, specifically including, but in no way limited to, any right that Mortgagor may have or acquire to transfer any development rights from the Property to other real property, and any development rights that may be so transferred (excluding, however, any intangible property owned by any tenant under any Lease).

1.31 Land: Collectively, the property described on Exhibit A and any land lying between the boundaries of such tract or tracts and the center line of any adjacent street, road, avenue, or alley, whether opened or proposed, and any tidelands or filled lands within the boundaries described on Exhibit A, as well as all rights-of-way, easements and other appurtenances thereto.

1.32 Lease Certificate: The Certificate Concerning Leases and Financial Condition of even date herewith made by Mortgagor to Mortgagee concerning, among other things, the Leases.

1.33 Leases: Any and all present and future leases, subleases, licenses and other use and occupancy agreements under the terms of which any Person other than Mortgagor has or acquires any right to occupy or use the Property, or any part thereof, including, without limitation, any Lease with a Required Tenant, excluding utility and other easements that are Permitted Exceptions.

1.34 Loan: The loan evidenced by the Notes and secured by this Mortgage.

1.35 Loan Application: The "Mortgage Loan Application" between Mortgagee and Mortgagor dated as of July 2, 2013.

1.36 Loan Documents: The Notes and all of the deeds of trust, mortgages and other instruments, certificates and documents securing the Notes or executed and delivered by Mortgagor and/or Guarantor and/or any of their respective Affiliates in connection with the Notes, including, without limitation, this Mortgage, the Environmental Indemnity Agreement, the Assignment of Leases, the Lease Certificate, the Guaranty, the Insurance Agreement, the Organizational Certificate, the Subordination Agreement, the Cash Collateral Agreement, the Post-Closing Agreement, and each other document (other than the organizational documents of Mortgagor or any of its Affiliates) executed or delivered by Mortgagor and/or Guarantor and/or any of their respective Affiliates in connection with the transaction pursuant to which the Notes has been executed and delivered each dated of even date herewith. The term "Loan Documents" also includes all amendments, modifications, supplements, extensions, renewals, and replacements of each document referred to above.

1.37 Maturity Date: August 1, 2028.

1.38 Member: One East Wacker Holding LLC, a Delaware limited liability company.

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1.39 Minimum Guarantor Net Worth Requirement: Guarantor has (i) an aggregate Net Worth of not less than \$100,000,000.00 and (ii) a Minimum Available Liquidity of not less than \$20,000,000.00, where (x) "Net Worth" shall mean the excess, if any, of (A) total assets (excluding the Property or any direct or indirect interest in the Property) over (B) total liabilities (including, without limitation, contingent liabilities), all as determined in accordance with GAAP, and (y) "Minimum Available Liquidity" shall mean the excess, if any, of (A) the market value of assets in the form of cash and other assets that are readily convertible to cash (including, without limitation, cash equivalents, obligations of the United States or any agency or instrumentality thereof which are supported by the full faith and credit of the United States, securities listed and traded on a recognized stock exchange or traded over the counter and listed in the National Association of Securities Dealers Automatic Quotations, certificates of deposit issued by a commercial bank having net assets of not less than \$1,000,000,000.00 and other liquid debt instruments that have a readily ascertainable value and are regularly traded in a recognized financial market), over (B) total liens and encumbrances affecting such cash and other assets (including, without limitation, contingent liabilities).

1.40 Mortgagee: Mortgagee named in the introductory paragraph of this Mortgage, whose address is c/o AIG Asset Management, 1999 Avenue of the Stars, 38th Floor, Los Angeles, California 90067-6022, together with any future holder of the Notes.

1.41 Mortgagor: Mortgagor named in the introductory paragraph of this Mortgage (Tax Identification No. 46-3082295), whose address is 250 Broadway, Suite 3001, New York, New York 10007, together with any future owner of the Property or any part thereof or interest therein.

1.42 Mortgagor Control Persons: Means (i) Mortgagor, (ii) any Guarantor, (iii) Member, and (iv) any other Person that Controls, directly or through one or more intermediaries, any of the Persons set forth in the preceding clause (i), (ii), or (iii) and any Person that is a managing member, manager, general partner or other owner of such controlling Person or intermediary.

1.43 Mortgagor Owner Persons: Means (i) Mortgagor (ii) Guarantor, (iii) the Other Owner Persons, (iv) Member; and (v) any other Person that owns, directly or indirectly, through one or more intermediaries, any interest in any Person described in the preceding clause (i), (ii), (iii) or (iv).

1.44 Notes: Means, collectively, the VALIC Note, the CSIC Note, and the AHAC Note.

1.45 Operating Account: As defined in Section 4.24(e).

1.46 Organizational Certificate: The Certificate Concerning Governing Documents of even date herewith by Mortgagor and Guarantor for the benefit of Mortgagee.

1.47 Organizational Chart: An organizational chart illustrating the direct and indirect upstream ownership of a Person, percentage interests held by each upstream entity or Person and type of each such Person.

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1.48 Other Owner Persons: Those parties identified as “Other Owner Persons” in the Organizational Certificate.

1.49 Permits: All permits, licenses, certificates, franchises and authorizations necessary or desirable for the development, ownership, use, occupancy, operation and maintenance of the Property and the conduct of the business of Mortgagor.

1.50 Permitted Exceptions: The matters set forth in Exhibit B attached hereto.

1.51 Permitted Indebtedness: As defined in Section 5.4(d).

1.52 Person: Means an individual, a corporation, an association, a joint stock company, a trust, a business trust, a partnership, a joint venture, a limited liability company, a real estate investment trust, an unincorporated organization, or a government or any agency or political subdivision thereof or any other entity.

1.53 Post-Closing Agreement: The Post-Closing Agreement, dated as of the date hereof, executed by Guarantor for the benefit of Mortgagee as the same may be modified, amended, supplemented or replaced from time to time.

1.54 Property: The Land, together with all of the right, title and interest of Mortgagor in, to and under any the following:

- (a) all Improvements;
- (b) all Leases and all guaranties thereof and security deposits or other security provided in connection therewith;
- (c) all of the Rents;
- (d) all (i) water and water rights (whether decreed or undecreed, tributary, nontributary or not nontributary, surface or underground, or appropriated or unappropriated), (ii) ditches and ditch rights, (iii) spring and spring rights, (iv) reservoir and reservoir rights and (v) shares of stock in water, ditch and canal companies and all other evidence of such rights, which are now owned or hereafter acquired by Mortgagor and which are appurtenant to or which have been used in connection with the Land or the Improvements;
- (e) all minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land;
- (f) all machinery, apparatus, equipment, fittings, fixtures (whether actually or constructively attached, and including all trade, domestic, and ornamental fixtures) now or hereafter located in, upon, or under the Land or the Improvements and used or usable in connection with any present or future operation thereof, all heating, air-conditioning, freezing, lighting, laundry, incinerating and power equipment; engines; pipes; pumps; tanks; motors; conduits; switchboards; plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, cooking, and communications apparatus; boilers, water heaters, ranges,

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furnaces, and burners; appliances; vacuum cleaning systems; elevators; escalators; shades; awnings; screens; storm doors and windows; stoves; refrigerators; attached cabinets; partitions; ducts and compressors; rugs and carpets; draperies; and all additions thereto and replacements therefor (excluding, however, any of the foregoing to the extent owned by a tenant under a Lease for so long as the same do not become property of Mortgagor under such Lease);

(g) all development rights associated with the Land or the Improvements, whether previously or subsequently transferred to the Land or the Improvements from other real property or now or hereafter susceptible of transfer from the Land or the Improvements to other real property, including, without limitation, all development rights appurtenant to the Land or the Improvements under any applicable zoning and other laws and regulations;

(h) all Permits;

(i) all awards and payments, including interest thereon, resulting from the exercise of any right of eminent domain or any other public or private taking of, injury to, or decrease in the value of, any of such property;

(j) all other and greater rights and interests of every nature in the Land and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Mortgagor;

(k) any and all contract rights with respect to, or that may in any way pertain to, the foregoing and all refunds, rebates, security deposits or other expectancy under or from any such account or contract right;

(l) any Access Agreement;

(m) the balance of the property interests associated with the Land and the Improvements to the extent not already included in this definition of "Property";

(n) all insurance proceeds in respect of the foregoing Property; and

(o) all proceeds of each and every of the foregoing.

1.55 Recording Office: Means the Cook County Recorder of Deeds.

1.56 Rent or Rents: All Gross Revenue generated by or in respect of the Property.

1.57 Required Tenant: Any tenant that occupies (in the aggregate, together with any Affiliates of such tenant) more than 15,000 square feet of rentable space at the Property, including, without limitation, each of (i) Kemper Insurance fka Unitrin, Inc., (ii) Starwood Retail Partners, LLC, (iii) Chicago Office Technology Group, Inc, fka Column Office Equipment Inc., and (iv) Public Communications, Inc. Each of the Required Tenants are referred to herein individually as a "Required Tenant" and collectively as the "Required Tenants".

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1.58 Secured Obligations: All present and future obligations of Mortgagor to Mortgagee evidenced by or contained in the Note, the Assignment of Leases, the Insurance Agreement, the Guaranty, the Environmental Indemnity Agreement, this Mortgage, the Subordination Agreement, the Lease Certificate, the Cash Collateral Agreement, Organizational Certificate, the Post-Closing Letter and all of the other Loan Documents, whether stated in the form of promises, covenants, representations, warranties, conditions, or prohibitions or in any other form whether absolute or contingent, direct or indirect, joint, several or independent, now outstanding or owing or which may hereafter be existing or incurred, arising by operation of law or otherwise, due or to become due under the Loan Documents, or are in any way secured by the Property or any other collateral now or hereafter provided to Mortgagee as collateral for the Loan.

1.59 Servicer: Means the servicer under the Cash Collateral to which Mortgagee may delegate all or any portion of Mortgagee's responsibilities under the Note, this Mortgage and the other Loan Documents.

1.60 Single Purpose Entity: means a Person, other than an individual, that (a) is formed or organized solely for the purpose of holding, directly, an ownership interest in the Property, or any portion thereof, or an ownership interest in another Person that holds, directly or indirectly, an ownership interest in the Property, or any portion thereof, (b) does not engage in any business other than the ownership, management and operation of the Property or any portion thereof or of any such other Person described in clause (a) above, (c) does not have any (i) assets other than those related to its interest in the Property or any portion thereof or of any such other Person described in clause (a) above or (ii) Indebtedness other than the Loan and any Permitted Indebtedness, (d) does not guarantee or otherwise become liable on or in connection with any obligation of any other Person, (e) does not enter into any contract or agreement with any stockholder, partner, principal, member or Affiliate of such Person or any Affiliate of any such stockholder, partner, principal, member or Affiliate except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with third parties other than an Affiliate, (f) does not incur, create or assume any Indebtedness (except for the Loan and any Permitted Indebtedness), (g) does not make any loans or advances to any other Person (including, without limitation, any Affiliate), (h) does not become insolvent or fail to pay its debts from its assets as the same shall become due, (i) does not fail to conduct and operate its business in all material respects as conducted and operated as of the date hereof, (j) does not fail to maintain its books and records and bank accounts separately from those of its Affiliates, including, without limitation, its general partners or members, as may be applicable, (k) does not fail at all times to hold itself out to the public as a legal entity separate and apart from any other Person (including, without limitation, any Affiliate (including, without limitation, any stockholder, partner, member, trustee, beneficiary, or other owner of Mortgagor or any Affiliate of any such stockholder, partner, member, trustee, beneficiary, or other owner)), (l) does not fail to file its own tax returns to the extent (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division for tax purposes of another taxpayer; (m) does not fail to maintain adequate capital for its normal obligations, reasonably foreseeable in a business of its size and character and in light of its contemplated business operations, (n) does not fail to maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any other Person, (o) does not hold itself out to be responsible for the Indebtedness of

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any other Person, (p) is subject to and complies with all of the limitations on powers set forth in the organizational documentation (and if a partnership, that of each general partner, and if a limited liability company, that of the managing member (or if there is no managing member, the members)) as in effect on the date hereof, (q) holds all of its assets in its own name, (r) utilizes its own letterhead, invoices and checks, (s) holds title to its interest in the Property in its own name, (t) allocates fairly and reasonably any overhead expenses that are shared with any Affiliate including, without limitation, paying for office space and services performed by any employee of any Affiliate, and (u) does not pledge its assets for the benefit of any other Person and (v) corrects any known misunderstandings regarding its separate identity.

1.61 SNDA: Any Subordination, Non-Disturbance and Attornment Agreement entered into in accordance with this Mortgage or any of the other Loan Documents.

1.62 Subordination Agreement: Any Subordination of Management Agreement entered into in accordance with Section 4.23 hereof, as the same may be modified, amended and/or supplemented from time to time.

1.63 Substitute Guarantor: As defined in Section 4.30 hereof.

1.64 Substitute Guarantor Minimum Net Worth Requirements: Guarantor has (i) an aggregate Net Worth of not less than an amount equal to fifty percent (50%) of the then-outstanding principal balance of the Notes and (ii) a Minimum Available Liquidity of not less than \$10,000,000.00, where (x) "Net Worth" shall mean the excess, if any, of (A) total assets (excluding the Property or any direct or indirect interest in the Property) over (B) total liabilities (including, without limitation, contingent liabilities), all as determined in accordance with GAAP, and (y) "Minimum Available Liquidity" shall mean the excess, if any, of (A) the market value of assets in the form of cash and other assets that are readily convertible to cash (including, without limitation, cash equivalents, obligations of the United States or any agency or instrumentality thereof which are supported by the full faith and credit of the United States, securities listed and traded on a recognized stock exchange or traded over the counter and listed in the National Association of Securities Dealers Automatic Quotations, certificates of deposit issued by a commercial bank having net assets of not less than \$1,000,000,000.00 and other liquid debt instruments that have a readily ascertainable value and are regularly traded in a recognized financial market), over (B) total liens and encumbrances affecting such cash and other assets (including, without limitation, contingent liabilities).

1.65 Transfer Conditions: has the meaning as set forth in Section 5.4(c) of this Mortgage.

1.66 Trust or Trusts: As defined in Section 4.30 hereof.

1.67 UCC: The Uniform Commercial Code in effect from time to time in the State of Illinois.

1.68 VALIC: As defined in the introduction section of this Mortgage.

1.69 VALIC Note: Means the Promissory Note of even date herewith from Mortgagor, payable to the order of The Variable Annuity Life Insurance Company in the original

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principal amount of \$46,230,000.00, together with all amendments, modifications, supplements, renewals, extensions and modifications thereof. All terms and provisions of the Note are incorporated by this reference in this Mortgage. The entire outstanding principal balance, and all other amounts due under the Note, this Mortgage and the other Loan Documents, together with all accrued and unpaid interest thereon, shall be due and payable in full on the Maturity Date.

ARTICLE 2

GRANTING CLAUSE

2.1 Grant to Mortgagee. For the purpose of securing payment of the Indebtedness and performance of the Secured Obligations, Mortgagor hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages, assigns, pledges, warrants and transfers to Mortgagee, with right of entry and possession, a security interest, which Mortgagor now has or may later acquire, in and to the Property.

2.2 Security Interest to Mortgagee. As additional security for the Secured Obligations, Mortgagor hereby grants to Mortgagee a security interest in the Property, the Chattels and the Intangible Personalty. To the extent the Property, the Chattels or the Intangible Personalty may be or have been acquired with funds advanced by Mortgagee under the Loan Documents, this security interest is a purchase money security interest. This Mortgage constitutes a Security Agreement under the UCC with respect to any part of the Property, the Chattels and the Intangible Personalty that may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all collectively hereinafter called "**Collateral**"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property, and the following provisions of this Section shall not limit the generality or applicability of any other provisions of this Mortgage, but shall be in addition thereto:

(a) The Collateral shall be used by Mortgagor solely for business purposes, and all Collateral (other than the Intangible Personalty) shall be installed upon the real estate comprising part of the Property for Mortgagor's own use or as the fixtures, equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Property;

(b) The Collateral (other than the Intangible Personalty) shall be kept at the real estate comprising a part of the Property, and shall not be removed therefrom without the written consent of Mortgagee (being the Secured Party as that term is used in the UCC) and the Collateral (other than the Intangible Personalty) may be affixed to such real estate, but shall not be affixed to any other real estate;

(c) No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office, and Mortgagor shall, at its cost and expense, upon demand, furnish to Mortgagee such further information and shall execute (if required) and deliver to Mortgagee such financing statements and execute and deliver such other documents in form satisfactory to Mortgagee and shall do all such acts and things as Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish

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and maintain a perfected first-priority security interest in the Collateral as security for the Secured Obligations, subject to no adverse liens or encumbrances other than the Permitted Exceptions. Mortgagor shall pay the cost of filing the same or filing or recording such financing statements or other documents and this instrument in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable;

(d) The terms and provisions contained in this Section and in Section 7.6 of this Mortgage shall, unless the context otherwise requires, have the meanings and be construed as provided in the UCC; and

(e) This Mortgage constitutes a financing statement under the UCC with respect to the Collateral. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. The filing of this Mortgage in the real estate records of the county where the Property is located shall constitute a fixture filing in accordance with the UCC. Information concerning the security interests created hereby may be obtained at the addresses set forth in Article 1 of this Mortgage. Mortgagor is the "Debtor" and Mortgagee is the "Secured Party" (as those terms are defined and used in the UCC) insofar as this Mortgage constitutes a financing statement.

2.3 Discharge Upon Satisfaction. Upon the indefeasible payment and performance in full of all of the Secured Obligations this Mortgage and the obligations set forth herein will terminate (except for those certain obligations that survive repayment of the Indebtedness under the Loan Documents), whereupon Mortgagee will, at the sole cost and expense of Mortgagor, promptly execute and deliver to Mortgagor such documents as may be reasonably required to discharge and/or release this Mortgage of record, provided that such documents are acceptable to Mortgagee in Mortgagee's discretion and Mortgagee's failure to so execute and deliver such documents shall not affect the validity of said termination.

ARTICLE 3

MORTGAGOR'S REPRESENTATIONS AND WARRANTIES

3.1 Warranty of Title. Mortgagor represents and warrants to Mortgagee that:

(a) Mortgagor owns and holds good, marketable and indefeasible fee simple title to the Property, and such fee simple title is free and clear of all liens, encumbrances, security interests and other claims whatsoever, subject only to the Permitted Exceptions.

(b) Mortgagor is the sole and absolute owner of the Chattels, the Intangible Personalty and the other Collateral, free and clear of all liens, encumbrances, security interests and other claims whatsoever, subject only to the Permitted Exceptions.

(c) This Mortgage is a valid and enforceable first lien and security interest on the Property, the Chattels, the Intangible Personalty and the other Collateral, subject only to the Permitted Exceptions.

(d) Mortgagor, for itself and its successors and assigns, hereby agrees to warrant and forever defend, all and singular of the property and property interests

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granted and conveyed pursuant to this Mortgage, against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

(e) The representations, warranties and covenants contained in this Section shall survive foreclosure of this Mortgage, and shall inure to the benefit of and be enforceable by any Person that may acquire title to the Property, the Chattels, the Intangible Personalty or the other Collateral pursuant to any such foreclosure.

3.2 Due Authorization. If Mortgagor is other than a natural person, then Mortgagor represents and warrants that each individual who executes this document on behalf of Mortgagor has been duly authorized by all necessary corporate, partnership, limited liability company or other action on the part of Mortgagor. Mortgagor represents and warrants to Mortgagee that Mortgagor has obtained all consents and approvals required in connection with the execution, delivery and performance of this Mortgage and all other Loan Documents.

