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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 1326322102 Fee: \$130.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/20/2013 02:37 PM Pg: 1 of 47

Report Mortgage Fraud  
800-532-8786

The property identified as: PIN: 07-12-400-014-0000

**Address:**

**Street:** 1750 E. Golf Rd

**Street line 2:**

**City:** Schaumburg

**State:** IL

**ZIP Code:** 60173

**Lender:** Beal Bank USA

**Borrower:** Boxer F2, L.P.

**Loan / Mortgage Amount:** \$22,627,723.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

**Certificate number:** 951686BC-FEEE-4F89-849E-BAF88ED1C9EF

**Execution date:** 09/18/2013

**UNOFFICIAL COPY****AFTER RECORDING, RETURN TO:**

Lawrence C. Adams, Esq.  
 Hunton & Williams, LLP  
 1445 Ross Avenue, Suite 3700  
 Dallas, Texas 75202

**THIS INSTRUMENT PREPARED BY:**

Hunton & Williams LLP  
 Lawrence C. Adams, Esq.  
 1445 Ross Avenue, Suite 3700  
 Dallas, Texas 75202

[Clerk's Recording Information]

**ATTENTION COUNTY CLERK:** THIS INSTRUMENT COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE MORTGAGED PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS INSTRUMENT SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A MORTGAGE, BUT ALSO AS A FINANCING STATEMENT COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE MORTGAGED PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE MORTGAGOR (DEBTOR) AND MORTGAGEE (SECURED PARTY) ARE SET FORTH IN THIS INSTRUMENT. MORTGAGOR IS A TEXAS LIMITED PARTNERSHIP AND ITS TEXAS ORGANIZATIONAL NUMBER IS: 801201455.

**MORTGAGE, SECURITY AGREEMENT,  
 AND  
 ASSIGNMENT OF LEASES AND RENTS**

This MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (hereinafter referred to as the "Mortgage") is executed by BOXER F2, L.P., a Texas limited partnership ("Mortgagor"), whose address for notice hereunder is 720 North Post Oak Road, Suite 500, Houston, Texas 77024, to and in favor of BEAL BANK USA, a thrift company organized under the laws of the State of Nevada (hereinafter defined as the "Mortgagee"), whose address for notice hereunder is 1970 Village Center Circle, Suite 1, Las Vegas, Nevada 89134:

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## WITNESSETH:

### ARTICLE I

#### DEFINITIONS

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

(a) Applicable Environmental Laws: All Legal Requirements now or hereafter applicable to the use, treatment, processing, disposal, transportation, storage or handling of hazardous or toxic wastes or substances, including, without limitation, the Resource Conservation and Recovery Act of 1987 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder or pursuant thereto, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder or pursuant thereto.

(b) Debtor Relief Laws: Any applicable liquidation, conservatorship, bankruptcy, moratorium, reorganization, insolvency, reorganization or similar laws, whether federal or state, affecting the rights or remedies of creditors generally, as in effect from time to time.

(c) Escrowed Funds: The amounts paid by Mortgagor to Mortgagee pursuant to Section 12.4 hereof to be held by Mortgagee in a fund for the payment of the Impositions.

(d) Event of Default: As defined in Article VI hereof.

(e) Fixtures: All right, title and interest of Mortgagor in and to all materials, supplies, equipment, apparatus and other items now or hereafter attached to, installed on or in the Land or the Improvements, or which in some fashion are deemed to be fixtures to the Land or Improvements under the laws of the State of Illinois, including the Illinois Uniform Commercial Code. The term "Fixtures" shall include, without limitation, all items of personalty to the extent that the same may be deemed Fixtures under applicable law.

(f) Governmental Authority: Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(g) Guarantors (whether one or more): Andrew Segal, a resident of Harris County, Texas ("A. Segal"), F. James Neil, Jr., a resident of Dallas County, Texas ("Neil"), Justin Segal, a resident of Harris County, Texas ("J. Segal"), The Sidekicks Trust f/b/o Francis James Neil III pursuant to Trust Agreement dated December 20, 2012, The Sidekicks Trust f/b/o Doris Neil Araiza pursuant to Trust Agreement dated December 20, 2012, The Sidekicks Trust f/b/o Charles Lyndon Neil pursuant to Trust

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Agreement dated December 20, 2012, and The Sidekicks Trust f/b/o Jennifer Elizabeth Neil pursuant to Trust Agreement dated December 20, 2012 (the foregoing trusts being collectively referred to as the "Trusts").

(h) Guaranty: Individually and collectively, (1) that certain Guaranty Agreement dated December 21, 2009, executed by Andrew Segal and F. James Neil, Jr., for the benefit of Mortgagee, relating to the Loan (as subsequently amended on February 7, 2013, and further amended on August 30, 2013), (2) that certain Guaranty Agreement dated August 30, 2013, executed by Justin Segal for the benefit of Mortgagee relating to the Loan, and (3) those certain Guaranty Agreements dated August 19, 2013, executed by each of the Trusts for the benefit of Mortgagee relating to the Loan.

(i) Impositions: The Taxes, the Insurance Premiums, water, gas, sewer, electricity and other utility rates and charges; all rentals charged under any ground lease covering all or any part of the Mortgaged Property; all charges imposed pursuant to any subdivision, planned unit development or condominium declaration, declaration of covenants and restrictions (including, without limitation, all assessments and other charges due to any owners association relating to all or any part of the Land); all charges for any easement, license or agreement maintained for the benefit of the Mortgaged Property, and all other costs, expenses, taxes, charges and assessments (including, without limitation, any thereof due to any utility, road, flood control or other district affecting any part of the Land), and any interest or penalties with respect thereto, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon any part of the Mortgaged Property or upon the ownership, operation, use, occupancy or enjoyment thereof, or which are related in any way to the transactions contemplated under the Loan Documents, excepting those imposed as a result of the gross negligence or willful misconduct of Mortgagee.

(j) Improvements: Any and all buildings, structures, open parking areas and other improvements, and any and all accessions, additions, replacements, substitutions or alterations thereof or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

(k) Indebtedness: The principal of, interest on and all other amounts and payments due under or secured by the Note, this Mortgage or any other Loan Document, and all renewals, extensions and modifications thereof, together with all funds hereafter advanced by Mortgagee to or for the benefit of Mortgagor or Maker as contemplated by any covenant or provision herein or therein contained or for any other purpose, and all other indebtedness, of whatever kind or character, direct or indirect, absolute or contingent, now owing or which may hereafter become owing by Mortgagor to Mortgagee, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise.

(l) Insurance Premiums: The premiums payable by Mortgagor under each of the policies of insurance which Mortgagor is required to maintain pursuant to the terms of this Mortgage.

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(m) Land: The real estate or any interest therein described in Exhibit "A" attached hereto and made a part hereof, together with all Improvements and Fixtures and all rights, titles and interests appurtenant thereto.

(n) Leases: Any and all leases, subleases, licenses, concessions or other agreements (written or verbal, now or hereafter in effect) which now or hereafter grant a possessory interest in and to, or the right to reside in, operate in, sell or use the Mortgaged Property, but specifically excluding leases of oil, gas or other minerals.

(o) Legal Requirements: (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Mortgagor, Maker or any of the Mortgaged Property, including, but not limited to, those regarding the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of all or any part of the Mortgaged Property, (ii) any and all Leases and other contracts (written or oral) of any nature to which Mortgagor, Maker or any of the Mortgaged Property may be bound, and (iii) any and all restrictions, reservations, conditions, easements or other covenants or agreements affecting the Mortgaged Property.

(p) Loan: The loan by Mortgagee to Mortgagor evidenced by the Note.

(q) Loan Agreement: That certain Loan Agreement dated December 21, 2009, by and between Mortgagor and Mortgagee, relating to the Loan, as subsequently amended by Letter Agreement dated April 30, 2010, Loan Modification Agreement dated November 30, 2011, Loan Modification Agreement dated August 30, 2012 (the "Extension Modification"), and Loan Modification Agreement dated August \_\_, 2013.

(r) Loan Documents: The Loan Agreement, the Note, this Mortgage, the Guaranty, that certain Borrower's Certificate, of even date herewith, executed and delivered by Mortgagor for the benefit of Mortgagee, that certain Assignment of Leases and Rents, of even date herewith, executed and delivered by Mortgagor for the benefit of Mortgagee (the "Assignment of Leases"), the Security Agreement, as such term is defined in the Loan Agreement, that certain Agreement and Assignment of Capital and Profits Interest dated as of December 21, 2009, made and entered into by and between Mortgagor, and Mortgagee (as amended most recently by that certain Twenty-Seventh Amendment to Agreement and Assignment of Capital Profits Interest, dated of even date herewith, made and entered into by and between Mortgagor and Mortgagee), and any and all other documents now or hereafter executed by Mortgagor to evidence or secure the payment of the Note or any other Indebtedness or the performance and discharge of the Obligations, and any and all other documents heretofore, hereafter or concurrently herewith executed by Mortgagor and/or any other person or entity in connection with the Loan. Without limitation of the foregoing, the Loan Documents include all documents and instruments hereafter executed and/or delivered in connection with properties hereafter acquired as contemplated by the Loan Agreement and which will constitute a

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part of the Property, as such term is defined in the Loan Agreement, which will constitute collateral securing the Loan.

(s) Maker: Mortgagor.

(t) Mortgagee: Beal Bank USA f/k/a Beal Bank Nevada, a thrift company organized under the laws of the State of Nevada, and the subsequent holder or holders, from time to time, of the Note.

(u) Mortgagor: The above defined Mortgagor and any and all subsequent record or equitable owners of the Mortgaged Property.

(v) Mortgaged Property: The Land, Improvements, Fixtures, Personalty, Leases and Rents, together with:

(i) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances in anywise appertaining thereto, and all right, title and interest of Mortgagor in and to any street, ways, alleys, strips or gores of land adjoining the Land or any part thereof, which Mortgagor now owns or at any time hereafter acquires;

(ii) all betterments, accessions, additions, appurtenances, substitutions, replacements and revisions thereof and thereto owned by Mortgagor and all reversions and remainders therein owned by Mortgagor;

(iii) all of Mortgagor's right, title and interest in and to any award, remuneration, settlement or compensation heretofore made or hereafter to be made by any Governmental Authority to Mortgagor in regard to the Land, Improvements, Fixtures, Personalty, Leases or Rents, including those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements;

(iv) all Mortgagor's plans and specifications for the Improvements; all contracts and subcontracts to which Mortgagor is a party relating to any of the Land and/or other Mortgaged Property, development and cost sharing or reimbursement agreements to which Mortgagor is a party, Improvements, Fixtures, Personalty, Leases and Rents, all deposits (including tenant's security deposits, if any), funds, accounts, contract rights (including, without limitation, rights to reimbursements), instruments, documents, general intangibles, and notes or chattel paper arising from or by virtue of any transactions related to the property described herein; all declarations of covenants and other similar documents relating to any part of the Land, and all rights (including, without limitation, membership and ownership rights) in any homeowners or other owners association relating to any part of the Land; all right, title and interest of Mortgagor under each contract for the sale, exchange or other transfer of all or any part of the Mortgaged Property or any interest therein (herein referred to collectively as the "Sales Contracts"), consent thereto not granted or to be implied

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hereby, and all deposits thereunder; all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with any of the Mortgaged Property described herein; all proceeds arising from or by virtue of the sale, lease or other disposition of all or any part of the Mortgaged Property (consent to same not granted or to be implied hereby); and all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to any of the Mortgaged Property;

(v) all right, title and interest of Mortgagor, now or hereafter existing, in regard to (x) any municipal utility district or other similar entity, which relates to or has jurisdiction over or provides utility, roadway or other services to the Mortgagor or for the benefit of any portion of the Land, and (y) all reimbursement rights relating to any such municipal utility or other district or otherwise in regard to the Land;

(vi) all other interest of every kind and character which Mortgagor now has or at any time hereafter acquires in and to the above described real and personal property and all property which is used or useful in connection therewith, including rights of ingress and egress, easements, licenses, and all reversionary rights or interests of Mortgagor with respect to such property. To the extent permitted by law, all of the foregoing personal property owned by Mortgagor and Fixtures are to be deemed and held to be a part of and affixed to the real property. In the event the estate of the Mortgagor in and to any of the Land and Improvements is a leasehold estate, this conveyance shall include, and the lien, security interest and assignment created hereby shall encumber and extend to, all other, further or additional titles, estates, interest or rights which may exist now or at any time be acquired by Mortgagor in or to the property demised under the lease creating such leasehold estate and including Mortgagor's rights, if any, to purchase the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Mortgagor, such fee simple interest shall be encumbered by this Mortgage in the same manner as if Mortgagor had fee simple title to such property as of the date of execution hereof without the necessity of any further act by Mortgagor, Mortgagee or any third party; and

(vii) any and all other security and collateral of any nature whatsoever owned by Mortgagor, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

As used in this Mortgage, the term "Mortgaged Property" is expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

(w) Note: That certain Revolving Promissory Note dated as of December 21, 2009, executed by Maker, payable to the order of Mortgagee, in the principal sum of Four Hundred Sixty Four Million Dollars (\$464,000,000.00), bearing interest and being

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payable as provided therein, becoming finally due and payable on June 30, 2019 (as a result of the Extension Modification), and any and all renewals, extensions and modifications thereof.

(x) Obligations: Any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor, Maker or any Guarantor to Mortgagee or others as set forth in the Loan Documents.

(y) Permitted Encumbrances: The outstanding liens, easements, building lines, restrictions, security interests and other matters (if any) as set forth on Exhibit "B" attached hereto and made a part hereof, together with any other items hereafter expressly approved by Mortgagee in writing or created by, the Loan Documents.

