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Illinois Anti-Predatory Lending Database Program



1336039092

Certificate of Exemption

Doc#: 1336039092 Fee: \$130.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/26/2013 01:53 PM Pg: 1 of 47

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 12-34-300-004-0000

Address:

Street: 2407-2457 West North Avenue

Street line 2:

City: Melrose Park

State: IL

ZIP Code: 60160

Lender: Wells Fargo Bank, National Association

Borrower: KTR ILL V LLC

Loan / Mortgage Amount: \$115,000,000.00

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

Certificate number: B77B2161-F85D-431F-B144-2636282AB013

Execution date: 12/18/2013

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Loan No. 1011058

FIRST AMERICAN TITLE

ORDER # 65124

1/11/13

**MORTGAGE, ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY
AGREEMENT AND FIXTURE FILING
(MELROSE PARK, ILLINOIS)**

by

KTR ILL V LLC,
as Mortgagor

for the benefit of

WELLS FARGO BANK, NATIONAL ASSOCIATION,
in its capacity as administrative agent
for the benefit of all of the "Lenders" from time to time under the
hereinafter defined "Credit Agreement",
as Mortgagee

Dated: December 20, 2013

**THIS DOCUMENT PREPARED BY,
RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

Land Services USA, Inc
10 North Church Street, Suite 307
West Chester, PA 19380
610.429.3145

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**MORTGAGE, ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING
(MELROSE PARK, ILLINOIS)****THIS MORTGAGE SECURES A NOTE OR NOTES
WHICH PROVIDE FOR A VARIABLE INTEREST RATE**

THIS MORTGAGE, ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (MELROSE PARK, ILLINOIS) (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as this "Mortgage"), is made and entered into this 20th day of December, 2013, by **KTR ILL V LLC**, a Delaware limited liability company, having an address c/o KTR Capital Partners LP, Five Tower Bridge, 300 Barr Harbor Drive, Suite 150, Conshohocken, Pennsylvania 19428 (hereinafter referred to as "Mortgagor"), in favor of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, having an address at 123 South Broad Street, 9th Floor, MAC No. Y1379-097, Philadelphia, Pennsylvania 19109, in its capacity as Administrative Agent for the benefit of all of the "Lenders" from time to time under the hereinafter defined "Credit Agreement" (hereinafter referred to as "Mortgage").

WITNESSETH:

WHEREAS, (i) KTR ILL VI, a Delaware limited liability company; (ii) KTR DUPAGE LLC, a Delaware limited liability company; (iii) KTR OHARE TWO LLC, a Delaware limited liability company; (iv) KTR CHI LAKE LLC, a Delaware limited liability company; (v) KTR VALLEY III LLC, a Delaware limited liability company; (vi) KTR MC II LLC, a Delaware limited liability company; (vii) KTR CLA III LLC, a Delaware limited liability company; (viii) KTR SOUTH BAY VII LLC, a Delaware limited liability company; (ix) KTR CLA IV LLC, a Delaware limited liability company; (x) KTR BAY EAST IV LLC, a Delaware limited liability company; and (xi) the Mortgagor (hereinafter collectively referred to as the "Co-Borrowers") are justly indebted to the Lenders, on a joint and several basis, in the aggregate principal sum of up to One Hundred Fifteen Million and 00/100 (\$115,000,000.00) Dollars or so much thereof as may be advanced from time to time, for money loaned to the Co-Borrowers by the Lenders, as evidenced by the "Notes" (as such term is defined below), the terms, covenants and conditions of which are specifically incorporated herein by reference, issued by the Co-Borrowers and made payable to the order of each of the Lenders (hereinafter each Lender and any assignee or other lawful owner of any of the Notes shall be sometimes referred to as the "Holder"), in lawful money of the United States of America with interest thereon, all at the rate and in the manner set forth in the provisions of the "Credit Agreement" (as such term is defined below); and

WHEREAS, each of the Notes is the valid, binding and legally enforceable obligation of the Mortgagor, each bearing interest at a variable rate as defined therein, and each with a maturity date as defined therein, and this Mortgage is a valid, binding and legally enforceable instrument to secure payment of the indebtedness evidenced by the Notes and the performance of the covenants, terms and conditions set forth herein and in the provisions of the Notes, and the execution, sealing and delivery of the Notes and this Mortgage by the Mortgagor have been in all respects duly authorized; and

WHEREAS, the Mortgagor desires to secure to each Holder the payment or repayment of all sums secured hereby and compliance with the terms, covenants and conditions, expressed or implied, set forth in the provisions of the Notes, the Credit Agreement, and this Mortgage.

NOW, THEREFORE, for and in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as

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follows:

ARTICLE 1 DEFINITIONS

1.1 **Definitions.** As used herein the following terms shall have the following meanings and all capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Credit Agreement:

- (a) **Construction Agreements.** Any and all contracts or agreements, written or oral, between Mortgagor and any other party in any way relating to any construction (including, without limitation, any Work) on the Land, or the supplying of material (specially fabricated or otherwise), labor, supplies or other services therefor.
- (b) **Credit Agreement.** That certain Credit Agreement dated of even date herewith executed by and among the Co-Borrowers, the Mortgagee, and the Lenders, which Credit Agreement is incorporated herein by reference to the same extent and effect as if fully set forth herein and made a part hereof, as said Credit Agreement may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented.
- (c) **Fixtures.** All and any right of Mortgagor in and to all materials, supplies, equipment, apparatus and other items owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used (temporarily or permanently) in connection with any of the Improvements on the Land, including, but not limited to, any and all partitions, generators, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, telecommunication, plumbing, laundry, incinerators, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, elevators, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities, whether or not situated in easements, together with all accessions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof.
- (d) **Impositions.** All real estate and personal property taxes; water, gas, sewer, electricity and other utility rates and charges; charges for any easement, license or agreement maintained for the benefit of the Mortgaged Premises; and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of every kind and nature whatsoever, which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Premises or the Rents or the ownership, use, occupancy or enjoyment thereof.
- (e) **Improvements:** All site improvements and other improvements located on the Land, whether now or in the future, and all related facilities and amenities (including all site work, utilities, infrastructure, paving, striping, signage, curb and gutter, landscaping and improvements.
- (f) **Land.** All those certain tracts, pieces or parcels of land located at 2407-2457 West North Avenue, Melrose Park, Illinois, together with all of the buildings, structures, and other Improvements located thereon, all as more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof, and all rights, title, and interests appurtenant thereto.
- (g) **Legal Requirements:** (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, proffers, certificates or ordinances of any Governmental

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Authority in any way applicable to Mortgagor, the Guarantor or the Mortgaged Premises, including, without limiting the generality of the foregoing, the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof; (ii) any and all covenants, conditions or restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Mortgaged Premises, or the ownership, use or occupancy thereof; (iii) Mortgagor's or the Guarantor's presently or subsequently effective operating agreement, certificate of formation, by-laws, articles of incorporation, certificate of limited partnership limited partnership agreement, or partnership, limited partnership, limited liability company, joint venture, trust or other form of business association agreement; (iv) any and all Leases; and (v) any and all leases and other contracts (written or oral) of any nature that relate, in any way, to the Mortgaged Premises and to which Mortgagor or the Guarantor may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Mortgagor is granted a possessory or any other interest in the Land.

(ii) **Lessees.** Any and all tenants, subtenants, guarantors and any other party which is (i) obligated to pay rent to Mortgagor pursuant to the Leases and/or (ii) occupying space in the Improvements.

(i) **Mortgaged Premises.** The Land, Improvements, Fixtures and Personalty, Plans, Leases and Rents, together with:

(1) All present and future rights, privileges, tenements, hereditaments, royalties, minerals, oil and gas rights, rights-of-way, easements, appendages, and appurtenances in anywise appertaining thereto, water, water rights, irrigation rights, development rights, rights as declarant or developer under any covenant, condition or restriction of record, ditch rights, shares of stock in irrigation districts or evidencing water rights, contracts for effluent, all contractual rights to water, and all right, title and interest of Mortgagor, if any, in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof; and

(2) All present and future betterments, improvements, additions, alterations, appurtenances, substitutions, replacements and revisions thereof and thereto, and all reversions and remainders therein; and

(3) All of Mortgagor's present and future right, title and interest in and to any awards, remunerations, reimbursements, condemnation payments, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty, including, but not limited to, those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and

(4) All of Mortgagor's present and future right, title and interest in and to any proceeds of insurance required or maintained pursuant to the terms of Paragraph 4.7 hereof; and

(5) Subject to the rights of Mortgagor under Paragraph 10.2 hereof, all of the Leases and Rents; and

(6) All of Mortgagor's present and future right, title and interest in and to all present and future licenses, permits, approvals and agreements from or with any governmental or quasi-governmental agency or entity or any other person, to the extent assignable, relevant to the zoning, subdivision, division, development, improvement, use, lease, sale or other disposition of the Land or any portion thereof, or any buildings or improvements now or hereafter erected, placed or located on the Land or any portion thereof, including Mortgagor's parking rights, together with all parking permits, stickers, gate cards, placards, and other forms of identification or similar devices which evidence or facilitate the exercise of parking rights; and

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(7) All of Mortgagor's present and future right, title and interest in and to all present and future plans, specifications, drawings, analyses, surveys, reports and other design products, to the extent assignable, relating to all present and future buildings and Lessee improvements and other improvements (including landscaping) constructed on the Land or any portion thereof, and all rights in and to all architectural and engineering contracts, construction management agreements, construction contracts, surety bonds, warranties, land use plans, studies, building contracts, soils reports, appraisals, feasibility and market studies, management agreements, operating agreements, service contracts, development contracts, design and sign design contracts, space planning contracts and any other agreements with respect to planning, designing, developing, or inspecting the Land or any portion thereof and any improvements or construction thereon, including the right to maintain signage with respect to the Land or any business conducted thereon, whether or not appurtenant to the Land, together with any accounts and funds maintained under, pursuant to, or in connection with any such contracts and agreements; and

(8) All of the beneficial interest of Mortgagor in any subdivision or holding trust, if title or any interest of Mortgagor in the Land is vested in or held by a trustee, and all rights to further encumber the Land or any portion thereof or any interest therein for debt; and