3.3 Other Representations and Warranties. Mortgagor represents and warrants to Mortgagee as follows:

(a) Mortgagor is (i) a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware, (ii) authorized to transact business and in good standing under the laws of the State of Illinois, (iii) a Single-Purpose Entity, (iv) owned by the Mortgagor Owner Persons, and (v) the authority to perform the day-to-day management of Mortgagor is vested solely in Nathan Aber.

(b) Intentionally Deleted

(c) The execution, delivery and performance by the Mortgagor Member or the Guarantors of the Loan Documents to which such Person is a party are within the power and authority of each such Person and have been duly authorized by all necessary action and will not violate any provision of the certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, operating agreement, trust agreement or other organizational documents of any such Person, all such documents (as applicable), in form and substance satisfactory to Mortgagee.

(d) This Mortgage and the other Loan Documents to which any of the Mortgagor Member or the Guarantors are a party will, when delivered hereunder, be valid and binding obligations of each such Person, enforceable against each such Person in accordance with their respective terms, except as limited by equitable principles and bankruptcy, insolvency and similar laws affecting creditors' rights.

(e) The execution, delivery and performance by the Mortgagor Member or the Guarantors of the Loan Documents to which any of such Persons are a party will not contravene any contractual or other restriction binding on or affecting such Persons, and will not result in or require the creation of any lien, security interest, other charge or encumbrance (other than pursuant hereto) upon or with respect to any of its or their respective properties.

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(f) The execution, delivery and performance by the Mortgagor Member or the Guarantors of the Loan Documents to which any of such Persons are a party do not contravene any applicable law or regulation.

(g) No authorization, approval, consent or other action by, and no notice to or filing with, any court, governmental authority or regulatory body is required for the due execution, delivery and performance by the Mortgagor Member or the Guarantors of any of the Loan Documents or the effectiveness of any assignment of any of such Persons' rights and interests of any kind to Mortgagee.

(h) No part of the Property, Chattels, Intangible Personalty or other Collateral is in the hands of a receiver, no application for a receiver is pending with respect to any portion of the Property, Chattels, Intangible Personalty or other Collateral, and no part of the Property, Chattels, Intangible Personalty or other Collateral is subject to any foreclosure or similar proceeding.

(i) None of the Mortgagor Members has made any assignment for the benefit of creditors, nor has any of the Mortgagor Members filed, or had filed against it, any petition in bankruptcy.

(j) There is no pending or threatened litigation, action, proceeding or investigation, including, without limitation, any condemnation proceeding, against the Mortgagor Member, Guarantor or the Property before any court, governmental or quasi-governmental, arbitrator or other authority which, if determined against the Mortgagor, Member, Guarantor, or the Property, will materially adversely affect the condition or business of Mortgagor, Member or Guarantor, the condition, value or ownership of the Property or the ability of Mortgagor, Member or Guarantor to perform its or their respective obligations under the Loan Documents to which they are a party.

(k) Each of Mortgagor and Guarantor is a "non-foreign person" within the meaning of Sections 1445 and 7701 of the United States Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

(l) Access to and egress from the Property are available and provided by public streets, and Mortgagor has no knowledge of any federal, state, county, municipal or other governmental plans to change the highway or road system in the vicinity of the Property or to materially restrict or change access from any such public street, highway or road to the Property.

(m) All public utility services necessary for the operation of the Property and the Improvements for their intended purposes are available at the boundaries of the Land, including, but not limited to, water supply, storm and sanitary sewer facilities, natural gas, electric and telephone facilities.

(n) Based solely on that certain PZR Report dated June 11, 2013 for PZR Site Number 68010-1, a copy of which has been provided to Mortgagee (the "**PZR Report**"), the Property is located in zoning districts designated "DX-16" by the City of Chicago, Illinois. Except as otherwise disclosed in the PZR Report, and to Mortgagor's knowledge, such

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designation permits the development, use and operation of the Property as it is currently operated as a permitted, and not as a non-conforming use. Except as otherwise disclosed in the PZR Report, to Mortgagor's knowledge the Property complies in all material respects with all applicable zoning ordinances, regulations, requirements, conditions and restrictions, including, but not limited, to deed restrictions and restrictive covenants, applicable to the Property.

(o) To Mortgagor's knowledge and except as may be disclosed in Title Commitment No. 1401 008933368 issued by Chicago Title Insurance Company (the "Title Report"), there are no special or other assessments for public improvements or otherwise now affecting the Property, nor does Mortgagor know of any pending or threatened special assessments affecting the Property or any contemplated improvements affecting the Property that may result in special assessments. To Mortgagor's knowledge, except as may be disclosed in the Title Report, there are no tax abatements or exceptions affecting the Property. To Mortgagor's knowledge, except as may be disclosed in the Title Report, there are no license fees or similar charges required in respect to any filled land or in respect of any tideland or bodies of water.

(p) Each of the Mortgagor, Member and the Guarantor has filed or has obtained extensions to file all tax returns which are required to be filed by it, and has paid all taxes as shown on such returns or on any assessment received pertaining to the Property.

(q) Mortgagor has not received (i) any notice from any governmental body having jurisdiction over the Property as to any violation of any applicable law, except as disclosed in the Title Report, or (ii) any notice from any insurance company or inspection or rating bureau setting forth any requirements as a condition to the continuation of any insurance coverage on or with respect to the Property or the continuation thereof at premium rates existing at present, which, in either case, has not been remedied or satisfied.

(r) None of the Mortgagor, Member or the Guarantors is in default, in any manner that would materially and adversely affect such Person's properties, assets, operations or condition (financial or otherwise), or in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any Loan Document by which such Person is bound.

(s) Except to the extent disclosed to Mortgagee in the Lease Certificate, and to Mortgagor's knowledge there are no occupancy rights (written or oral), Leases or tenancies presently affecting any part of the Property. The Lease Certificate contains a true, correct and complete description of all Leases presently affecting the Property. No written or oral agreements or understandings exist between Mortgagor and the tenants under the Leases described in the Lease Certificate that grant such tenants any rights greater than those described in the Lease Certificate or that are in any way inconsistent with the rights described in the Lease Certificate.

(t) To Mortgagor's knowledge there are no purchase options, purchase contracts or other similar purchase or sale agreements of any type (written or oral) presently affecting any part of the Property.

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(u) Except to the extent disclosed to Mortgagee in the Lease Certificate, and to Mortgagor's knowledge there exists no brokerage agreement with respect to any part of the Property.

(v) Except to the extent disclosed to Mortgagee in the Lease Certificate, and to Mortgagor's knowledge (i) there are no Contracts presently affecting the Property having a term in excess of one hundred eighty (180) days or not terminable by Mortgagor (without penalty) on thirty (30) days' notice, (ii) Mortgagor has heretofore delivered to Mortgagee true, correct and complete copies of each of the Contracts together with all amendments thereto, (iii) Mortgagor is not in default beyond any applicable notice and/or cure period of any obligations under any of the Contracts and (iv) the Contracts represent the complete agreement between Mortgagor and such other parties as to the services to be performed or materials to be provided thereunder and the compensation to be paid for such services or materials, as applicable, and except as otherwise disclosed herein, such other parties possess no unsatisfied claims against Mortgagor.

(w) To Mortgagor's knowledge, Mortgagor has obtained all Permits necessary for the operation, use, ownership, development, occupancy and maintenance of the Property for its current use and occupancy and the use and occupancy as set forth under the Leases. To Mortgagor's knowledge none of the Permits has been suspended or revoked, and all of the Permits are in full force and effect, are fully paid for, and Mortgagor has made or will make application for renewals of any of the Permits prior to the expiration thereof. Mortgagor has not received any written notice of default or notice terminating or threatening to terminate any such Permit.

(x) All insurance policies held by Mortgagor relating to or affecting the Property are in full force and effect and shall remain in full force and effect until all Secured Obligations are satisfied. Mortgagor has not received any written notice of default or notice terminating or threatening to terminate any such insurance policies. Mortgagor has made or will make application for renewals of any of such insurance policies prior to the expiration thereof.

(y) Mortgagor currently complies with or is not subject to ERISA. Neither the making of the loan evidenced by the Note and secured by this Mortgage nor the exercise by Mortgagee of any of its rights under the Loan Documents constitutes or will constitute a non-exempt, prohibited transaction under ERISA.

(z) To Mortgagor's knowledge, the Access Agreements, if any, are in full force and effect and there are no defaults thereunder by Mortgagor or any other party and no conditions which with the passage of time and/or notice would constitute defaults thereunder.

(aa) Mortgagor is not insolvent and the obligations of Mortgagor set forth in this Mortgage and the other Loan Documents will not render Mortgagor insolvent. Mortgagor has no outstanding debt or liabilities other than any liabilities created pursuant to this Mortgage and the other Loan Documents.

(bb) As of the date hereof, none of the Mortgagor Control Persons or any of the Guarantors has any offsets, claims, counterclaims or defenses against Mortgagee or

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any of the Secured Obligations, and any such offsets, claims, counterclaims or defenses are hereby waived.

(cc) Mortgagor does not receive more than five percent (5%) of its revenue from business conducted in or with countries sanctioned by the U.S. Treasury Department of Foreign Assets Control, except in connection with "Country Sanction Programs" promulgated thereby.

3.4 Continuing Effect. Mortgagor shall be liable to Mortgagee for any damage suffered by Mortgagee if any of the foregoing representations and warranties are inaccurate as of the date hereof, regardless of when such inaccuracy may be discovered by, or result in harm to, Mortgagee.

ARTICLE 4

MORTGAGOR'S AFFIRMATIVE COVENANTS

4.1 Payment of Note. Mortgagor shall pay all principal, interest and other sums payable under the Note or the other Loan Documents on the date when such payments are due, without notice or demand.

4.2 Performance of Other Obligations. Mortgagor shall promptly and strictly perform and comply with all other covenants, conditions and prohibitions required of Mortgagor by the terms of the Loan Documents.

4.3 Other Encumbrances. Mortgagor shall promptly and strictly perform and comply with all covenants, conditions and prohibitions required of Mortgagor in connection with any Access Agreement and any other encumbrance affecting the Property, the Chattels, the Intangible Personalty or the other Collateral, or any part thereof, or any interest therein, regardless of whether such other encumbrance is superior or subordinate to the lien hereof.

4.4 Payment of Taxes.

(a) Property Taxes. Unless Mortgagor is depositing money into escrow pursuant to Section 4.4(b) hereof, Mortgagor shall (i) pay, before delinquency and before the imposition of any penalty or interest, all taxes and assessments, general or special, which may be levied or imposed at any time against Mortgagor's interest and estate in the Property, the Chattels or the Intangible Personalty, and (ii) within ten (10) days after receipt thereof with respect to each payment of any such tax or assessment, Mortgagor shall deliver to Mortgagee, without notice or demand, an official receipt for such payment. At Mortgagee's option, Mortgagee may retain the services of a firm to monitor the payment of all taxes and assessments relating to the Property, the actual cost of which shall be borne by Mortgagor. Mortgagor shall provide Mortgagee with reasonably satisfactory evidence of the payment of all such taxes and assessments, general or special, which may be levied or imposed at any time against Mortgagor's interest and estate in the Property, the Chattels or the Intangible Personalty within ten (10) days following any such payment.

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(b) Deposit for Taxes. Mortgagor shall deposit with Mortgagee an amount equal to 1/12th of the amount that Mortgagee reasonably estimates will be required to make the next annual or semi-annual payment of taxes, assessments and similar governmental charges referred to in this Section, multiplied by the number of whole or partial months that have elapsed since the date one month prior to the most recent due date for such taxes, assessments and similar governmental charges. Thereafter, with each monthly payment under the Note, Mortgagor shall deposit with Mortgagee an amount equal to 1/12th of the amount that Mortgagee estimates will be required to pay the next annual payment of taxes, assessments and similar governmental charges referred to in this Section. The purpose of these provisions is to provide Mortgagee with sufficient funds on hand for Mortgagee or Servicer to pay all such taxes, assessments and other governmental charges thirty (30) days before the date on which they become past due (whether such payment is due annually or semi-annually). If Mortgagee, in Mortgagee's reasonable discretion, determines that the funds escrowed hereunder are, or will be, insufficient, Mortgagor shall upon demand pay such additional sums as Mortgagee shall determine necessary and shall pay any increased monthly charges reasonably requested by Mortgagee. Provided no Event of Default exists hereunder, Mortgagee will apply the amounts so deposited to the payment of such taxes, assessments and other charges when due, but in no event will Mortgagee be liable for any interest on any amount so deposited, and any amount so deposited may be held and commingled with Mortgagee's own funds.

(c) Intangible Taxes. If by reason of any statutory or constitutional amendment or judicial decision adopted or rendered after the date hereof, any tax, assessment or similar charge is imposed against the Note, Mortgagee, or any interest of Mortgagee in any real or personal property encumbered hereby, Mortgagor shall pay such tax, assessment or other charge before delinquency (with interest and penalties, if any) and will indemnify Mortgagee against all loss, expense or diminution of income in connection therewith. In the event Mortgagor is unable to pay such tax, assessment or other charge before delinquency for any reasons, then the Note will, at Mortgagee's option, become due and payable in full upon one hundred twenty (120) days' notice to Mortgagor.

(d) Right to Contest. Notwithstanding any other provision of this Section, Mortgagor shall not be deemed to be in Default solely by reason of Mortgagor's failure to pay any tax, assessment or similar governmental charge so long as, in Mortgagee's judgment, each of the following conditions is satisfied:

(i) Mortgagor is engaged in and diligently pursuing in good faith administrative or judicial proceedings appropriate to contest the validity or amount of such tax, assessment or charge;

(ii) Mortgagor's payment of such tax, assessment or charge would necessarily and materially prejudice Mortgagor's prospects for success in such proceedings;

(iii) Nonpayment of such tax, assessment, or charge will not result in the loss or forfeiture of any property encumbered hereby or any interest of Mortgagee therein; and

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(iv) Mortgagor deposits with Mortgagee, as security for such payment that may ultimately be required, a sum equal to the amount of the disputed tax, assessment or charge plus the interest, penalties, advertising charges and other costs that Mortgagee estimates are likely to become payable if Mortgagor's contest is unsuccessful. For the avoidance of doubt, the funds required to be deposited with Mortgagee under this paragraph (iv) shall be in addition to all taxes, assessments and other governmental charges that are not being contested and that are subject to the deposit provisions of Section 4.4(b) hereof.

If Mortgagee determines that any one or more of such conditions is not satisfied or is no longer satisfied, Mortgagor shall pay the tax, assessment or charge in question, together with any interest and penalties thereon, within ten (10) days following the date that Mortgagee gives notice of such determination.

4.5 Maintenance of Insurance.

(a) Coverages Required. Mortgagor shall maintain or cause to be maintained, with financially sound and reputable insurance companies or associations satisfactory to Mortgagee, all insurance required under the terms of the Insurance Agreement, and shall comply with each and every covenant and agreement contained in such Insurance Agreement.

(b) Renewal Policies. In each case pursuant to and in accordance with the terms and provisions of the Insurance Agreement, Mortgagor shall deliver to Mortgagee either an appropriate renewal policy (or a certified copy thereof) that satisfies the requirements of the Insurance Agreement, together with evidence satisfactory to Mortgagee that the applicable premium has been prepaid.

(c) Deposit for Premiums. During the continuance of an Event of Default, Mortgagor shall deposit with Mortgagee an amount equal to 1/12th of the amount that Mortgagee estimates will be required to make the next annual payments of the premiums for the policies of insurance referred to in this Section, multiplied by the number of whole and partial months which have elapsed since the date one month prior to the most recent policy anniversary date for each such policy. With each subsequent monthly payment under the Note during which an Event of Default exists, Mortgagor shall deposit an amount equal to 1/12th of the amount that Mortgagee estimates will be required to pay the next required annual premium for each insurance policy referred to in this Section. The purpose of these provisions is to provide Mortgagee with sufficient funds on hand for Mortgagee or Servicer to pay all such premiums thirty (30) days before the date on which they become past due. If Mortgagee, in Mortgagee's reasonable discretion, determines that the funds escrowed hereunder are, or will be, insufficient, Mortgagor shall upon demand, pay such additional sums as Mortgagee shall determine as necessary and shall pay any increased monthly charges reasonably requested by Mortgagee. Provided no Event of Default exists hereunder, Mortgagee will apply the amounts so deposited to the payment of such insurance premiums when due, but in no event will Mortgagee be liable for any interest on any amounts so deposited, and the money so received may be held and commingled with Mortgagee's own funds.

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(d) Application of Hazard Insurance Proceeds. Mortgagor shall after learning thereof promptly notify Mortgagee of any damage or casualty to all or any portion of the Property or Chattels. Mortgagee may participate in all negotiations and appear and participate in all judicial or arbitration proceedings concerning any insurance proceeds that may be payable as a result of such casualty or damage, and may, in Mortgagee's sole discretion, compromise or settle, in the names of both Mortgagor and Mortgagee, any claim for any such insurance proceeds; provided, however, that in any event any such compromise or settlement shall be subject to the prior consent of Mortgagee, which may be granted or withheld in Mortgagee's discretion. Notwithstanding the foregoing, Mortgagor may settle, compromise or adjust claims for losses of less than the Threshold Amount (as defined below) without Mortgagee's consent. Any such insurance proceeds shall be paid directly to Mortgagee and shall be applied first to reimburse Mortgagee for all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Mortgagee in connection with the ascertainment and collection of such insurance proceeds. The balance, if any, of any insurance proceeds received by Mortgagee with respect to an insured damage or casualty shall, in Mortgagee's sole discretion, either (i) be retained and applied by Mortgagee toward payment of the Secured Obligations, in such order and manner as Mortgagee deems appropriate, or (ii) be paid over, in whole or in part and subject to such conditions as Mortgagee may reasonably impose, to Mortgagor to pay for repairs or replacements necessitated by the damage or casualty with any balance remaining after completion of such repairs or replacements being paid to Mortgagor; provided, however, that if all of the Secured Obligations have been performed or are discharged by the application of less than all of such insurance proceeds, then any remaining proceeds will be paid over to Mortgagor. Notwithstanding the foregoing provisions of this Section 4.5(d), Mortgagee shall apply any such insurance proceeds as provided in clause (ii) of the preceding sentence, provided, and on the following conditions: (A) there does not exist any Event of Default, (B) Mortgagor demonstrates to the reasonable satisfaction of Mortgagee that Mortgagor has the financial ability to pay all principal and interest and any other amounts required to be paid under the Note, and perform all of the other Secured Obligations, during the restoration of the Property from the proceeds of rent loss or business interruption insurance or otherwise, (C) the damage or casualty occurs prior to the last six (6) months of the term of the Loan and the restoration is capable of being completed prior to the stated maturity date of the Loan, (D) all insurance proceeds and other funds provided by Mortgagor for the restoration are released under escrow and construction funding arrangements reasonably satisfactory to Mortgagee, (E) the repair or restoration will return the Property to substantially the same size, design and utility as existed immediately prior to the damage or casualty, (F) in the event the proceeds of insurance are insufficient to pay by themselves for the restoration (as determined in good faith by Mortgagee), Mortgagor shall, prior to the commencement of any restoration work, deposit with Mortgagee within thirty (30) days following the date on which the proceeds of insurance are received by Mortgagee such additional funds as in the good faith opinion of Mortgagee are necessary to complete the restoration; (G) Mortgagor undertakes and covenants and agrees (in writing) with Mortgagee to fund any and all deficiencies, and in fact actually funds any and all such deficiencies, within thirty (30) days following being notified in writing thereof and prior to the distribution of any further insurance proceeds, so that at all times the funds held by Mortgagee and remaining to be disbursed for purposes of the restoration shall be sufficient to complete the work; (H) the annual income from the Leases that are in existence as of the date hereof or executed in accordance with the provisions of this Mortgage and that will survive the restoration

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or repair of the Property produce a Debt Service Coverage Ratio of not less than 1.10 to 1.0 and Mortgagor demonstrates to Mortgagee's satisfaction that Mortgagor shall be able to attain a Debt Service Coverage Ratio of at least 1.10 to 1.0 from Leases (that are in existence as of the date hereof or that are executed following the date hereof in accordance with the provisions of this Mortgage) within twelve (12) months following completion of the restoration; and (I) if any site plan amendment, variance, special use permit or other similar special approval or consent is required from any government authority or any other Person for such repair or restoration, Mortgagor shall obtain and deliver to Mortgagee such site plan amendment, variance, special use permit or other similar special approval or consent within one hundred eighty (180) days following such casualty or damage (but such one hundred eighty (180) day time period shall in all respects be subject to the foregoing provisions of this Section 4.5(d) and shall not extend or otherwise modify any time periods in such foregoing provisions). Mortgagee may, prior to the application of insurance proceeds, commingle them with Mortgagee's own funds and otherwise act with regard to such proceeds as Mortgagee may determine in Mortgagee's sole discretion.