(z) Personalty: All of the right, title and interest of Mortgagor in and to all tangible and intangible personal property, including all accounts, equipment, consumer goods, chattel paper, goods, inventory, instruments, money, general intangibles, documents, crops and timber (as those terms are defined in the Illinois Uniform Commercial Code, which are attached to, installed on or placed or used on, in connection with or which are acquired for such attachment, installation, placement or use, or which arise out of the development, improvement, financing, leasing, operation, use or maintenance of, the Land, the Improvements, Fixtures or other goods located on the Land or Improvements, or from or out of any business of Mortgagor operated in or from the Land or the Improvements, together with all additions, accessions, accessories, amendments and modifications thereto, extensions, renewals, enlargements and proceeds thereof, substitutions therefor, and income and profits therefrom. The following are included, without limitation, in the definition of Personalty: Mortgagor's interest in furnishings, building materials, supplies, machines, engines, boilers, stokers, pumps, fans, vents, blowers, dynamos, furnaces, elevators, ducts, shafts, pipes, cabinets, shades, blinds, screens; plumbing, heating, air conditioning, lighting, lifting, ventilating, refrigerating, cooking, medical, laundry and incinerating equipment, partitions, drapes, carpets, rugs and other floor coverings, awnings, call and sprinkler systems, fire prevention and extinguishing apparatus and equipment, water tanks, swimming pools, compressors, vacuum cleaning systems, disposals, dishwashers, ranges, ovens, kitchen equipment, cafeteria equipment, recreational equipment, lawn and landscaping equipment and supplies, loan commitments, management agreements, maintenance and service agreements, utility contracts, financing arrangements, bonds, construction contracts, leases, licenses, permits, sales contracts, insurance policies and the proceeds therefrom, plans and specifications, surveys, rent rolls, books and records, funds, bank deposits and all other intangible personal property of Mortgagor; provided, the foregoing shall not include Mortgagor's furniture located in the Improvements or any computers, office furniture and equipment related thereto solely owned or used by the property management company for the Mortgaged Property.

(aa) Rents: All of the rents, revenues, accounts, accounts receivable, income, proceeds, profits and other benefits now or hereafter paid or payable for using, leasing,

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licensing, possessing, operating from or in, residing in, selling or otherwise enjoying or using the Mortgaged Property, if any, including, without limitation, all damages received following any default under any of the Leases and all proceeds payable under any policy of insurance covering loss of rents.

(bb) Taxes: All real estate and personal property taxes and assessments payable with respect to the ownership, use or operation of the Mortgaged Property including, without limitation, all ad valorem taxes levied or assessed against the Mortgaged Property (including, without limitation, so called "Rollback Taxes" and penalties and interest thereon or related thereto, arising from any change of use or ownership of any of the Mortgaged Property and whether relating to periods before or after the date hereof).

## ARTICLE II

### GRANT

To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor does hereby irrevocably GRANT, BARGAIN, SELL, CONVEY, WARRANT, MORTGAGE, TRANSFER, ASSIGN, PLEDGE AND SET OVER AND CONFIRM unto Mortgagee, its successors and assigns, the Mortgaged Property, subject, however, to the Permitted Encumbrances. Mortgagor does hereby bind itself, its successors and assigns, to warrant and forever defend the title to the Mortgaged Property unto Mortgagee against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject only to the Permitted Encumbrances. Upon the written request of Mortgagee stating that all sums secured hereby have been paid, and upon surrender of this Mortgage and the Note to the Mortgagee for cancellation and retention, and upon payment of its fees, Mortgagee shall release and discharge this Mortgage and reconvey, without warranty, the Mortgaged Property. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

## ARTICLE III

### WARRANTIES AND REPRESENTATIONS

Mortgagor and Maker hereby unconditionally warrant and represent to Mortgagee as follows:

3.1 Organization. Mortgagor is a duly organized limited partnership, validly existing and in good standing under the laws of the State of Texas and is qualified to do business in the State of Illinois. The execution and delivery of the Loan Documents have been duly authorized under the terms of Mortgagor's limited partnership agreement and authorized by Mortgagor's partners. Mortgagor has all requisite authority, licenses and permits to own, operate and

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encumber the Mortgaged Property. No proceeding or action is pending, planned or threatened for the dissolution, termination or annulment of Mortgage.

3.2 Validity of Documents. The execution, delivery and performance by Mortgagor of the Loan Documents and the borrowing evidenced by the Note, (i) have received all (if any) requisite prior governmental approvals in order to be legally binding and enforceable in accordance with the terms thereof (subject to the effects on enforceability of applicable Debtor Relief Laws), and (ii) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under any mortgage, indenture, agreement, commitment or instrument to which Mortgagor is a party or by which any of the assets of Mortgagor are bound, or any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's property or assets, except as contemplated by the provisions of the Loan Documents. The Loan Documents executed by Mortgagor constitute the legal, valid and binding obligations of Mortgagor and are enforceable against Mortgagor in accordance with their respective terms (subject to the effects on enforceability of applicable Debtor Relief Laws), and Mortgagor has full and lawful authority to bargain, grant, sell, mortgage, assign, transfer and convey all of the Mortgaged Property as set forth herein.

3.3 Information. All information, reports, papers and data given to Mortgagee with respect to Mortgagor, Maker, Guarantors and the Mortgaged Property are accurate, complete and correct in all material respects and do not omit any fact necessary to prevent the facts contained therein from being materially misleading. All information reasonably material to the transactions contemplated herein has been expressly disclosed in writing by Mortgagor to Mortgagee.

3.4 Title to Mortgaged Property and Lien of this Instrument. Mortgagor has good and indefeasible title to the Land and the Improvements in fee simple, and good and indefeasible title to the Fixtures, Personalty, Leases and Rents, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances. This Mortgage constitutes a valid, subsisting first priority and the only lien mortgage on the Land, the Improvements and the Fixtures, subject only to the Permitted Encumbrances and a valid, subsisting first and prior and the only security interest in and to the Personalty, Leases and Rents, all in accordance with the terms hereof. None of the Personalty has been acquired by Mortgagor in violation of any applicable bulk sale law. To Mortgagor's best knowledge and belief, after reasonable inquiry, no tenant or other party has any rights or interests of any kind with respect to the Mortgaged Property other (i) as to such tenants, the right to occupy a portion of the Improvements pursuant to such tenant's Lease and (ii) as to any such other party, than rights, if any, created by Permitted Encumbrances.

3.5 Taxes and Other Payments. Mortgagor has filed all federal, state, county, municipal and city income, franchise and other tax returns which are required to have been filed by Mortgagor, and Mortgagor has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Mortgagor, and Mortgagor knows of no basis for any additional assessment in respect of any such taxes. Mortgagor has paid or will pay in full (except for such retainages as may be permitted or required by any Legal Requirements to be withheld

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by Mortgagor pending completion of the Improvements) all sums (i) owing or claimed for labor, material, supplies, personal property (whether or not constituting a Fixture hereunder) and services of every kind and character used, furnished or installed in the Mortgaged Property, and (ii) currently due in regard to any Imposition, and no claim for any of the same currently exists or will be permitted to become past due.

3.6 Litigation. There are no actions, suits or proceedings pending or, to the knowledge of Mortgagor, threatened against or affecting Mortgagor or the Mortgaged Property or which involve the validity or enforceability of this Mortgage, any other Loan Document or the priority of the lien and security interest hereof, and no event has occurred (including specifically Mortgagor's execution of the Loan Documents and the consummation of the Loan) which will violate, be in conflict with, result in the breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's property other than the lien and security interest created by the Loan Documents.

3.7 The Financial Statements. Mortgagor's and each Guarantor's financial statements heretofore delivered to Mortgagee fairly present in all material respects the financial condition and operations presented therein for the periods covered thereby, and have been prepared in accordance with sound accounting principles consistently applied. No materially adverse change in Mortgagor's or any Guarantor's financial condition has occurred since the date of such financial statements, and no borrowings have been made by Mortgagor since the date thereof other than the borrowings contemplated hereby.

3.8 No Defaults. Mortgagor is not in default under any of the Loan Documents, and no event has occurred which by notice, the passage of time or otherwise would constitute an Event of Default under any of the Loan Documents. Mortgagor is not in default in the payment of any material indebtedness for borrowed money or under the terms and provisions of any agreement or instrument evidencing any such indebtedness. Mortgagor is not in default with respect to any order, writ, injunction, decree or demand of any court or of any other requirement of any Governmental Authority, which default could result in any material adverse effect on the Loan, Mortgagee's rights, titles, interests or remedies with regard to the Loan. Mortgagor or the Mortgaged Property or any other collateral for the Loan.

3.9 Access and Utilities. The Mortgaged Property has direct access to dedicated and completely constructed public roads. All water, sanitary sewer and storm drain facilities and other public utilities necessary to the use of the Mortgaged Property and Improvements for their intended purposes as currently used or available and servicing the Mortgaged Property.

3.10 Lien Potential. Mortgagor has not taken, suffered, or permitted any action, the effect of which would be to establish or cause the inception or priority of any mechanics' or materialman's lien, statutory or otherwise, or any other lien, charge, or encumbrance upon the Mortgaged Property (or any part thereof) to be prior or superior to the lien and security interest of this Mortgage, except the Permitted Encumbrances. Each contractor, subcontractor, mechanic and materialman which has at any time supplied labor or materials to the Mortgaged Property

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has been paid in full, and Mortgagor has received no lien affidavits with respect to the Mortgaged Property.

3.11 Dangerous Conditions. To Mortgagor's current knowledge, there is no dangerous condition affecting any portion of the Mortgaged Property, and the use by Mortgagor of the Mortgaged Property for its intended purpose will not result in the violation of any law, ordinance or regulation applicable to the Mortgaged Property.

3.12 Environmental Matters. To the Mortgagor's current actual knowledge and belief, except as described in that certain Phase I Environmental Site Assessment, dated August 6, 2013, prepared by Nova Consulting (the "ESA"), (i) the Mortgaged Property is not in violation of any Applicable Environmental Laws and is not subject to any existing, pending or threatened investigation or inquiry by any Governmental Authority or to any remedial obligations under any Applicable Environmental Laws, (ii) no flammable explosives, radioactive materials, hazardous or toxic wastes, hazardous or toxic substances or related materials have been used, generated, manufactured, stored, spilled, released, or disposed of on, under, from, about or onto the Mortgaged Property, (iii) there has been no presence, disposal, spill, use or release of any hazardous or toxic wastes, hazardous or toxic substances or related materials on, under, from, about or onto the Mortgaged Property prior to Mortgagor's acquisition of title to the Mortgaged Property, (iv) no asbestos or asbestos-containing materials have been installed, used, incorporated into or disposed of in the Improvements or on the Land at any time, (v) no underground tanks or containers of any nature are located on the Mortgaged Property, or were located on the Mortgaged Property and subsequently moved or filled, (vi) no polychlorinated biphenyls (PCBs) are or were located upon or in the Mortgaged Property, including but not limited to any electrical transformers, flares and light fixtures with ballasts, cooling oils, or any other similar equipment or device of any nature, (vii) there are no conditions likely to exist during the term of this Mortgage, or in the foreseeable future, which would require or are likely to require clean up, removal, remedial action, or other responsive action pursuant to any Applicable Environmental Laws by Mortgagor, or which would subject Mortgagor to damages, penalties, injunctive relief or clean up costs under any Applicable Environmental Laws, (viii) no permits, licenses or approvals are required under any Applicable Environmental Laws relative to the Mortgaged Property, (ix) neither the Mortgaged Property nor Mortgagor is subject to any judgment, decree, order or citation which relates to or arises out of a violation of any Applicable Environmental Law, or that requires Mortgagor to clean up, remove or take remedial action or other responsive action pursuant to any Applicable Environmental Law, and (x) there are not now, nor to Mortgagor's knowledge after reasonable investigation, has there ever been any substance classified as hazardous, or toxic under any Applicable Environmental Law, stored, deposited, treated, recycled or disposed of on, under, or at the Mortgaged Property. Mortgagor will fully comply with all Applicable Environmental Laws relative to the Mortgaged Property at all times in the future. To the Mortgagor's current, actual knowledge, Mortgagor has disclosed to all applicable Governmental Authorities all facts, conditions and circumstances, if any, pertaining to the Mortgaged Property which are required to be disclosed under Applicable Environmental Laws.

3.13 Development and Operation. The Improvements will be operated in accordance with all Legal Requirements. During the term of the Loan, no development or other work (other

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than as allowed or required by Sections 4.3, 4.5, 4.6 or 4.8 herein) on or relating to any of the Mortgaged Property which remains encumbered by the Mortgage will be performed unless Mortgagor has obtained Mortgagee's prior written consent to such work, which consent shall not be unreasonably withheld or delayed.

## ARTICLE IV

### AFFIRMATIVE COVENANTS

Mortgagor and Maker hereby jointly and severally, unconditionally covenant to and agree with Mortgagee as follows:

4.1 Payment and Performance. Mortgagor will pay the Note and the other Indebtedness in accordance with the terms of the Note and the other Loan Documents, and Mortgagor will fully perform or cause to be performed all of the other Obligations on or before the dates they are to be performed.

4.2 Existence. Mortgagor will preserve and keep in full force and effect its existence, rights, franchises and trade names, and all licenses and permits necessary for the operation of the Mortgaged Property for its intended use.