(9) All of Mortgagor's present and future right, title and interest in and to all present and future water service and wastewater capacity reservation agreements and security agreements, and all other present and future contracts, agreements, books and records, all to the extent assignable, relating to the development, improvement, use, leasing, disposition, operation and management of the Land or any portion thereof, all buildings and other improvements or personal property now or hereafter placed, erected or located on the Land, and any account and funds maintained under, pursuant to, or in connection with any such contracts and agreements; and

(10) All present and future rights under or with respect to: (i) any declarations of restrictions governing or imposing rights or responsibilities on or with respect to any subdivisions, horizontal property regimes, condominiums, planned area developments, planned unit developments or master plans which are partially or wholly located on or affect the Land, as may hereafter be amended, modified, supplemented or assigned, including all of Mortgagor's right, title and interest thereunder as a declarant, owner, occupant, developer or member, or in any other capacity; (ii) any design review or architectural review committee and any property owners' or similar association described in or created by the documents referred to in the foregoing clause (i), together with any voting rights therein; and (iii) any and all other documents and instruments and any amendments relating to the operation, organization, control or development of the Land; and

(11) All adjacent streets (open or proposed), roads, sidewalks, alleys, public places, parking areas, and strips and gores of land now or hereafter appurtenant to or used or useful in connection with the Land or any portion thereof, or any buildings or other improvements now or hereafter erected, placed or located on the Land or any portion thereof; and

(12) To the extent assignable, all rights in and to all present and future agreements or commitments for the purpose of financing, refinancing, selling or otherwise disposing of any interest in the Land or any portion thereof, and any buildings and other improvements now or hereafter located on the Land or any portion thereof; and

(13) All (i) replacements and substitutions for, (ii) additions to, (iii) proceeds and products of (including all insurance proceeds and condemnation awards (or proceeds of any purchase in lieu thereof) which are or may become payable with respect to), and (iv) books, records and files relating to, all or any portion of the items described in the preceding paragraphs; and

(14) All of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Mortgagee or any Lender to Mortgagor under any swap, derivative, foreign

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exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Mortgagor and Mortgagee or any Lender in connection with the Loan, including, without limitation, any Specified Derivatives Contract; and

(15) Any and all other security and collateral, of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations or any Specified Derivatives Obligations.

The foregoing descriptions of items constituting the Mortgaged Premises shall be construed as cumulative and not limiting, and the terms "include" and "including", when used in those descriptions, shall mean without limitation by reason of enumeration. Unless the context clearly indicates otherwise, the terms "equipment," "inventory," "accounts," "instruments," "promissory notes," "investment property," "commercial tort claims," "deposit accounts," "letter-of-credit rights," "supporting obligations," "chattel paper," "general intangibles," "proceeds" and "products" shall have the meanings provided for those terms in the Illinois Uniform Commercial Code in effect on the date of this Mortgage. As used in this Mortgage, the term "Mortgaged Premises" shall be 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.

(j) **Notes.** Collectively, (i) that certain Promissory Note dated of even date herewith, executed by the Co-Borrowers, on a joint and several basis, payable to the order of Wells Fargo Bank, National Association, in the maximum principal amount of up to One Hundred Fifteen Million and 00/100 (\$115,000,000.00) Dollars, and (ii) any other Promissory Note executed from time to time by the Co-Borrowers, on a joint and several basis, in favor of any Lender which evidences any portion of the Credit Facility, in each case together with any and all renewals, amendments, reinstatements, rearrangements, enlargements, modifications or extensions thereof or of any promissory note or notes given in substitution therefor, and secured, in part, by this Mortgage. The Notes, as such term is defined in this Mortgage, are the "Notes" as defined in the Credit Agreement.

(k) **Obligations.** Any and all of the covenants, warranties, representations and other obligations (other than to pay or repay the Indebtedness) made or undertaken by Mortgagor, the Guarantor or others to Mortgagee, any Lender, or others as set forth in the Loan Documents. For the avoidance of doubt, "Obligations" shall not include "Specified Derivatives Obligations" (as such term is defined in the Credit Agreement).

(l) **Permitted Encumbrances.** The outstanding liens, easements, building lines, restrictions, security interests and other matters (if any), as reflected on Exhibit "B" attached hereto and made a part hereof.

(m) **Personalty.** All now existing or hereafter acquired or arising right, title and interest of Mortgagor in and to all furniture, furnishings, equipment, machinery, building supplies and materials, goods, general intangibles, money, insurance proceeds, accounts, chattel paper (whether electronic or tangible), instruments, documents, deposit accounts, investment property, embedded software, letter of credit rights, commercial tort claims, supporting obligations, contract rights, inventory, books and records, vehicles, all refundable, returnable, or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, trade names, trademarks, logos, management agreements, and related agreements and documents, all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Mortgagee or any Lender to Mortgagor under any Specified Derivatives Contract at any time

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entered into between Mortgagor and/or other Co-Borrowers and Mortgagee or any Lender (or any affiliate of Mortgagee or any Lender) in connection with the Credit Facility, and all general intangibles and other rights arising from or in connection with all such agreements (including any rights of first refusal, options to purchase or similar rights, and any right of first refusal arising under applicable bankruptcy law), and all products and proceeds thereof and additions thereto, and all other personal property (other than the Fixtures) of any kind or character, as defined in and subject to the provisions of the Uniform Commercial Code (as herein defined) owned by Mortgagor, now or hereafter located, or to be located, upon, within or about the Land and the Improvements, or which are or may be used in or related to the planning, development, financing or operation of all or any portion of the Mortgaged Premises, together with all accessories, additions, replacements and substitutions thereto or therefor and the proceeds thereof (Mortgagor hereby agreeing with respect to all additions and replacements to execute and deliver from time to time such further instruments as may be reasonably requested by Mortgagee to confirm the conveyance, transfer and assignment of any of the foregoing).

(n) **Rents.** All of the rents, receipts, revenues, issues, income, proceeds, payments, security and other types of deposits and other benefits and profits now due or which may become due or to which Mortgagor may now or hereafter shall become entitled (whether upon the expiration of any applicable period of redemption or otherwise) or may demand or claim, arising or issuing from or out of the Leases, or from or out of using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Premises or any part thereof, including, without limiting the generality of the foregoing, indemnification payments made or to be made by any Lessee, minimum rents, additional rents, percentage rents, parking maintenance charges or fees, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency rents, security deposits and liquidated damages following default or late payment of rent, premiums payable by any Lessee upon the exercise of a cancellation privilege provided for in any Lease and all proceeds payable under any policy of insurance covering loss of rent resulting from untenability caused by destruction or damage to the Mortgaged Premises, together with any and all rights and claims of any kind which Mortgagor may have against any Lessee under any Lease or any subtenants or occupants of the Mortgaged Premises.

(o) **Uniform Commercial Code.** The Uniform Commercial Code, as enacted in the State of Illinois in effect as of the date of this Mortgage.

(p) **Work.** Any reconstruction, repair or restoration of the Mortgaged Premises after the occurrence of damage or destruction to the Mortgaged Premises.

ARTICLE 2 GRANT

FOR THE CONSIDERATION of One Hundred Fifteen Million and 00/100 (\$115,000,000.00) Dollars, or such portion thereof as may hereafter be advanced to or for the benefit of Mortgagor, Mortgagor hereby irrevocably conveys, transfers, pledges, warrants, and assigns to Mortgagee, and grants to Mortgagee a security interest in, all of Mortgagor's present and future rights, title, and interests in and to all of the Mortgaged Premises. All of Mortgagor's present and future rights, title, and interests in the Mortgaged Premises shall be subject to the lien and other terms and provisions of this Mortgage regardless of the time that any such right, title and interest is created, obtained by or conveyed, transferred or assigned to Mortgagor.

TO HAVE AND TO HOLD the Mortgaged Premises, together with all and singular the rights, privileges, tenements, hereditaments and appurtenances thereto in any way incident or belonging, unto Mortgagee and its successors and assigns, forever.

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FOR THE PURPOSE OF SECURING, the following:

(1) Payment of the Indebtedness evidenced by the Notes according to the terms thereof and the performance and discharge of each and every obligation of Mortgagor set forth in the Notes and the Loan Documents, and any and all renewals, replacements, amendments, modifications or extensions of the Notes, the Credit Agreement or this Mortgage;

(2) Payment to Mortgagee and Lenders of all other sums, with interest thereon, becoming due or payable under the provisions hereof and the provisions of the Loan Documents, including, without limitation, the unpaid balances of advances made by any Lender for the payment of taxes, assessments, maintenance charges and insurance premiums with respect to the Mortgaged Premises, expenses incurred by Mortgagee or any Lender for the protection of the Mortgaged Premises or the lien of this Mortgage, expenses incurred by Mortgagee or any Lender by reason of default by Mortgagor, all late charges, default interest, prepayment charges or premiums, loan fees, commitment fees, extension fees, and other fees and expenses of any nature described in the Notes or the Credit Agreement and all costs of collecting the Indebtedness or other amounts evidenced by the Notes or described in this Mortgage or the Credit Agreement, including any and all costs and expenditures of a receiver in possession and reasonable attorney's fees;

(3) Due, prompt, and complete observance and performance of each and every obligation, covenant and agreement of Mortgagor contained herein, in the Credit Agreement, this Mortgage and any other agreement, document or instrument, and any and all renewals, replacements, amendments, modifications, or extensions thereof, including the Loan Documents, given by Mortgagor to Mortgagee or any Lender to evidence or secure the indebtedness secured hereby; provided that, without derogation of the secured environmental indemnity obligations under Paragraph 11.25 below and elsewhere in the Loan Documents, Mortgagor's obligations under the Hazardous Materials Indemnity Agreement shall not be secured by this Mortgage;

(4) The payment and performance of all covenants and obligations of Mortgagor under any Specified Derivatives Contract at any time entered into between Mortgagor and any other Co-Borrowers and Mortgagee or any Lender (or any affiliate of Mortgagee or any Lender) in connection with the Credit Facility;

(5) The payment of such additional sums with interest thereon as may be hereafter borrowed from any Lender or their respective successors or assigns, by the then record owner or owners of the Mortgaged Premises when evidenced by another promissory note or notes, which by the terms thereof is or are secured by this Mortgage; and

(6) The payment and performance of any and all other indebtedness, obligations and liabilities of any kind, of Mortgagor to Mortgagee or any Lender, now or hereafter existing, absolute or contingent, joint and/or several, due or not due, secured or unsecured, or direct or indirect, including indebtedness, obligations and liabilities to Mortgagee or any Lender of Mortgagor (or, if Mortgagor is more than one person, any of the persons constituting Mortgagor) (but not as a member of any partnership, syndicate or association or other group) and whether incurred by Mortgagor as principal, surety, endorser, guarantor, accommodation party or otherwise, and any obligations which give rise to an equitable remedy for breach of performance if such breach gives rise to an obligation by Mortgagor to pay Mortgagee or any Lender, provided that any such indebtedness, obligation or liability contains a written provision that it is to be so secured by this Mortgage.