(e) Notwithstanding the foregoing provisions of this Section 4.5(d), in the event that the insurance proceeds do not exceed \$2,500,000 (the "**Threshold Amount**"), then such insurance proceeds received by Mortgagor or Mortgagee with respect to the applicable damage or casualty shall be paid over, in whole, to Mortgagor to pay for repairs or replacements necessitated by the damage or casualty with any balance remaining after completion of such repairs or replacements being paid to Mortgagor (provided, however, that if all of the Secured Obligations have been performed or are discharged by the application of less than all of such insurance proceeds, then any remaining proceeds will be paid over to Mortgagor) if (i) no Event of Default then exists, and (ii) Intentionally deleted, and (iii) the cost of such restoration shall not exceed \$2,500,000, and (iv) the damage or casualty occurs prior to the last six (6) months of the term of the Loan and the restoration is capable of being completed, in Mortgagee's judgment, at least ninety (90) days prior to the stated maturity date of the Loan and (v) Mortgagor shall undertake and complete the repair or restoration of the Property so as to return the Property to substantially the same size, design and utility as existed immediately prior to the damage or casualty and shall fund any deficiency in the event such proceeds are insufficient to complete such repair or restoration.

(f) Mortgagee will have no obligation to see to the proper application of any insurance proceeds paid over to Mortgagor, nor will any such proceeds received by Mortgagee bear interest or be subject to any other charge for the benefit of Mortgagor. If such proceeds are deposited with Mortgagee, Mortgagee may, prior to the application of such proceeds, commingle them with Mortgagee's own funds and otherwise act with regard to such proceeds as Mortgagee may determine in Mortgagee's sole discretion.

(g) Successor's Rights. Any Person that acquires title to the Property or the Chattels upon foreclosure or deed in lieu of foreclosure hereunder will succeed to all of Mortgagor's rights under all policies of insurance maintained pursuant to this Section.

4.6 Maintenance and Repair of Property and Chattels; Contracts. Mortgagor shall at all times maintain the Property and the Chattels in good condition and repair, will diligently prosecute the completion of any building or other improvement that is at any time in the process of construction on the Property, and shall promptly repair, restore, replace, or

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rebuild any part of the Property or the Chattels that may be affected by any casualty or any public or private taking or injury to the Property or the Chattels. All costs and expenses arising out of the foregoing shall be paid by Mortgagor whether or not the proceeds of any insurance or eminent domain shall be sufficient therefor. Mortgagor shall maintain access to and egress from the Property by public streets. Subject to the provisions of Section 4.15(b), Mortgagor shall comply with (or cause compliance with) all statutes, ordinances, and other governmental or quasi-governmental requirements and private covenants relating to the ownership, construction, use, or operation of the Property, including but not limited to, any zoning requirements, any environmental or ecological requirements and any requirements regarding access for persons with disabilities. Mortgagee and any Person authorized by Mortgagee may upon prior notice to Mortgagor enter and inspect the Property at all reasonable times, and may inspect the Chattels, wherever located, at all reasonable times, in each case using reasonable efforts to minimize disruption with building operations and tenants. Mortgagor shall take all actions necessary or required under the Leases to effect the provisions of the immediately preceding sentence. Mortgagor shall maintain all public utility services (including, without limitation, water supply, storm and sanitary sewer facilities, and natural gas, electric and telephone) necessary for the operation of the Property (including, without limitation, improvements constituting part of the Property) for its intended purposes, and, without limiting such maintenance requirement, shall maintain such services at the boundaries of the land constituting part of the Property. Mortgagor shall comply with (or cause compliance with) all requirements of any insurance company or inspection or rating bureau in respect of the Property, including, without limitation, any requirements for the continuation of any insurance coverage or the continuation thereof at premium rates. Mortgagor shall timely pay and perform each of Mortgagor's obligations under or in connection with the Contracts. Except for the types of Contracts described on Schedule 4.6 attached hereto, Mortgagor shall not, without Mortgagee's prior written consent, (i) enter into any Contract with an Affiliate of Mortgagor or any Mortgagor Owner Person and/or (ii) enter into any Contract that has a term in excess of one year unless such Contract is terminable by Mortgagor (without penalty) on thirty (30) days' notice. None of Mortgagor, Member, or the Guarantors shall enter into any contract or agreement that contravenes any of the Loan Documents or that provides or has the effect that the performance of the Loan Documents constitutes a default under such contract or agreement or results in the creation of any lien, security interest, other charge or encumbrance upon or with respect to its properties. Mortgagor shall perform, observe and fulfill, in all material respects, and shall cause Guarantor to perform, observe and fulfill, in all material respects, all of the obligations, covenants and conditions set forth in any agreement or instrument to which Mortgagor or Guarantor, as the case may be, or any of the properties, assets or revenues of Mortgagor or Guarantor, as the case may be, are bound, if the failure to perform, observe or fulfill any such obligation, covenant or condition would materially and adversely affect the properties, assets, operations or condition (financial or otherwise) of Mortgagor or Guarantor, as the case may be, or the ability of any party to the Loan Documents to perform such party's obligations under the Loan Documents.

4.7 Leases. Mortgagor shall timely pay and perform each of its obligations under or in connection with the Leases, if any, and shall otherwise pay such sums and take such action as shall be necessary or required in order to maintain each of the Leases in full force and effect in accordance with its terms. Mortgagor shall within five (5) Business Days following receipt thereof, furnish to Mortgagee copies of any notices given to Mortgagor by the lessee under any Lease alleging the default by Mortgagor in the timely payment or performance of its

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obligations under such Lease where the cost of paying or performing such obligation exceeds \$25,000, or purporting to terminate or cancel any Lease prior to its stated expiration date (other than (i) Safe-Harbor Leases with a rentable area of no more than 5,000 square feet, (ii) Leases of a term no longer than one (1) year and demising less than 3,000 square feet, and (iii) Leases in full force and effect as of the date hereof and demising less than 3,000 square feet), or requiring or demanding the expenditure of more than \$25,000 by Mortgagor (or demanding the taking of any action by Mortgagor), and any subsequent communications related thereto. Mortgagor agrees that Mortgagee, in Mortgagee's sole discretion may during the continuance of an Event of Default advance any sum or take any action that Mortgagee reasonably believes is necessary or required to maintain the Leases in full force and effect, and all such sums advanced by Mortgagee, together with all costs and expenses incurred by Mortgagee in connection with action taken by Mortgagee pursuant to this Section, shall be due and payable by Mortgagor to Mortgagee within ten (10) days following demand thereof, shall bear interest from the date such sums are advanced by Mortgagee until paid at the Default Rate, and shall be secured by this Mortgage.

4.8 Eminent Domain; Private Damage. If all or any part of the Property is taken or damaged by eminent domain or any other public or private action, Mortgagor shall notify Mortgagee promptly of the time and place of all meetings, hearings, trials, and other proceedings relating to such action. Mortgagee may participate in all negotiations and appear and participate in all judicial or arbitration proceedings concerning any award or payment that may be due as a result of such taking or damage, and may, in Mortgagee's sole discretion, compromise or settle, in the names of both Mortgagor and Mortgagee, any claim for any such award or payment; provided, however, that in any event any such compromise or settlement shall be subject to the prior consent of Mortgagee, which may be granted or withheld in Mortgagee's discretion. Notwithstanding the foregoing, Mortgagor may settle, compromise or adjust claims of less than the Threshold Amount without Mortgagee's consent. Any such award or payment shall be paid directly to Mortgagee and shall be applied first to reimburse Mortgagee for all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Mortgagee in connection with the ascertainment and collection of such award or payment. The balance, if any, of such award or payment received by Mortgagee with respect to a condemnation shall, in Mortgagee's sole discretion, either (i) be retained and applied by Mortgagee toward payment of the Secured Obligations, in such order and manner as Mortgagee deems appropriate, or (ii) be paid over, in whole or in part and subject to such reasonable conditions as Mortgagee may impose, to Mortgagor for the purpose of restoring, repairing, or rebuilding any part of the Property affected by the taking or damage; provided however, that if all Secured Obligations have been performed or are discharged by the application of less than all of such insurance proceeds, then any remaining proceeds shall be paid over to Mortgagor. Notwithstanding the foregoing provisions of this Section 4.8, Mortgagee shall apply any such award or payment as provided in clause (ii) of the preceding sentence, provided, and on the following conditions: (A) there does not exist any Event of Default, (B) Mortgagor demonstrates to the reasonable satisfaction of Mortgagee that Mortgagor has the financial ability to pay all principal and interest required under the Note, and perform all of the other Secured Obligations, during the restoration of the Property from the proceeds of rent loss or business interruption insurance or otherwise, (C) the damage occurs prior to the last six (6) months of the term of the Loan and the restoration is capable of being completed prior to the stated maturity date of the Loan, (D) any condemnation award and other funds provided by Mortgagor for the restoration are released under escrow and

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construction funding arrangements reasonably satisfactory to Mortgagee, (E) the repair or restoration will return the Property to substantially the same size, design and utility as existed immediately prior to the damage, (F) in the event the condemnation award is insufficient to pay by itself for the restoration (as determined in good faith by Mortgagee), Mortgagor shall, prior to the commencement of any restoration work, deposit with Mortgagee within fifteen (15) days following the date on which the condemnation award is received by Mortgagee such additional funds as in the good faith opinion of Mortgagee are necessary to complete the restoration; (G) Mortgagor undertakes and covenants and agrees (in writing) with Mortgagee to fund any and all deficiencies, and in fact actually funds any and all such deficiencies, within thirty (30) days after being notified in writing thereof and prior to the distribution of any further portion of the condemnation award, so that at all times the funds held by Mortgagee and remaining to be disbursed for purposes of the restoration shall be sufficient to complete the work; (H) the annual income from the Leases that are in existence as of the date hereof or executed in accordance with the provisions of this Mortgage and that will survive the restoration or repair of the Property produce a Debt Service Coverage Ratio of not less than 1.10 to 1.0 and Mortgagor demonstrates to Mortgagee's satisfaction that Mortgagor shall be able to attain a Debt Service Coverage Ratio of at least 1.10 to 1.0 from Leases (that are in existence as of the date hereof or that are executed following the date hereof in accordance with the provisions of this Mortgage) within twelve (12) months after completion of the restoration; and (I) if any site plan amendment, variance, special use permit or other similar special approval or consent is required from any government authority or any other Person for such repair or restoration, Mortgagor shall obtain and deliver to Mortgagee such site plan amendment, variance, special use permit or other similar special approval or consent within one hundred eighty (180) days following such taking or condemnation (but such one hundred eighty (180) day time period shall in all respects be subject to the foregoing provisions of this Section 4.8 and shall not extend or otherwise modify any time periods in such foregoing provisions). Mortgagee may, prior to the application of any condemnation award, commingle it with Mortgagee's own funds and otherwise act with regard to such award as Mortgagee may determine in Mortgagee's sole discretion. If this Mortgage has been foreclosed prior to Mortgagee's receipt of such award or payment, Mortgagee may nonetheless retain such award or payment to the extent required to reimburse Mortgagee for all costs and expenses, including reasonable attorneys' fees, incurred in connection therewith, and to discharge any deficiency remaining with respect to the Secured Obligations.

Notwithstanding the foregoing provisions of this Section 4.8, in the event that the award or payment does not exceed the Threshold Amount, then such award or payment received by Mortgagor with respect to the applicable condemnation shall be paid over, in whole, to Mortgagor for the purpose of restoring, repairing or rebuilding any part of the applicable Property affected by the taking or damage with any balance remaining after completion of such repairs or replacements being paid to Mortgagor, if (i) no Default or Event of Default then exists, and (ii) Intentionally deleted, and (iii) the cost of such restoration, repair or rebuilding shall not exceed the Threshold Amount, and (iv) the condemnation occurs prior to the last six (6) months of the term of the Loan and the restoration, repair or rebuilding is capable of being completed, in Mortgagee's judgment, at least ninety (90) days prior to the stated maturity date of the Loan and (v) Mortgagor shall undertake and complete the restoration, repair or rebuilding of the Property so as to return the Property to substantially the same size, design and utility as existed immediately prior to the condemnation and shall fund any deficiency in the event such award is insufficient to complete such repair or restoration

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Mortgagee will have no obligation to see to the proper application of any proceeds paid over to Mortgagor, nor will any such proceeds received by Mortgagee bear interest or be subject to any other charge for the benefit of Mortgagor. If such proceeds are deposited with Mortgagee, Mortgagee may, prior to the application of such proceeds, commingle them with Mortgagee's own funds and otherwise act with regard to such proceeds as Mortgagee may determine in Mortgagee's sole discretion.

4.9 Mechanics' Liens. Mortgagor shall keep the Property free and clear of all liens and claims of liens by contractors, subcontractors, mechanics, laborers, materialmen, and other such persons, and Mortgagor shall cause any recorded statement of any such lien to be released of record or bonded off within forty-five (45) days after the recording thereof. Notwithstanding the preceding sentence, however, Mortgagor shall not be deemed to be in default under this Section if and so long as Mortgagor (a) contests in good faith the validity or amount of any asserted lien and diligently prosecutes or defends an action appropriate to obtain a binding determination of the disputed matter, and (b) provides Mortgagee with such security as Mortgagee may reasonably require to protect Mortgagee against all loss, damage and expense, including, without limitation, reasonable attorneys' fees, that Mortgagee might incur if the asserted lien is determined to be valid (which security may, at the option of Mortgagor, be in the form of a bond over such lien, provided that such bond either removes any such lien of record or prevents the filing or enforcement of any such lien of record).

4.10 Defense of Actions. Mortgagor shall defend, at Mortgagor's expense, any action, proceeding or claim that affects any property encumbered hereby or any interest of Mortgagee in such property or in the Secured Obligations, and Mortgagor shall indemnify and hold Mortgagee harmless from all loss, damage, cost, or expense, including reasonable attorneys' fees, which Mortgagee may incur in connection therewith.

4.11 Expenses of Enforcement. Mortgagor shall pay all costs and expenses, not limited to, all reasonable attorneys' fees, appraisal fees, consultants' fees, and other expenses incurred by Mortgagee in securing title to or possession of, and realizing upon, any security for the Secured Obligations. All such costs and expenses (together with interest thereon at the Default Rate from the date incurred) shall constitute part of the Secured Obligations, and may be included in the computation of the amount owed to Mortgagee for purposes of foreclosing or otherwise enforcing this Mortgage.

4.12 Financial Reports. Mortgagor shall furnish to Mortgagee (a) within thirty (30) days following the end of each fiscal quarter of each fiscal year and ninety (90) days following the end of each fiscal year of Mortgagor, Mortgagor's quarterly and annual operating statements for the Property as of the end of and for the preceding quarter and fiscal year, as applicable, in each case, prepared against the budget for such quarter or fiscal year, as may be applicable, (b) contemporaneously with the delivery of each of such operating statements of the Property, a rent roll certified, signed and dated by Mortgagor detailing the names of all tenants under the Leases, the portion of the Improvements on the Property occupied by each tenant, the rent and any other charges payable under each Lease and the term of each Lease, (c) within ninety (90) days following the end of each fiscal year of Mortgagor, the annual balance sheet and profit and loss statement of Mortgagor and within one hundred twenty (120) days following the end of each fiscal year either (x) an annual balance sheet and profit and loss statement of

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Guarantor, or (y) a statement certified by an independent public accountant evidencing that each Guarantor satisfies the Minimum Guarantor Net Worth Requirement, and (d) copies of all federal and state tax returns of Mortgagor within ten (10) days following the filing of the same, and, upon request of Mortgagee, the most recently filed federal and state tax returns of each Guarantor within ten (10) Business Days following Mortgagee's request of the same. The financial statements and reports described in clause (a) and clause (c) above shall be (x) in such detail as Mortgagee may reasonably require; (y) prepared (i) in accordance with generally accepted accounting principles consistently applied, (ii) using the same methodology as the financial statements and reports provided to Mortgagee on the date hereof, or (iii) using a methodology approved by Mortgagee in its reasonable discretion; and (z) certified to Mortgagee as true, correct and complete by Mortgagor and Guarantor (or, if required by Mortgagee, by an independent certified public accountant acceptable to Mortgagee). The financial statements required by clause (d) above shall be of the same form and methodology as the Guarantor financial statements and reports provided to Mortgagee on the date hereof. Mortgagor and Guarantor shall also promptly furnish or cause to be furnished to Mortgagee, any other financial reports or statements of Mortgagor and Guarantor, including, without limitation, balance sheets, profit and loss statements, tax returns, other financial statements, and certified rent rolls, required under any of the Loan Documents, requested by any regulatory or governmental authority exercising jurisdiction over Mortgagee, or requested by Mortgagee from time to time, certified as true, correct and complete by Mortgagor and Guarantor. Upon demand by Mortgagee following any Default or Event of Default, or if Mortgagee securitizes the Loan, Mortgagor shall deliver to Mortgagee the items required in clause (a) and clause (b) above on a monthly basis.

4.13 Priority of Leases. To the extent Mortgagor has the right, under the terms of any Lease, to make such Lease subordinate to the lien hereof, Mortgagor shall, at Mortgagee's request and Mortgagor's expense, take such action as may be reasonably required to effect such subordination. Conversely, Mortgagor shall, at Mortgagee's request and Mortgagor's expense, take such action as may be necessary to subordinate the lien hereof to any future Lease designated by Mortgagee. The standard form of Lease used by Mortgagor shall provide that the Lease is subject and subordinate to the Mortgage and all future mortgages affecting the Property. Notwithstanding the preceding sentence, however, Mortgagee shall provide a subordination, non-disturbance and attornment agreement, in Mortgagee's standard form, for each Lease that does not require Mortgagee's approval under this Mortgage or that has been approved by Mortgagee; provided, however, that if any tenant under any such Lease requests a different form of such an agreement or modifications to Mortgagee's standard form of such agreement, then Mortgagee shall use commercially reasonable efforts to negotiate a form of such an agreement that is mutually acceptable to Mortgagee and such tenant. In no event, however, shall Mortgagee be required to enter into a form of such agreement that is not acceptable to Mortgagee in Mortgagee's sole discretion.