4.3 Compliance with Legal Requirements. Mortgagor will promptly and faithfully comply with, conform to and obey all present and future Legal Requirements, whether or not the same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

4.4 Payment of Impositions. Subject to Mortgagee's rights under Sections 12.4 and 12.6 hereof, Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the date upon which the Impositions become due; provided, however, that Mortgagor may, if permitted by law and if installment payments would not create or permit the filing of a lien against the Mortgaged Property, pay the Impositions in installments, whether or not interest shall accrue on the unpaid balance of such Impositions and provided further, that Mortgagor may in good faith contest any thereof so long as (i) Mortgagor provides to Mortgagee, if requested by Mortgagee, in the exercise of its reasonable business judgment, pursuant to documents satisfactory to Mortgagee, a bond or other collateral satisfactory to Mortgagee in its reasonable discretion and in an amount satisfactory to Mortgagee in its reasonable discretion and (ii) such Impositions are paid prior to the time any part of the Mortgaged Property may be sold or levied upon for the payment thereof. Notwithstanding any such contest, Mortgagee may, at any time Mortgagee determines in its reasonable judgment such contest may have a material adverse effect on the Mortgaged Property or any rights of Mortgagee under the Loan Documents, pay the amounts being contested and such amounts so paid will be due and payable by Mortgagor to Mortgagee on demand by Mortgagee and shall bear interest as provided in the Note.

4.5 Condition of Property. Mortgagor will keep the Mortgaged Property in good order and condition as a similarly situated office building and presenting a good appearance as a similarly situated office building, in each case in the same market (and in any case, in accordance

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with applicable Legal Requirements) and will make all repairs, replacements, renewals, additions, betterments, improvements and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Mortgagor will also use reasonable efforts to prevent any act or occurrence which might impair the value or usefulness of the Mortgaged Property for its intended usage. In instances where repairs, replacements, renewals, additions, betterments, improvements or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste or destruction thereof, Mortgagor shall proceed to construct same, or cause same to be constructed, notwithstanding anything to the contrary contained in Paragraph 5.2 hereinbelow; provided, however, that in instances where such emergency measures are to be taken that have a material impact on the Mortgaged Property, Mortgagor will promptly notify Mortgagee in writing of the commencement of same and the measures to be taken, and when same are completed, the completion date and the measures actually taken. All work contemplated by line items on the Approved Budget for the Mortgaged Property may be performed by Mortgagor in accordance with the provisions of the Loan Agreement.

4.6 Improvements. Mortgagor shall not make any material Improvements to the Mortgaged Property (other than as required by or in accordance with Section 4.5 and tenant improvements in the ordinary course of business as provided in the Loan Agreement) unless consented to in writing by Mortgagee, which consent shall not be unreasonably withheld or delayed. Upon receipt of Mortgagee's consent to the proposed Improvements, Mortgagor shall diligently construct its proposed Improvements substantially in accordance with the plans therefor consented to by Mortgagee, and to final completion in a good and workmanlike manner, free from construction defects and in accordance with the terms of the Loan Documents. In no event shall Mortgagee have any liability or responsibility whatsoever with respect to any Improvements made to the Mortgaged Property by Mortgagor, and as a condition to the commencement of construction, Mortgagor shall cause all contractors, subcontractors and other persons engaged by or on behalf of Mortgagor with respect to the work to procure and maintain insurance coverage against such risks, in such amounts and with such companies as Mortgagee may reasonably require. Mortgagee, by consenting to the plans for the construction of Improvements to the Mortgaged Property, is not thereby consenting to the imposition of any mechanic's or materialmen's or other lien upon the Mortgaged Property as a result of the furnishing of any materials, furnishings or equipment or the performance of any labor or services, and in no event shall this Mortgage be deemed to have been subordinated to any such lien or claim. In regard to tenant finish-out improvements in the Improvements which are to be constructed in accordance with the terms of the Loan Agreement, Mortgagor may cause such tenant improvements to be constructed in accordance with the applicable Lease and standards common to other similarly situated office buildings in the same market, provided the construction of such tenant improvements is diligently completed and no mechanic's or materialmen's or other liens or lien claims arise from such construction (unless the same are satisfied or bonded in a manner satisfactory to Mortgagee in its reasonable discretion).

4.7 Insurance. Mortgagor shall obtain and maintain policies of liability, flood, vandalism, malicious mischief and other insurance as required by the Loan Agreement.

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Upon the reasonable request of Mortgagee, Mortgagor shall increase the coverages under any of the insurance policies required to be maintained under the Loan Agreement or otherwise modify such policies in accordance with Mortgagee's reasonable request. All of the insurance policies required under the Loan Agreement shall be issued by corporate insurers licensed to do business in the State in which the Land is located, rated A or better by A.M. Best Company and shall be in form reasonably acceptable to Mortgagee. If and to the extent that the Mortgaged Property is located within an area that has been or is hereafter designated or identified as an area having special flood hazards by the Department of Housing and Urban Development or by such other Governmental Authority official as shall from time to time be authorized by federal or state law to make such designation pursuant to any national or state program of flood insurance, Mortgagor shall carry flood insurance with respect to the Mortgaged Property in amounts not less than the maximum limit of coverage then available with respect to the Mortgaged Property or the amount of the Indebtedness, whichever is less. Certificates of all insurance required to be maintained hereunder shall be delivered to Mortgagee concurrently with Mortgagor's execution of this Mortgage. All such certificates shall be in form reasonably acceptable to Mortgagee. All renewal certificates of insurance shall be delivered to Mortgagee along with evidence of the payment of all premiums then due thereunder at least fifteen (15) days before termination of the policies being renewed or substituted. Mortgagee shall have the right, but not the obligation, to make premium payments, at Mortgagor's expense, to prevent any cancellation, endorsement, alteration or reissuance of any policy of insurance maintained by Mortgagor, and such payments shall be accepted by the insurer to prevent same. The foregoing insurance policies required to be maintained hereunder may be satisfied by a policy or policies of blanket insurance maintained by Mortgagor.

4.8 Restoration Following Casualty. If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in material damage to or destruction of the Mortgaged Property (such event being called a "Loss"), Mortgagor will give prompt written notice thereof to Mortgagee. All insurance proceeds paid or payable in connection with such Loss shall be paid to Mortgagee. Mortgagee shall have the right to either (a) place all insurance proceeds received in connection with such Loss in a separate account for the benefit of Mortgagee and Mortgagor to be used to restore, repair or replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such Loss or (b) apply all insurance proceeds in connection with such Loss to the payment of the Indebtedness in such order as Mortgagee may elect; provided, however, that if (i) no Event of Default or event or condition which, with the giving of notice, the passage of time, or both, could mature into an Event of Default shall have occurred and be continuing, (ii) Mortgagor provides evidence satisfactory to Mortgagee of its ability to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Mortgaged Property, (iii) no tenant under any material Lease shall terminate its Lease as a result of such Loss, and (iv) Mortgagee determines, in its reasonable discretion, that the proceeds of such award are sufficient to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such Loss, or, if the proceeds of such award are insufficient for such purpose, if Mortgagor provides additional sums to Mortgagee's satisfaction so that the aggregate of such sums and the proceeds of such award will be sufficient for such purpose, the proceeds of such award, together with additional sums provided by Mortgagor, shall be placed in a separate account for the benefit of Mortgagee and

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Mortgagor to be used to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such Loss, and any withdrawals from such separate account shall be subject to the satisfaction of all reasonable conditions imposed by Mortgagee consistent with Mortgagee's construction lending requirements then in effect. All work to be performed in connection therewith shall be pursuant to a written contract therefor, which contract shall be subject to the prior written approval of Mortgagee. Mortgagor hereby covenants to diligently prosecute any restoration, repairs or replacement of the Mortgaged Property undertaken by or on behalf of Mortgagor pursuant to this Section 4.8, and agrees that all such work shall be conducted pursuant to written contracts (which contracts, if the work in question will cost in excess of \$50,000.00, must be approved by Mortgagee in writing) and free and clear of all mechanic's or materialmen's or other liens or lien claims arising from such work (unless the same are satisfied or bonded in a manner satisfactory to Mortgagee in its reasonable discretion). In the event any insurance proceeds remain following the restoration, repair or replacement of the Mortgaged Property, such proceeds shall be applied as a principal payment on the Note.

4.9 Inspection. Mortgagor will permit Mortgagee, and its agents, representatives and employees, to inspect the Mortgaged Property at all reasonable times upon reasonable notice to Mortgagor.

4.10 Defense of Actions. If the title to, or the interest of Mortgagee in, the Mortgaged Property, or any part thereof, or the Loan, or the respective rights and obligations of Mortgagor and Mortgagee pursuant to this Mortgage or any other Loan Document, shall be endangered or shall be attacked, directly or indirectly, Mortgagor hereby authorizes Mortgagee, at Mortgagor's expense, to take all necessary and proper steps (as determined by Mortgagee in the exercise of its reasonable judgment) for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against such title or interest in the Mortgaged Property. **Mortgagor will indemnify and hold Mortgagee harmless from and against any and all loss, cost, damage, liability or expense incurred by Mortgagee in protecting its interests hereunder in such an event (including all court costs and attorneys' fees) excluding any thereof arising solely from the negligence or willful misconduct of Mortgagee.**

4.11 Future Impositions. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage or upon any rights, titles, liens or security interests created hereby or upon the Note, or any part thereof (other than income taxes or state franchise taxes due from Mortgagee as a result of payments on the Note), Mortgagor shall immediately pay or cause to be paid all such taxes; provided, however, that in the alternative, Mortgagor may, in the event of the enactment of such a law, and must, if it is unlawful for Mortgagor to pay such taxes, prepay (without prepayment penalty) the Note in full within sixty (60) days after demand therefor by Mortgagee. Mortgagor shall, upon request, promptly furnish at any time and from time to time (but no more than two times per calendar year unless Mortgagee is required by applicable law or regulation to obtain more frequent statements), a written statement or affidavit, in such form as may be required by Mortgagee, stating the amount of the unpaid balance of the Note and that there are no offsets or defenses against full payment of

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the Note and performance of the terms hereof or, if there are any such offsets and defenses, specifying them in detail.

4.12 Books and Records. Mortgagor will maintain full and accurate books of account and other records reflecting the results of its operations and will furnish or cause to be furnished to Mortgagee, at Mortgagor's expense, the following: (i) within ninety (90) days following the end of each fiscal year of Mortgagor and Guarantor, annual financial statements (together with supporting data reflecting all material information with respect to the operation of the Mortgaged Property) of the Mortgagor and the Guarantor, which financial statements of (a) the Mortgagor will be certified to present fairly in all material respects the financial position of the Mortgagor for the periods presented in the statement by an officer of Mortgagor familiar with Mortgagor's finances and (b) each Guarantor will be certified to present fairly in all material respects the financial position of the Mortgagor for periods presented in the statement by such Guarantor, (iii) within forty-five (45) days following the end of each quarter during the term of the Loan, unaudited, certified (by Mortgagor) operating statements of the Mortgaged Property for the preceding quarter and year-to-date, and (iii) such additional financial and other information as is required by the Loan Agreement or any other Loan Document or as Mortgagee may from time to time reasonably request in writing. In addition, promptly following the filing thereof the Mortgagor will provide to Mortgagee, true, correct and complete copies of the federal income tax returns of the Mortgagor and each Guarantor.

4.13 Late Charge. Mortgagor will pay any Late Charge, as defined in the Note, imposed in accordance with the terms of the Note.

4.14 Expenses. Mortgagor shall pay all reasonable costs and expenses incurred by Mortgagee from time to time in connection with the Mortgaged Property, the Loan, the Loan Documents, any amendments or modifications to any of the Loan Documents, any waiver of any provisions of the Loan Documents and any other matter related to the Loan including, without limitation, the reasonable costs and expenses of the preparation of the Loan Documents and of any other documents or instruments Mortgagee in its reasonable judgment considers necessary or appropriate with respect to the Loan, the cost and expenses of or incident to the enforcement or performance of and compliance with any of the provisions of this Mortgage or any of the other Loan Documents, the reasonable costs of all appraisals of the Mortgaged Property (or such portions thereof as Mortgagee may designate from time to time) obtained by Mortgagee and any other reasonable costs and expenses of any kind or nature whatsoever which at any time prior to or after the execution hereof are payable with respect to the Mortgaged Property, or the ownership, operation, use, occupancy or enjoyment thereof, or which are related in any way to the transactions contemplated under this Mortgage.

4.15 Additional Acts. In addition to the acts recited herein and contemplated to be performed, executed and/or delivered by Mortgagor, Mortgagor hereby agrees, at any time, and from time to time upon the request of Mortgagee, to perform, execute, acknowledge, deliver, record and/or file such further instruments, do such further acts and give such further assurances as may be necessary or proper to (a) promptly implement the intent of Mortgagor and Mortgagee under this Mortgage; (b) promptly correct any defect, error or omission which may be discovered in this Mortgage or any other Loan Document, and execute any and all additional documents, as

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may be reasonably requested by Mortgagee to correct such defect, error or omission; (c) assure Mortgagee a valid and direct lien (of the priority specified in Section 3.4 above) and perfected first priority security interest (of the priority specified in Section 3.4 above) under the Loan Documents or any of them on the Mortgaged Property; (d) create, perfect, preserve, maintain and protect (in each case with the priority required by the Loan Documents) the liens and security interests created or intended to be created by the Loan Documents; and (e) provide the rights and remedies to Mortgagee granted or provided for by the Loan Documents. Mortgagor, upon reasonable request of Mortgagee, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as Mortgagee, in the exercise of its reasonable judgment, may determine to be necessary, desirable or proper to carry out more effectively the purposes of the Loan Documents, to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Mortgaged Property, and to complete, execute, record and file any document or instrument necessary to place third parties on notice of the liens and security interests granted under the Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its agents and attorneys-in-fact to, only during the continuance of an Event of Default, or if Mortgagor fails to take action requested by Mortgagee pursuant hereto within fifteen (15) days after such request, execute, acknowledge and deliver all such instruments and additionally to record and file any of the same as may be necessary.