The proceeds of the payments secured by this Mortgage may be advanced in multiple installments

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at different times subsequent to the recordation of this Mortgage (up to the maximum principal amount of \$115,000,000.00). The maximum amount secured by this Mortgage shall not exceed two times the maximum principal amount of the Notes plus interest thereon (including interest at the Post-Default Rate) plus all protective advances and costs and expenses of Mortgagee and Lenders incurred in compliance with the Loan Documents. Each advance made subsequent to the initial advance hereunder shall be secured in the same lien priority position as the initial advance. If for any reason a court of competent jurisdiction should determine the foregoing sentence to be unenforceable, then, all amounts advanced by Mortgagee or any Lender as of the time that a third party acquires or provides notice of (whichever action such court may require) an interest in the Mortgaged Premises shall continue to be secured in a first priority lien position, and amounts advanced by Mortgagee or any Lender after the acquisition or giving notice of (as applicable) the intervening interest (except for amounts determined by the court to be senior to the intervening interest, even though advanced by Mortgagee or a Lender after the recordation or giving notice of the intervening interest) shall be secured in a position junior to the intervening interest. The foregoing sentence shall not be construed to permit any person to acquire an intervening interest without Mortgagee's consent, to acknowledge that any or all of the obligations secured by this Mortgage will be subordinate to intervening interests or to excuse any party that may obtain an intervening interest from complying with the requirements of applicable law for giving *actual* notice to Mortgagee or for taking other necessary measures to establish its lien priority over subsequently advanced amounts, and the holder of any intervening interest will be charged with notice of the provisions of this paragraph to the fullest extent allowed by law.

The rate of interest on the obligation secured by this Mortgage accrues or may accrue at a variable rate of interest more particularly described in the Credit Agreement. All such interest, including interest resulting from increases in the applicable interest rate subsequent to the recordation of this Mortgage, shall be secured in the same lien priority position as the principal to which it relates.

**ARTICLE 3
WARRANTIES AND REPRESENTATIONS**

Mortgagor hereby unconditionally warrants and represents to Mortgagee, as of the date hereof and as of the date of each advance of proceeds of the Credit Facility, as follows (which warranties and representations have been and will be relied upon by Lenders in advancing funds to Mortgagor under the Loan Documents), except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and accurate on and as of such earlier date), and except for changes in factual circumstances expressly and specifically permitted pursuant to the Credit Agreement:

3.1 **Organization and Power.** Mortgagor (a) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly authorized to conduct business in, and in good standing under the laws of, the State of Illinois, and (b) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications and documentation to own, lease and operate its properties and to carry on its business as now being, and as proposed to be, conducted.

3.2 **Validity of Loan Documents.** The execution, delivery and performance by Mortgagor of the Loan Documents (other than the Guaranty) and the borrowing evidenced by the Notes (a) are within Mortgagor's powers and have been duly authorized by Mortgagor's sole member and any other necessary parties, and all other requisite action for such authorization has been taken, (b) have received all (if any) requisite prior Governmental Authority approval in order to be legally binding and enforceable in accordance with the terms thereof, and (c) 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 laws, ordinances, rules, or

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regulations, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's or the Guarantor's property or assets, except as contemplated by the provisions of the Loan Documents. The Loan Documents constitute the legal, valid, and binding obligations of Mortgagor and Guarantor, enforceable in accordance with their respective terms.

3.3 **Information.** All information, reports, papers and data given by or on behalf of Mortgagor to Mortgagee with respect to Mortgagor, the Guarantor, and the Mortgaged Premises are accurate, complete and correct in all material respects and do not, omit any fact, the inclusion of which is necessary to prevent the facts contained therein from being misleading.

3.4 **Title to Mortgaged Premises and Priority of this Instrument.** Mortgagor hereby represents and warrants that it is the sole owner of good, marketable, unencumbered, and indefeasible title in fee simple, to the Land and Improvements, Leases, Rents, Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever, except the Permitted Encumbrances. This Mortgage constitutes a valid and subsisting Mortgage, prior in right on the Mortgaged Premises and a valid and subsisting first priority security interest in and to the Personalty, Leases, Construction Agreements, Plans and Rents, all in accordance with the terms hereof.

3.5 **Taxes and Other Payments.** Mortgagor and Guarantor have filed all federal, state, county, municipal and city income and other tax returns required to have been filed by them and have paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by them, and Mortgagor knows of no basis for any additional assessment in respect of any such taxes. Mortgagor has paid or will pay in full all sums owing or claimed for labor, material, supplies, personal property (whether or not forming a Fixture hereunder), and services of every kind and character used, furnished or installed in or on the Mortgaged Premises by or on behalf of Mortgagor and no claim for same exists or will be permitted to be created beyond the due date therefor, unless contested in accordance with the terms of the Credit Agreement.

3.6 **Litigation.** There are no actions, suits or proceedings pending, or, to the knowledge of Mortgagor, threatened against or affecting the Mortgagor, the Guarantor, or the Mortgaged Premises, or involving the validity or enforceability of this Mortgage or the priority of the liens and security interests created by the Loan Documents, and, no event has occurred (including specifically Mortgagor's and the Guarantor's respective execution of the Loan Documents and its consummation of the borrowing of the Credit Facility represented thereby) 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 laws, ordinances, rules, or regulations or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's property constituting a portion of the Mortgaged Premises, other than the liens and security interests created by the Loan Documents.

3.7 **Location of Assets.** All of the Mortgaged Premises which constitutes "goods" under the Uniform Commercial Code is located in Melrose Park, Illinois. Unless otherwise consented to by Mortgagee, all of the Mortgaged Premises will be kept solely at Mortgagor's principal place of business or at the Land described in Exhibit "A" attached hereto and made a part hereof. Without giving Mortgagee at least thirty (30) days prior written notice, Mortgagor shall not (i) change the location of its books and records pertaining to the Mortgaged Premises, (ii) change the location of any of the Mortgaged Premises, (iii) establish any additional place of business, or (iv) change its legal name or jurisdiction of organization.

ARTICLE 4 AFFIRMATIVE COVENANTS

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Mortgagor hereby unconditionally covenants and agrees with Mortgagee as follows:

4.1 **Payment and Performance.** Mortgagor will pay the Indebtedness, as and when called for in the Loan Documents, and on or before the due dates thereof, and will perform all of the Obligations and Specified Derivatives Obligations in full and on or before the dates same are to be performed pursuant to the Loan Documents and any Specified Derivatives Contract.

4.2 **Existence.** Mortgagor will preserve and keep in full force and effect its existence, rights, franchises and trade names.

4.3 **Compliance with Legal Requirements.** Mortgagor will promptly and faithfully comply with, conform to and obey all present and future material Legal Requirements imposed by any Governmental Authorities, whether or not such Legal Requirements shall necessitate structural changes in, material improvements to, or interfere with the use or enjoyment of the Mortgaged Premises.

4.4 **Prior Mortgage Status.** Mortgagor will protect the senior lien status of this Mortgage and the other Loan Documents and will not place, or permit to be placed, or otherwise convey, mortgage, hypothecate or encumber the Mortgaged Premises with any other lien or Mortgage or lien or possessory interest of any nature whatsoever, except (as to possessory interests only) as may be otherwise expressly permitted by the Loan Documents (statutory, constitutional or contractual), regardless of whether same is allegedly or expressly inferior to the title created by this Mortgage, and if any such claim, lien or security interest is asserted against the Mortgaged Premises, Mortgagor will promptly, and at its own cost and expense, (a) pay the underlying claim in full or take such other action so as to cause same to be released; and (b) within five (5) Business Days from the date such claim, lien or security interest is asserted, give Mortgagee notice of such claim, lien or security interest. Such notice shall specify who is asserting such claim, lien or security interest and shall detail the origin and nature of the underlying facts giving rise to such asserted claim, lien or security interest. No provision hereof shall require Mortgagor to pay any claims for labor, materials or services which Mortgagor in good faith disputes and which Mortgagor, at its own expense, is currently and diligently contesting; provided, however, that Mortgagor shall, within ten (10) days after the filing of any claim or lien that is disputed or contested by Mortgagor, obtain and record a bond from a surety acceptable to Mortgagee in an amount and in form and substance reasonably satisfactory to Mortgagee.

4.5 **Payment of Impositions.** Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof, or the day any fine, penalty, interest or cost may be added thereto or imposed, or the day any lien may be filed, for the nonpayment thereof (if such day is used to determine the due date of the respective item); provided, however, that Mortgagor may, to the extent and in the manner permitted by law (a) pay the Impositions in installments whether or not interest shall accrue on the unpaid balance of such Impositions if such installment payment would not create or permit the filing of a lien (statutory, constitutional or contractual) against the Mortgaged Premises and (b) contest the payment of any Impositions in good faith and by appropriate proceedings; provided that (i) any such contest shall be prosecuted diligently and in a manner not prejudicial to the rights, liens and security interests of Mortgagee or any Lender, (ii) Mortgagor shall deposit funds with Mortgagee or obtain a bond in form and substance and with an issuing company reasonably satisfactory to Mortgagee in an amount sufficient to cover any amounts which may be owing in the event the contest may be unsuccessful (Mortgagor shall make such deposit or obtain such bond, as the case may be, within five (5) Business Days after demand therefor and, if made by payment of funds to Mortgagee, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Mortgagor or the adverse claimant), (iii) no contest may be conducted and no payment may be delayed beyond the date on which the Mortgaged Premises could be sold for nonpayment, and (iv) Mortgagee may pay over to the taxing authority entitled thereto any or all of the funds at any time when, in the reasonable opinion of

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Mortgagee's counsel, the entitlement of such authority to such funds is established. Subject to Mortgagee's right to contest as provided for herein, on or before thirty (30) days after the delinquent date of any real estate and personal property taxes, charges and assessments levied upon or assessed or charged against the Mortgaged Premises, Mortgagor shall submit to Mortgagee copies of tax statements and paid tax receipts evidencing the due and punctual payment of all such taxes.