4.14 Inventories; Assembly of Chattels. Mortgagor shall, from time to time at the request of Mortgagee, deliver to Mortgagee a current inventory of the Chattels, the Intangible Personalty and the other Collateral, in such detail as Mortgagee may reasonably require. During the existence of any Event of Default hereunder, Mortgagor shall at Mortgagee's request assemble the Chattels and make them available to Mortgagee at any place designated by Mortgagee that is reasonably convenient to both parties.

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4.15 Compliance with Laws, Existence, Etc. (a) Mortgagor shall comply with all applicable laws, rules, regulations and orders and other governmental or quasi-governmental requirements and private covenants, such compliance to include, without limitation, maintaining all Permits and paying before the same become delinquent all taxes, assessments and governmental charges imposed upon Mortgagor or the Property. In the event that (x) no Event of Default exists, and (y) Mortgagee is holding funds in an amount sufficient to pay any such taxes, assessments or governmental charges, and Mortgagee fails or refuses to pay the same, such event shall not be deemed to be a default by Mortgagor in respect of this Section 4.15(a). Mortgagor shall maintain all Permits necessary or desirable for the operation, ownership, use, development, occupancy and maintenance of the Property for its current use, and without limiting this covenant of Mortgagor, Mortgagor shall make application for renewals of any of the Permits prior to the expiration thereof. Mortgagor shall, promptly after receiving notice thereof, notify Mortgagee of any litigation, action, proceeding or investigation against Mortgagor, Member or any Guarantor or the Property before any court, governmental or quasi-governmental arbitrator or other authority and, upon reasonable request of Mortgagee, from time to time provide Mortgagee with status or other information in respect thereof. Mortgagor and Member shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence as a limited liability company, corporation or other entity, as may be applicable, and to maintain its authorization to perform the obligations under the Loan Documents. Neither Mortgagor nor Member shall amend or modify its organizational documents so as to contravene any of the Loan Documents or to prevent the observance of the obligations under the Loan Documents. Mortgagor, Member, and the Guarantors shall comply with all applicable laws, rules, regulations and orders and other governmental or quasi-governmental requirements, and shall obtain all authorizations, approvals and consents from, and shall make all notices and filings with, any court, governmental, authority or regulatory body, in respect of its right and ability to perform, or cause the performance of, the obligations under the Loan Documents. Mortgagor, Member, and the Guarantors shall maintain its status as "non-foreign person" within the meaning of Sections 1445 and 7701 of the United States Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

(b) Right to Contest. Notwithstanding any other provision of this Mortgage, Mortgagor shall not be deemed to be in default solely by reason of Mortgagor's failure to comply with any applicable law, rule, regulation or order so long as, in Mortgagee's judgment, each of the following conditions is satisfied:

(i) Mortgagor is engaged in and diligently pursuing in good faith administrative or judicial proceedings appropriate to contest the validity or applicability of such law, rule, regulation or order; and

(ii) Noncompliance with any such law, rule, regulation or order will not result in the loss or forfeiture of any property encumbered hereby or any interest of Mortgagee therein or result in any fines or other punitive actions or any loss or impairment of insurance coverage; and

(iii) Mortgagor notifies Mortgagee that it plans to contest the validity or applicability of such law, rule, regulation or order, and, upon request by Mortgagee, Mortgagor deposits with Mortgagee, as security for any payment or

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performance that may ultimately be required, a sum equal to the amount of any fine, assessment or charge plus the interest, penalties, and other costs that Mortgagee reasonably estimates are likely to become payable if Mortgagor's contest is unsuccessful.

If Mortgagee determines that any one or more of such conditions is not satisfied or is no longer satisfied, then Mortgagor shall comply with the law, rule, regulation or order in question, within thirty (30) days after Mortgagee gives notice of such determination.

4.16 Records and Books of Account. Mortgagor shall keep accurate and complete records and books of account, in which complete entries will be made, reflecting all financial transactions relating to the Property.

4.17 Inspection Rights. At any reasonable time, and from time to time, upon prior notice from Mortgagee, Mortgagor shall permit Mortgagee, or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit and inspect the Property and to discuss with Mortgagor the affairs, finances and accounts of Mortgagor provide that Mortgagee, or such agents or representatives as the case may be, shall use reasonable efforts to minimize disruption with building operations and tenants.. Mortgagor shall take all actions necessary or required under the Leases to effect such right of Mortgagee to inspect the Property.

4.18 Change of Executive Offices. Mortgagor shall promptly notify Mortgagee in writing if changes are made in the location of Mortgagor's primary executive offices.

4.19 Further Assurances; Estoppel Certificates. Mortgagor shall execute and deliver to Mortgagee within ten (10) days after any request by Mortgagee, and pay the costs of preparation and recording thereof, any further documents that Mortgagee may reasonably request to confirm or perfect the liens and security interests created or intended to be created hereby, or to confirm or perfect any evidence of the Secured Obligations. Mortgagor shall also, within ten (10) days after any request by Mortgagee, deliver to Mortgagee a signed and acknowledged statement certifying to Mortgagee, or to any proposed transferee of the Secured Obligations, (a) the balance of principal, interest, and other sums then outstanding under the Note and the other Loan Documents and (b) whether Mortgagor claims to have any offsets or defenses with respect to the Secured Obligations and, if so, the nature of such offsets or defenses.

4.20 Costs of Closing. Mortgagor shall on demand pay directly or reimburse Mortgagee for any costs or expenses reasonably incurred in connection with the closing of the Loan, including, but not limited to, fees of counsel for Mortgagee and costs and expenses for which invoices were not available at the closing of such loan, or costs and expenses which are incurred by Mortgagee after such closing. All such costs and expenses (together with interest thereon at the Default Rate which interest shall accrue from ten (10) days following Mortgagee's request for repayment of such costs and expenses until repaid), shall constitute a part of the Secured Obligations, and may be included in the computation of the amount owed to Mortgagee for purposes of foreclosing or otherwise enforcing this Mortgage and/or any of the other Loan Documents.

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4.21 Fund for Electronic Transfer. All monthly payments of principal and interest on the Note, escrow deposits and other amounts due under this Mortgage or the other Loan Documents shall be made by Mortgagor by electronic funds transfer from a bank account established and maintained by Mortgagor for such purpose. Mortgagor shall establish and maintain such account until the Secured Obligations are fully paid and shall direct the depository of such account in writing to so transmit such payments on or before the respective due dates to the account of Mortgagee as shall be designated by Mortgagee in writing.

4.22 Use. Mortgagor shall use the Property solely for the operation of a mixed-use commercial building comprised of retail and office components and as otherwise provided in the Leases and any other use consistent therewith and not otherwise in violation of any applicable laws and for no other use or purpose.

4.23 Management and Leasing.

(a) **Management.** The Property shall be managed by Mortgagor or any Property Manager (as defined below). The Property shall not be managed by any Person other than Mortgagor, except under a management agreement delivered to, and approved by, Mortgagee (the "**Management Agreement**") and with a property manager consented to by Mortgagee (the "**Property Manager**"). Mortgagee hereby approves AmTrust Realty Corp., a New York corporation, as the initial Property Manager and the Management Agreement, a true, correct and complete copy of which has been delivered to Mortgagee prior to the date hereof. Any substitute or replacement Property Manager or any other change in Property Manager shall be subject to the prior written consent of Mortgagee, such consent not to be unreasonably withheld or delayed. Mortgagor shall not permit any amendment to or modification of any Management Agreement, or management of the Property by any Person other than Mortgagor or Property Manager, without the prior written consent of Mortgagee. Any such Property Manager shall execute a Subordination Agreement in respect of its Management Agreement in form and substance satisfactory to Mortgagee.

(b) **Leasing.** In the event that Mortgagor enters into an exclusive leasing agreement with any leasing agent or other third party (whether or not such third party is an Affiliate of Mortgagor), such leasing agent shall execute a Subordination Agreement in respect of its leasing agreement in form and substance satisfactory to Mortgagor.

4.24 Cash Management Lockbox. At or prior to the closing of the Loan, Mortgagee and Mortgagor shall enter into the Cash Collateral Agreement, pursuant to which Mortgagee shall (or shall cause Servicer to) establish a deposit account into which all proceeds in respect of the Property, including, without limitation, all Rents, shall be deposited, applied, retained and/or disbursed, pursuant to and in accordance with the terms and provisions of the Cash Collateral Agreement. Mortgagor shall comply with all of the terms and conditions of the Cash Collateral Agreement.

4.25 Single Purpose Entity. Mortgagor shall at all times be a Single Purpose Entity.

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4.26 Patriot Act.

(a) Mortgagor hereby represents, warrants and covenants and agrees that: the Mortgagor Control Persons and their respective Affiliates (i) are not, and shall not become, a Person subject to, or with whom Mortgagee is restricted from doing business with under, regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including, but not limited to, those named on OFAC’s Specially Designated and Blocked Persons list) or under any statute (including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)), executive order (including, without limitation, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and the Annex thereto, collectively, the “**Executive Order**”), or other governmental action relating to terrorism financing, terrorism support and/or otherwise relating to terrorism, and (ii) are not and shall not engage in any dealings or transactions or otherwise become or be associated with Persons named on OFAC’s Specially Designated and Blocked Persons list or persons who commit terrorism or conspire to commit or support terrorism as defined in the Executive Order (any Person described in the preceding clause (i) or clause (ii) being referred to herein as “**Prohibited Person**”). Mortgagor hereby represents, warrants and covenants and agrees that none of the Mortgagor Members or their respective Affiliates; (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; (C) is a Person that is in violation of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1, et seq.); (D) is a Person that is in violation of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010; or (E) 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 prohibitions set forth in the Executive Order or any statutes referred to in this Section 4.26(a). Mortgagor covenants and agrees to deliver to Mortgagee any certification or other evidence requested from time to time by Mortgagee in Mortgagee’s sole discretion, confirming Mortgagor’s compliance with this Section 4.26(a).

(b) At all times throughout the term of the Loan, (i) none of the funds or other assets of any Mortgagor Control Person or its respective Affiliates shall constitute property of, shall be beneficially owned, directly or indirectly, by any government or other Person subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et. seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder or any other laws, regulations or executive orders administered by the Office of Foreign Assets Control with the result that an investment in Mortgagor (whether directly or indirectly) is prohibited by law or the Loan made by Mortgagee is in violation of law (an “**Embargoed Person**”), (ii) no Embargoed Person shall have any interest of any nature whatsoever in Mortgagor with the result that such investment in Mortgagor (whether directly or indirectly) is prohibited by law or the Loan is in violation of law, and (iii) none of the funds of any Mortgagor Control Person or its respective Affiliates, as applicable, shall be derived from any unlawful activity with the result

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that the investment in Mortgagor (whether directly or indirectly) is prohibited by law or the Loan is in violation of law.

(c) None of the Mortgagor Control Person, or any of their respective constituents, Affiliates, members, officers, directors or any individual who has the authority to execute or authorize, or who has been authorized to execute, and/or whose consent is required for the execution of the Loan Documents on behalf of any Mortgagor Control Person, any of their respective brokers or other agents acting in any capacity in connection with the Loan, does or shall (i) conduct any business or 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 or leasing any portion of the Property to any Prohibited Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engage in or 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 prohibitions set forth in any Anti Terrorism Law.

(d) Mortgagor shall promptly deliver to Mortgagee any certification or other evidence reasonably requested from time to time by Mortgagee confirming the compliance by Mortgagor and the Mortgagor Control Persons with this Section 4.26. The representations, warranties and covenants set forth in this Section 4.26 shall be deemed repeated and reaffirmed by Mortgagor as of each date that Mortgagor makes a payment to Mortgagee under the Note, this Mortgage and the other Loan Documents or receives any payment from Mortgagee. Mortgagor shall promptly notify Mortgagee in writing should Mortgagor become aware of any change in the information set forth in these representations, warranties and covenants.

4.27 Anti-Money Laundering. Mortgagor represents and warrants that Mortgagor has taken reasonable measures appropriate to the circumstances (and in any event as required by law), with respect to each holder of a direct or indirect interest in Mortgagor, to assure that funds invested by such holders in Mortgagor are derived from legal sources (the “**Anti-Money Laundering Measures**”). Mortgagor represents that the Anti-Money Laundering Measures have been undertaken in accordance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 et seq. (“**BSA**”), and all applicable laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, the “**Anti-Money Laundering Laws**”). Mortgagor covenants that Mortgagor shall take the Anti-Money Laundering Measures in accordance with the Anti-Money Laundering Laws with respect to each holder of a direct or indirect interest in Mortgagor. Mortgagor covenants that Mortgagor shall take reasonable measures appropriate to the circumstances (in any event as required by law) to ensure that Mortgagor is in compliance with all current and future Anti-Money Laundering Laws and laws, regulations and government guidance for the prevention of terrorism, terrorist financing and drug trafficking. Without limiting the foregoing provisions of this Section 4.27, at all times throughout the term of the Loan, none of the funds of Mortgagor or any Guarantor, as applicable, that are used to repay the Loan shall be derived from any unlawful activity, with the result that the investment in Mortgagor (whether directly or indirectly) is prohibited by law or the Loan is in violation of law.

4.28 General Indemnity. Mortgagor agrees that while Mortgagee has no liability to any Person in tort or otherwise as lender and that while Mortgagee is not an owner or

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operator of the Property, Mortgagor shall, at Mortgagor's sole cost and expense, protect, defend, release, indemnify and hold harmless the Indemnified Parties (defined below) from any Losses (defined below) imposed on, incurred by, or asserted against the Indemnified Parties, directly or indirectly, arising out of or in connection with the Secured Obligations, the Property (or any portion thereof), the Loan, or the Loan Documents, any and all claims for brokerage, leasing, finders or similar fees that may be made relating to the Property and the Secured Obligations, or the exercise by Mortgagee of any rights or remedies granted to Mortgagee pursuant to this Mortgage, the other Loan Documents or applicable law; provided, however, that the foregoing shall not apply (a) to any Losses caused by the gross negligence or willful misconduct of the Indemnified Parties or (b) to any disputes among the Indemnified Parties not caused in whole or in part by a breach of Mortgagor's obligations under the Loan Documents. The term "Losses" shall mean any claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses (including, without limitation, unrealized loss of value of the Property), costs, expenses, fines, penalties, charges, fees, judgments, awards, and amounts paid in settlement of whatever kind including reasonable attorneys' fees and all other costs of defense. The term "**Indemnified Parties**" shall mean (a) Mortgagee, (b) any prior owner or holder of the Note, (c) any existing or prior servicer of the Loan, (d) the officers, directors, shareholders, partners, members, employees and trustees of any of the foregoing, and (e) the heirs, legal representatives, successors and assigns of each of the foregoing. THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO LOSSES THAT IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY OR ANY STRICT LIABILITY, EXCEPT AS AFORESAID.

4.29 Duty to Defend, Costs and Expenses. Upon request, whether Mortgagor's obligation to indemnify Mortgagee arises under Section 4.28 above or elsewhere in the Loan Documents, Mortgagor shall defend the Indemnified Parties (in Mortgagor's or the Indemnified Parties' names) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, the Indemnified Parties may, in their sole discretion, engage their own attorneys and professionals to defend or assist them, and, at their option, their attorneys shall control the resolution of any claims or proceedings. Upon demand, Mortgagor shall pay or, in the sole discretion of the Indemnified Parties, reimburse the Indemnified Parties for all Losses imposed on, incurred by, or asserted against the Indemnified Parties by reason of any items set forth in Section 4.28 above and/or the enforcement or preservation of the Indemnified Parties' rights under the Loan Documents. Any amount payable to the Indemnified Parties under this Section 4.29 shall (a) be deemed a demand obligation, (b) be part of the Secured Obligations, (c) bear interest at the Default Rate, which interest shall accrue from five (5) days following Mortgagee's request for repayment of such amounts payable until repaid, and (d) be secured by this Mortgage.

4.30 Guarantor. Within thirty (30) days after the death of an individual Guarantor, Mortgagor shall notify Mortgagee in writing of such death and provide to Mortgagee the names and current financial statements of one or more substitute guarantors reasonably acceptable to Mortgagee (any such substitute guarantor, a "**Substitute Guarantor**"): (A) whose net worth and financial condition is, in Mortgagee's discretion, equivalent to or better than the deceased Guarantor based upon the financial statements and other financial information delivered to Mortgagee in respect of the individual that is the Guarantor immediately prior to

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such replacement, or (B) who are the heirs, devisees and beneficiaries of substantially all of the deceased Guarantor's assets, provided, however, that, in each case, such Substitute Guarantor shall have an aggregate Net Worth greater than or equal to the Minimum Guarantor Net Worth Requirement. For the avoidance of doubt, in the event Mortgagor is required to identify a Substitute Guarantor, Mortgagee shall accept The George Karfunkel 2007 Grantor Retained Annuity Trust #1 and/or Michael Karfunkel 2005 GRAT (each, a "Trust", and together, the "Trusts") as such Substitute Guarantor, provided that at the time of such substitution, either such Trust or collectively the Trusts shall satisfy the Substitute Guarantor Minimum Net Worth Requirement. In the event of that either or both of the Trusts are the substitute guarantors, all references herein and in other Loan Documents to Minimum Guarantor Net Worth Requirement shall instead refer to the Substitute Guarantor Minimum Net Worth Requirement. Within sixty (60) days after the death of such individual Guarantor, each substitute guarantor(s) shall (i) deliver to Mortgagee the financial reports and statements required to be delivered by Guarantor in Section 4.12 hereof and Section 12 of the Guaranty and (ii) execute and deliver to Mortgagee a guaranty agreement and environmental indemnity agreement in substantially the same form as the Guaranty and Environmental Indemnity Agreement and such other instruments as Mortgagee may reasonably require in connection with such substitution. Notwithstanding the foregoing provisions of this Section 4.30, in the event of the death of one, but not both, of the individual Guarantors, so long as the surviving individual Guarantor (x) satisfies the Minimum Guarantor Net Worth Requirement at the time of the death of such other individual Guarantor and (y) provides Mortgagee with a financial statement that complies with the provisions of Section 4.12 of this Mortgage as it relates to the Guarantors and which financial statement shows that such surviving Guarantor satisfies the Minimum Guarantor Net Worth Requirement, then Mortgagor shall not be required to provide Mortgagee any substitute guarantor.

4.31 Claims Against Indemnified Parties. Mortgagor hereby (a) waives any claim that Mortgagor may have against any of the Indemnified Parties based upon any assertion that any such Indemnified Party has acted unreasonably or that any such Indemnified Party has unreasonably withheld or unreasonably delayed any action, in each case, to the extent that such Indemnified Party had an obligation, either at law or pursuant to the Loan Documents, to act reasonably and (b) agrees that the sole remedy of Mortgagor based upon any such claim against any of the Indemnified Parties shall be an action for specific performance, injunctive relief or declaratory judgment. Mortgagor hereby further agrees that the Indemnified Parties shall not be liable for any monetary damages (including, without limitation, compensatory, consequential or punitive damages) in respect of any such claim by Mortgagor and that Mortgagor's sole remedy in respect of any such claim shall be limited to specific performance, injunctive relief or declaratory judgment.