4.16 Notices by Governmental Authority, Fire and Casualty Losses, Etc. Mortgagor shall timely comply with and promptly furnish to Mortgagee true and complete copies of any official notice or claim by any Governmental Authority pertaining to the Mortgaged Property; provided, however, subject to the satisfaction of the conditions specified in Section 4.4 above, Mortgagor may contest in good faith any such notice or claim. Mortgagor shall promptly notify Mortgagee of any fire or other casualty or any notice of taking or eminent domain action or proceeding affecting the Mortgaged Property.

4.17 Notice of Certain Events. Mortgagor shall promptly notify Mortgagee if Mortgagor learns of the occurrence of (a) any event which constitutes an Event of Default, together with a detailed statement of the steps being taken to cure such Event of Default, or (b) the receipt of any notice from, or the taking of any other action by, the counterparty to any contract or agreement or the holder of any promissory note, debenture or other evidence of indebtedness of Mortgagor with respect to a claimed default which could reasonably be expected to have a material, adverse effect on the Loan, the Mortgagee's rights, interests or remedies under any of the Loan Documents, Mortgagor, the Mortgaged Property or any other collateral for the Loan, together with a detailed statement specifying the notice given or other action taken by such holder and the nature of the claimed default and what action Mortgagor is taking or proposes to take with respect thereto, or (c) any legal, judicial or regulatory proceedings affecting Mortgagor or any of its properties in which the amount involved is material and is not covered by insurance, or which, if adversely determined, could reasonably be expected to have a material adverse effect upon Mortgagor or the Mortgaged Property or any other collateral for the Loan, or (d) any other event or condition having a material adverse effect on the Loan, any of Mortgagee's rights, interests or remedies under the Loan Documents, Mortgagor, any Guarantor

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or the Mortgaged Property, or (e) any material default under any of the Leases or any material service contract or management agreement applicable to the Mortgaged Property.

4.18 Reserved.

4.19 No Conditional Sale Contracts, Etc. Without the prior written consent of Mortgagee, no materials, equipment, or fixtures shall be supplied, purchased, or installed for the operation of the Improvements pursuant to security agreements, conditional sale contracts, lease agreements, or other arrangements or understandings whereby a security interest or title is retained by any party or the right is reserved or accrues to any party to remove or repossess any such materials, equipment, or fixtures intended to be utilized in the operation of the Improvements.

4.20 Indemnification. Mortgagor agrees to indemnify Mortgagee and to hold Mortgagee harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) at any time asserted against or incurred by Mortgagee by reason of, arising out of or in connection with (i) any violation or breach by Mortgagor of any of the terms and provisions of the Loan Documents including, without limitation, any breach or violation of any Applicable Environmental Laws, except to the extent caused solely by the negligence or willful misconduct of Mortgagee and (ii) any claims for brokerage commission, fee or other compensation or breach of funding commitment or any related claim asserted by any person or entity in connection with the Loan. In addition, Mortgagor agrees to indemnify Mortgagee and to hold Mortgagee harmless from and against any and all costs, expenses, damages, losses or liabilities incurred or suffered by Mortgagee as a result of any removal or remedial obligations imposed with respect to the Mortgaged Property under any Applicable Environmental Laws, except to the extent caused solely by the negligence or willful misconduct of Mortgagee.

4.21 Compliance with Applicable Environmental Laws. Mortgagor will not cause or permit the Mortgaged Property to be in violation of any Applicable Environmental Laws, or do or permit anything to be done which will subject the Mortgaged Property to any remedial obligations under any Applicable Environmental Laws. Mortgagor will promptly notify Mortgagee in writing of any existing, pending or threatened investigation by any Governmental Authority under or in connection with any Applicable Environmental Laws. Mortgagor will not use the Mortgaged Property in a manner which will result in the disposal or release of any hazardous substances or solid waste on, from or to the Mortgaged Property, and shall at all times keep the Mortgaged Property free of all hazardous substances and wastes. If at any time during the term of this Mortgage, Mortgagee receives information leading Mortgagee to reasonably believe that the Mortgaged Property is not free of hazardous substances or wastes, then Mortgagor shall provide to Mortgagee, at Mortgagor's sole cost and expense and within a reasonable period of time following Mortgagee's request therefor, a current report by an environmental engineer acceptable to Mortgagee and covering such matters with respect to the Mortgaged Property as may be required by Mortgagee, in the exercise of its reasonable discretion. If Mortgagor fails to provide Mortgagee with such report within a reasonable period of time following Mortgagee's request therefor, Mortgagee shall have the right to obtain such report at Mortgagor's cost, and the same shall be a demand obligation owing by Mortgagor to

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Mortgagee and shall be a part of the Indebtedness. Mortgagor covenants to operate the Mortgaged Property (whether or not such property constitutes a "Facility" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA")), so that no cleanup or other obligation arises in respect of CERCLA or other applicable Environmental Law which would constitute a lien or charge on the Mortgaged Property prior to that of this Mortgage. If any such claim be made or any obligation should nevertheless arise hereafter, Mortgagor agrees that it will, at its own expense, (a) promptly cure same and (b) indemnify Mortgagee from any liability, responsibility or obligation in respect thereof or in respect of any cleanup or other liability as successor, secured party or otherwise (regardless of whether or not Mortgagee may be deemed to be an "owner or operator" under CERCLA) for any reason including, but not limited to, the enforcement of Mortgagee's rights as a secured party under this Mortgage or any obligation of law, except to the extent caused solely by the gross negligence or willful misconduct of Mortgagee.

4.22 Maintenance of Rights of Way, Easements and Licenses. Mortgagor will maintain, preserve and renew all existing contracts, rights of way, easements, grants, privileges, licenses and franchises reasonably necessary for the use of the Mortgaged Property from time to time and will not, without the prior consent of Mortgagee, which may be granted or withheld at the sole discretion of Mortgagee, initiate, join in or consent to any private restrictive covenant or other public or private restriction as to the use of the Mortgaged Property. Mortgagor shall, however, comply with (i) all restrictive covenants which may at any time affect any of the Mortgaged Property, and (ii) zoning and planned unit development ordinances and other public or private restrictions as to the use of any of the Mortgaged Property.

## ARTICLE V

### NEGATIVE COVENANTS

Mortgagor hereby covenants and agrees with Mortgagee that until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1 Use Violations. Mortgagor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Mortgaged Property in a manner which (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law, (c) constitutes a public or private nuisance or (d) makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

5.2 Alterations. Mortgagor will not commit or permit any waste of the Mortgaged Property and will not (subject to the provisions of Sections 4.5, 4.6 and 4.8 herein), without the prior written consent of Mortgagee, such consent not to be unreasonably withheld, make or permit to be made any alterations or additions to the Mortgaged Property of a material nature.

5.3 Replacement of Fixtures, Personalty and Equipment. Mortgagor will not, without the prior written consent of Mortgagee, such consent not to be unreasonably withheld, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless

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the removed item is removed temporarily for maintenance or repair or, if removed permanently, is replaced by an item of equal suitability and value, owned by Mortgagor free and clear of any lien or security interest except the liens and security interests created by the Loan Documents and such others, if any, as may be first approved in writing by Mortgagee, which approval may be granted or withheld at the sole discretion of the Mortgagee.

5.4 No Further Encumbrances. Mortgagor will not, without the prior written consent of Mortgagee, which may be granted or withheld at the sole discretion of Mortgagee, create, place, suffer or permit to be created or placed or, through any act or failure to act, acquiesce in the placing of or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual) security interest, encumbrance or charge on the Mortgaged Property, or enter into any conditional sale or other title retention agreement with respect to the Mortgaged Property, regardless of whether same are expressly subordinate to the liens and terms of the Loan Documents. Notwithstanding the foregoing, Mortgagor shall have the right to contest in good faith by appropriate proceedings any of the foregoing encumbrances which are inferior and subordinate to the lien of this Mortgage; provided, that as a condition thereto Mortgagor shall furnish to Mortgagee a surety bond or other security satisfactory to Mortgagee in its sole discretion fully protecting Mortgagee from the adverse consequences of any such contest.

5.5 Prohibition on Transfer. Mortgagor shall not sell, transfer, convey, pledge, assign, lease (except as otherwise provided herein or in the Assignment of Leases), hypothecate or encumber any of its rights or interests in the Mortgaged Property, or any part thereof or interest therein, or agree to do any of the foregoing either directly, by operation of law or otherwise without the prior written consent of Mortgagee, which may be granted or withheld at the sole discretion of Mortgagee. In addition, any sale or other transfer of any ownership interest in Mortgagor or any material ownership interest in any direct or indirect owner of Mortgagor without the prior written consent of Mortgagee, which may be granted or withheld at the sole discretion of Mortgagee, will constitute a violation of this provision and an Event of Default. Any pledge, assignment, hypothecation or encumbrance, or sale, transfer or conveyance in violation of this Section shall constitute an Event of Default, and without impairing any remedies or rights of Mortgagee on account of such pledge, assignment, hypothecation or encumbrance, or sale, transfer or conveyance, Mortgagee shall have the right at its election to declare the entire Indebtedness secured hereby to be immediately due and payable and to pursue all of its rights and remedies as a result of an Event of Default under Article VI hereof. Notwithstanding the foregoing, the following are "Permitted Transfers": a transfer by (i) devise or descent or by operation of law upon the death of a member, partner or stockholder of Mortgagor and/or Maker, or any member or partner thereof; and (ii) a transfer of a membership, partnership or shareholder interest in Mortgagor and/or Maker, whichever the case may be, by a current member, partner or shareholder, as applicable, to an immediate family member (i.e., parents, spouses, siblings, children or grandchildren) of such member, partner or shareholder, or to a trust for the benefit of an immediate family member of such member, partner or shareholder, for estate planning purposes so long as no change in control of the Mortgagor and/or Maker results from such transfer.

5.6 Restrictions. Mortgagor shall not without the prior written consent of Mortgagee, which may be granted or withheld at the sole discretion of Mortgagee, impose or amend any

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restrictive covenants or encumbrances upon the Mortgaged Property, amend, modify or terminate any existing easement, developer's contract or other agreement relating to any of the Mortgaged Property, assign or transfer any rights, as declarant, owner, Mortgagee, member or otherwise, under any declaration of covenants or in regard to any owners association, vote or take any action under or in regard to any such declaration of covenants or owners association which may have a material adverse effect on Mortgagor's or Mortgagee's rights or the ownership, development or use of any of the Mortgaged Property, or consent to the annexation of any of the Mortgaged Property to any city or the extraterritorial jurisdiction of any city (except pursuant to documents previously approved by the Mortgagee) or seek or consent to any imposition of zoning in regard to any of, or any change to or modification of the zoning of any of, the Mortgaged Property or any planned unit development affecting any of the Mortgaged Property. Mortgagor shall not without the prior written consent of Mortgagee, which may be granted or withheld at the sole discretion of Mortgagee, (i) cause any portion of the Mortgaged Property to be subjected to any condominium declaration, declaration of covenants, easement or other encumbrance or consent to any thereof, (ii) cause any portion of the Property to be subjected to any preliminary or final plat or consent to any thereof, or (iii) cause any portion of the Property to be zoned or the terms of zoning applicable to any portion of the Mortgaged Property to be changed or consent to any thereof.

5.7 Agreements Regarding Certain Contracts. Mortgagor agrees that (i) all management, leasing and service contracts relating to the Mortgaged Property must be on market terms and must be subordinate to the Loan Documents, and (ii) all tenants of any portion of the Mortgaged Property designated by Mortgagee must execute and deliver to the Mortgagee a subordination, non-disturbance and attornment agreement in form and substance acceptable to Mortgagee in its sole discretion.

## ARTICLE VI

### EVENTS OF DEFAULT

The term "Event of Default," as used herein and in the Loan Documents, shall have the meaning set forth in the Loan Agreement.

## ARTICLE VII

### DEFAULT AND FORECLOSURE

If an Event of Default shall occur, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses, in addition to any other remedy which Mortgagee may have.

7.1 Acceleration and Future Advances. Mortgagee may declare the entire Indebtedness, including the then unpaid principal balance on the Note, the accrued but unpaid interest thereon, court costs and attorney's fees hereunder immediately due and payable, without notice, presentment, protest, demand or action of any nature whatsoever, except as provided in the Note (each of which hereby is expressly waived by Mortgagor), whereupon the same shall

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become immediately due and payable. Additionally, Mortgagee shall not be required to make any further advances under the Loan Agreement or any other Loan Documents upon the occurrence of an Event of Default or an event which, with the giving of notice or passing of time, would constitute an Event of Default.

7.2 Entry on Mortgaged Property. Mortgagee may enter upon the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto without notice and without being guilty of trespass. If Mortgagor remains in possession of all or any part of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent thereto, Mortgagee may, without notice to Mortgagor, invoke any and all legal remedies to dispossess Mortgagor, including specifically one or more actions for forcible entry and detainer, trespass to try title and writ of restitution. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after an Event of Default than would have existed in the absence of such sentence.

7.3 Operation of Mortgaged Property. Mortgagee may hold, lease, manage, operate or otherwise use or permit the use of the Mortgaged Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Mortgagee may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Mortgagee shall deem necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 7.16 herein. Mortgagor hereby irrevocably appoints Mortgagee as the agent and attorney-in-fact of Mortgagor, with full power of substitution, and in the name of Mortgagor, if Mortgagee elects to do so, to (a) endorse the name of Mortgagor on any checks or drafts representing proceeds of the insurance policies, or other checks or instruments payable to Mortgagor with respect to the Mortgaged Property, (b) prosecute or defend any action or proceeding incident to the Mortgaged Property, and (c) take any action with respect to the Mortgaged Property that Mortgagee may at any time and from time to time deem necessary or appropriate. Mortgagee shall have no obligation to undertake any of the foregoing actions, and if Mortgagee should do so, it shall have no liability to Mortgagor for the sufficiency or adequacy of any such actions taken by Mortgagee, except for damages arising solely from the gross negligence or willful misconduct of Mortgagee.