In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages, or security agreements, or assignments of leases or debts secured thereby or the manner of collecting such taxes so as to adversely affect Mortgagee or any Lender, Mortgagor will pay any such tax on or before the due date thereof. If Mortgagor fails to make such prompt payment or if, in the opinion of Mortgagee, any such state, federal, municipal, or other governmental law, order, rule or regulation prohibits Mortgagor from making such payment or would penalize Mortgagee or any Lender if Mortgagor makes such payment or if, in the opinion of Mortgagee, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the entire balance of the Indebtedness and all interest accrued thereon shall, at the option of Mortgagee, become due and payable within ninety (90) days therefrom, but no prepayment premium, breakage fee or other charge shall be owing in connection with the prepayment of the Indebtedness.

4.6 **Repair.** Mortgagor will keep the Mortgaged Premises in first class order and condition 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 not, without the prior express written consent of Mortgagee, permit any Improvement or Lessee improvement which constitutes part of the Mortgaged Premises to be removed, demolished, or structurally altered in whole or in part, or permit any fixture or article of personal property which constitutes part of the Mortgaged Premises to be removed, damaged or destroyed unless the same is replaced with property of equal value, except for the removal by a Lessee of trade fixtures upon vacation of the premises at the end of its Lease term if such removal is permitted pursuant to its Lease. Mortgagor will also use its best efforts to prevent any act or occurrence which might impair the value or usefulness of the Mortgaged Premises for its intended usage, as set forth in the Loan Documents. Mortgagor will not abandon the Mortgaged Premises or leave the Mortgaged Premises unguarded, unprotected or deserted, and will not cause or permit any waste to any portion of the Mortgaged Premises. Mortgagor will not commit, suffer or permit any act with respect to the Mortgaged Premises which would be in material violation of any Legal Requirement imposed by any Governmental Authorities. In instances where repairs, replacements, renewals, additions, betterments, improvements, or alterations are required in and to the Mortgaged Premises in the course of routine maintenance and repair or 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 below; provided, however, that in instances where any emergency measures are to be taken, Mortgagor will 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. Mortgagor will permit Mortgagee in person or by agent to enter the Mortgaged Premises at any time and with at least one (1) Business Day advance notice or such longer notice as may be required under the terms of any Lease (except that no notice will be required in an emergency or after and (unless cured by Mortgagee) during the continuance of, an Event of Default but in all events with such notice as may be required under the terms of Leases), to inspect or protect the Mortgaged Premises in such manner and to such manner and to such extent as Mortgagee may deem necessary; provided, however, that all such actions, entry and inspections shall be made subject to, and in compliance with the terms, conditions, requirements, and limitations of, the Leases, including, without limitation, the terms thereof which are applicable to security

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and confidentiality.

4.7 **Insurance.** Mortgagor will obtain and maintain insurance upon and relating to the Mortgaged Premises, insuring against personal injury and death, loss by fire and such other hazards, casualties and contingencies (including business interruption insurance covering loss of rents and builder's all risk coverage on a non-reporting form) as are normally and usually covered by extended coverage policies in effect where the Land is located and such other risks as may be specified by Mortgagee from time to time, all in such amounts and with such insurers of recognized responsibility as are reasonably acceptable to Mortgagee and containing noncontributory standard mortgagee clauses, their equivalent, or a reasonably satisfactory mortgagee loss payable endorsement in favor of Mortgagee. Each insurance policy issued in connection therewith shall provide by way of endorsements, riders or otherwise as follows: (a) proceeds will be payable to Mortgagee as its interest may appear, it being agreed by Mortgagor that such payments shall be applied, at Mortgagee's option, but subject to Paragraph 4.8(a)(2) of this Mortgage (i) to the restoration, repair or replacement of the Mortgaged Premises, or (ii) toward the payment of the indebtedness (in which case no prepayment premium, penalty or breakage costs shall be payable by Mortgagor) applicable to the Mortgaged Premises (based on the then current Allocated Loan Amount for the Mortgaged Premises) and, to the extent Mortgagor satisfies the requirements for a Property Release under Section 4.1 of the Credit Agreement, Mortgagee shall release this Mortgage and the other Loan Documents as it relates to the Mortgaged Premises; (b) the coverage of Mortgagee shall not be terminated, reduced or affected in any manner regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy; (c) no such insurance policy shall be cancelled, endorsed, altered or reissued to effect a change in coverage for any reason and to any extent whatsoever unless such insurer shall have first given Mortgagee (i) ten (10) days' prior written notice of any cancellation for nonpayment of premium or (ii) thirty (30) days' prior express written notice otherwise; and (d) Mortgagee may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration or reissuance, and such payments shall be accepted by the insurer to prevent same. Mortgagor shall also carry public liability insurance, in such form, amounts, and with such companies as Mortgagee may reasonably require, naming Mortgagee as an additional insured. Mortgagor will not permit any condition to exist on or with respect to the Mortgaged Premises which would wholly or partially invalidate any insurance thereon. Mortgagee shall be furnished with a counterpart original of each such insurance policy coincident with the execution of this Mortgage and a counterpart original of each renewal policy not less than thirty (30) days prior to the expiration of the initial or each succeeding renewal policy, together with receipts or other evidence that the premium thereon have been paid, and such policies shall be held by Mortgagee. Mortgagor shall furnish to Mortgagee, on or before thirty (30) days after the close of each of Mortgagor's fiscal years, a statement certified by Mortgagor or a duly authorized officer of Mortgagor of the amounts of insurance maintained in compliance with this Paragraph 4.7, of the risks covered by such insurance, and of the insurance company or companies which carry such insurance.

In furtherance of the foregoing, Mortgagor shall (or shall cause the applicable Lessee to), while any obligation of Mortgagor or the Guarantor under any Loan Document or Specified Derivatives Contract remains outstanding, maintain at Mortgagor's (or such Lessee's, as applicable) sole expense, the following policies of insurance in form and substance reasonably satisfactory to Mortgagee. Capitalized terms used in this Paragraph 4.7 shall have the same meaning as such terms are commonly and presently defined in the insurance industry.

(a) **Title Insurance.** A title insurance policy providing title insurance with respect to the Mortgaged Premises, as required under the Credit Agreement, together with any endorsements which Mortgagee may require and which are legally available, insuring Mortgagee, in the principal amount of the Notes, the validity and the priority of the lien of the Mortgage upon the Mortgaged Premises, subject only to the Permitted Exceptions.

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(b) Property Insurance. An All Risk/Special Form Property Insurance policy (or, during any period of construction on the Mortgaged Premises, a Builders All Risk/Special Form Completed Value (Non-Reporting Form) Hazard Insurance policy), including without limitation, theft coverage and such other coverages and endorsements as Mortgagee may require, insuring Mortgagee against damage to the Mortgaged Premises in an amount acceptable to the Mortgagee, but in no event less than 100% of the full replacement cost of the Improvements. Such coverage should adequately insure any and all Credit Facility collateral related to the Mortgaged Premises, whether such collateral is onsite, stored offsite or otherwise. Mortgagee shall be named on the policy as "mortgagee" and named under a Lender's Loss Payable Endorsement (form #438BFU or equivalent).

(c) Flood Hazard Insurance. To the extent that any of the Improvements are located in a special flood hazard area, a policy of flood insurance, as required by applicable governmental regulations, or as deemed necessary by Mortgagee, in an amount sufficient to comply with the requirements of Section 8.5(d) of the Credit Agreement.

(d) Liability Insurance. A policy of Commercial General Liability insurance on an occurrence basis, with coverages and limits as reasonably required by Mortgagee, insuring against liability for injury and/or death to any person and/or damage to any property occurring on the Mortgaged Premises and/or in the Improvements. During the period of any construction, Mortgagor may cause its contractors and/or subcontractors to maintain in full force and effect any or all of the liability insurance required hereunder. Mortgagee may require that Mortgagor be named as an additional insured on any such policy. Whether Mortgagor employs a general contractor or performs as owner-builder, Mortgagee may require that coverage include statutory workers' compensation insurance.

(e) Other Coverage. Mortgagor shall provide to Mortgagee evidence of such other reasonable insurance in such reasonable amounts as Mortgagee may from time to time request against such other insurable hazards which at the time are commonly insured against for property similar to the Mortgaged Premises located in or around the region in which the Mortgaged Premises is located. Such coverage requirements may include but are not limited to coverage for earthquake, sink hole, soft costs, Lessee improvement, environmental, business income, delayed business income, rental loss and, at Mortgagee's request, acts of terrorism.

(f) General. Mortgagor shall provide to Mortgagee insurance certificates or other evidence of coverage in form acceptable to Mortgagee, with coverage amounts, deductibles, limits and retentions as reasonably required by Mortgagee. All insurance policies shall provide that the insurer shall give Mortgagee not less than (i) ten (10) days' prior written notice in the case of termination or modification for non-payment of premium and (ii) thirty (30) days' prior written notice to Mortgagee of any other cancellation or any modification (including a reduction in coverage). Mortgagee shall be named under a Lender's Loss Payable Endorsement (form #438BFU or equivalent) on all insurance policies which Mortgagor actually maintains with respect to the Mortgaged Premises. All insurance policies shall be issued and maintained by insurers approved to do business in the state in which the Mortgaged Premises is located and must have an A.M. Best Company financial rating and policyholder surplus acceptable to Mortgagee.