4.32 Title to the Property. Mortgagor shall warrant and defend the validity of the lien of this Mortgage, subject only to the Permitted Exceptions, against the claims of every Person whomsoever.

4.33 Minimum Net Worth and Liquidity of Guarantor. Except as set forth in Section 4.31 above, at all times until repayment in full of the Secured Obligations, Mortgagor shall cause Guarantor to satisfy the Minimum Guarantor Net Worth Requirement.

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ARTICLE 5

MORTGAGOR'S NEGATIVE COVENANTS

5.1 Waste and Alterations. Mortgagor shall not commit or permit any physical waste with respect to the Property or the Chattels. Mortgagor shall not cause or permit any part of the Property, including, but not limited to, any building, structure, parking lot, driveway, landscape scheme, timber, or other ground improvement, to be removed, demolished, or materially altered, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Mortgagee's consent shall not be required in connection with any alterations that are made in connection with (a) tenant improvement work performed pursuant to the terms of any Lease executed in accordance with the terms hereof, (b) tenant improvement work performed pursuant to the terms and provisions of a Lease and not adversely affecting any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, (c) alterations performed in connection with the restoration of the Property following a casualty or condemnation in accordance with the terms and provisions of this Mortgage and the other Loan Documents, (d) repairs that are required to be performed in order to maintain the normal operation of the Property, provided, that, as soon as reasonably practical after such repair is completed, Mortgagor shall provide to Mortgagee written notice of such repairs and such evidence as may be reasonable requested by Mortgagee that such repairs have been completed in a workmanlike manner or (e) alterations costing less than \$1,000,000 and that do not adversely affect any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements. Mortgagor shall not change or cause to be changed any access to or egress from the Property by public streets, easements or rights of way in a way that would have a material adverse effect on the value of the Property.

5.2 Zoning and Private Covenants. Mortgagor shall not initiate, join in, or consent to any change in any zoning ordinance or classification, any change in the "zoning lot" or "zoning lots" (or similar zoning unit or units) presently comprising the Property, any transfer of development rights, any private restrictive covenant, or any other public or private restriction limiting or defining the uses that may be made of the Property or any part thereof, without the express written consent of Mortgagee. If under applicable zoning provisions the use of all or any part of the Property is or becomes a nonconforming use, Mortgagor shall not cause such use to be discontinued or abandoned without the express written consent of Mortgagee, and Mortgagor shall use its best efforts to prevent the tenant under any Lease from discontinuing or abandoning such use.

5.3 Certain Covenants Regarding Leases.

(a) Mortgagor shall neither do, nor neglect to do, anything which may cause or permit the termination of any Lease of all or any part of the Property, or cause or permit the withholding or abatement of any rent payable under any such Lease.

(b) Without Mortgagee's prior written consent, which may be granted or withheld in Mortgagee's sole discretion, Mortgagor shall not enter into or modify,

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amend, supplement, terminate or cancel any Lease of all or any part of the Property (except in respect of (i) the addition or reduction of any storage area located at the Property, or (ii) installation or modification of signage). Any submission by Mortgagor for Mortgagee's consent to a Lease or modification, amendment, supplement, termination or cancellation thereof shall be accompanied by a copy of such Lease or modification, amendment, supplement, termination or cancellation, a then-current rent roll for the Property, year-to-date and prior year operating statements for the Property and a cover letter requesting Mortgagee's consent which contains a signature line on which Mortgagee may evidence its consent to such Lease or modification, amendment, supplement, termination or cancellation (collectively, the "**Lease Approval Deliveries**"). Each Lease, and each modification, amendment, supplement, termination or cancellation of any Lease, shall be in writing.

(c) Except with the prior written consent of Mortgagee, which may be granted or withheld in Mortgagee's sole discretion, Mortgagor shall not (i) collect minimum base rent from all or any part of the Property for more than sixty (60) days in advance (not including payments of the first installment of rent made on execution of a Lease), (ii) assign the Rents from the Property or any part thereof or (iii) consent to the cancellation or surrender of all or any part of any Lease, except that Mortgagor may in good faith terminate any Lease for nonpayment of Rent or other material breach by the tenant thereunder.

(d) Mortgagor shall provide Mortgagee with a rent roll, on an annual basis, certified by Mortgagor to Mortgagee as true, correct and complete the following items: (a) name of tenant, (b) date of Lease, (c) rentable square footage, (d) space or unit number, (e) commencement and expiration dates, (f) commencement date of rental payments, (g) monthly base rent, (h) rent abatements (if any), (i) rent escalations, (j) all other rent items (including reimbursable expenses), (k) percentage rent breakpoint (if applicable), (l) expense stop (if applicable), (m) deposits, (n) guarantor (if any), (o) date of guaranty (if any), (p) options to purchase, extend, expand, renew and/or terminate (q) operating covenant "Go Dark" rights, (r) co-tenancy clause and (s) any unextinguished tenant concessions. Without limiting the provisions of Section 5.3(b), the rent roll shall include all Leases, whether or not evidenced by written instruments.

(e) Notwithstanding the foregoing provisions of this Section 5.3, Mortgagor shall have the right to enter into "Safe-Harbor Leases" (as hereinafter defined) without Mortgagee's prior written consent. A "**Safe-Harbor Lease**" shall mean any Lease or proposed Lease that meets the following criteria: (A) provides for base rent of at least \$15.50 per square foot, tenant improvement allowances of no more than \$50.00 per square foot, leasing commissions of no more than 10% of the base rent for the initial term of such lease and 10% of the base rent for any renewal term of such lease, and a free rent period of no greater (x) than six (6) months for any Lease with an initial five (5) year lease and (y) proportionately commensurate with a longer term lease, (B) the rentable area demised pursuant to such Lease or to be demised pursuant to such proposed Lease which, when combined with any other space in the Property leased to affiliated entities of the tenant under such Lease or proposed Lease, is less than 15,000 square feet, (C) such Lease is, or such proposed Lease shall be for a term of no less than (x) three (3) years in respect of any Lease or proposed lease where the rentable area demised pursuant to such Lease or proposed Lease is greater than 3,000 square feet and less than 15,000 square feet, or (y) one (1) year in respect of any Lease or proposed lease where the rentable area demised

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pursuant to such Lease or proposed Lease is less than 3,000 square feet, and in each case, no greater than twenty-five (25) years, including any tenants extension options, (D) does not contain any options to purchase, or other rights to acquire, the Property or any portion thereof or interest therein (other than such rights arising in connection with a material casualty or condemnation), (E) does not contain any extraordinary, uncustomary and unduly burdensome landlord obligations (including, without limitation, obligations that a landlord unaffiliated with Mortgagor would have difficulty performing), (F) is entered into on the standard form of Lease approved in writing by Mortgagee, without material modification thereto, with such changes only as are necessitated by the business terms satisfying the requirements of this definition of "Safe-Harbor Lease" and other non-material changes as are commercially reasonable, and provided it conforms with the Lease provisions hereunder and under the other Loan Documents, (G) is entered into on arms-length terms with Persons that are not Affiliates of Mortgagor or Member or Guarantor, which tenant shall be creditworthy and reputable, (H) is otherwise commercially reasonable and contains terms comparable to then-existing local market terms, (I) is automatically self-subordinated to this Mortgage and requires tenant to attorn to Mortgagee or Mortgagee's successor in interest upon such party's acquisition of title and at such party's sole option, (J) does not contain any requirement for a non-disturbance or recognition agreement (provided, however, for the avoidance of doubt, any provision that requires Mortgagor to use "commercially reasonable efforts" or "good faith efforts", or similar language, to obtain a non-disturbance agreement or recognition agreement shall not constitute a "requirement" for the purpose of this clause (J) of this Section 5.3(e)), or any other provision that might adversely affect Mortgagee's rights under the Loan Documents in any material way, (K) not contain an expansion option which, if exercised, would cause the premises under such Lease to exceed 30,000 rentable square feet, and (L) not grant the tenant thereunder any incentives equivalent to ownership of the Property or any Interest in the ownership of the Property, or contain any other terms that would materially impair Mortgagee's security, and (M) not later than the date that is ten (10) days following the execution of such Lease or a modification or amendment of a Safe-Harbor Lease, Mortgagor shall provide Mortgagee with a certified copy of such Lease or such modification or amendment (other than Safe-Harbor Leases with a rentable area of no more than 5,000 square feet), together with (i) all other items required to be submitted with any Lease pursuant to Section 5.3(b), and (ii) a certificate from Mortgagor certifying to Mortgagee that the Lease (or, if applicable, such Lease together with such modification or amendment) is a Safe-Harbor Lease as defined in this Mortgage and that the Lease (or, if applicable, such Lease together with such modification or amendment) satisfies in all material respects the requirements set forth herein to qualify as a Safe-Harbor Lease. For the avoidance of doubt, Mortgagor may (without the prior written consent of Mortgagee) enter into any modification or amendment of any Safe-Harbor Lease, so long as such Safe Harbor Lease shall remain a Safe Harbor Lease following such modification or amendment. Notwithstanding any provision to the contrary contained herein, Mortgagor may (without the prior written consent of Mortgagee) (w) renew or extend an existing Lease that is not a Safe-Harbor Lease, provided that such Lease shall meet the requirements of a Safe-Harbor Lease following such renewal or extension, (x) terminate any Safe-Harbor Lease of which the demised area pursuant to such Lease is less than or equal to 5,000 square feet, or (y) terminate any Safe-Harbor Lease, provided that Mortgagor has received a written commitment or letter of intent from a proposed tenant to relet the space demised by the Safe-Harbor Lease being so terminated, or (z) enter into any modification or amendment of any

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Lease approved by Mortgagee or any Safe-Harbor Lease, provided that, in each case, the area demised pursuant to such Lease or Safe-Harbor Lease is less than 15,000 square feet.

(f) Whenever Mortgagee's consent is required pursuant to the provisions of this Section 5.3 with respect to any proposed Lease that does not qualify as a Safe-Harbor Lease or with respect to any modification, amendment, supplement, termination, or cancellation of a Lease that does not qualify as a Safe-Harbor Lease, Mortgagee shall attempt to respond within ten (10) Business Days after Mortgagee's receipt of (i) Mortgagor's written request for such consent, which request includes the following legend clearly marked in not less than fourteen (14) point bold face type, underlined, in all caps letters: "**LENDER SHALL BE DEEMED TO HAVE CONSENTED TO THE MATTER CONTAINED HEREIN IF LENDER FAILS TO RESPOND TO THIS REQUEST FOR CONSENT WITHIN TEN (10) BUSINESS DAYS AFTER THE DATE HEREOF,**" (ii) all documents and information specified in Section 5.3(b), and (iii) any additional information requested by Mortgagee pursuant to this Section 5.3(f) (collectively, the "**Lease Approval Deliveries**") within five (5) Business Days after Mortgagee's receipt of the proposed lease modification, amendment, supplement, termination or cancellation; and Mortgagee's consent shall not be unreasonably withheld based upon market conditions at the time of such request. Notwithstanding the provisions of Section 5.3(b), instead of a copy of the proposed Lease, Mortgagor shall be permitted to submit to Mortgagee, for purposes of obtaining Mortgagee's consent to any proposed Lease under this Section 5.3(f), either (i) a "Lease Summary Term Sheet" that sets out all of the economic terms of the proposed Lease, as well as any deviations from the standard form of Lease approved by Mortgagee or (ii) a comparison of such Lease against the standard form of Lease approved in writing by Mortgagee showing all proposed modifications to the standard form of Lease approved in writing by Mortgagee. If Mortgagee fails to respond to such written request for consent of a proposed Lease or modification, amendment, supplement, termination or cancellation within ten (10) Business Days after receipt of such proposed Lease Approval Deliveries, Mortgagee shall have deemed to have consented to such Lease, modification, amendment, supplement, termination or cancellation. Notwithstanding the foregoing, the provisions set forth in this Section 5.3(f) in respect of any deemed approval, shall not apply to any proposed Lease to an Affiliate of Borrower, Guarantors, or the Property Manager.

(g) Termination Fees.

(i) Without limiting the generality of the foregoing, whether or not Mortgagee's consent to the cancellation, termination or surrender of any Lease is required hereunder, (a) Mortgagor shall notify Mortgagee in writing of any cancellation penalties, termination fees or other consideration payable to Mortgagor in connection with any cancellation, termination or surrender of any Lease (any such penalties or fees are referred to herein as "**Termination Fees**"), which written notice shall be delivered to Mortgagee not later than ten (10) Business Days following receipt by Mortgagor of notice from the applicable tenant under such Lease of the intention of such tenant to cancel, terminate or surrender such Lease (unless, pursuant to the terms of such Lease, Tenant's payment of such Termination Fee or any portion thereof is required to be made by the tenant thereunder at the time notice of its intent to terminate, cancel or surrender such Lease is given, in which case Borrower's written notice to Mortgagor shall be delivered as soon as possible after tenant's notification is received), but in any event prior

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to the payment by the applicable tenant under such Lease of any such Termination Fees in respect of any Lease that is not a Safe-Harbor Lease to Mortgagor and (b) Mortgagee may, but shall not be required to, require that Mortgagor deposit such Termination Fees into a reserve held by Mortgagee or Servicer pending receipt by Mortgagee of a Lease that covers space left vacant to be relet to a tenant under a Lease reasonably acceptable to Mortgagee (any such Lease an “**Approved Lease**”). Following receipt by Mortgagee of an executed copy of such Approved Lease, Mortgagee shall disburse or cause to be disbursed the Termination Fees then held by Mortgagee in respect of such Approved Lease to Mortgagor. The provisions of Section 5.3(g)(i) above do not apply to Safe-Harbor Leases.

Notwithstanding the foregoing, in the event that Mortgagor receives any Termination Fees in respect of any Lease with any Tenant under a Safe-Harbor Lease, then following a Triggering Event, any such Termination Fees received by Mortgagor shall be deposited into the Deposit Account (as such term is defined in the Cash Collateral Agreement) and applied pursuant to and in accordance with the terms and provisions of the Cash Collateral Agreement.

(ii) If no Default or Event of Default is then continuing, Mortgagee shall disburse to Mortgagor any Termination Fees not disbursed to Mortgagor pursuant to this Section 5.3 above

(iii) If any Event of Default shall then be continuing, Mortgagee may apply any Termination Fees to the Secured Obligations in such order and in such manner as determined by Mortgagee in Mortgagee’s sole discretion.

5.4 Transfer or Further Encumbrance of Property.

(a) Except as provided in this Section 5.4, without Mortgagee’s prior written consent, which consent may be granted or withheld in Mortgagee’s sole and absolute discretion, Mortgagor shall not (a) directly or indirectly sell, assign, convey, transfer or otherwise dispose of any direct or indirect legal, beneficial or equitable interest in all or any part of the Property, (b) permit or suffer any owner, directly or indirectly, voluntarily or involuntarily, of any direct or indirect ownership or beneficial interest in the Property or Mortgagor to transfer such interest, whether by transfer of partnership, membership, stock or other beneficial interest in any entity or otherwise, or (c) mortgage, pledge, hypothecate or otherwise encumber or permit to be encumbered or grant or permit to be granted a security interest in all or any part of the Property or Mortgagor or any direct or indirect legal beneficial or equitable interest in the Property or Mortgagor.

(b) Notwithstanding anything to the contrary set forth in this Mortgage or any other Loan Document, transfers of title to the Property or direct or indirect interests in Mortgagor pursuant to any will or testament or applicable law of descent upon the death of a natural person that was the holder of the applicable interest in Mortgagor, shall be permitted without the consent of Mortgagee.

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(c) Notwithstanding the provisions of Section 5.4(a), transfers of direct and indirect interests in Mortgagor (i) to any Family Member, any Family Entity or any Family Trust made for bona fide estate planning purposes and (ii) in the aggregate over the term of the Loan of not more than forty-nine percent (49%) of the direct and/or indirect ownership interests in Mortgagor (but not inclusive of any transfer made pursuant to clause (i) above) shall be permitted without Mortgagee's prior written consent, provided that, in each case, all of the following conditions (the "**Transfer Conditions**") shall be satisfied:

- (i) no Default or Event of Default has occurred;
- (ii) after the proposed transfer, George Karfunkel and/or Michael Karfunkel continue to directly or indirectly Control Mortgagor and own, directly, indirectly, or beneficially, at least 51% of the ownership interests in the Mortgagor;
- (iii) Intentionally deleted;
- (iv) Mortgagor delivers to Mortgagee at least ten (10) days' prior written notice of the proposed transfer, together with Organizational Charts illustrating the ownership structure both before and after the proposed change in ownership;
- (v) not later than the date that is (five) 5 days following the date that the transfer has occurred, Mortgagor delivers to Mortgagee a final Organizational Chart confirming the new ownership structure;
- (vi) Mortgagor shall pay or reimburse Mortgagee for all of the actual costs and expenses incurred by Mortgagee in respect of any such transfer, including, without limitation, reasonable attorney's fees incurred by Mortgagee, whether or not such transfer is consummated;
- (vii) Any Person to whom or to which any such direct or indirect ownership interest is transferred shall comply with the requirements of Mortgagor and the Mortgagor Control Persons as set forth in Section 4.25 and Section 4.27 hereof, and if Mortgagee requests, the proposed transferees and its constituent members or other owners shall execute a certificate in form and substance satisfactory to Mortgagee conforming such compliance.
- (viii) concurrently with the delivery of the notice described in subsection (iv) above, Mortgagor shall pay Mortgagee an administrative review fee in the amount of \$5,000.00.
- (ix) Each such Person to whom or which any such direct or indirect ownership interest is transferred shall be a citizen of the United States of America or any State of the United States of America or the District of Columbia, or, in the alternative, as applicable, an entity organized under the laws of the United States of America, any State of the United States of America or the District of Columbia.

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(x) Such transfer shall not impair or adversely affect Mortgagee's security under the Loan Documents, including, without limitation, the obligations of Mortgagor under this Mortgage and the obligations of Guarantors under the Guaranty and the Environmental Indemnity Agreement.

(xi) Such transfer could not reasonably be expected, in the good faith determination of Mortgagee, to subject Mortgagee or any of its Affiliates to any civil or criminal penalties in any jurisdiction or otherwise constitute an unlawful act, offence or crime by Mortgagee or any of its Affiliates, including, without limitation, under any of the laws, regulations and executive orders described in Section 4.26 of this Mortgage.

(xii) Immediately following the consummation of such transfer, all of the representations set forth in Section 3.3 shall remain true, complete and correct, except solely as applicable to such transfer.

(xiii) The organizational documents of the Mortgagor and Member shall not be amended or modified, except solely to reflect the change in ownership resulting from such transfer.

(xiv) Prior to any such transfer, Mortgagor shall provide Mortgagee with (A) evidence reasonably satisfactory to Mortgagee that all of the Transfer Conditions have been satisfied or will be at the time of transfer with respect to such transfer and (B) a certificate signed by Mortgagor and Guarantors that (I) certifies to Mortgagee that all of the Transfer Conditions have been satisfied with respect to such transfer and (II) attaches (x) a copy of the documents effectuating the transfer and a copy of the organizational documents of the entities affected by such transfer, as amended, (y) certifies to Mortgagee that the Organizational Chart delivered to Mortgagee in respect of such transfer is true, complete and correct, and (z) any other information that Mortgagee may reasonably request.