7.4 Foreclosure and Sale.

(a) Mortgagee may foreclose the lien hereof in accordance with the laws of the State of Illinois, and:

(i) in any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and

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costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title or to the value of the Mortgaged Property; and

(ii) all expenditures and expenses of the nature mentioned in this subparagraph (a), and such expenses and fees as may be incurred in the protection of the Mortgaged Property in the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation and proceedings affecting this Mortgage, the Note or the Mortgaged Property or the rights of Mortgagee hereunder or as to which Mortgagee may be made a party by virtue of its interest in the Mortgaged Property pursuant to this Instrument or otherwise, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall constitute so much additional Indebtedness, and shall be immediately due and payable by Mortgagor, with interest thereon at the default rate as indicated in the Note.

Mortgagor hereby expressly waives any and all rights of redemption from sale, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent herein that any and all such rights of redemption of Mortgagor and all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of 735 ILCS 5/15-1601 or other applicable law or replacement statutes. Mortgagor hereby agrees that it shall not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein, or otherwise granted or delegated to Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and if Mortgagor is a trustee, Mortgagor represents that the provisions of this Section (including the waiver of redemption rights) are made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

7.5 Divestment of Rights; Tenant at Sufferance. After sale of the Mortgaged Property, or any portion thereof, Mortgagor will be divested of any and all interest and claim thereto, including any interest or claim to all insurance policies, bonds, loan commitments and other intangible property covered hereby. Additionally, with respect to the Land, Improvements, Fixtures and Personalty, after a sale of all or any portion thereof, Mortgagor will be considered a

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tenant at sufferance of the purchaser of the same, and said purchaser shall be entitled to immediate possession thereof, and if Mortgagor shall fail to vacate the Mortgaged Property immediately, the purchaser may and shall have the right, without further notice to Mortgagor, to go into any justice court in any precinct or county in which the Mortgaged Property is located and file an action in forcible entry and detainer, which action shall lie against Mortgagor or its assigns or legal representatives, as a tenant at sufferance. This remedy is cumulative of any and all remedies the purchaser may have hereunder or otherwise.

7.6 Receiver. Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein or any legal proceedings hereunder, Mortgagee may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, for appointment of a receiver of the Mortgaged Property. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 7.16 herein. The right to the appointment of a receiver shall apply regardless of whether Mortgagee has commenced procedures for the foreclosure of the liens and security interest created herein, or has commenced any other legal proceedings to enforce payment of the Indebtedness or performance or discharge of the Obligations, and shall also apply upon the actual or threatened waste to any part of the Mortgage Property.

7.7 Separate Sales. Mortgagee may sell all or any portion of the Mortgaged Property together or in lots or parcels and in such manner and order as Mortgagee, in its sole discretion, may elect. The sale or sales by Mortgagee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and Mortgagee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and if the proceeds of such sale or sales of less than the whole of such Mortgaged Property shall be less than the aggregate of the Indebtedness and the expense of executing this trust, this Mortgage and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale or sales had been made; provided, however, that Mortgagor shall never have any right to require the sale or sales of less than the whole of the Mortgaged Property, but Mortgagee shall have the right to sell less than the whole of the Mortgaged Property. As among the various counties in which items of the Mortgaged Property may be situated, sales in such counties may be conducted in any order that Mortgagee may deem expedient; and any one or more of such sales may be conducted in the same month, or in successive or different months, as the Mortgagee may deem expedient. If an Event of Default occurs, the holder of the Indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire Indebtedness due, and if sale is made because of default of an installment, or a part of an installment, such sale may be made subject to the unmatured part of the Note and the Indebtedness; and such sale, if so made, shall not in any manner affect the unmatured part of the Indebtedness but as to such unmatured part, this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this Section. Any number of sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indebtedness secured hereby.

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7.8 Foreclosure for Installments. Mortgagee shall have the option to proceed with foreclosure and satisfaction of any installments of the Indebtedness which have not been paid when due, through the courts by proceeding with foreclosure and satisfaction of the matured but unpaid portion of the Indebtedness as if under a full foreclosure, conducting the sale as herein provided without declaring the entire Indebtedness due; such sale may be made subject to the unmatured portion of the Indebtedness, and any such sale shall not in any manner affect the unmatured portion of the Indebtedness, but as to such unmatured portion of the Indebtedness this Mortgage shall remain in full force and effect just as though no sale had been made hereunder. It is further agreed that several sales may be made hereunder without exhausting the right of sale for any unmatured portion of the Indebtedness, it being the purpose hereof to provide for foreclosure and sale of the security for any matured portion of the Indebtedness without exhausting the power to foreclose and sell the Mortgaged Property for any subsequently maturing portion of the Indebtedness.

7.9 Other. Mortgagee may exercise any and all other rights, remedies and recourses granted under the Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

7.10 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including specifically those granted by the Illinois Uniform Commercial Code in effect and applicable to the Mortgaged Property or any portion thereof) and same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively or concurrently against Mortgagor, Guarantors or others obligated under the Note, or against the Mortgaged Property, or against any one or more of them at the sole discretion of Mortgagee; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (d) are intended to be, and shall be, nonexclusive.

7.11 No Conditions Precedent to Exercise of Remedies. Neither Mortgagor nor any other person or entity obligated for payment of all or any part of the Indebtedness or fulfillment of all or any of the Obligations shall be relieved of such obligation by reason of (a) the failure of the Mortgagee to comply with any request of Mortgagor or any other person or entity so obligated to foreclose the lien of this Mortgage or to enforce any provisions of the other Loan Documents; (b) the release, regardless of consideration, of the Mortgaged Property or any portion thereof or the addition of any other property to the Mortgaged Property; (c) any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending, renewing, rearranging, or in any other way modifying the terms of the Loan Documents without first having obtained the consent of, given notice to or paid any consideration to Mortgagor or such other person or entity, and in such event, Mortgagor and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement unless expressly released and discharged in writing by Mortgagee (notwithstanding anything contained herein to the contrary, Mortgagee is under no obligation to give notice to or pay any consideration to Mortgagor or any other such person or entity for any modifications, extensions, renewals or rearrangements of the Loan Documents); or

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(d) by any other act save and except the complete payment of the Indebtedness and the complete fulfillment of all of the Obligations.

7.12 Release of and Resort to Collateral. Any part of the Mortgaged Property may be released by Mortgagee without affecting, subordinating or releasing the lien, security interest and assignment hereof against the remainder. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security, or the rearrangement, extension or renewal of the Indebtedness, or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby or affect the liability of Mortgagor or of any endorser, guarantor or surety, or improve the right of any permitted junior lienholder; and this Mortgage, as well as any instrument given to secure any rearrangement, renewal or extension of the Indebtedness secured hereby, or any part thereof, shall be and remain a first and prior lien on all of the Mortgaged Property not expressly released until the Indebtedness is completely paid. For payment of the Indebtedness, Mortgagee may resort to any other security therefore held by Mortgagee in such order and manner as Mortgagee may elect.

7.13 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefits that might accrue to Mortgagor by any present or future laws exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (b) all notices of any Event of Default (except as may be specifically provided for under the terms hereof or the terms of any other Loan Document), presentment, demand, notice of intent to accelerate, notice of acceleration and any other notice of Mortgagee's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents; (c) any right to appraisal or marshalling of assets or a sale in inverse order of alienation; (d) the exemption of homestead; and (e) the administration of estates of decedents, or other matter to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to sell the Mortgaged Property for the collection of the Indebtedness secured hereby (without any prior or different resort for collection) or the right of Mortgagee under the terms of this Mortgage, to the payment of the Indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted). Mortgagor expressly waives and relinquishes any right or remedy which it may have or be able to assert by reason of the provisions of Illinois Uniform Commercial Code pertaining to the rights and remedies of sureties.

7.14 Discontinuance of Proceedings. In case Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Mortgagee shall have the unqualified right so to do and, in such event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and power of Mortgagee shall continue as if the same had never been invoked.

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7.15 Form and Substance. All documents, certificates, insurance policies, and other items required under this Mortgage to be executed and/or delivered to Mortgagee shall be in form and substance reasonably satisfactory to Mortgagee.

7.16 Application of Proceeds; Deficiency Obligation. The proceeds of any sale of, and the Rents and other income generated by the holding, leasing, operating or other use of the Mortgaged Property shall be applied by Mortgagee (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following orders of priority: (a) first, to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, maintaining, repairing, improving and selling the same, including, without limitation, (i) reasonable Mortgagee's fees and receiver's fees; (ii) costs of advertisement; (iii) reasonable attorneys' and accountants' fees; and (iv) court costs, if any; (b) second, to the payment of all amounts, other than the principal amount and accrued but unpaid interest on the Indebtedness, which may be due to Mortgagee under the Loan Documents, including all Indebtedness and Obligations, together with interest thereon as provided therein, in such order and manner as Mortgagee may determine; (c) third, to the payment of all accrued but unpaid interest due on the Note in such order and manner as Mortgagee may determine; (d) fourth, to the payment of the principal amount outstanding on the Note and all other Indebtedness and Obligations in such order and manner as Mortgagee may determine; and (e) fifth, to Mortgagee or as otherwise required by law. Subject to the foregoing, and unless Mortgagee, in its reasonable discretion elects otherwise, the proceeds of any sale of, and the Rents and other income generated by the holding, leasing, operating or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) to the extent that funds are so available therefrom: (1) first, to reduce that portion of the Indebtedness then remaining unpaid for which Mortgagor is not personally liable, if any, and (2) second, to reduce that portion of the Indebtedness then remaining unpaid for which Mortgagor is personally liable. Without limitation of or effect on any obligations of any Guarantor under the Guaranty or of any other person or entity that has any obligations with regard to the Loan, Mortgagor shall be liable for any deficiency remaining on the Indebtedness and Obligations subsequent to the sale referenced this Section 7.16.

7.17 Purchase by Mortgagee. Mortgagee, if the highest bidder, shall have the right to become the purchaser at any sale of the Mortgaged Property hereunder and shall have the right to be credited on the amount of its bid therefor all of the Indebtedness and Obligations due and owing as of the date of such sale.

7.18 Disaffirmation of Contracts. The purchaser at foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made in violation of any provisions of this Mortgage and may take immediate possession of the Mortgaged Property free from, and despite the terms of, any such grant of easement, rental, lease or other contract.

7.19 Acceleration Following Certain Events. Notwithstanding anything to the contrary contained herein or inferable from any provision hereof, upon the occurrence of an Event of Default as defined in Section 1.33 (e) or (f) of the Loan Agreement, the Indebtedness, including without limitation the unpaid accrued interest under the Note and any other accrued but unpaid

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portion of the Indebtedness, shall be automatically and immediately due and payable in full without the necessity of any action on the part of Mortgagee.

7.20 Prepayment. Prepayment of the Note is permitted as provided in the Note.

## ARTICLE VIII

### CONDEMNATION

8.1 Application of Proceeds. If the Mortgaged Property, or any part thereof, shall be condemned or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking of, or injury to, the Mortgaged Property shall be paid to Mortgagee who shall have the right, in its sole and absolute discretion, to apply the amounts so received against (a) the costs and expenses of Mortgagee, including reasonable attorneys' fees incurred in connection with collection of such amounts and (b) the balance against the Indebtedness and Obligations; provided, however, that if (i) no Event of Default or event or condition which, with the giving of notice, the passage of time, or both, could mature into an Event of Default shall have occurred and be continuing hereunder, (ii) Mortgagor provides evidence satisfactory to Mortgagee of its ability to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Mortgaged Property and (iii) Mortgagee determines, in its reasonable discretion, that the proceeds of such award are sufficient to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such taking, or, if the proceeds of such award are insufficient for such purpose, if Mortgagor provides additional sums to Mortgagee's satisfaction so that the aggregate of such sums and the proceeds of such award will be sufficient for such purpose, the proceeds of such award, together with additional sums provided by Mortgagor, shall be placed in a separate account for the benefit of Mortgagee and Mortgagor to be used to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such taking. All work to be performed in connection therewith shall be pursuant to a written contract therefor, which contract, if a Material Contract, shall be subject to the prior written approval of Mortgagee. To the extent that any funds remain after the Mortgaged Property has been so restored and repaired, the same shall be applied against the Indebtedness in such order as Mortgagee may elect. To enforce its rights hereunder, Mortgagee shall be entitled to participate in and, during the continuance of an Event of Default, control any condemnation proceedings and to be represented therein by counsel of its own choice, and Mortgagor will deliver, or cause to be delivered, to Mortgagee such instruments as may be requested by it from time to time to permit such participation. In the event Mortgagee, as a result of any such judgment, decree or award, believes that the payment or performance of any obligation secured by this Mortgage is impaired, Mortgagee may declare all of the Indebtedness secured hereby immediately due and payable without prepayment penalty.

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## ARTICLE IX

### SECURITY AGREEMENT

9.1 Security Interest. This Mortgage shall be construed as a Mortgage on real property, and it shall also constitute and serve as a security agreement on personal property within the meaning of, and shall constitute until the grant of this Mortgage shall terminate as provided in Article II hereof, a first and prior pledge and assignment and a first priority security interest under the Illinois Uniform Commercial Code with respect to the Personalty, Fixtures, Leases and Rents. Mortgagor has granted, bargained, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, convey, assign, transfer and set over unto Mortgagee, a first priority security interest in and to all of Mortgagor's right, title and interest in, to and under the Personalty, Fixtures, Leases and Rents in trust, to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. Upon the occurrence of an Event of Default Mortgagor shall gather all of the Mortgaged Property which is Personalty at a location designated by Mortgagee for sale pursuant to the terms hereof. Within thirty (30) days following Mortgagor's receipt of a written request from Mortgagee, Mortgagor shall prepare and deliver to Mortgagee a written inventory specifically listing all of the Personalty and Fixtures, which inventory shall be certified by Mortgagor as being true, correct and complete.