The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage in extinguishment or partial extinguishment of the Indebtedness, all right, title and interest of Mortgagor in and to all insurance policies then in force shall pass to the purchaser or to Mortgagee, as the case may be, and Mortgagee is hereby irrevocably appointed by Mortgagor as attorney-in-fact with full power of substitution for Mortgagor to transfer and assign any such policy to said purchaser or to Mortgagee, as the case may be, without accounting to Mortgagor for any unearned premiums thereon.

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The requirements of this Paragraph 4.7 may be modified or amended in whole or in part by Mortgagee in its reasonable discretion and Mortgagor agrees to provide a replacement policy or policies which shall meet such amended or modified insurance standards.

The following notice is delivered in compliance with the Illinois Collateral Protection Act, 815 ILCS 180/1 et seq.:

"Unless you provide us with evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance of obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own."

4.8 Application of Proceeds.

(a) Insurance proceeds will be used as follows:

(1) Provided that there has occurred no continuing Default hereunder or under any of the other Loan Documents and that no Event of Default exists hereunder or under any of the other Loan Documents, then in the event there occurs any casualty, damage to, or destruction of any part of the Mortgaged Premises where the cost to repair or replace is less than Five Hundred Thousand and 00/100 (\$500,000.00) Dollars (hereinafter referred to as the "Threshold Amount"), Mortgagee shall release such insurance proceeds to Mortgagor (or direct that such proceeds be paid to Mortgagor), and in connection therewith Mortgagor will use such proceeds to restore or repair the Mortgaged Premises to return the Mortgaged Premises to substantially the same condition as existed immediately prior to such damage or destruction. Upon request of Mortgagee, Mortgagor will deliver to Mortgagee copies of the plans and specifications, contracts and all other documents executed by Mortgagor in connection with the Work and evidence reasonably satisfactory to Mortgagee of the application of such insurance proceeds to the cost of the Work; and

(2) In the event there occurs any casualty, damage to or destruction of any part of the Mortgaged Premises where the cost to repair or replace is equal to or exceeds the Threshold Amount, then any insurance proceeds collected by Mortgagee with respect to such damage or destruction, less its expenses in such collection, will be used for the costs of the Work if all of the following conditions are satisfied within ninety (90) days from the date of the damage or destruction:

(A) There has occurred no continuing Default hereunder or under any of the other Loan Documents and no Event of Default exists hereunder or under any of the other Loan Documents.

(B) Mortgagor satisfies Mortgagee that the municipality in which the Mortgaged Premises is located has approved the Work so that the portion of the Mortgaged Premises which was damaged may be restored in substantially the same location, with substantially the same dimensions and at substantially the same height that existed prior to the casualty and without the requirement for any additional parking spaces.

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(C) Mortgagor satisfies Mortgagee that after the Work is completed, the value of the Mortgaged Premises, as determined by Mortgagee in its reasonable discretion, will be sufficient to produce an Allocated Loan Amount equal to or greater than the Allocated Loan Amount with respect to the Mortgaged Premises which existed immediately prior to the occurrence of said casualty, damage, or destruction.

(D) In Mortgagee's reasonable discretion, the proceeds deposited with Mortgagee, when aggregated with anticipated insurance proceeds, are sufficient to pay all costs of Work on the Mortgaged Premises. If the insurance proceeds deposited with Mortgagee are not sufficient, Mortgagee will permit Mortgagor to deposit additional funds or demonstrate to Mortgagee's reasonable satisfaction Mortgagor's ability to pay such additional costs of Work.

(E) Mortgagor has delivered to Mortgagee a construction contract for the Work in form and content reasonably acceptable to Mortgagee with a contractor reasonably acceptable to Mortgagee.

(F) An architect or engineer, approved by Mortgagee shall be retained by Mortgagor (at Mortgagor's expense) and charged with the supervision of the Work.

(G) Mortgagor shall have prepared, submitted to Mortgagee and secured Mortgagee's written approval of the plans and specifications for such Work.

(H) All Leases will remain in full force and effect following completion of the Work, under which Leases the Lessees have no termination rights upon casualty (or have waived such rights in writing or by the passage of time), or, based on the estimated time for completion of such Work, the termination rights under said Leases are not applicable or will not become effective.

(b) If the proceeds of the insurance described in Paragraph 4.7 hereinabove are to be used for the Work, such proceeds shall be paid out by Mortgagee from time to time to Mortgagor (or, at the option of Mortgagee, jointly to Mortgagor and the persons furnishing labor and/or material incident to the Work) as the Work progresses, subject to the following conditions:

(1) each request for payment by Mortgagor shall be made on ten (10) days' prior written notice to Mortgagee and shall be accompanied by a certificate executed by the architect or engineer supervising the Work (or if, Mortgagee waives the requirement for a supervising architect or engineer in Mortgagee's sole and absolute discretion, by Mortgagor or an executive officer of Mortgagor), stating, among such other matters as may be reasonably required by Mortgagee, that: (A) all of the Work completed has been done in compliance with the approved plans and specifications; (B) the sum requested is justly required to reimburse Mortgagor for payments by Mortgagor to, or is justly due to, the contractor, subcontractor, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials); (C) when added to all sums previously paid out by Mortgagor, the sum requested does not exceed the value of the Work done prior to the date of such certificate; and (D) the amount of insurance proceeds remaining with the Mortgagee will be sufficient upon completion of the Work to pay for the same in full (giving, in such reasonable detail as the Mortgagee may require, an estimate of the cost of such completion);

(2) for each disbursement of insurance proceeds made to Mortgagor hereunder, Mortgagee shall retain a sum equal to the amount calculated in accordance with the Mortgagee's standard retainage requirements for new construction;

(3) each request shall be accompanied by releases of liens, satisfactory in form and substance to Mortgagee, covering that part of the Work for which payment or reimbursement is being requested, and, only if requested by Mortgagee, by a search prepared by a title company or licensed abstractor or by other evidence reasonably satisfactory to Mortgagee that there has not been filed with

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respect to the Mortgaged Premises any mechanic's lien or other lien, affidavit or instrument asserting any lien or any lien rights with respect to the Mortgaged Premises;

(4) no Event of Default or Default shall have occurred and be continuing since the hazard, casualty or contingency giving rise to payment of the insurance proceeds;

(5) if in the case of the request for the final disbursement, such request is accompanied by a copy of any certificate of occupancy or other certificate required by any Governmental Authority, only if required to render occupancy of the damaged portion of the Mortgaged Premises lawful;

(6) if, in Mortgagee's judgment, the amount of such insurance proceeds will not be sufficient to complete the Work (which determination may be made prior to or during the performance of the Work), Mortgagor shall deposit with Mortgagee, immediately upon a request therefor, an amount of money which, when added to such insurance proceeds, will be sufficient, in Mortgagee's reasonable judgment, to complete the Work; and

(7) Only if requested by Mortgagee, Mortgagee shall receive an endorsement to the Mortgagee's title insurance policy for the Mortgaged Premises, dated as of the date of payment of such proceeds, reflecting no changes in the status of title or said title insurance policy, except as may be permitted under the Loan Documents.

(c) If, upon completion of the Work, any portion of the insurance proceeds has not been disbursed to Mortgagor (or to one or more of the other aforesaid persons) incident thereto, Mortgagee may, at Mortgagee's option, disburse such balance to Mortgagor or apply such balance toward the payment of the Indebtedness on a date when no prepayment premium or breakage charge will be owing. Nothing herein shall be interpreted to prohibit Mortgagee from applying at any time the whole or any part of such insurance proceeds to the curing of any Event of Default or toward the payment of the Indebtedness if any of the conditions set forth above in Paragraph 4.7 or in this Paragraph 4.8 are not satisfied.

4.9 Restoration Following Casualty. If any act or occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtained or obtainable), shall result in damage to or loss or destruction of the Mortgaged Premises, Mortgagor will give notice thereof to Mortgagee immediately and, if so instructed by Mortgagee, will promptly, at Mortgagor's sole cost and expense and regardless of whether the insurance proceeds (if any) shall be sufficient for the purpose, promptly commence and continue diligently to restore, repair, replace and rebuild the Mortgaged Premises in accordance with the provisions of Paragraph 4.8 and all Legal Requirements as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction. Mortgagee shall apply casualty or insurance proceeds according to the terms of Paragraphs 4.7 and 4.8 above.

4.10 Performance of Leases. Mortgagor will (a) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon it under each of the Leases, (b) not voluntarily terminate, cancel or waive its rights or the obligations of any other party under any of the Leases, (c) use all reasonable efforts to maintain each of the Leases in full force and effect during the full term thereof, and (d) appear in and defend any action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants and agreements of it or the other party or parties thereto.

4.11 Inspection. Mortgagor will permit Mortgagee and its agents, representatives and employees to inspect the Mortgaged Premises at all reasonable times, after at least one (1) Business Days prior notice (or such longer notice period as may be required under the Leases, except that no such notice will be required in an emergency or after and (except if cured by Mortgagee, but in all events such notice

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as is required under the Leases shall be provided) during the continuance of an Event of Default provided that all such entry and inspections shall be made on and subject to, and in compliance with, the requirements of the Leases including, without limitation, the terms applicable to security and confidentiality.

4.12 **Hold Harmless**. Mortgagor, at its own cost and expense, will indemnify, defend and hold Mortgagee and the Lenders harmless for, from and against any action, proceeding or claim affecting the Mortgaged Premises or the Loan Documents, and all costs and expenses incurred by Mortgagee or any Lender in protecting its interests hereunder in such an event (including all court costs and reasonable attorneys' fees) shall be borne by Mortgagor and secured hereby, except to the extent the same arise by reason of the gross negligence or willful misconduct of Mortgagee, any Lender, or their respective agents, employees, representatives or contractors. In the event of any dispute among the members of Mortgagor, Mortgagor shall defend, indemnify, and save Mortgagee, the Lenders, and any corporation controlling, controlled by, or under common control with Mortgagee, any Lender, and any officer, attorney, director, shareholder, agent or employee of Mortgagee, any Lender, or any such corporation, and each of them, harmless for, from, and against any and all damages, expenses and liabilities of any type whatsoever, including, but not limited to, reasonable attorneys' fees, and including, but not limited to, any liability arising out of demands by any of the members of the Mortgagor for undisbursed proceeds of any borrowing authorized by any of the Loan Documents, suffered, or incurred as a result of or in connection with any such dispute. This indemnity provision shall survive the repayment of any and all Indebtedness, shall be binding upon the separate and respective heirs, administrators, personal representatives, successors and assigns of the Mortgagor and its members and shall inure to the benefit of the successors and assigns of Mortgagee, the Lenders, and any corporation, entity or person controlling, controlled by, or under common control with Mortgagee or any Lender, and to the heirs, administrators, personal representatives, successors and assigns of Mortgagee, any Lender, or any such corporation's, entity's or person's officers, directors, shareholders, attorneys, agents and employees.