The violation of any provision of this Section 5.4(c), or the failure of any of the certifications and representations required pursuant to this Section 5.4(c) to be true, complete and correct, shall constitute an Event of Default under this Mortgage and the other Loan Documents, whether or not Mortgagor or Mortgagee has received notice thereof or has knowledge of the occurrence thereof.

(d) Trade Payables; Permitted Equipment Financing. Subject to the satisfaction of each of the following conditions and notwithstanding anything to the contrary contained in this Mortgage or any other Loan Document, Mortgagor may incur, without the consent of Mortgagee, (x) unsecured indebtedness in respect of trade payables incurred in the ordinary course of business relating to the ownership and operation of the Property ("**Trade Payable Financing**") and (y) equipment financing entered into in the ordinary course of Mortgagor's business for non-fixture equipment related to the ownership and operation of the Property ("**Equipment Financing**");

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(i) The maximum aggregate amount of Trade Payable Financing and Equipment Financing outstanding at any one time shall not exceed \$250,000.

(ii) Following the funding of any Trade Payable Financing or any Equipment Financing, all of the terms of the Loan Documents shall remain unchanged.

(iii) Mortgagor shall be responsible for all closing costs in connection with the Equipment Financing, including, but not limited to, the legal, appraisal, engineering and environmental, title and escrow costs of Mortgagee and the lender providing the Equipment Financing.

(iv) The interest rate payable under, and each of the other terms and provisions of, any Trade Payable Financing or any Equipment Financing shall be on arms'-length, market rate terms.

(v) The Equipment Financing shall be either (A) unsecured or (B) secured solely by security interests that encumber only equipment located at the Property that does not constitute fixtures, and whose removal would not damage or impair the operation or value of the Property.

(vi) Any such Equipment Financing or Trade Payable Financing shall be paid within sixty (60) days of the date incurred, unless such sums are the subject of a good faith dispute by Mortgagor.

(vii) Not less than ten (10) business days prior to the funding of any Trade Payable Financing or Equipment Financing, Mortgagor shall provide Mortgagee with a copy of the loan documents to be executed or delivered in connection therewith, and Mortgagor shall provide Mortgagee with written evidence satisfactory to Mortgagee that such Equipment Financing complies with the foregoing restrictions.

Any such Trade Payable Financing and/or Equipment Financing that satisfies each of the above conditions, as applicable, is referred to herein as "**Permitted Indebtedness**". For the avoidance of doubt, leasing commissions and trade payables that are payable pursuant to any Lease shall not be deemed to be "Permitted Indebtedness" for the purpose of this Mortgage or the other Loan Documents.

5.5 Further Encumbrance of Chattels. Mortgagor shall neither create nor permit any lien, security interest or encumbrance against the Chattels, Intangible Personalty or other Collateral or any part thereof or interest therein, other than the liens and security interests created by the Loan Documents, without the prior written consent of Mortgagee, which may be withheld for any reason.

5.6 Assessments Against Property. Mortgagor shall not, without the prior written consent of Mortgagee, which may be withheld for any reason, consent to or allow the creation of any so-called special districts, special improvement districts, benefit assessment districts or similar districts, or any other body or entity of any type, or consent to or allow the

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occurrence of any other event, that would or might result in the imposition of any additional taxes, assessments or other monetary obligations or burdens on the Property, and this provision shall serve as RECORD NOTICE to any such district or districts or any governmental entity under whose authority such district or districts exist or are being formed that, should Mortgagor or any other Person include all or any portion of the Property in such district or districts, whether formed or in the process of formation, without first obtaining Mortgagee's express written consent, the rights of Mortgagee in the Property pursuant to this Mortgage or following any foreclosure of this Mortgage, and the rights of any Person to whom Mortgagee might transfer the Property following a foreclosure of this Mortgage, shall be senior and superior to any taxes, charges, fees, assessments or other impositions of any kind or nature whatsoever, or liens (whether statutory, contractual or otherwise) levied or imposed, or to be levied or imposed, upon the Property or any portion thereof as a result of inclusion of the Property in such district or districts.

5.7 Transfer or Removal of Chattels, Intangible Personalty or other Collateral. Mortgagor shall not sell, transfer or remove from the Property all or any part of the Chattels, Intangible Personalty or other Collateral without the prior written consent of Mortgagee, unless the items sold, transferred, or removed (i) are simultaneously replaced with similar items of equal or greater value or utility, (ii) are, in the commercially reasonable determination of Mortgagor, obsolete and of no value or utility to the Property, (iii) consist of office furniture or other fixtures, furnishings, or equipment abandoned on the Property by tenants that have vacated the Property or (iv) in any consecutive 12 month period have an aggregate value, as commercially reasonably determined by Mortgagor, equal to or less than \$100,000.

5.8 Change of Name. Mortgagor shall not change the name under which Mortgagor does business, or adopt or begin doing business under any other name or assumed or trade name, without first notifying Mortgagee of Mortgagor's intention to do so and delivering to Mortgagee such executed modifications or supplements to this Mortgage (and to any financing statement which may be filed in connection herewith) as Mortgagee may require.

5.9 Improper Use of Property, Chattels, Intangible Personalty or other Collateral. Mortgagor shall not use the Property, the Chattels, the Intangible Personalty or the other Collateral for any purpose or in any manner that violates any applicable law, ordinance, or other governmental requirement, the requirements or conditions of any insurance policy, or any private covenant.

5.10 ERISA. Mortgagor shall not engage in any transaction that would cause the Note (or the exercise by Mortgagee of any of its rights under the Loan Documents) to be a non-exempt, prohibited transaction under ERISA (including for this purpose the parallel provisions of Section 4975 of the Internal Revenue Code of 1986, as amended), or otherwise result in Mortgagee being deemed in violation of any applicable provisions of ERISA. Mortgagor shall indemnify, protect, defend, and hold Mortgagee harmless from and against any and all losses, liabilities, damages, claims, judgments, costs, and expenses (including, without limitation excise taxes, attorneys' fees and costs incurred in the investigation, defense, and settlement of claims and in obtaining any individual ERISA exemption or state administrative exception that may be required, in Mortgagee's sole and absolute discretion) that Mortgagee may incur, directly or indirectly, as the result of the breach by Mortgagor of any warranty or

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representation set forth in Section 3.3(y) hereof or the breach by Mortgagor of any covenant contained in this Section 5.10. This indemnity shall survive any termination, satisfaction or foreclosure of this Mortgage and shall not be subject to the limitation on personal liability described in the Note.

5.11 Use of Proceeds. Mortgagor shall not use any funds advanced by Mortgagee under the Loan Documents for household or agricultural purposes, to purchase margin stock, or for any purpose prohibited by law.

5.12 Entity Organization. Mortgagor shall own and hold the Property and the Rents therefrom, and the Chattels, Intangible Personalty or other Collateral as Mortgagor's sole assets. Mortgagor shall not engage in any business other than the ownership, management and operation of the Property, Chattels, Intangible Personalty or other Collateral. Mortgagor shall not guarantee or otherwise become liable for, or pledge its assets to secure, the Indebtedness or obligations of any other Person. Mortgagor shall not incur any Indebtedness (except for Permitted Indebtedness) other than the Loan.

5.13 Access Agreements. Without Mortgagee's prior written consent, which may be granted or withheld in Mortgagee's reasonable discretion, Mortgagor shall not enter into, modify or terminate any Access Agreements.

ARTICLE 6

EVENTS OF DEFAULT

Each of the following events will constitute an event of default (an "Event of Default") under this Mortgage and under each of the other Loan Documents:

6.1 Failure to Pay Note or Other Amounts.

(a) Any failure to pay when due any interest, principal or other amount in a sum certain under this Mortgage or under any of the other Loan Documents for which sum there is a scheduled date for payment or for which there is a date certain for payment; provided, however, that in any twelve (12) month period, there shall be a single grace period of not more than five (5) days for one (1) payment of principal and interest if such payment is not made on the due date therefor.

(b) Any failure to pay within five (5) days following demand by Mortgagee for any amount other than any amount described in Section 6.1(a) above.

6.2 Violation of Certain Covenants. The occurrence of any violation of any covenant contained in Sections 4.24, 4.25, 4.26, 4.27, 4.30, 4.33, 5.3 (except violation of the covenants contained in Section 5.3(g) which shall only constitute an Event of Default if uncured after expiration of five (5) Business Days' notice), 5.4, 5.5, 5.7, 5.12, or 5.13.

6.3 Other Obligations. The failure of Mortgagor to properly perform any obligation contained herein or in any of the other Loan Documents (other than (i) the obligation to make payments under the Note or the other Loan Documents and (ii) other obligations under

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the Loan Documents covered by other provisions of this Article 6) and the continuance of such failure for a period of thirty (30) days following written notice thereof from Mortgagee to Mortgagor; provided, however, that if such failure is not curable within such thirty (30) day period, then, so long as Mortgagor commences to cure such failure within such thirty (30) day period and is thereafter diligently attempting to cure to completion, such failure shall not be an Event of Default unless such failure remains uncured for ninety (90) days after such written notice to Mortgagor.

6.4 Levy Against Property. The levy against any of the Property, Chattels or Intangible Personalty, of any execution, attachment, sequestration or other writ that shall remain unvacated, or not set aside, or unstayed, for thirty (30) days.

6.5 Liquidation. The liquidation, termination or dissolution of Mortgagor Member or any Guarantor.

6.6 Appointment of Receiver. The appointment of a trustee, receiver or liquidator for the assets, or any part thereof, of Mortgagor, Member or any Guarantor, other than by the request of Mortgagee.

6.7 Assignments. The making by Mortgagor, Member or any Guarantor of a transfer in fraud of creditors or an assignment for the benefit of creditors.

6.8 Order for Relief. The entry in bankruptcy of an order for relief for or against Mortgagor, Member or any Guarantor.

6.9 Bankruptcy. The filing of any petition (or answer admitting the material allegations of any petition), or other pleading, seeking entry of an order for relief for or against Mortgagor, Member or any Guarantor as a debtor or bankrupt or seeking an adjustment of any of such parties' debts, or any other relief under any state or federal bankruptcy, reorganization, debtor's relief or insolvency laws now or hereafter existing, including, without limitation, a petition or answer seeking reorganization or admitting the material allegations of a petition filed against any such party in any bankruptcy or reorganization proceeding, or the act of any of such parties in instituting or voluntarily being or becoming a party to any other judicial proceedings intended to effect a discharge of the debts of any such parties, in whole or in part, or a postponement of the maturity or the collection thereof, or a suspension of any of the rights or powers of a trustee or of any of the rights or powers granted to Mortgagee herein, or in any other document executed in connection herewith, and any such petition, if involuntary, is not dismissed within ninety (90) days following the filing thereof.

6.10 Misrepresentation. If a representation, warranty or certification made by any Mortgagor, Member, or any Guarantor herein, or in any of the other Loan Documents, any certificate delivered to Mortgagee under or in connection with any of the Loan Documents, or any other instrument or document modifying, renewing, extending, evidencing, securing or pertaining to the Loan is false, misleading or erroneous in any material respect at the time when made.

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6.11 Judgments. The failure of Mortgagor, Member or any Guarantor to pay any money judgment in excess of \$25,000.00 against any such party before the expiration of thirty (30) days after such judgment becomes final and no longer appealable.

6.12 Admissions Regarding Debts. The admission of Mortgagor, Member or any Guarantor, in writing, of any such party's inability to pay such party's debts as they become due.

6.13 Assertion of Priority. The assertion of any claim of priority over this Mortgage, by title, lien, or otherwise, unless Mortgagor within thirty (30) days after such assertion either causes the assertion to be withdrawn or provides Mortgagee with such security as Mortgagee may require to protect Mortgagee against all loss, damage, or expense, including attorneys' fees, which Mortgagee may incur in the event such assertion is upheld.

6.14 Other Loan Documents. The occurrence of any default by Mortgagor or Guarantor, after the lapse of any applicable notice, grace or cure period, or the occurrence of any event or circumstance defined as or deemed to be an "Event of Default", under this Mortgage or any of the other Loan Documents.

6.15 Other Liens. The occurrence of any default after the lapse of any applicable grace or cure period, or the occurrence of any event or circumstance defined as an "Event of Default", under any consensual lien encumbering the Property or any part thereof or interest therein, or any document or instrument evidencing obligations secured thereby; provided, however, that nothing in this Section 6.15 shall be deemed to permit any such consensual lien to be executed by Mortgagor or any other Person.

6.16 Other Indebtedness. The occurrence of any default after the lapse of any applicable grace or cure period, or the occurrence of any event or circumstance defined as an "Event of Default", under any Indebtedness incurred or owing by Mortgagor, or any document or instrument evidencing any obligation to pay such Indebtedness.

ARTICLE 7

MORTGAGEE'S REMEDIES

Immediately upon or any time after the occurrence of any Event of Default, Mortgagee may exercise any remedy available at law or in equity, including, but not limited to, those listed below and those listed in the other Loan Documents, in such sequence or combination as Mortgagee may determine in Mortgagee's sole discretion:

7.1 Performance of Defaulted Obligations. Mortgagee may make any payment or perform any other obligation under the Loan Documents that Mortgagor or Guarantor has failed to make or perform, and Mortgagor hereby irrevocably appoints Mortgagee as the true and lawful attorney-in-fact for Mortgagor to make any such payment and perform any such obligation in the name of Mortgagor. All payments made and expenses (including attorneys' fees) incurred by Mortgagee in this connection, together with interest thereon at the Default Rate from the date paid or incurred until repaid, will be part of the Secured Obligations and will be immediately due and payable by Mortgagor to Mortgagee. In lieu of advancing

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Mortgagee's own funds for such purposes, Mortgagee may use any funds of Mortgagor that may be in Mortgagee's possession, including, but not limited to, insurance or condemnation proceeds and amounts deposited for taxes, insurance premiums or other purposes.

7.2 Specific Performance and Injunctive Relief. Notwithstanding the availability of legal remedies, Mortgagee will be entitled to obtain specific performance, mandatory or prohibitory injunctive relief, or other equitable relief requiring Mortgagor or Guarantor to cure or refrain from repeating any Default.

7.3 Acceleration of Secured Obligations. Mortgagee may, without notice or demand, declare all of the Secured Obligations immediately due and payable in full.

7.4 Suit for Monetary Relief. Subject to the non-recourse provisions of the Note, with or without accelerating the maturity of the Secured Obligations, Mortgagee may sue from time to time for any payment due under any of the Loan Documents, or for money damages resulting from Mortgagor's default under any of the Loan Documents.

7.5 Possession of Property. To the extent permitted by law, Mortgagee may enter and take possession of the Property without seeking or obtaining the appointment of a receiver, may employ a managing agent for the Property, and may lease or rent all or any part of the Property, either in Mortgagee's name or in the name of Mortgagor, and may collect the rents, issues, and profits of the Property. Any revenues collected by Mortgagee under this Section will be applied first toward payment of all expenses (including, without limitation, attorneys' fees) incurred by Mortgagee, together with interest thereon at the Default Rate from the date incurred until repaid, and the balance, if any, will be applied against the Secured Obligations in such order and manner as Mortgagee may elect in Mortgagee's sole discretion.

7.6 Enforcement of Security Interests. Mortgagee may exercise all rights of a secured party under the UCC with respect to the Chattels and the Intangible Personalty, including but not limited to, taking possession of, holding, and selling the Chattels and enforcing or otherwise realizing upon any accounts and general intangibles. Any requirement for reasonable notice of the time and place of any public sale, or of the time after which any private sale or other disposition is to be made, will be satisfied by Mortgagee's giving of such notice to Mortgagor at least five (5) days prior to the time of any public sale or the time after which any private sale or other intended disposition is to be made.

7.7 Foreclosure Against Property.

(a) Mortgagee may:

(i) institute proceedings for the complete foreclosure of this Mortgage, in which case the Property may be sold for cash or credit in one or more parcels, and in such order as Mortgagee shall determine;

(ii) with or without entry and, to the extent permitted, and pursuant to the procedures provided by, applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Secured Obligations then due and payable, subject to the lien

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of this Mortgage continuing unimpaired and without loss of priority so as to secure the balance of the Secured Obligations not then due; and

(iii) sell the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein at one or more sales, in whole or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien on the remaining portion of the Property.

Any real estate sold pursuant to any writ of execution issued on a judgment obtained by virtue of the Note or this Mortgage, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Mortgagee, in Mortgagee's sole discretion may elect.

(b) All fees, costs and expenses of any kind incurred by Mortgagee in connection with foreclosure of this Mortgage, including, without limitation, the costs of any appraisals of the Property obtained by Mortgagee, the cost of any title reports or abstracts, all costs of any receivership for the Property advanced by Mortgagee, and all attorneys' and consultants' fees and expenses incurred by Mortgagee, shall constitute a part of the Secured Obligations and may be included as part of the amount owing from Mortgagor to Mortgagee at any foreclosure sale.

(c) The proceeds of any sale under this Section shall be applied:

First: To the payment of the costs and expenses of any such sale, including, without limitation, compensation to Mortgagee, its agents and counsel, and of any judicial proceedings, including, without limitation, the costs and legal expenses of Mortgagee in foreclosing or otherwise enforcing this Mortgage, and of all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, together with interest at the Default Rate, and all taxes or assessments, except any taxes, assessments or other charges subject to which the Property shall have been sold.

Second: To the payment of the whole amount of the Secured Obligations then due, owing or unpaid, with interest on the unpaid Secured Obligations at the Default Rate from and after the happening of any Event of Default until the same is paid.

Third: To the payment of any other sums required to be paid by Mortgagor pursuant to any provision of this Mortgage, the Note and all other Loan Documents.

Fourth: To the payment of the surplus, if any, to whosoever may be lawfully entitled to receive the same.

Mortgagee and any receiver or custodian of the Property or any part thereof shall be liable to account for only those rents, issues and profits actually received by Mortgagee or such receiver or custodian.

(d) Mortgagee may adjourn from time to time any sale to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of

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law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(e) Upon the completion of any sale or sales made by Mortgagee under or by virtue of this Section 7.7, Mortgagee, or any officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, granting, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor (coupled with an interest), in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons or entities with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Mortgagor, if so requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for such purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 7.7, whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons or entities claiming or who may claim the same, or any part thereof, either from, through or under Mortgagor.

(f) Upon sale made under or by virtue of this Section 7.7 (whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Mortgagee may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may take settlement for the purchase price by crediting upon the Secured Obligations the net sale price after deducting therefrom the expenses of the sale and the costs of the action and any other sums that Mortgagee is authorized to deduct under this Mortgage.

(g) Subject to the provisions of Section 18 of the Note and Section 9.21 of this Mortgage, the obligation of this Mortgage and of the Note shall continue until the Secured Obligations are paid in full notwithstanding any action or actions or partial foreclosure that may be brought to recover any amount or amounts for installments of principal, interest, taxes, assessments, water and sewer charges, rents and rates or insurance or other sums or charges due and payable under the provisions of this Mortgage.

(h) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Property or upon any other property of Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before, and notwithstanding any statutory rate of interest applicable with respect to judgments, after the entering of execution of any judgment, the Secured Obligations shall bear interest at the Default Rate until the Secured Obligations shall have been paid in full.