9.2 Financing Statements. Mortgagor authorizes Mortgagee to prepare, in form and substance reasonably satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, consider reasonably necessary to create, perfect and preserve Mortgagee's security interest herein granted, and Mortgagee may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Pursuant to the Illinois Uniform Commercial Code, this Mortgage shall be effective as a Financing Statement filed as a Fixture filing from the date of its filing for record covering the Fixtures and Personalty. The address of Mortgagor, as Debtor, is as set forth herein. The above described goods are or are to become fixtures related to the Land and Improvements of which Mortgagor is the record title owner.

9.3 Uniform Commercial Code Remedies. Mortgagee shall have all the rights, remedies and recourses with respect to the Personalty, Fixtures, Leases and Rents afforded a secured party by the aforesaid Illinois Uniform Commercial Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded by the Loan Documents and at law.

9.4 No Obligation of Mortgagee. The assignment and security interest herein granted shall not be deemed to cause Mortgagee to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to operate the Mortgaged Property or attempt to do the same, or take any action, incur expenses or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

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9.5 Remedies. If an Event of Default shall occur, Mortgagee may elect, in addition to exercising any and all other rights, remedies and recourses set forth in Article VII or referred to in Section 9.3 hereinabove, to collect and receive all of the Rents and to proceed in the manner set forth in the Illinois Uniform Commercial Code relating to the procedure to be followed when a Security Agreement covers both real and personal property. Except as otherwise set forth in this Section 9.5, at any foreclosure and sale as described in Section 7.4 hereinabove, it shall be deemed that the Mortgagee proceeded under the applicable provisions of the Illinois Uniform Commercial Code and that such sale passed title to all of the Mortgaged Property and other property described herein to the purchaser thereat, including without limitation, the Personalty, Leases and Rents. Mortgagee may elect either prior to or at such sale not to proceed under the applicable provisions of the Illinois Uniform Commercial Code by notifying Mortgagor of the manner in which Mortgagee intends to proceed with regard to the Personalty, Leases and Rents.

## ARTICLE X

### ASSIGNMENT OF RENTS AND LEASES

10.1 Assignment of Rents, Profits, Etc. All of the Rents are hereby absolutely and unconditionally assigned to Mortgagee, to be applied by Mortgagee in payment of the Indebtedness. Notwithstanding any provision of this Mortgage or any other Loan Document which might be construed to the contrary, the assignment in this Section 10.1 is an absolute assignment and not merely a security interest. However, Mortgagee's rights as to the assignment shall be exercised only upon the occurrence of an Event of Default. Prior to the occurrence of an Event of Default, Mortgagor shall have the right to collect, but not more than thirty (30) days prior to accrual (except as approved in writing by Mortgagee), all Rents and, provided all amounts then due and owing on the Indebtedness have been paid, to retain, use and enjoy the same.

10.2 Assignment of Leases. Mortgagor hereby assigns the Leases to Mortgagee. Mortgagor hereby further assigns to Mortgagee all guaranties of tenants' performance under the Leases.

10.3 Warranties Concerning Leases and Rents. Mortgagor represents and warrants to Mortgagee that, to Mortgagor's best knowledge and belief after reasonable inquiry:

(a) no Lease is currently in effect in regard to any of the Mortgaged Property, except for any described in the Mortgagor's Certificate, of even date herewith, executed and delivered by Mortgagor to Mortgagee;

(b) no Leases or Rents have previously been assigned, mortgaged or pledged, and no Rent due under any existing Lease has been paid more than thirty (30) days in advance of its due date;

(c) no Rents have been waived, released, discounted, set off or compromised;  
and

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(d) Mortgagor has not received any funds or deposits from any tenant for advance rentals (other than the rentals payable for the month in which this Mortgage is executed).

10.4 Mortgagor's Covenants of Performance. Mortgagor covenants to:

(a) duly and punctually perform, in all material respects, all of its obligations under the Leases, if any, and give prompt notice to Mortgagee of any known failure to do so;

(b) give immediate notice to Mortgagee of any notice Mortgagor receives from any tenant or subtenant under any Lease, specifying any claimed default by any party under any such Lease;

(c) not voluntarily terminate, cancel, waive, modify or amend any of the Leases without the prior written consent of Mortgagee, except as provided in the Assignment of Leases or the Loan Agreement;

(d) enforce the tenants' obligations under the Leases;

(e) defend, at Mortgagor's expense, any proceeding pertaining to the Leases, including, if Mortgagee so requests, any such proceeding to which Mortgagee is a party; and

(f) neither create nor permit any encumbrance upon its interest as lessor under the Leases nor further assign, pledge or encumber the Rents.

10.5 Prior Approval for Actions Affecting Leases. Mortgagor shall not, without the prior written consent of Mortgagee:

(a) enter into any lease agreement covering all or any portion of the Mortgaged Property, which requires Mortgagee's consent as provided in Section 7.08 of the Loan Agreement, and if any such lease agreement is entered into, Mortgagor will promptly following the execution thereof deliver to the Mortgagee a true, correct and complete copy of such lease agreement and any and all related agreements;

(b) receive or collect Rents more than one month in advance;

(c) waive or release any obligation of any tenant under the Leases except in the exercise of reasonable management discretion in the ordinary course of business;

(d) except as expressly permitted as provided in the Assignment of Leases or the Loan Agreement, cancel, terminate or modify any of the Leases, cause or permit any cancellation, termination or surrender of any of the Leases, or commence any proceedings for dispossession of any tenant under any of the Leases, except upon default by the tenant thereunder, or in the exercise of reasonable management discretion in the ordinary course of business;

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(e) renew or extend any of the Leases (except as expressly provided in the Leases); or

(f) permit any assignment of the Leases by tenants, except as permitted by the Assignment of Rents.

10.6 Mortgagee in Possession. Mortgagee's acceptance of this assignment shall not, prior to entry upon and taking possession of the Mortgaged Property by Mortgagee, be deemed to constitute Mortgagee a "mortgagee in possession", nor obligate Mortgagee to appear in or defend any proceeding relating to any of the Leases or to the Mortgaged Property, to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Mortgagor by any lessee and not delivered to Mortgagee. Mortgagee shall not be liable for any injury or damage to person or property in or about the Mortgaged Property, except such damage or injury caused solely by Mortgagee's gross negligence or willful misconduct.

10.7 Appointment of Attorney. Mortgagor hereby appoints Mortgagee its attorney-in-fact, coupled with an interest, empowering Mortgagee to subordinate any Leases to this Mortgage.

10.8 Indemnification. Mortgagor hereby indemnifies and holds Mortgagee harmless from all costs, damages, expenses, liabilities and losses incurred by Mortgagee arising from or in connection with any claims under the Leases, including, without limitation, claims by tenants for security deposits or for rental payments more than one (1) month in advance and not delivered to Mortgagee, except to the extent caused solely by the negligence or willful misconduct of Mortgagee. All amounts indemnified against hereunder, including attorneys' fees, if paid by Mortgagee shall bear interest at the rate then applicable under the Note and shall be payable by Mortgagor immediately upon demand and shall be secured hereby.

10.9 Records. Upon written request by Mortgagee, Mortgagor shall deliver to Mortgagee true, correct and complete copies of the executed originals of all Leases in Mortgagor's possession and copies of all records relating thereto.

10.10 Merger. There shall be no merger of the leasehold estates created by the Leases, with the fee estate of the Land without the prior written consent of Mortgagee.

10.11 Right to Rely. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payment to Mortgagee shall constitute payment to Mortgagor under the Leases. Notwithstanding the foregoing, the Mortgagee agrees not to send such notice to the tenants under the Leases absent the occurrence and continuation of an Event of Default.

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## ARTICLE XI

### CONCERNING THE MORTGAGEE

11.1 No Liability. Mortgagee shall not be liable for any error of judgment or act done by Mortgagee, or be otherwise responsible or accountable under any circumstances whatsoever, unless caused by the gross negligence or willful misconduct of Mortgagee. Mortgagee shall not be personally liable in case of entry by him or anyone acting by virtue of the powers herein granted him upon the Mortgaged Property for debts contracted or liability or damages incurred in the management or operation of the Mortgaged Property. Mortgagee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder or believed by him in good faith to be genuine. Mortgagee shall be entitled to reimbursement for expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. Mortgagee will, after an Event of Default, pay compensation due the Mortgagee hereunder and reimburse Mortgagee for and save and hold him harmless from and against any and all loss, cost, liability, damage and expense whatsoever incurred by him in the performance of his duties.

11.2 Retention of Monies. All monies received by Mortgagee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law) and Mortgagee shall be under no liability for interest on any monies received by him hereunder.

11.3 Intentionally omitted.

11.4 Intentionally omitted.

11.5 Performance of Duties by Agents. Mortgagee may authorize one or more parties to act on his behalf to perform the ministerial functions required of him hereunder, including, without limitation, the transmittal and posting of any notices.

11.6 No Required Action. Mortgagee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in or defend any action, suit or other proceeding in connection therewith where in his opinion such action will be likely to involve him in expense or liability, unless requested to do so by a written instrument signed by Mortgagee and, unless Mortgagee is tendered security and indemnity satisfactory to him against any and all costs, expenses and liabilities arising therefrom. Mortgagee shall not be responsible for the execution, acknowledgment or validity of the Security Instruments, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and makes no representation in respect thereof or in respect of the rights, remedies and recourses of Mortgagee.

Mortgage

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## ARTICLE XII

### MISCELLANEOUS

12.1 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full.

12.2 Recording and Filing. Mortgagor will cause the Loan Documents designated by the Mortgagee and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and refiled in such manner and in such places as Mortgagee shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

12.3 Notices. All notices or other communications required or permitted to be given pursuant to this Mortgage and the other Loan Documents shall be in writing and shall be considered as properly given if given as provided in the Loan Agreement; provided, however, that notice regarding any proposed foreclosure sale shall be given pursuant to Section 7.4 above.

12.4 Real Estate Taxes; Impositions. Upon the occurrence and during the continuance of an Event of Default, at Mortgagee's request, Mortgagor shall pay to Mortgagee, in advance, on the first day of each calendar month during the term of the Note, an amount equal to one-twelfth of the annual real estate Taxes estimated by Mortgagee to be due for each calendar year during the term of the Note. In addition, if Mortgagee reasonably determines that any amounts theretofore paid by Mortgagor are insufficient for the payment in full of such real estate Taxes, Mortgagee shall notify Mortgagor of the increased amounts required to provide a sufficient fund for the payment thereof, whereupon Mortgagor shall pay to Mortgagee within fifteen (15) days thereafter the additional amount so stated in Mortgagee's notice. Upon any assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of the Escrowed Funds then in its possession to its assignee, whereupon the Mortgagee shall then become completely released from all liability with respect thereto. Upon payment of the Indebtedness and performance of the Obligations, or at such earlier time as Mortgagee may elect, the balance of the Escrowed Funds in its possession may be paid over to Mortgagor, and no other party shall have any right or claim thereto. Upon the occurrence of an Event of Default, Mortgagee shall have the right to apply the Escrowed Funds to the Indebtedness without notice to Mortgagor, and Mortgagee shall thereafter have the right to require Mortgagor, within fifteen (15) days after Mortgagor's receipt of demand therefor from Mortgagee, to deposit with Mortgagee the amount of the Escrowed Funds so applied. The Escrowed Funds may, at the option of Mortgagee, be repaid to Mortgagor in sufficient time to allow Mortgagor to satisfy Mortgagor's obligations under the Loan Documents to pay the Impositions or may be paid by Mortgagee directly to the person or entities entitled thereto. Notwithstanding anything to the contrary contained in this Section 12.4 or elsewhere in this Mortgage, Mortgagee hereby reserves the right to waive the payment by Mortgagor to Mortgagee of the Escrowed Funds and, in the event Mortgagee does so waive such payment, it shall be without prejudice to Mortgagee's right to insist, at any subsequent time or times, that such payments be made in accordance herewith. The Escrowed Funds, if collected by

Mortgagee

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Mortgagee, will be held in a federally insured (to the extent available) interest bearing account for the benefit of the Mortgagor to be applied as provided herein.

12.5 No Waiver. Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Mortgagor of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of the same or of any other term, provision or condition thereof, and Mortgagee shall have the right at any time, from time to time thereafter, to insist upon strict performance by Mortgagor of any and all of such terms, provisions and conditions.

12.6 Mortgagee's Right to Pay Indebtedness and Perform Obligations. If Mortgagor or any other party shall fail, refuse or neglect to make any required payment of the Indebtedness or perform any of the Obligations required by the Loan Documents, then at any time thereafter and without notice or demand upon Mortgagor or any other party, and without waiving or releasing any other right, remedy or recourse Mortgagee may have because of the same, Mortgagee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Mortgagor and shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action thereon with respect to the Mortgaged Property as it may deem necessary or appropriate. **Mortgagor shall be obligated to repay Mortgagee for all sums advanced by it pursuant to this Section 12.6 and shall indemnify and hold Mortgagee harmless from and against any and all loss, cost, expense, liability, damage, and claims and causes of action, including reasonable attorneys' fees, incurred or accruing by any acts performed by Mortgagee pursuant to the provisions of this Section 12.6 or by reason of any other provision of the Loan Documents, except to the extent caused solely by the gross negligence or willful misconduct of Mortgagee.** All sums paid by Mortgagee pursuant to this Section 12.6 and all other sums extended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the default rate of interest set forth in the Note from the date of such payment or expenditure shall constitute additions to the Indebtedness and Obligations, shall be secured by the Loan Documents and shall be paid by Mortgagor to Mortgagee upon demand.