4.13 **General Requirements Regarding Financial Statements**. At any time and from time to time, Mortgagor shall deliver to Mortgagee such financial and other related data as Mortgagee or any Lender shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Premises and/or Mortgagor, and Mortgagee and Lenders shall have the right, at reasonable times and upon reasonable notice, to audit, examine and make copies or extracts of Mortgagor's books of account and records relating to the Mortgaged Premises, all of which shall be maintained and made available to Mortgagee, Lenders, and their respective representatives for such purpose (on and subject to the confidentiality requirements of the Leases, if any) at the address specified herein for Mortgagor or at such other location as Mortgagee may approve. The foregoing shall be at Mortgagee's (or the applicable Lender's) expense prior to a Default under any Loan Documents and at Mortgagor's expense thereafter. Mortgagor shall deliver to Mortgagee promptly any amendments to its governing documents.

4.14 **Status of Title**. Mortgagor agrees to protect, preserve and defend its interest in the Mortgaged Premises and the title thereto; to appear and defend this Mortgage in any action or proceeding affecting or purporting to affect the Mortgaged Premises, the lien of this Mortgage thereon, or any of the rights of Mortgagee or any Lender hereunder, and to pay all reasonable costs and expenses incurred by Mortgagee or any Lender in connection with such proceeding, including reasonable attorneys' fees.

4.15 **Performance of Obligations**. Mortgagor shall observe, perform and discharge, duly and punctually, all and singular, the Obligations and all Specified Derivatives Obligations, and Mortgagor shall give prompt notice to Mortgagee of any failure on the part of Mortgagor to observe, perform and discharge the same or of any claim made for any such failure by Mortgagor.

4.16 **Taxes and Insurance Escrow**. During the continuance of an Event of Default (but after

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an Event of Default if the Event of Default was cured by Mortgagee or any Lender), upon Mortgagee's request, Mortgagor shall pay monthly, annually or as otherwise directed by Mortgagee, an amount (hereinafter collectively referred to as the "Escrowed Sums") equal to the sum of (a) the annual Impositions for real estate taxes and assessments (reasonably estimated by Mortgagee, wherever necessary) to become due for the tax year during which such payment is so directed plus (b) the insurance premiums for the same year for those insurance policies as are required hereunder. If Mortgagee reasonably determines that any amounts theretofore paid by Mortgagor are insufficient for the payment in full of such Impositions and insurance premiums, Mortgagee shall notify Mortgagor of the increased amounts required to provide a sufficient fund, whereupon Mortgagor shall pay to Mortgagee within thirty (30) days thereafter the additional amount as stated in Mortgagee's notice. The Escrowed Sums may be held by Mortgagee in an interest bearing account and may be commingled with Mortgagee's other funds. Upon assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of the Escrowed Sums then in its possession to its assignee whereupon Mortgagee shall then become completely released from all liability with respect thereto. Within sixty (60) days following the full payment of the Indebtedness (other than a full payment of the Indebtedness as a consequence of a foreclosure, judicial sale or conveyance in lieu of foreclosure of the liens and security interests securing the Indebtedness) or at such earlier time as Mortgagee may elect, the balance of the Escrowed Sums in its possession shall be paid over to Mortgagor and no other party shall have any right or claim thereto. If no Event of Default shall be continuing hereunder, the Escrowed Sums shall, 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 and the required insurance premiums or be paid directly to the Governmental Authority and the insurance company entitled thereto. If an Event of Default shall have occurred and be continuing hereunder, however, Mortgagee shall have the additional option of crediting the full amount of the Escrowed Sums against the Indebtedness. Notwithstanding anything to the contrary contained in this Paragraph 4.16 or elsewhere in this Mortgage, Mortgagee hereby reserves the right to waive the payment by Mortgagor to Mortgagee of the Escrowed Sums, and, in the event Mortgagee does so waive such payment, it shall be without prejudice to Mortgagee's rights to insist, at any subsequent time or times, that such payments be made in accordance herewith. The failure to make escrow payments due under this Paragraph 4.16 shall constitute a failure to pay the Indebtedness as said term is used under this Mortgage and the Loan Documents.

4.17 **Letters of Credit.** In the event that any Lessee pursuant to an existing or future Lease elects in accordance with the provisions of its Lease to provide Mortgagor with a security deposit or other collateral for its obligations under the Lease in an amount greater than or equal to \$25,000.00 in a form other than cash (hereinafter referred to as a "Non-Cash Deposit"), Mortgagor hereby agrees that such Non-Cash Deposit shall be fully assignable at no cost to Mortgagee or any Lender. In the event Mortgagee is not named as a payee or beneficiary thereunder, Mortgagor shall execute and deliver to Mortgagee an undated draw on such Non-Cash Deposit in blank which draw on such Non-Cash Deposit in the name of and on behalf of Mortgagor. At Mortgagee's election, the Non-Cash Deposit shall be delivered to Mortgagee and shall be held by Mortgagee until repayment in full of the Indebtedness, subject, however, to return as and when required by the terms of the Leases. If such Non-Cash Deposit is held by Mortgagor, Mortgagor shall maintain such Non-Cash Deposit in a safe, secure and fireproof location. Following the occurrence and during the continuance of an Event of Default (but after the occurrence if such Event of Default was cured by Mortgagee), Mortgagor shall immediately pay to Mortgagee all security deposits and other cash collateral then held by Mortgagor under all Leases and shall deliver to Mortgagee all Non-Cash Deposits, all of which shall be held by Mortgagee subject to the terms of the Leases.

**ARTICLE 5
NEGATIVE COVENANTS**

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Mortgagor hereby covenants and agrees with Mortgagee that until the entire Indebtedness shall have been paid in full and all of the Obligations and all Specified Derivatives 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 Premises in any manner which (a) violates any Legal Requirement of any Governmental Authority, (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 or required by the terms of this Mortgage to be in force with respect thereto. Mortgagor shall cause all Leases for space at the Mortgaged Premises to obligate the applicable Lessees to pay for any increases in insurance premiums arising due to such Lessee's use or activities, except as may be otherwise expressly required by the terms of the Leases.

5.2 **Alterations.** Mortgagor will not commit or permit any waste of the Mortgaged Premises and will not (subject to the provisions of Paragraphs 4.6 and 4.9 above), without the prior express written consent of Mortgagee, make or permit to be made any alterations or additions of a material nature to the Mortgaged Premises except in accordance with the Plans approved by Mortgagee, or as may be otherwise expressly required by the terms of the Leases.

5.3 **Replacement of Fixtures and Personalty.** Mortgagor will not, without the prior express written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item (a) is removed by a Lessee in accordance with the provisions of its Lease, (b) is removed temporarily for maintenance and repair, or, (c) if removed permanently, is replaced by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest except the lien of this Mortgage and such as may be first approved, in writing, by Mortgagee.

5.4 **No Further Encumbrances.** Mortgagor will not, without the prior express written consent of Mortgagee, create or place, 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, or conditional sale or other title retention agreement, regardless of whether same are expressly subordinate to the Loan Documents, with respect to the Mortgaged Premises, the Leases, the Construction Agreements, the Plans or the Rents, other than the Permitted Encumbrances and the Loan Documents. If any lien or claim is asserted against the Mortgaged Premises, Mortgagor shall perform its obligations with respect thereto and shall have the rights with respect hereto as specified in Paragraph 4.4 above.

5.5 **No Sales, Leases or Other Transfers.** Other than Permitted Dispositions, Mortgagor will not, without the prior express written consent of Mortgagee, make a Disposition, subject to the terms, conditions, and provisions of Paragraphs 5.3 and 10.4 hereof.

ARTICLE 6 EVENTS OF DEFAULT

The term "Event of Default," as used in the Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

6.1 **Event of Default Under Loan Documents.** The occurrence of an Event of Default under the Credit Agreement or a default (beyond any applicable grace and cure periods) under this Mortgage, the Notes, or any of the other Loan Documents.

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ARTICLE 7 MORTGAGEE'S REMEDIES

7.1 **Remedies.** If an Event of Default shall occur, Mortgagee may, at its sole and absolute election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the "Principal Balance" (defined hereby as meaning the then unpaid principal balance on the Notes), the accrued interest and any other accrued but unpaid portion of the Indebtedness to be immediately due and payable, without further notice, presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable, time being of the essence in this Mortgage.

(b) **Termination of License and/or Entry on Mortgaged Premises.** Demand that Mortgagor shall forthwith surrender to Mortgagee the actual possession of the Mortgaged Premises, and/or terminate the license granted Mortgagor in Paragraph 10.2 hereof to receive the Rents and, to the extent permitted by law enter and take possession of all of the Mortgaged Premises without the appointment of a receiver, or an application therefor, and exclude Mortgagor and its agents and employees wholly therefrom, and have joint access with Mortgagor to the books, papers and accounts of Mortgagor.

If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Premises or any part thereof immediately after such demand by Mortgagee, Mortgagee may obtain a judgment or decree conferring upon Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Mortgaged Premises to Mortgagee, and Mortgagor hereby specifically covenants and agrees that Mortgagor will not oppose, contest or otherwise hinder or delay Mortgagee in any action or proceeding by Mortgagee to obtain such judgment or decree. Mortgagor will pay to Mortgagee, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Mortgagee, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Indebtedness and shall be secured by this Mortgage.

Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage, and control the Mortgaged Premises and conduct the business thereof, and, from time to time, (i) undertake all maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property, all to the extent Mortgagee deems necessary and proper, (ii) insure or keep the Mortgaged Premises insured, (iii) manage and operate the Mortgaged Premises and exercise all the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name, or otherwise act with respect to the same, and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Mortgagee, all as Mortgagee from time to time may determine to be in its best interest. Whether or not Mortgagee has obtained possession of the Mortgaged Premises, upon the termination of Mortgagor's license to receive the Rents, Mortgagee may collect, sue for and receive all the Rents and other issues, profits and revenues from the Mortgaged Premises, including those past due as well as those accruing thereafter. Anything in this Mortgage to the contrary notwithstanding, Mortgagee shall not be obligated to discharge or perform the duties of the landlord to any Lessee or incur any liability as the result of any exercise by Mortgagee of its rights under this Mortgage, and Mortgagee shall be liable to account only for the Rents actually received by Mortgagee.

Whether or not Mortgagee takes possession of the Mortgaged Premises, Mortgagee may make, modify, enforce, cancel, or accept surrender of any Lease, remove and evict any Lessee, increase or decrease Rents under any Lease, appear in and defend any action or proceeding purporting to affect the

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Mortgaged Premises, and perform and discharge each and every obligation, covenant and agreement of Mortgagor contained in any Lease. Neither the entering upon and taking possession of the Mortgaged Premises, nor the collection of any Rents and the application thereof as aforesaid, shall cure or waive any Event of Default theretofore or thereafter occurring, or affect any notice of an Event of Default hereunder or invalidate any act done pursuant to any such notice. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor, or anyone having an interest in the Mortgaged Premises by reason of anything done or left undone by Mortgagee hereunder. Nothing contained in this Paragraph 7.1(b) shall require Mortgagee to incur any expense or do any act. If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Premises and/or collecting the Rents, any funds expended by Mortgagee for such purposes shall become Indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Such amounts, together with interest at the Post-Default Rate and attorneys' fees, if applicable, shall be immediately due and payable. Notwithstanding Mortgagee's continuance in possession or receipt and application of Rents, Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law upon or after the occurrence of an Event of Default. Any of the actions referred to in this Paragraph 7.1(b) may be taken by Mortgagee at such time as Mortgagee is so entitled, without regard to the adequacy of any security for the Indebtedness hereby secured. Nothing herein shall be construed as constituting Mortgagee as a "mortgagee in possession" unless Mortgagee shall have entered into and shall remain in actual physical possession of the Mortgaged Premises.

In the event that all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions, and agreements of this Mortgage shall be paid and all Events of Default shall be cured, and as a result thereof Mortgagee surrenders possession of the Mortgaged Premises to Mortgagor, the same right herein given to Mortgagee shall continue to exist if any subsequent Events of Default shall occur.

(c) **Foreclosure and Sale.** (i) Institute and maintain an action of judicial foreclosure against any of the Mortgaged Premises, through the same manner provided by law for the foreclosure of mortgages on real property, (ii) institute and maintain an action on the Notes or any other instrument secured hereby, or (iii) take such other action at law or in equity for the enforcement of any document evidencing or securing the obligations secured as the law may allow. The mailing address of Mortgagor for the purpose of mailing a copy of the notice of sale shall be the address specified in the Credit Agreement, unless a subsequent request for notice of sale specifying a different address is recorded in the manner provided by law. Mortgagee may proceed in any such action to final judgment and execution thereon for all sums due under Paragraph 7.1(b), together with interest on such sums at the Post-Default Rate, all costs of suit and reasonable attorneys' fees and expenses. Interest at a rate equal to the Post-Default Rate shall be due on any judgment obtained by Mortgagee from the date of judgment until actual payment is made of the full amount of the judgment by the Sheriff or otherwise. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Premises may be sold as an entirety or in separate parcels and in such manner or order as Mortgagee may deem appropriate, and the Personalty covered by this Mortgage may be sold at the same sale as the Mortgaged Premises or at one or more separate sales in any manner permitted by the Uniform Commercial Code, and one or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Mortgaged Premises is sold or the Indebtedness and all other obligations secured by this Mortgage are paid in full. Mortgagor hereby expressly waives any right which it may have to direct the order in which any of the Mortgaged Premises shall be sold in the event of any sale pursuant hereto. If the Indebtedness is now or hereafter further secured by any chattel mortgages, pledges, contracts or guarantees, assignments of lease or other security instruments, Mortgagee may at its option exhaust the remedies granted under any of said security instruments, either concurrently or independently, and in such order as Mortgagee may determine.

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(d) **Receiver.** Upon application to a court of competent jurisdiction, Mortgagee shall be entitled as a matter of strict right, without notice and without regard to the adequacy or value of any security for the Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take immediate possession of and to operate the Mortgaged Premises and to collect and apply the income, Rents, issues, profits, and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the State of Illinois. Mortgagor will pay to Mortgagee upon demand all expenses, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this paragraph, and any such amounts paid by Mortgagee shall be added to the Indebtedness and shall be secured by this Mortgage. Mortgagor hereby expressly waives any express or implied legal requirement that might otherwise require the initiation or pendency of an action or proceeding seeking other relief as a condition to the appointment of a receiver.

(e) **Performance by Mortgagee.** Pay, perform or observe any term, covenant or condition of this Mortgage not paid, performed or observed by Mortgagor, and all payments made or costs or expenses incurred by Mortgagee in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee with interest thereon at the Post-Default Rate. Mortgagee is hereby empowered to enter, and to authorize others to enter, upon the Mortgaged Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

(f) **Other.** Exercise any and all other rights, remedies and recourses granted under the Loan Documents (including, without limitation, those set forth in Articles 9 and 10 hereinbelow) or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

(g) **Remedies Available Under Applicable Law.** In addition to any remedies provided herein for breach or default hereof, Mortgagee shall have all other remedies allowed or provided for under or described in the other Loan Documents and all other writings executed or delivered in connection with the obligation secured by this Mortgage or available under applicable law. Any one or more rights and remedies available to Mortgagee may, at its option, be sought and exercised concurrently or consecutively, and in inconsistent proceedings, whether legal or equitable. Mortgagee's failure to exercise any of its rights upon any default or breach shall not prejudice its rights in the event of any other or subsequent default or breach. Mortgagee's delay in exercising any rights shall not preclude it from exercising the same at any time during the continuance of such default or breach. By accepting any performance or payment of any portion of the obligation secured by this Mortgage after its due date, Mortgagee shall not waive the agreement contained herein that time is of the essence hereof, nor shall Mortgagee waive its rights to require prompt performance or payment when due of the remainder of the obligation secured by this Mortgage or to consider failure to so perform or pay a default hereunder.

(h) **Remedies Available Under the Uniform Commercial Code.** Without limitation of Mortgagee's rights of enforcement with respect to the Mortgaged Premises in accordance with the procedures for foreclosure of real estate, Mortgagee may exercise its rights under the Uniform Commercial Code and, in conjunction therewith:

(i) Mortgagee may enter upon the Land to take possession of, assemble and collect any or all personal property collateral or to render it unusable in accordance with applicable law;

(ii) Mortgagee may require Mortgagor to assemble such collateral and make it available at a place designated by Mortgagee which is mutually convenient to allow Mortgagee to take possession or dispose of such collateral;

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(iii) written notice shall be mailed to Mortgagor as provided herein at least thirty (30) days prior to the date of public sale of the Mortgaged Premises or prior to the date on which private sale of the Mortgaged Premises will be made shall constitute reasonable notice;

(iv) any sale made under the provisions of this subparagraph (h) shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Mortgaged Premises under power of sale as provided herein;

(v) in the event of a foreclosure sale, the Mortgaged Premises and the other collateral may, at Mortgagee's option, be sold as a whole;

(vi) Mortgagee need not take possession of the Mortgaged Premises or any part thereof prior to the time the sale is conducted, nor shall it be necessary for the Mortgaged Premises or any part thereof to be present at the location of the sale;

(vii) with respect to application of proceeds from disposition of the Mortgaged Premises, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and reasonable attorneys' fees and legal expenses incurred by Mortgagee;

(viii) any and all statements of fact or other recitals made in any sheriff's deed, bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the obligation secured by this Mortgage or as to the occurrence of any Event of Default, or as to Mortgagee having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the property to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee, shall be *prima facie* evidence of the truth of the facts so stated and recited;

(ix) Mortgagee may appoint or delegate any one or more persons as its agent to perform any acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale;

(x) Mortgagee may comply with any applicable state or federal legal requirements in connection with the disposition of the Mortgaged Premises, and such compliance will not be considered to adversely affect the commercial reasonableness of any disposition of the Mortgaged Premises;

(xi) Mortgagee may dispose of the Mortgaged Premises without giving any warranties and may specifically disclaim any warranties of title, merchantability, fitness for a specific purpose or the like, but any such disclaimer will not be considered to adversely affect the commercial reasonableness of any disposition of the Mortgaged Premises;

(xii) Mortgagor acknowledges that a private sale of the portion of the Mortgaged Premises constituting personal property may result in less proceeds than a public sale; and

(xiii) Mortgagor acknowledges that the Mortgaged Premises may be sold, in accordance with applicable laws, at a loss to Mortgagor, and that in such event, Mortgagee shall have no liability or responsibility to Mortgagor for such loss.

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(i) If it chooses to do so, Mortgagee may dispose of any personal property separately from the sale of real property, in any manner permitted by Article 9 of the Uniform Commercial Code, including any public or private sale, or in any other manner permitted by any other applicable law.

(j) Mortgagee may choose to dispose of some or all of the Mortgaged Premises, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, and Mortgagor agrees that such a sale of personal property together with real property constitutes a commercially reasonable disposition of the personal property.

7.2 **Separate Sales.** The Mortgaged Premises may be sold in one or more parcels and in such manner and order as Mortgagee, in its sole and absolute discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

7.3 **Remedies Cumulative, Concurrent and Non-Exclusive.** 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 Uniform Commercial Code) and same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor, the Guarantor or others obligated under the Notes, or against the Mortgaged Premises, or against any one or more of them, at the sole and absolute 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 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. If there exists additional security for the performance of the obligations secured hereby, the holder of the Notes, at its sole option and without limiting or affecting its rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder, either concurrently with whatever rights it may have in connection with such other security or in such order as it may determine.