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(i) In the event of a foreclosure of this Mortgage or the succession by Mortgagee to the interests of Mortgagor hereunder, the purchaser of the Property or such successor shall succeed to all rights of Mortgagor, including any right to proceeds of insurance and to unearned premiums, and in and to all policies or certificates of insurance assigned and delivered to Mortgagee pursuant to this Mortgage.

(j) Any assignee of this Mortgage and the Note shall take the same free and clear of all offsets, counterclaims and defenses of any nature (except for payments actually made) whatsoever that Mortgagor may have against any assignor of this Mortgage and the Note and no such offset, counterclaim or defense (except for payments actually made) shall be interposed or asserted by Mortgagor in any action or proceeding brought by any such assignee upon this Mortgage and/or the Note and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Mortgagor.

(k) In any action or proceeding to foreclose this Mortgage, or to recover or collect the Secured Obligations, the provisions of law respecting the recovery of costs, disbursements and allowances shall also be applicable.

(l) Nothing in this Section dealing with foreclosure procedures or specifying particular actions to be taken by Mortgagee shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by Illinois law, and any such inconsistency shall be resolved in favor of Illinois law applicable at the time of foreclosure.

(m) In the event that a referee is appointed during the pendency of a proceeding to foreclose this Mortgage, or to recover or collect the Secured Obligations, Mortgagor hereby waives any right to an in-person hearing and Mortgagor agrees that the referee report will be prepared based on written submission by the parties.

(n) In the event that Mortgagor fails to repair or maintain the Property as required by the terms and conditions of this Mortgage and the other Loan Documents during the pendency of a proceeding to foreclose this Mortgage, or to recover or collect the Secured Obligations, Mortgagor hereby agrees that Mortgagee may apply for court approval to make such repairs or cause such maintenance, and Mortgagor waives any right to contest such application. Any such maintenance or repair costs and expenses incurred by Mortgagee shall constitute a part of the Secured Obligations and may be included as part of the amount owing from Mortgagor to Mortgagee at any foreclosure sale.

7.8 Appointment of Receiver. To the extent permitted by law, Mortgagee shall be entitled, as a matter of absolute right and without regard to the value of any security for the Secured Obligations or the solvency of any person liable therefor, to the appointment of a receiver for the Property upon ex-parte application to any court of competent jurisdiction. Mortgagor waives (i) any right to any hearing or notice of hearing prior to the appointment of a receiver and (ii) any right to contest the appointment of any receiver proposed by Mortgagee. Such receiver and its agents shall be empowered, but shall not be obligated, to (a) take possession of the Property and any businesses conducted by Mortgagor or any other person thereon and any business assets used in connection therewith, (b) exclude Mortgagor and

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Mortgagor's agents, servants, and employees from the Property, (c) collect the rents, issues, profits, and income therefrom, (d) complete any construction which may be in progress, (e) do such maintenance and make such repairs and alterations as the receiver deems necessary, (f) use all stores of materials, supplies, and maintenance equipment on the Property and replace such items at the expense of the receivership estate, (g) pay all taxes and assessments against the Property and the Chattels, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, and (h) generally do anything that Mortgagor could legally do if Mortgagor were in possession of the Property. All expenses incurred by the receiver or its agents shall constitute a part of the Secured Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including attorneys' fees incurred by the receiver and by Mortgagee, together with interest thereon at the Default Rate from the date incurred until repaid, and the balance shall be applied toward the Secured Obligations in such order or manner as Mortgagee may in Mortgagee's sole discretion elect or in such other manner as the court may direct. Unless sooner terminated with the express consent of Mortgagee, any such receivership will continue until the Secured Obligations have been discharged in full, or until title to the Property has passed after foreclosure sale and all applicable periods of redemption have expired. Notwithstanding the foregoing provisions of this Section 7.8, prior to any receiver's engagement of counsel or any consultants, or incurring any expenses in excess of \$10,000.00, in connection with the Property, such receiver shall obtain Mortgagee's written consent to such counsel, consultant or expense, as applicable.

7.9 Right to Make Repairs, Improvements. Should any part of the Property come into the possession of Mortgagee, after an Event of Default, Mortgagee may, but shall not be obligated, to use, operate, and/or make repairs, alterations, additions and improvements to the Property for the purpose of preserving the Property or the value of the Property. Mortgagor covenants to promptly reimburse and pay to Mortgagee, at the place where the Note is payable, or at such other place as may be designated by Mortgagee in writing, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges) incurred by Mortgagee in connection with its custody, preservation, use or operation of the Property, together with interest thereon from the date incurred by Mortgagee at the Default Rate, and all such expenses, costs, taxes, interest, and other charges shall be a part of the Secured Obligations. It is agreed, however, that the risk of accidental loss or damage to the Property is undertaken by Mortgagor and Mortgagee shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance, or for failure to determine whether any insurance ever in force is adequate as to amount or as to the risks insured.

7.10 Surrender of Insurance. Mortgagee may surrender the insurance policies maintained pursuant to the terms hereof, or any part thereof, and receive and apply the unearned premiums as a credit on the Secured Obligations and, in connection therewith, Mortgagor hereby appoints Mortgagee (or any officer of Mortgagee), as the true and lawful agent and attorney-in-fact for Mortgagor (with full powers of substitution), which power of attorney shall be deemed to be a power coupled with an interest and therefore irrevocable, to collect such premiums.

7.11 Application of Escrow and Reserve Funds. Mortgagee may draw all amounts available under any letter of credit provided to Mortgagee and apply any or all of the funds that are so drawn or held in any escrow account or reserve account or maintained pursuant

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to any of the Loan Documents or otherwise in connection with the Loan to the payment of the Secured Obligations in such order and manner as Mortgagee may determine in Mortgagee's sole discretion.

7.12 Remedies Under Other Loan Documents. Mortgagee may exercise any right or remedy provided for in any of the other Loan Documents.

7.13 Prima Facie Evidence. Mortgagor agrees that, in any assignments, deeds, bills of sale, notices of sale, or postings, given by Mortgagee, any and all statements of fact or other recitals therein made as to the identity of Mortgagee, or as to the occurrence or existence of any Event of Default, or as to the acceleration of the maturity of the Secured Obligations, or as to the request to sell, posting of notice of sale, notice of sale, time, place, terms and manner of sale and receipt, distribution and application of the money realized therefrom, and without being limited by the foregoing, as to any other act or thing having been duly done by Mortgagee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state facts and are without further question to be so accepted, and Mortgagor does hereby ratify and confirm any and all acts that Mortgagee may lawfully do by virtue hereof.

7.14 Replacement of Property Manager. Following the occurrence of an Event of Default, Mortgagee shall have the right to replace the Property Manager with a property manager acceptable to Mortgagee in Mortgagee's sole discretion.

ARTICLE 8

ASSIGNMENT OF LEASES AND RENTS

8.1 Assignment of Leases and Rents. Mortgagor hereby unconditionally and absolutely grants, transfers and assigns unto Mortgagee all Rents now or hereafter due or payable for the occupancy or use of the Property, and all Leases, whether written or oral, with all security therefor, including all guaranties thereof, now or hereafter affecting the Property; reserving unto Mortgagor, however, a license to collect, retain, and enjoy such Rents and all security for the Leases and to exercise all rights, remedies, and options as the landlord or lessee thereunder prior to the existence of any Event of Default. Such license shall be revocable by Mortgagee without notice to Mortgagor at any time after the occurrence and during the continuance of an Event of Default, provided, however, that such license shall be reinstated following a cure of any Event of Default accepted by Mortgagee (provided, that Mortgagee shall in no event or under no circumstances be obligated or required to accept a cure by Mortgagor or by any other Person of an Event of Default).. Mortgagor represents that the Rents and the Leases have not been heretofore sold, assigned, transferred or set over by any instrument now in force and will not at any time during the life of this assignment be sold, assigned, transferred or set over by Mortgagor or by any person or persons whomsoever; and Mortgagor has good right to sell, assign, transfer and set over the same and to grant to and confer upon Mortgagee the rights, interest, powers and authorities herein granted and conferred. Failure of Mortgagee at any time or from time to time to enforce the assignment of Rents and Leases under this Section shall not in any manner prevent its subsequent enforcement, and Mortgagee is not obligated to collect anything hereunder, but is accountable only for sums actually collected.

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8.2 Further Assignments. Mortgagor shall give Mortgagee promptly upon request any further or additional forms of assignment or transfer of such Rents, Leases and security as may be reasonably requested by Mortgagee, and shall deliver to Mortgagee executed copies of all such Leases and security.

8.3 Application of Rents. Mortgagee shall be entitled to deduct and retain a just and reasonable compensation from monies received hereunder after an Event of Default for its services or that of its agents in collecting such monies. Any monies received by Mortgagee hereunder after the occurrence of an Event of Default may be applied when received from time to time in payment of any taxes, assessments or other liens affecting the Property regardless of the delinquency, such application to be in such order as Mortgagee may determine. The acceptance of this Mortgage by Mortgagee or the exercise of any rights by it hereunder shall not be, or be construed to be, an affirmation by it of any Lease nor an assumption of any liability under any Lease.

8.4 Collection of Rents. At any time during the continuance of an Event of Default, Mortgagee may declare all sums secured hereby immediately due and payable, and may, at its option, without notice, and whether or not the Secured Obligations shall have been declared due and payable, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, (a) enter upon, take possession of, manage and operate the Property, or any part thereof (including without limitation making necessary repairs, alterations and improvements to the Property); (b) make, cancel, enforce or modify Leases (and any guaranties thereof); (c) obtain and evict tenants; (d) fix or modify Rents; (e) do any acts which Mortgagee deems reasonably proper to protect the security thereof and (f) either with or without taking possession of the Property, in Mortgagee's own name sue for or otherwise collect and receive such Rents, including those past due and unpaid. In connection with the foregoing, Mortgagee shall be entitled and empowered to employ attorneys, and management, rental and other agents in and about the Property and to effect the matters which Mortgagee is empowered to do, and in the event Mortgagee shall itself effect such matters, Mortgagee shall be entitled to charge and receive reasonable management, rental and other fees therefor as may be customary in the area in which the Property is located; and the reasonable fees, charges, costs and expenses of Mortgagee or such persons shall be additional Secured Obligations. Mortgagee may apply all funds collected as aforesaid, less costs and expenses of operation and collection, including reasonable attorneys' and agents' fees, charges, costs and expenses, as aforesaid, upon any Secured Obligations, and in such order as Mortgagee may determine. The entering upon and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any default or waive, modify or affect notice of default under the Note or this Mortgage or invalidate any act done pursuant to such notice.

8.5 Authority of Mortgagee. Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Mortgagee hereunder without investigating the reason for any action taken by Mortgagee, or the validity or the amount of Secured Obligations owing to Mortgagee, or the existence of any default in the Note or this Mortgage, or under or by reason of this assignment of Rents and Leases, or the application to be made by Mortgagee of any amounts to be paid to Mortgagee. The sole signature of Mortgagee shall be sufficient for the exercise of any rights under this assignment and the sole receipt of Mortgagee for any sums received shall be a full discharge and release therefor to any such tenant

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or occupant of the Property. Checks for all or any part of the rentals collected under this assignment of Rents and Leases shall be drawn to the exclusive order of Mortgagee.

8.6 Indemnification of Mortgagee. Nothing herein contained shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty or liability of any lessor under any Lease of the Property, and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any and all liability, loss or damage which Mortgagee may or might incur under any Lease or by reason of the assignment; and any and all such liability, loss or damage incurred by Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by Mortgagee in defense of any claims or demands therefor (whether successful or not), shall be additional Secured Obligations, and Mortgagor shall reimburse Mortgagee therefor on demand, excluding, however, in the case of each of the foregoing indemnity and reimbursement obligations, any such matter resulting from Mortgagee's gross negligence or willful misconduct.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 Time of the Essence. Time is of the essence with respect to all provisions of this Mortgage and the other Loan Documents.

9.2 Joint and Several Obligations. If Mortgagor is more than one Person, then: (a) all Persons comprising Mortgagor are jointly and severally liable for all of the Secured Obligations; (b) representations, warranties, and covenants made by Mortgagor shall be deemed representations, warranties, and covenants of each of the Persons comprising Mortgagor; (c) any breach, Default or Event of Default by any of the Persons comprising Mortgagor hereunder shall be deemed to be a breach, Default, or Event of Default of Mortgagor; and (d) any event creating personal liability of any of the Persons comprising Mortgagor shall create personal liability for all such Persons.

9.3 Waiver of Homestead and Other Exemptions. To the extent permitted by law, Mortgagor hereby waives all rights to any homestead or other exemption to which Mortgagor would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law. Mortgagor hereby waives any right it may have to require Mortgagee to marshal all or any portion of the security for the Secured Obligations. Notwithstanding the existence of interests in the Property, Chattels or Intangible Personalty other than that created by this Mortgage, and notwithstanding any other provision of this Mortgage, upon an Event of Default, to the extent permitted by applicable law, Mortgagee shall have the right, in Mortgagee's sole discretion, to determine the order in which the Property, Chattels or Intangible Personalty shall be subjected to the remedies provided in this Mortgage and to determine the order in which all or any part of the Indebtedness secured by this Mortgage is satisfied from the proceeds realized upon the exercise of the remedies provided in this Mortgage.

9.4 Non Recourse; Exceptions to Non-Recourse. Except as expressly set forth in Section 18 of the Note and Section 9.21 of this Mortgage, the recourse of Mortgagee

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with respect to the obligations evidenced by the Note, this Mortgage and the other Loan Documents (except for the Guaranty and the Environmental Indemnity Agreement) shall be solely to the Property, the Chattels and the Intangible Personalty, and any other collateral given as security for the Note.

9.5 Rights and Remedies Cumulative. Mortgagee's rights and remedies under each of the Loan Documents are cumulative of the rights and remedies available to Mortgagee under each of the other Loan Documents and those otherwise available to Mortgagee at law or in equity. No act of Mortgagee shall be construed as an election to proceed under any particular provision of any Loan Document to the exclusion of any other provision in the same or any other Loan Document, or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Mortgagee.

9.6 No Implied Waivers. Mortgagee shall not be deemed to have waived any provision of any Loan Document unless such waiver is in writing and is signed by Mortgagee. Without limiting the generality of the preceding sentence, neither Mortgagee's acceptance of any payment with knowledge of a Default by Mortgagor, nor any failure by Mortgagee to exercise any remedy following a Default by Mortgagor shall be deemed a waiver of such Default, and no waiver by Mortgagee of any particular Default on the part of Mortgagor shall be deemed a waiver of any other Default or of any similar Default in the future. No course of conduct or course of dealing during the term of the Loan shall be deemed to constitute a waiver by Mortgagee of any rights under any of the Loan Documents.

9.7 No Third Party Rights. No Person shall be a third party beneficiary of any provision of any of the Loan Documents. All provisions of the Loan Documents favoring Mortgagee are intended solely for the benefit of Mortgagee, and no third party shall be entitled to assume or expect that Mortgagee will not waive or consent to modification of any such provision in Mortgagee's sole discretion.

9.8 Preservation of Liability and Priority. Without affecting the liability of Mortgagor or of any other Person (except a Person expressly released in writing) for payment and performance of all of the Secured Obligations, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, and without impairing in any way the priority of this Mortgage over the interests of any person acquired or first evidenced by recording subsequent to the recording hereof, Mortgagee may, either before or after the maturity of the Note, and without notice or consent: (a) release any Person liable for payment or performance of all or any part of the Secured Obligations; (b) make any agreement altering the terms of payment or performance of all or any of the Secured Obligations; (c) exercise or refrain from exercising, or waive, any right or remedy that Mortgagee may have under any of the Loan Documents; (d) accept additional security of any kind for any of the Secured Obligations; or (e) release or otherwise deal with any real or personal property securing the Secured Obligations. Any Person acquiring or recording evidence of any interest of any nature in the Property, the Chattels, or the Intangible Personalty shall be deemed, by acquiring such interest or recording any evidence thereof, to have agreed and consented to any or all such actions by Mortgagee.

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9.9 Subrogation of Mortgagee. Mortgagee shall be subrogated to the lien of any previous encumbrance discharged with funds advanced by Mortgagee under the Loan Documents, regardless of whether such previous encumbrance has been released of record.

9.10 Notices. Any notice, consent or approval required or permitted to be given by Mortgagor or Mortgagee under this Mortgage shall be in writing and will be deemed given (a) upon personal delivery, (b) on the first Business Day after receipted delivery to a courier service that guarantees next-business-day delivery, or (c) on the third Business Day after mailing, by registered or certified United States mail, postage prepaid, in any case to the appropriate party at its address set forth below:

If to Mortgagor:

One East Wacker Partners LLC
250 Broadway, Suite 3001
New York, New York 10007
Attention: Nathan Aber

with a copy to:

DLA Piper LLP
1251 Avenue of the Americas, 27th Floor
New York, New York 10020-1104
Attention: David Berlyne, Esq.

If to Mortgagee:

The Variable Annuity Life Insurance Company, Chartis Specialty Insurance Company, and American Home Assurance Company
c/o AIG Asset Management
1999 Ave. of the Stars, 38th Floor,
Century City, Los Angeles, California 90067 6022
Attention: Director-Mortgage Lending and Real Estate

with a copy to:

Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, California 90067
Attention: Adam Engel, Esq.

Either party may change such party's address for notices or copies of notices by giving notice to the other party in accordance with this Section.

9.11 Release or Assignment by Mortgagee. Upon payment and performance in full of all of the Secured Obligations, Mortgagee will, at the sole cost and expense of Mortgagor, execute and deliver to Mortgagor such documents as may be required to release this

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Mortgage of record. Any such documents shall be satisfactory in form and substance to Mortgagee in Mortgagee's sole discretion.

9.12 Illegality. If any provision of this Mortgage is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Mortgage, the legality, validity, and enforceability of the remaining provisions of this Mortgage shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Mortgage a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If the rights and liens created by this Mortgage shall be invalid or unenforceable as to any part of the Secured Obligations, then the unsecured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on the Secured Obligations shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Secured Obligations.

9.13 Usury Savings Clause. It is expressly stipulated and agreed to be the intent of Mortgagee and Mortgagor at all times to comply with the applicable law governing the highest lawful interest rate. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved or received with respect to the loan evidenced thereby, or if acceleration of the maturity of the Note, any prepayment by Mortgagor, or any other circumstance whatsoever, results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is the express intent of Mortgagor and Mortgagee that all excess amounts theretofore collected by Mortgagee be credited on the principal balance of the Note (or, at Mortgagee's option, paid over to Mortgagor), and the provisions of the Note and other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. The right to accelerate maturity of the Note does not include the right to accelerate any interest that has not otherwise accrued on the date of such acceleration, and Mortgagee does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Mortgagee for the use, forbearance or detention of the Secured Obligations evidenced hereby or by the Note shall to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such Secured Obligations until payment in full so that the rate or amount of interest on account of such Secured Obligations does not exceed the maximum rate or amount of interest permitted under applicable law. The term "applicable law" as used herein shall mean any federal or state law applicable to the loan made by Mortgagee to Mortgagor evidenced by the Note.

9.14 Obligations Binding Upon Mortgagor's Successors. This Mortgage is binding upon Mortgagor and Mortgagor's successors and assigns, and shall inure to the benefit of Mortgagee, and its successors and assigns, and the provisions hereof shall likewise be covenants running with the land. The duties, covenants, conditions, obligations, and warranties of Mortgagor in this Mortgage shall be joint and several obligations of Mortgagor and Mortgagor's successors and assigns.