12.7 Covenants Running with the Land. All obligations contained in the Loan Documents are intended by the parties to be and shall be construed as covenants running with the Mortgaged Property. All of the representations, warranties, covenants and agreements of Mortgagor and/or Maker set forth herein (including, without limitation, all of the agreements by Mortgagor and/or Maker to indemnify Mortgagee) shall survive the execution and delivery of this Mortgage, any foreclosure of the lien of this Mortgage and any other acquisition of title to the Mortgaged Property by Mortgagee, subject to the provisions of Section 12.01 above.

12.8 Successors and Assigns. This Mortgage is for the sole benefit of Mortgagee, its successors and assigns, and Mortgagor, its permitted successors and assigns, and is not for the benefit of any third party. All of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives and all other persons claiming by, through or under them.

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12.9 Severability. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances or other instruments referred to hereinabove shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law.

12.10 Controlling Agreement. All agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand or acceleration of the maturity of the Note or otherwise, shall the interest contracted for, charged, received, paid or agreed to be paid to Mortgagee exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Mortgagee in excess of the maximum lawful amount, the interest payable to Mortgagee shall be reduced to the maximum amount permitted under applicable law; and if from any circumstance Mortgagee shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal of the Indebtedness and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Indebtedness, such excess shall be refunded to Mortgagor. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal so that the interest on the Indebtedness for such full period shall not exceed the maximum amount permitted by applicable law. Mortgagee hereby expressly disclaims any intent to contract for, charge or receive interest in an amount which exceeds the maximum amount of interest permitted by applicable law. This section shall control all agreements between Mortgagor and Mortgagee.

12.11 Entire Agreement and Modification. The Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof, and all prior agreements relative thereto which are not contained herein or therein are terminated. The Loan Documents may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

12.12 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

12.13 Applicable Law. Insofar as the Mortgaged Property consists of property located in the State of Illinois, this Mortgage shall be governed by and construed according to the laws of the State of Illinois and the laws of the United States applicable to transactions in the State of Illinois.

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12.14 Headings and General Application. The article, Section and subsection entitlements hereof are inserted for convenience of reference only and shall in no way affect, modify or define, or be used in construing, the text of such article, Section or subsection. If the text requires, words used in the singular shall be read as including the plural, and pronouns of any gender shall include all genders.

12.15 Sole Benefit. This instrument and the other Loan Documents have been executed for the sole benefit of Mortgagor and Mortgagee and the heirs, successors, assigns and legal representatives of Mortgagee. No other party shall have rights thereunder nor be entitled to assume that the parties thereto will insist upon strict performance of their mutual obligations hereunder, any of which may be waived from time to time. Mortgagor shall not have any right to assign any of its rights under the Loan Documents to any party whatsoever, including the right to receive advances under the Note or otherwise.

12.16 Subrogation. If any or all of the proceeds of the Indebtedness or the Obligations have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property or to satisfy any indebtedness or obligation secured by a lien or encumbrance of any kind (including liens securing the payment of any Impositions), such proceeds have been advanced by Mortgagee at Mortgagor's request, and, to the extent of such funds so used, the Indebtedness and Obligations in this Mortgage shall be subrogated to and extend to all of the rights, claims, liens, titles and interests heretofore existing against the Mortgaged Property to secure the indebtedness or obligation so extinguished, paid, extended or renewed, and the former rights, claims, liens, titles and interests, if any, shall not be waived but rather shall be continued in full force and effect and in favor of Mortgagee and shall be merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and satisfaction of the Obligations.

12.17 Business or Commercial Purpose. Mortgagor warrants that the extension of credit evidenced by the Note secured hereby is solely for business or commercial purposes, other than agricultural purposes. Mortgagor further warrants that the credit transaction evidenced by the Note is specifically exempted under Regulation Z issued by the Board of Governors of the Federal Reserve System and Title I (Truth in Lending Act) of the Consumer Credit Protection Act and that no disclosures are required to be given under such regulations and federal laws in connection with the above transaction.

12.18 Reserved.

12.19 Performance at Mortgagor's Expense. The cost and expense of performing or complying with any and all of the Obligations shall be borne solely by Mortgagor, and no portion of such cost and expense shall be in any way or to any extent credited against any installment on or portion of the Indebtedness.

12.20 No Partnership. Nothing contained in the Loan Documents is intended to, or shall be construed as, creating to any extent or in any manner whatsoever, any partnership, joint venture or association between Mortgagor and/or Mortgagee, or in any way make Mortgagee co-

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principals with Mortgagor with reference to the Mortgaged Property or the Loan, and any inferences to the contrary are hereby expressly negated.

12.21 Agents. Any right, remedy, privilege, duty or action available to or to be performed by Mortgagee under the Loan Documents may, if and to the extent determined by Mortgagee, be exercised or performed by any agent, attorney, correspondent or other representative of Mortgagee.

12.22 Credit Reports. Mortgagor hereby authorizes Mortgagee to obtain from time to time credit reports through reputable credit reporting agencies relating to Mortgagor.

12.23 Disposition of Mortgaged Property, Leases, or Beneficial Interest in Mortgagor. Upon the sale, exchange, assignment, conveyance or other disposition (herein collectively called "Disposition") of all or any portion of the Mortgaged Property (or any interest therein, other than a Permitted Transfer)), without Mortgagee's prior written consent, an Event of Default shall be deemed to have occurred and Mortgagee may, at Mortgagee's option, enforce any and all of Mortgagee's rights, remedies and recourses available upon the occurrence of an Event of Default. It is expressly agreed that in connection with determining whether to grant or withhold such consent to each such Disposition, Mortgagee may, inter alia, (a) consider (based upon Mortgagee's then current criteria for approving Mortgagors for mortgage loans similar to the Loan) the financial strength and experience of the party to whom such Disposition will be made and its management ability with respect to the Mortgaged Property, (b) consider whether or not the security for payment of the Indebtedness and the performance of the Obligations, or Mortgagee's ability to enforce its rights, remedies and recourses with respect to such security, will be impaired in any way by the proposed Disposition, (c) require as a condition to granting such consent, an increase in the rate of interest payable under the Note (subject to the provisions of Section 12.10 hereof), (d) require that Mortgagee be reimbursed for all costs and expenses incurred by Mortgagee in investigating the financial strength, experience and management ability of the party to whom such Disposition will be made and in determining whether Mortgagee's security will be impaired by the proposed Disposition, (e) require the payment to Mortgagee of a transfer fee not to exceed [one percent (1%)] of the purchase price of the Mortgaged Property to cover the cost of documenting the Disposition in its records on the date of closing of such Disposition (subject to the provisions of Section 12.10 hereof) (however, no transfer fee shall be applicable if the Disposition in question does not include assumption by the buyer of any portion of the Loan), (f) require the payment of its reasonable attorney's fees in connection with such Disposition, (g) require the express assumption of payment of the Indebtedness and performance of the Obligations by the party to whom such Disposition will be made (with or without the release of Mortgagor or Maker from liability for such Indebtedness and Obligations), (h) require the execution of assumption agreements, modification agreements, supplemental security documents and financing statements satisfactory in form and substance to Mortgagee, (i) require endorsements (to the extent available under applicable law) to any existing mortgage title insurance policies insuring Mortgagee's liens and security interests covering the Mortgaged Property or new mortgage title policies, (j) require additional security for the payment of the Indebtedness and performance of the Obligations, and (k) shorten the stated term of the Note or otherwise rearrange the payment terms of the Note.

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## 12.24 Environmental Matters.

(a) Mortgagee shall have the right, at any time so long as any part of the Note shall remain unpaid, to inspect the Mortgaged Property or any part thereof during reasonable hours and upon reasonable notice to Mortgagor to determine if any environmental hazard is present or is threatening to be created which will impair the value of the Mortgaged Property. Mortgagee may conduct any test or investigation, or collect any samples of materials from on, about, or under the Mortgaged Property necessary to determine whether such hazards might exist so long as it uses reasonable efforts not to interfere with Mortgagor's use of Mortgaged Property. If an environmental hazard (whether existing prior to the date hereof or coming into existence after the date hereof) which is likely to damage collateral value of the Mortgaged Property, and Mortgagor does not remove or cure (or promptly commence and diligently pursue the cure) the risk which threatens to impair value of the Mortgaged Property and in any case complete such cure within a reasonable period of time, such failure shall be an Event of Default under the terms of this Mortgage.

(b) So long as any part of the Note remains unpaid, Mortgagor shall not allow any activity to be conducted on the Mortgaged Property or any use to be made of the Mortgaged Property which presents a high risk of environmental contamination, including but not limited to:

- (i) Chemical manufacturing or storage;
  - (ii) Operation of any hazardous waste handling or recycling facility;
- and
- (iii) Underground storage of petroleum products.

(c) The use of the Mortgaged Property for any of the uses prohibited in Section 12.24(b) above shall be deemed an Event of Default under the terms of this Mortgage.

12.25 Joint and Several Liability. If Mortgagor consists of more than one party, the Obligations and the obligation to repay the Indebtedness as contained herein shall be the joint and several obligations of each of such parties.

12.26 Releases. Mortgagee has no obligation to release any portion of the Mortgaged Property from the liens, security interests and other terms of this Mortgage or any other Loan Document unless and until the Indebtedness and Obligations have been unconditionally paid and performed in full.

12.27 Publicity. Mortgagee may publicize its making of the Loan in such manner as Mortgagee determines.

12.28 Express Negligence. THIS MORTGAGE CONTAINS PROVISIONS WHICH REQUIRE THE MORTGAGOR TO INDEMNIFY MORTGAGEE FROM ITS OWN

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NEGLIGENCE. IN NO EVENT SHALL MORTGAGOR BE LIABLE FOR DAMAGES, COSTS, OR EXPENSES CAUSED BY MORTGAGEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

## 12.29 Waiver of Deficiency Statute.

(a) Waiver. In the event an interest in any of the Mortgaged Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Mortgagor agrees as follows: notwithstanding the applicable provisions of the Illinois Uniform Commercial Code, and to the extent permitted by law, Mortgagor agrees that Mortgagee shall be entitled to seek a deficiency judgment from Mortgagor and any other party obligated on the Note equal to, as applicable, (i) if substantially all of the Property which then secures the Loan is foreclosed at substantially the same time (to the extent permitted by applicable law), the difference between the amount owed on the Indebtedness and the amount applied to the payment of the Indebtedness as provided above from the proceeds from the sale of substantially all of the Property pursuant to such judicial or non-judicial foreclosure sale or (ii) if only the Mortgaged Property is foreclosed, the difference between then the amount advanced as part of the Indebtedness with regard to the Mortgaged Property pursuant to the applicable Approved Budget and such other amounts as Mortgagee may have advanced with regard to the Mortgaged Property and the amount applied to payment of the Indebtedness as provided above from the proceeds from the sale of the Mortgaged Property pursuant to such judicial or nonjudicial foreclosure sale. Mortgagor expressly recognizes that this Section constitutes a waiver of the above-cited provisions of the Property Code which would otherwise permit Mortgagor and the other persons against whom recovery of deficiencies is sought or any Guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Mortgaged Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Mortgagor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Mortgagor, any Guarantor and others against whom recovery of a deficiency is sought.

(b) Alternative to Waiver. Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale; (i) the Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged Property for cash promptly (but no later than twelve [12] months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Mortgaged Property, including, without limitation,

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brokerage commissions, costs related to title insurance, a survey of the Mortgaged Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five (5) years experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above.

12.30 Site Agreement. THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

12.31 BUSINESS LOAN. Mortgagor represents and agrees that the loan evidenced by the Note and secured by this Mortgage is a business loan within the purview of 815 ILCS 205/4 (or any substitute, amended or replacement statutes) and is transacted solely for the purpose of carrying on and acquiring the business of Mortgagor, or if Mortgagor is a trustee, for the purpose of carrying on and acquiring the business of the beneficiaries of Mortgagor as contemplated by said Section.

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Mortgage



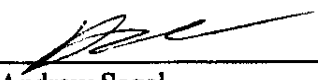
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EXECUTED by the undersigned on the date acknowledged, to be effective as of September 18, 2013.

**MORTGAGOR:**

BOXER F2, L.P.,  
a Texas limited partnership

By: Boxer M2, L.L.C., General Partner

By:   
Name: Andrew Segal  
Title: Manager

Property of Cook County Clerk's Office

**ACKNOWLEDGMENT**

THE STATE OF TEXAS

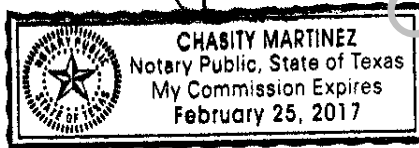
§  
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COUNTY OF HARRIS

This instrument was acknowledged before me on this the 18 day of September 2013, by Andrew Segal, as Manager of Boxer M2, L.L.C., General Partner of BOXER F2, L.P., a Texas limited partnership, on behalf of said limited partnership.

  
Notary Public in (and for the State of) Texas

My Commission Expires:  
2-25-17



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## EXHIBIT "A"

### LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY OF SCHAUMBURG, COUNTY OF COOK, STATE OF ILLINOIS, DESCRIBED AS FOLLOWS:

**PARCEL 1:**

LOTS 2 AND 4 IN CENTURY CENTRE SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTH EAST 1/4 OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 14, 1984 AS DOCUMENT 27336946, IN COOK COUNTY, ILLINOIS.