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9.15 Construction. All pronouns and any variations of pronouns herein shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of the parties may require. Whenever the terms herein are singular, the same shall be deemed to mean the plural, as the identity of the parties or the context requires. The term “including” shall mean “including, without limitation.” Each party hereto acknowledges that each party hereto and its respective counsel reviewed and revised this Mortgage and the other Loan Documents, and each party hereto agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Mortgage and the other Loan Documents.

9.16 Attorneys’ Fees. Any reference in this Mortgage to attorneys’ or counsel fees paid or incurred by Mortgagee shall be deemed to include paralegals’ fees and legal assistants’ fees. Moreover, wherever provision is made herein for payment of attorneys’ or counsels’ fees or expenses incurred by Mortgagee, such provision shall include but not be limited to, such fees or expenses incurred in any and all judicial, bankruptcy, reorganization, administrative, or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced, during such proceedings or after entry of a final judgment.

9.17 Waiver and Agreement Regarding Prepayment.

(a) EXCEPT AS OTHERWISE EXPRESSLY PERMITTED HEREUNDER OR UNDER THE NOTES, MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT MORTGAGOR MAY HAVE UNDER APPLICABLE LAW TO PREPAY THE NOTES, IN WHOLE OR IN PART, WITHOUT PREPAYMENT CHARGE, UPON ACCELERATION OF THE MATURITY DATE OF THE NOTE, AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PERMITTED HEREUNDER OR UNDER THE NOTES, IF FOR ANY REASON A PREPAYMENT OF ALL OR ANY PART OF THE NOTE IS MADE, WHETHER VOLUNTARILY OR FOLLOWING ANY ACCELERATION OF THE MATURITY DATE OF THE NOTES BY MORTGAGEE ON ACCOUNT OF THE OCCURRENCE OF ANY EVENT OF DEFAULT ARISING FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY PROHIBITED OR RESTRICTED TRANSFER, FURTHER ENCUMBRANCE OR DISPOSITION OF THE PROPERTY OR ANY PART THEREOF SECURING THE NOTES, THEN MORTGAGOR SHALL BE OBLIGATED TO PAY, CONCURRENTLY WITH SUCH PREPAYMENT, THE PREPAYMENT PREMIUM PROVIDED FOR IN THE NOTES (OR, IN THE EVENT OF ACCELERATION WHEN THE NOTES IS CLOSED TO PREPAYMENT, THE PREPAYMENT PREMIUM AS SET FORTH IN SECTION 5(f) OF THE NOTE). MORTGAGOR HEREBY DECLARES THAT MORTGAGEE’S AGREEMENT TO MAKE THE LOAN EVIDENCED BY THE NOTES AT THE INTEREST RATE AND FOR THE TERM SET FORTH IN THE NOTES CONSTITUTES ADEQUATE CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY MORTGAGOR, FOR THIS WAIVER AND AGREEMENT.

(b) If the maturity of the Notes secured by this Mortgage is accelerated, Mortgagor shall pay a prepayment premium in an amount equal to any prepayment premium that would be payable under the terms of the Notes as if the Notes were prepaid in full

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on the date of the acceleration. If under the terms of the Note no voluntary prepayment would be permissible on the date of such acceleration, then the prepayment fee or premium shall be equal to one hundred fifty percent (150%) of the highest prepayment fee or premium set forth in the Notes, calculated as of the date of such acceleration as if prepayment were permitted on such date.

9.18 Waiver of Jury Trial. MORTGAGEE AND MORTGAGOR KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS MORTGAGE, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO OR TO ANY LOAN DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE AND MORTGAGOR TO ENTER INTO THE LOAN TRANSACTION EVIDENCED BY THE NOTE.

9.19 Governing Laws; Forum.

(a) The substantive laws of the State of Illinois shall govern the validity, construction, enforcement and interpretation of this Mortgage.

(b) Any legal suit, action or proceeding against Mortgagee or Mortgagor arising out of or relating to this Mortgage shall be instituted in any federal or state court located in or serving the County of Cook, State of Illinois and Mortgagor waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such suit, action or proceeding, and Mortgagor hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

9.20 Entire Agreement; Inconsistency. The Loan Documents and the Loan Application constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the Loan and supersede all prior agreements, understandings or negotiations with respect thereto, whether written or oral. In the event of any inconsistency between the terms of the Loan Documents and the Loan Application, the terms of the Loan Documents shall govern and control in all respects.

9.21 Limitation on Liability. The provisions of Section 18(a) and Section 18(b) of the Note are incorporated herein by reference

9.22 Acceptance of Cures for Events of Default. Notwithstanding anything to the contrary contained in this Mortgage or the other Loan Documents (including, without limitation, any reference to the "continuance" of an Event of Default), Mortgagee shall in no event or under any circumstance be obligated or required to accept a cure by Mortgagor, Guarantors or by any other Person of an Event of Default unless Mortgagee agrees to do so in the exercise of Mortgagee's sole and absolute discretion, it being agreed that once an Event of Default has occurred and so long as Mortgagee has not determined to accept a cure of such Event of Default in writing, Mortgagee shall be absolutely and unconditionally entitled to pursue all

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rights and remedies available to it under this Mortgage or the other Loan Documents or otherwise at law or in equity.

9.23 Binding Action. Mortgagor agrees that with respect to any consent, direction, approval or action that is required of Mortgagor under this Mortgage, any consent, direction, approval or action by Mortgagor shall be binding on Mortgagor and that Mortgagee shall have no obligation to confirm any such consent, direction, approval or action given to it and may act in reliance upon any such consent, direction, approval or action.

9.24 Reasonable Standard. Mortgagor hereby agrees that the sole remedy of Mortgagor based upon any claim that an Indemnified Party has acted unreasonably or that an Indemnified Party has unreasonably withheld or unreasonably delayed any action, in each case, to the extent that such Indemnified Party had an obligation, either at law or pursuant to the Loan Documents, to act reasonably, shall be an action for specific performance, injunctive relief or declaratory judgment. Mortgagor hereby further agrees that the Indemnified Parties shall not be liable for any monetary damages in respect of any such claim and that Mortgagor's sole remedy in respect of any such claim shall be limited to specific performance, injunctive relief or declaratory judgment.

9.25 Claims Against Mortgagee. Mortgagee shall not be in default under this Mortgage, or under any of the other Loan Documents, unless a written notice specifically setting forth the claim of Mortgagor shall have been given to Mortgagee within three (3) months after Mortgagor first had knowledge of the occurrence of the event that Mortgagor alleges gave rise to such claim and Mortgagee does not remedy or cure the default, if any there be, promptly thereafter. Mortgagor waives any claim, set-off or defense against Mortgagee arising by reason of any alleged default by Mortgagee as to which Mortgagor does not give such notice timely as aforesaid. Mortgagor acknowledges that such waiver is or may be essential to Mortgagee's ability to enforce Mortgagee's remedies without delay and that such waiver therefore constitutes a substantial part of the bargain between Mortgagee and Mortgagor with respect to the Loan.

9.26 Lenders to Act Jointly; Reliance by Mortgagor and Guarantors.

(a) Notwithstanding that the Loan is evidenced by the AHAC Note, the CSIC Note and the VALIC Note separately, Mortgagee agrees that (i) the Holders of each of the Notes shall pursue the same remedies simultaneously hereunder and under the Notes as if the Notes were one in the same note, and (ii) there shall be no duplication of fees, expenses, deposits, costs, damages, losses, liabilities or other charges payment for which is demanded from Mortgagor or Guarantors by VALIC, CSIC, AHAC or any successor or assign of any of the foregoing pursuant to any of the provisions of the Loan Documents.

(b) Mortgagor shall be entitled to rely, shall be obligated to rely, and shall be fully protected in relying upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, e-mail, instant or telephone message, statement or other document or conversation believed by it to be genuine and correct and solely to the extent that such writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, e-mail, instant or telephone message, statement or other document or conversation is signed, sent or made by each of VALIC, CSIC and AHAC or any Person purporting to be a

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successor or assign of any of the foregoing or purporting to be a servicer appointed by any of the foregoing in connection with the Loan, as if such communication were signed, sent or made by all constituents of the Mortgagor acting jointly. Any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, e-mail, instant or telephone message, statement or other document or conversation not signed or sent by or on behalf of each of VALIC, CSIC, and AHAC shall not be valid.

(c) Each of the Guarantors is an intended third party beneficiary of the provisions of this Section 9.26.

ARTICLE 10

ILLINOIS PROVISIONS

10.1 Protective Advances. In the event of any inconsistencies between the terms and conditions of this Article 10 and the terms and conditions of this Mortgage, the terms and conditions of this Article 10 shall control and be binding.

10.2 Acceleration; Foreclosure. Notwithstanding an acceleration, the loan shall mature on the Maturity Date. Upon the occurrence of an Event of Default, Mortgagee, at Mortgagee's option, may declare the entire balance of the Loan, including all accrued interest, to be immediately due and payable without further demand and may foreclose the lien of this Mortgage by judicial proceeding and may pursue any other remedies permitted by applicable law or provided herein or in any of the other Loan Documents. If the foreclosure is for less than all of the indebtedness secured hereby, the lien of this Mortgage shall continue for the balance of the indebtedness and obligations secured hereby. Without limitation of any other provision of this Mortgage, if Mortgagee shall incur or expend any sums, including without limitation attorneys' fees, whether or not in connection with any action or proceeding, to sustain the lien of this Mortgage or its priority, or to protect or enforce any of Mortgagee's rights hereunder, or to recover any indebtedness secured hereby, all such sums shall become immediately due and payable by Mortgagor, with interest thereon. All such sums shall be secured by this Mortgage and shall be a lien on the Property prior to any right, title, interest, or claim in, to or upon the Property attaching or accruing subsequent to the lien of this Mortgage. Mortgagee shall be entitled to collect all fees, costs and expenses incurred in pursuing such remedies, including, but not limited to, reasonable attorney's fees, costs of documentary evidence, abstracts and title reports. Without limitation of the foregoing, in any suit to foreclose the lien hereof, Mortgagee shall be allowed to include as additional indebtedness secured hereby in the decree for sale all costs and expenses which may be paid or incurred by or on behalf of Mortgagor or any holder or holders of the Note or other indebtedness secured hereby (plus interest thereon) for attorneys' fees, appraiser's fees, receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Property, stenographer's charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, guarantee policies and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Property or for any other reasonable purpose. Subject to applicable law, the amount of any such costs and expenses which may be paid or incurred after the decree for sale is entered may be estimated and

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the amount of such estimate may be allowed and included as additional indebtedness secured hereby in the decree for sale.

10.3 Illinois Mortgage Foreclosure.

(a) It is the express intention of Mortgagor and Mortgagee that the rights, remedies, powers and authorities conferred upon the Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Illinois Mortgage Foreclosure Law (735 ILCS § 5/15-1101 et seq.) (herein called the "IMFL") and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Mortgage shall be inconsistent with any provision in the IMFL, the provisions of the IMFL shall take precedent over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMFL.

(b) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether provided for in this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

(c) The powers, authorities and duties conferred upon the Mortgagee, in the event that the Mortgagee takes possession of the Mortgaged Property, and upon a receiver hereunder, shall also include all such powers, authority and duties as may be conferred upon a Mortgagee in possession or receiver under and pursuant to the IMFL. To the extent the IMFL may limit the powers, authorities and duties purportedly conferred hereby, such power, authorities and duties shall include those allowed, and be limited as proscribed by IMFL at the time of their exercise or discharge.

(d) Mortgagor knowingly and voluntarily waives, on behalf of itself and all persons or entities now or hereafter interested in the Mortgaged Property, to the fullest extent permitted by applicable law including IMFL, (i) all rights under all appraisal, homestead, moratorium, valuation, exemption, stay, extension, redemption, single action, election of remedies and marshaling statutes, laws or equities now or hereafter existing, (ii) any and all requirements that at any time any action may be taken against any other person or entity and Mortgagor agrees that no defense based on any thereof will be asserted in any action enforcing this Instrument, and (iii) any and all rights to reinstatement and redemption as allowed under Section 15-1601(b) of the IMFL or to cure any defaults, except such rights of reinstatement and cure as may be expressly provided by the terms of the Guaranty and this Mortgage.

(e) MORTGAGOR HEREBY KNOWINGLY AND VOLUNTARILY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS OF REDEMPTION FROM SALE OR OTHERWISE UNDER ANY ORDER OR DECREE OF FORECLOSURE, DISCLAIMS ANY STATUS WHICH IT MAY HAVE AS AN "OWNER OF REDEMPTION" AS THAT TERM MAY BE DEFINED IN SECTION 15-1212 OF THE IMFL, PURSUANT TO RIGHTS HEREIN GRANTED, ON

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BEHALF OF MORTGAGOR AND ALL PERSONS BENEFICIALLY INTERESTED THEREIN, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN, OR TITLE TO, THE PROPERTY DESCRIBED HEREIN SUBSEQUENT TO THE DATE OF THIS MORTGAGE, AND ON BEHALF OF ALL OTHER PERSONS TO THE FULLEST EXTENT PERMITTED BY THE PROVISIONS OF THE ILLINOIS STATUTES.

10.4 Protective Advances.

(a) All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage or by the IMFL (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the IMFL, including those provisions of the IMFL hereinbelow referred to:

(i) all advances by Mortgagee in accordance with the terms of the Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, each as referred to in Subsection (b)(5) of Section 5/15-1302 of the IMFL;

(ii) payments by Mortgagee of: (i) when due, installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (iii) other obligations authorized by the Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the IMFL;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

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

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

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the IMFL;

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(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (ii) if Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Mortgaged Property imposed by Subsection (c)(l) of Section 5/15-1704 of the IMFL; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (vii) if the Loan is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; and (viii) pursuant to any lease or other agreement for occupancy of the Mortgaged Property for amounts required to be paid by mortgagor.

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

(c) The Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded pursuant to Subsection (b)(l) of Section 5/15-1302 of the IMFL.

(d) All Protective Advances shall, except to the extent if any, that any of the same is clearly contrary to or inconsistent with the provisions of the IMFL, apply to and be included in:

(i) determination of the amount of indebtedness secured by the Mortgage at any time;

(ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

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(iii) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the IMFL;

(iv) if the right of redemption has not been waived by Mortgagor in this Mortgage, the computation of the amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the IMFL;

(v) application of income in the hands of any receiver or Mortgagee in possession; and

(vi) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the IMFL.

10.5 Agricultural or Residential Real Estate. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the IMFL) or residential real estate (as defined in Section 15-1219 of the IMFL).

10.6 Maximum Principal Amount. The maximum indebtedness secured by this Mortgage shall not exceed three hundred percent (300%) of the aggregate, original principal amount of the Loan.

10.7 Appointment of Receiver. Upon the occurrence of an Event of Default (or to the extent permitted by applicable law, at any time prior thereto), Mortgagee shall be entitled, without additional notice and without regard to the adequacy of any security for the Loan, whether the Property shall then be occupied as a homestead or not, or the solvency of any party bound for its payment, to make application for the appointment of a receiver to take possession of and to operate the Property, and to collect the Rents, all expenses of which shall be added to the Loan and secured hereby. The receiver shall have all the rights and powers described in Section 15-1704 of the IMFL, including without limitation, the power to execute leases, and the power to collect the rents, sales, proceeds, issues, profits and proceeds of the Property during the pendency of such foreclosure suit, as well as during any further times when Mortgagor, its successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, sales proceeds, issues, proceeds and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. All costs and expenses (including receiver's fees, reasonable attorney's fees and costs incurred in connection with the appointment of a receiver) shall be secured by this Mortgage. Notwithstanding the appointment of any receiver, trustee or other custodian, Mortgagee shall be entitled, to retain possession and control of any cash or other instruments, at the time held by or payable or deliverable under the terms of the Mortgage to Mortgagee to the fullest extent permitted by law. In addition to any provision herein authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the IMFL, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all

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powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the IMFL.

10.8 Use of Loan Proceeds. Mortgagor covenants and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured hereby constitutes: (a) a “business loan” as that term is defined in, and for all purposes of, the Illinois Interest Act, Section 815 ILCS 205/4(1)(c); and (b) “a loan secured by a mortgage on real estate” within the purview and operation of Section 815 ILCS 205/4(1)(1) thereof.

10.9 Usury. All agreements between Mortgagee and Mortgagor (including, without limitation, those contained in this Mortgage, the Note, and any other Loan Documents) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to Mortgagee exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note, or any other Loan Documents, at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, *ipso facto*, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, Mortgagee shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the indebtedness secured hereby (whether or not then due and payable) and not to the payment of interest.

10.10 Illinois Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows:

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

[END OF TEXT]

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IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage as of the date first mentioned above.

MORTGAGOR:

ONE EAST WACKER PARTNERS LLC, a
Delaware limited liability company

By: 

Name: Nathan Aber

Title: Manager

Property of Cook County Clerk's Office

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STATE OF New York)
) ss.:
COUNTY OF New York)

On the 18th day of July in the year 2013 before me, the undersigned, a Notary Public in and for said State, personally appeared, Nathan Aber, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individuals(s) acted, executed the instrument.

Nathan Aber

(Signature and office of individual taking acknowledgment.)

Notary Public

My Commission Expires:

ROBERT S. BLOOM
Notary Public, State of New York
No. 01BL4863773
Qualified in New York County
Commission Expires June 23, 2014

2014

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EXHIBIT A

LEGAL DESCRIPTION

LOTS 1 TO 8 IN BLOCK 8 IN FORT DEARBORN ADDITION TO CHICAGO, THE WHOLE SOUTHWEST FRACTIONAL $\frac{1}{4}$ OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 17-10-302-027-0000 and 17-10-302-028-0000

Common Address: One East Wacker Drive, Chicago, Illinois

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EXHIBIT B

PERMITTED EXCEPTIONS

1. Taxes for the years 2012 and 2013, a lien not yet due and payable.
2. Taxes imposed pursuant to Ordinance recorded with the Cook County Recorder of Deeds (the "**Recorder**") as Document No. 91075841, a lien not yet due and payable.
3. Easement dated May 4, 1959 and recorded with the Recorder on May 4, 1959 as Document No. 17527621 and as modified by instrument recorded with the Recorder on March 18, 1966 as Document No. 17807558.
4. Easement dated May 4, 1959 and recorded with the Recorder on May 4, 1959 as Document No. 17527622.
5. All encroachments shown on the Survey No. 2013-17793-001 prepared by Gremley & Biedermann dated May 16, 2013 and last revised July 24, 2013.
6. Liens and security interests created by the Loan Documents.
7. Rights of tenants in possession of the Property, as tenants only, without rights of first refusal or options to purchase all or any part of the Property or interests therein.

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Schedule 4.6

1. Elevator service contracts
2. Union agreements
3. Façade repair contracts
4. Phone and internet service provider contracts
5. Tax consultant agreements (provided, however, that except with respect to the retainer agreement for tax certiorari legal representation with Madigan and Getzendanner assumed by Mortgagor on the date hereof, such agreements shall not survive any foreclosure or acceptance by Mortgagee of a deed in lieu of foreclosure)
6. BAS service contracts
7. Fire alarm (monitoring, maintenance, and life safety) contracts
8. Chiller maintenance service contracts
9. Photocopier leasing contracts
10. Electricity supplier contracts
11. Riser maintenance contracts
12. 360 facility contracts
13. Messenger center operator contracts (provided, however, such contracts shall not have a term in excess of two (2) years)