**PARCEL B2: (EASEMENT PARCEL II):**

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT DATED JUNE 28, 1984 AND RECORDED JULY 2, 1984 AS DOCUMENT 27155654, AS AMENDED BY INSTRUMENTS RECORDED OCTOBER 26, 1984 AS DOCUMENT 27312705, AND JANUARY 13, 1988 AS DOCUMENT 86016646, AND AS FURTHER AMENDED BY AMENDMENT TO EASEMENT AGREEMENT RECORDED JANUARY 4, 1994 AS DOCUMENT 94008473, MADE BY AND BETWEEN: UNION OIL COMPANY OF CALIFORNIA, A CALIFORNIA CORPORATION, ROUTE 58 CORPORATION, A DELAWARE CORPORATION, THE TRAVELERS INSURANCE COMPANY, A CONNECTICUT CORPORATION, CHICAGO TITLE AND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 5, 1991 AND KNOWN AS TRUST NUMBER 1096226, AND HOMART COMMUNITY CENTERS, INC., A DELAWARE CORPORATION, FOR ACCESS, INGRESS, AND EGRESS OVER THE FOLLOWING DESCRIBED PROPERTY:

THAT PART OF LOT 2 IN WOODFIELD VILLAGE GREEN-WOODFIELD-76 SUBDIVISION, BEING A PART OF THE SOUTHWEST 1/4 AND THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 41 NORTH RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF THE FRACTIONAL SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 26, 1993 AS DOCUMENT 93580462, DESCRIBED AS FOLLOWS:

COMMENCING AT A CORNER OF SAID LOT 2, BEING ALSO THE NORTHWEST CORNER OF LOT 1 IN CENTURY CENTRE SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 12, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 14, 1984 AS DOCUMENT 27336946; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID LOT 2, SAID LINE HAVING A BEARING OF SOUTH 0 DEGREES, 23 MINUTES, 49 SECONDS EAST, A DISTANCE OF 520.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0 DEGREES, 23 MINUTES, 49 SECONDS EAST ALONG SAID WEST LINE, A DISTANCE OF 28.00 FEET; THENCE SOUTH 89 DEGREES, 36 MINUTES, 11 SECONDS WEST 56.50 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG A CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 29.00 FEET, AN ARC DISTANCE OF 14.04 FEET TO THE EAST LINE OF CENTRAL PARK BOULEVARD AS DEDICATED PER SAID WOODFIELD VILLAGE GREEN-WOODFIELD-76 SUBDIVISION, THE CHORD OF SAID ARC HAVING A LENGTH OF 13.91 FEET AND A BEARING OF SOUTH 75 DEGREES, 43 MINUTES, 52 SECONDS WEST; THENCE NORTH 0 DEGREES, 23 MINUTES, 49 SECONDS WEST ALONG THE EAST LINE, 34.67 FEET; THENCE EASTERLY ALONG A CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 29.00 FEET, AN ARC DISTANCE OF 14.04 FEET TO A POINT OF TANGENCY, THE CHORD OF SAID ARC HAVING A LENGTH OF 13.91 FEET AND A BEARING OF 76 DEGREES, 31 MINUTES, 30 SECONDS EAST; THENCE NORTH 89 DEGREES, 36 MINUTES, 11 SECONDS EAST 56.50 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

CHICAGO TITLE AND TRUST COMPANY

Mortgage

**UNOFFICIAL COPY****PARCEL B3 (EASEMENT PARCEL III)**

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT DATED JUNE 28, 1984 AND RECORDED JULY 2, 1984 AS DOCUMENT 27155654, AS AMENDED BY INSTRUMENTS RECORDED OCTOBER 26, 1984 AS DOCUMENT 27312705, AND JANUARY 13, 1986 AS DOCUMENT 86016645, AND AS EASEMENT AGREEMENT RECORDED JANUARY 4, 1994 AS DOCUMENT 94008473, MADE BY AND BETWEEN: UNION OIL COMPANY OF CALIFORNIA, A CALIFORNIA CORPORATION, ROUTE 58 CORPORATION, A DELAWARE CORPORATION, THE TRAVELERS INSURANCE COMPANY, A CONNECTICUT CORPORATION, CHICAGO TITLE AND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 6, 1991 AND KNOWN AS TRUST NUMBER 1096226, AND HOMART COMMUNITY CENTERS, INC., A DELAWARE CORPORATION FOR ACCESS, INGRESS, AND EGRESS OVER THE FOLLOWING DESCRIBED PROPERTY:

THAT PART OF LOT 2 IN WOODFIELD VILLAGE GREEN-WOODFIELD-76 SUBDIVISION, BEING A PART OF THE SOUTHWEST 1/4 AND THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 41 NORTH RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF THE FRACTIONAL SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 26, 1993 AS DOCUMENT 93580462, DESCRIBED AS FOLLOWS:

COMMENCING AT THE CORNER OF SAID LOT 2 BEING ALSO THE NORTHWEST CORNER OF LOT 1 IN CENTURY CENTRE SUBDIVISION, BEING A SUBDIVISION IN SAID SOUTHEAST 1/4 OF SECTION 12, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 14, 1984 AS DOCUMENT 27336946; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 1, SAID LINE HAVING A BEARING OF SOUTH 0 DEGREES, 23 MINUTES, 49 SECONDS EAST, A DISTANCE OF 283.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0 DEGREES, 23 MINUTES, 49 SECONDS EAST ALONG SAID WEST LINE, 28.00 FEET; THENCE SOUTH 85 DEGREES, 51 MINUTES, 29 SECONDS WEST 76.77 FEET TO THE NORTHEAST CORNER OF CENTRAL PARK BOULEVARD, DEDICATED PER SAID WOODFIELD VILLAGE GREEN-WOODFIELD-76 SUBDIVISION; THENCE SOUTH 89 DEGREES, 38 MINUTES, 11 SECONDS WEST ALONG THE NORTH LINE OF SAID CENTRAL PARK BOULEVARD, A DISTANCE OF 100.00 FEET TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 0 DEGREES, 23 MINUTES, 49 SECONDS WEST 56.00 FEET; THENCE NORTH 89 DEGREES, 36 MINUTES, 11 SECONDS EAST 100.00 FEET; THENCE NORTH 88 DEGREES, 42 MINUTES, 58 SECONDS EAST 70.09 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**PARCEL B6 (NORTH ACCESS EASEMENT)**

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT DATED JUNE 28, 1984 AND RECORDED JULY 2, 1984 AS DOCUMENT 27155654, AS AMENDED BY INSTRUMENTS RECORDED OCTOBER 26, 1984 AS DOCUMENT 27312705; AND JANUARY 13, 1986 AS DOCUMENT 86016645, AND AS FURTHER AMENDED BY AMENDMENT TO EASEMENT AGREEMENT RECORDED JANUARY 4, 1994 AS DOCUMENT 94008473, MADE BY AND BETWEEN: UNION OIL COMPANY OF CALIFORNIA, A CALIFORNIA CORPORATION, ROUTE 58 CORPORATION, A DELAWARE CORPORATION, THE TRAVELERS INSURANCE COMPANY, A CONNECTICUT CORPORATION, CHICAGO TITLE AND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 6, 1991 AND KNOWN AS TRUST NUMBER 1096226, AND HOMART COMMUNITY CENTERS, INC., A DELAWARE CORPORATION, FOR ACCESS, INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED LAND:

THAT PART OF LOT 1 IN CENTURY CENTRE SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER, 14, 1984 AS DOCUMENT 27336946 DESCRIBED AS FOLLOWS:

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BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 1, BEING 283.00 FEET SOUTH OF THE NORTHWEST CORNER THEREOF, THENCE NORTH 89 DEGREES, 17 MINUTES, 50 SECONDS EAST 161.52 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVE, CONCAVE TO THE SOUTH WEST, HAVING A RADIUS OF 125.50 FEET, AN ARC DISTANCE OF 98.57 FEET TO A POINT OF TANGENCY, THE CHORD OF SAID ARC HAVING A LENGTH OF 96.05 FEET AND A BEARING OF SOUTH 68 DEGREES, 12 MINUTES, 10 SECONDS EAST; THENCE SOUTH 45 DEGREES, 42 MINUTES, 10 SECONDS EAST 76.47 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 26.50 FEET, AN ARC DISTANCE OF 16.82 FEET TO THE EAST LINE OF SAID LOT 1, BEING 381.29 FEET SOUTH OF THE NORTHEAST CORNER THEREOF, THE CHORD OF SAID ARC HAVING A LENGTH OF 16.54 FEET AND A BEARING OF SOUTH 63 DEGREES, 53 MINUTES, 15 SECONDS EAST, THENCE SOUTH 0 DEGREES, 42 MINUTES, 10 SECONDS EAST ALONG SAID EAST LINE, 27.15 FEET, THENCE NORTHWESTERLY ALONG A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 53.50 FEET, AN ARC DISTANCE OF 38.04 FEET TO A POINT OF TANGENCY, THE CHORD OF SAID ARC HAVING A LENGTH OF 37.24 FEET AND A BEARING OF NORTH 66 DEGREES, 04 MINUTES, 23 SECONDS WEST; THENCE NORTH 45 DEGREES, 42 MINUTES, 10 SECONDS WEST 76.47 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY LONG A CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 98.50 FEET, AN ARC DISTANCE OF 77.36 FEET TO A POINT OF TANGENCY, THE CHORD OF SAID ARC HAVING A LENGTH OF 75.39 FEET AND A BEARING OF NORTH 68 DEGREES, 12 MINUTES, 10 SECONDS WEST; THENCE SOUTH 89 DEGREES, 17 MINUTES, 50 SECONDS WEST 161.52 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 0 DEGREES, 42 MINUTES, 10 SECONDS WEST ALONG SAID WEST LINE 27.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**PARCEL B7 (SOUTH ACCESS EASEMENT):**

EASEMENT FOR THE BENEFIT OF PARCEL B7 WAS CREATED BY EASEMENT AGREEMENT DATED JUNE 28, 1984 AND RECORDED JULY 2, 1984 AS DOCUMENT 27155854, AS AMENDED BY INSTRUMENTS RECORDED OCTOBER 26, 1984 AS DOCUMENT 27212705, AND JANUARY 13, 1986 AS DOCUMENT 86016649, AND AS FURTHER AMENDED BY AMENDMENT TO EASEMENT AGREEMENT RECORDED JANUARY 4, 1994 AS DOCUMENT 94008473, MADE BY AND BETWEEN: UNION OIL COMPANY OF CALIFORNIA, A CALIFORNIA CORPORATION, ROUTE 58 CORPORATION, A DELAWARE CORPORATION, THE TRAVELERS INSURANCE COMPANY, A CONNECTICUT CORPORATION, CHICAGO TITLE AND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 6, 1991 AND KNOWN AS TRUST NUMBER 1096226, AND HOMART COMMUNITY CENTER'S, INC., A DELAWARE CORPORATION, FOR ACCESS, INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED LAND:

THAT PART OF LOT 1 IN CENTURY CENTRE SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 14, 1984 AS DOCUMENT 27336946 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 1, BEING 520.00 FEET SOUTH OF THE NORTHWEST CORNER THEREOF, THENCE NORTH 89 DEGREES, 17 MINUTES, 50 SECONDS EAST 226.00 FEET, THENCE SOUTH 45 DEGREES, 42 MINUTES, 10 SECONDS EAST 131.65 FEET TO THE EAST LINE OF SAID LOT 1, BEING 613.09 FEET SOUTH OF THE NORTHEAST CORNER THEREOF, THENCE SOUTH 0 DEGREES, 42 MINUTES, 10 SECONDS EAST ALONG SAID EAST LINE, 38.18 FEET; THENCE NORTH 45 DEGREES, 42 MINUTES, 10 SECONDS WEST 147.47 FEET, THENCE SOUTH 89 DEGREES, 17 MINUTES, 50 SECONDS WEST 214.82 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 0 DEGREES, 42 MINUTES, 10 SECONDS WEST ALONG SAID WEST LINE, 27.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PIN: 07-12-400-014-0000  
07-12-400-016-0000

ADDRESS: 1750 E. Golf Course Road, Schaumburg Illinois

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## EXHIBIT "B"

### PERMITTED ENCUMBRANCES

1. Terms, conditions and provisions of the Easement Agreement recorded July 2, 1984 as Document 27155654 as amended by Amendment to Easement Agreement recorded October 26, 1984 as Document 27312705 and Amendment to Easement Agreement recorded January 13, 1986 as Document 86016645 and further amended by Amendment to Easement Agreement recorded as Document recorded January 4, 1994 as Document 94008473 and Declaration of Easement recorded January 4, 1994 as Document 94008472 creating easements described in Schedule C. (Affects Parcels B1 through B7)
2. Terms and provisions contained in the covenant running with the land recorded July 17, 1958 as Document No. 17262548. (Affects Parcel B1)
3. Building lines and easements as shown on the Plat of Subdivision of Century Centre Subdivision, recorded November 14, 1984 as Document No. 27336946 together with the easement provisions contained therein.  
(Affects a 10 foot strip along the southerly line of and southwesterly line Lot 2 of Parcel B1)
4. Easement in favor of Illinois Bell Telephone Company for pole lines, conduits and maintenance purposes granted in Grant of Easement Document 85180172; recorded on September 9, 1985, and the terms and conditions thereof.  
(Affects a 10 foot strip along the southerly line of and southwesterly line Lot 2 of Parcel B1)
5. Easement in favor of Commonwealth Edison Company for pole lines, conduits and maintenance purposes granted by Grant of Easement Document 85180173, recorded on September 9, 1985, and the terms and conditions thereof.  
(Affects a 10 foot strip of Lot 2 in Parcel B1)
6. Reservation of an easement for prospecting, exploring, mining, drilling and removing oil, gas and other hydro carbon substance, minerals and water and covenants and restrictions contained in Deed recorded as Document No. 271556652 and the terms and provisions therein contained.  
(Affects Parcel B1)
7. Traffic Agreement recorded June 5, 2003 as Document No. 0315603124 and the provisions therein contained  
(Affects Parcel B1)
8. Notice of Requirements for Storm Water Detention recorded June 14, 1979 as Document 25005010.

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