7.4 **No Conditions Precedent to Exercise of Remedies.** Neither Mortgagor, the Guarantor nor any other person hereafter obligated for payment of all or any part of the Indebtedness, or fulfillment of all or any of the Obligations or Specified Derivatives Obligations, shall be relieved of such obligation by reason of (a) the failure of Mortgagee or any Lender to comply with any request of Mortgagor, Guarantor, or of any other person so obligated, to foreclose the Mortgage or to enforce any provisions of the other Loan Documents, (b) the release, regardless of consideration, of the Mortgaged Premises or the addition of any other property to the Mortgaged Premises, (c) any agreement or stipulation between any subsequent owner of the Mortgaged Premises 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, the Guarantor or such other person, and in such event, Mortgagor, Guarantor 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, or (d) by any other act or occurrence, save and except the complete payment of the Indebtedness and the complete fulfillment of all of the Obligations and all of the Specified Derivatives Obligations.

7.5 **Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration, any part of the Mortgaged Premises without, as to the remainder, in any way impairing, affecting, subordinating or releasing the conveyance, lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior mortgage, lien or security interest in and to the

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Mortgaged Premises. For payment of the Indebtedness, Mortgagee may resort to any security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

7.6 Waiver of Appraisement, Valuation, etc. Mortgagor hereby agrees, to the full extent permitted by law, that in case of an Event of Default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any moratorium, reinstatement, forbearance, appraisement, valuation, stay, extension, homestead exemption or redemption laws now or hereafter in force in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Premises, the delivery of possession thereof immediately after such sale to the purchaser at such sale, or the exercise of any other remedy hereunder; and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have assets subject to the security interest of this Mortgage or any other Loan Document marshaled upon any foreclosure or sale under the power herein granted or a sale in inverse order of alienation. Without limiting the generality of the foregoing, Mortgagor, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Mortgaged Premises subsequent to the date of this Mortgage, hereby irrevocably waives, on its own behalf and on behalf of each and every person, pursuant to 735 ILCS 5/15 1601 any and all rights of reinstatement (including, without limitation, all rights of reinstatement provided for in 735 ILCS 5/15 1602) or redemption from sale or from or under any order, judgment or decree of foreclosure of this Mortgage (including, without limitation, all rights of redemption provided for in 735 ILCS 5/12 122 et seq. and 735 ILCS 5/15 1603) or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the "Act" (as such term is defined in Paragraph 11.28 of this Mortgage) or other applicable law or replacement statutes. Mortgagor further waives and releases all technical errors, defects and imperfections in any proceedings instituted by Mortgagee under this Mortgage and all notices not elsewhere herein specifically required of Mortgagor's default or Mortgagee's exercise, or election to exercise, any right or remedy under this Mortgage.

7.7 Discontinuance of Proceedings. In case Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, or in the event Mortgagee commences an enforcement proceeding and such proceeding shall have been withdrawn, discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then in every such case (a) Mortgagor and Mortgagee shall be restored to their former positions and rights, (b) all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken, (c) each and every Event of Default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall be and shall be deemed to be a continuing Event of Default, and (d) neither this Mortgage, nor the Notes, nor the Indebtedness, nor any other Loan Document shall be or shall be deemed to have been reinstated or otherwise affected by such withdrawal, discontinuance or abandonment; and Mortgagor hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the above.

7.8 Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, operation, or other use of the Mortgaged Premises, or any part thereof, the Leases, the Construction Agreements, or the Plans shall be applied by Mortgagee (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following order of priority (unless Mortgagee designates a different order of priority, which order shall then apply) or as may be otherwise required by law or as Mortgagee may otherwise designate (but subject to the order of priority set forth in the Credit Agreement):

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(a) First, to the payment of the reasonable costs and expenses of taking possession of the Mortgaged Premises and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (i) receivers' fees, (ii) court costs, (iii) attorneys' and accountants' fees, and (iv) the payment of any and all Impositions, liens, security interests or other rights, titles or interests superior to this Mortgage (except those to which the Mortgaged Premises has been sold subject to and without in any way implying Mortgagee's prior consent to the creation thereof);

(b) Second, to the payment of all amounts, other than the Principal Balance and accrued but unpaid interest, which may be due to Mortgagee and/or Lenders under the Loan Documents, together with interest thereon as provided therein;

(c) Third, to the payment of all accrued but unpaid interest due on the Notes;

(d) Fourth, to the payment of the Principal Balance and any remaining portion of the Indebtedness outstanding under the Notes;

(e) Fifth, to the extent funds are available therefor out of the sale proceeds or the Rents, and to the extent known by Mortgagee, to the payment of any indebtedness or obligation secured by a subordinate interest in the Mortgaged Premises; and

(f) Sixth, to Mortgagee.

Mortgagor shall be responsible for any deficiency judgment which remains outstanding.

7.9 **Leases**. Mortgagee, at its option, is authorized to foreclose this Mortgage subject to the rights of any Lessees of the Mortgaged Premises, and the failure to make any such Lessees parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagee, a defense to any proceedings instituted by Mortgagee to collect the Indebtedness. Upon any sale of the Mortgaged Premises under this Mortgage, any lease that is subordinate to the lien of this Mortgage shall remain in effect, the purchaser thereby being subrogated to Mortgagee's interest therein, unless the purchaser elects to treat any such lease as terminated by virtue of the sale under the prior lien and charge of this Mortgage, unless a separate non-disturbance agreement executed by Mortgagee precludes such termination.

7.10 **Purchase by Mortgagee**. Upon any foreclosure sale or sales, Mortgagee may bid for and purchase the Mortgaged Premises and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

7.11 **Mortgagor as Tenant Holding Over**. In the event of any such foreclosure sale, Mortgagor shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

7.12 **Suits to Protect the Mortgaged Premises**. Mortgagee shall have the power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Mortgaged Premises by any acts which may be unlawful or which may constitute an Event of Default under this Mortgage, (b) to preserve or protect its interest in the Mortgaged Premises and in the Leases and Rents arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Mortgagee.

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7.13 **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the entire amount of the Indebtedness at the date of the institution of such proceedings and for any additional amount of the Indebtedness after such date.

7.14 **Mortgagees' Expenses.** Immediately upon the first insertion of any advertisement or notice of any foreclosure sale, there shall be and become due and owing from Mortgagor all reasonable expenses incident to said advertisement or notice, all court costs and all reasonable expenses incident to any foreclosure proceedings brought under this Mortgage, including reasonable attorneys' fees and post-judgment collection costs and expenses. No party shall be required to receive only the aggregate indebtedness then secured hereby with the interest thereon to the date of payment unless the same shall be accompanied by a tender of the said expenses and costs.

ARTICLE 8 CONDEMNATION

8.1 **General.** Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceeding for the condemnation of the Mortgaged Premises, or any part thereof, Mortgagor shall notify Mortgagee of such fact. Mortgagor shall then, if requested by Mortgagee, file or defend its claim thereunder and prosecute same with due diligence to its final disposition and shall cause any awards or settlements or compensation in lieu thereof to be paid over to Mortgagee for disposition pursuant to the terms of this Mortgage. Mortgagor may be the nominal party in such proceeding, but Mortgagee shall be entitled to participate in and to control same and to be represented therein by counsel of its own choice; and Mortgagor shall deliver, or cause to be delivered, to Mortgagee such instruments as may be reasonably requested by it from time to time to permit such participation. If the Mortgaged Premises is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, the award, settlement or other compensation payable to Mortgagor by virtue of its interest in the Mortgaged Premises shall be, and by these presents is, assigned, transferred and set over unto Mortgagee to be held by it, subject to the lien and security interest of this Mortgage, and disbursed as follows:

(a) If (i) all of the Mortgaged Premises is taken, (ii) so much of the Mortgaged Premises is taken, or the Mortgaged Premises is so diminished in value, that the remainder thereof cannot (in Mortgagee's reasonable judgment) be restored or repaired to a profitable condition for the purpose for which it was being used immediately prior to such taking or diminution within twelve (12) months after the date of condemnation, (iii) an Event of Default shall have occurred and be continuing, or (iv) the Mortgaged Premises is partially taken or diminished in value and (in Mortgagee's reasonable judgment) cannot be reasonably rebuilt, restored or repaired in any manner, then, in any such event, the entirety of the sums to be paid to Mortgagee shall be applied by it in the order recited in Paragraph 8.2 hereinbelow; or

(b) If (i) only a portion of the Mortgaged Premises is taken and the portion remaining can (in Mortgagee's reasonable judgment), be rebuilt within twelve (12) months after the condemnation, (ii) none of the other facts recited in Paragraph 8.1(a) hereinabove exists, (iii) Mortgagor shall deliver to Mortgagee plans and specifications for such rebuilding, restoration or repair reasonably acceptable to Mortgagee, which acceptance shall be evidenced by Mortgagee's written consent thereto, and (iv) Mortgagor shall thereafter commence the rebuilding, restoration or repair and complete same, all in substantial accordance with the plans and specifications and within three (3) months after the date of the taking or diminution in value, and shall otherwise comply with Paragraph 4.8 hereinabove, then such

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sums shall be paid to Mortgagee to reimburse Mortgagee for money spent in the rebuilding, restoration or repair; otherwise, same shall be applied by Mortgagee in the order recited in Paragraph 8.2 hereinbelow.

8.2 **Application of Proceeds.** All proceeds received by Mortgagee with respect to a taking or a diminution in value of the Mortgaged Premises shall be applied in the following order of priority:

(a) First, to reimburse Mortgagee and the Lenders for all reasonable costs and expenses, including reasonable attorneys' fees, incurred in connection with collection of the said proceeds:

(b) Thereafter, the balance, if any, shall be applied in the order of priority recited in Paragraphs 8(b) through (d) hereinabove to the portion of the principal amount allocable to the Mortgaged Premises (except that no prepayment premium or breakage fee shall be owing from Mortgagee to Mortgagee or any Lender in connection therewith) and, to the extent Mortgagee satisfies the requirements for a Property Release under Section 4.1 of the Credit Agreement, the Mortgaged Premises and Mortgagee shall be released from the lien of this Mortgage and the other Loan Documents; provided, however, that if such proceeds are required under Paragraph 8.1(b) hereinabove to be applied to the rebuilding, restoration or repair of the Mortgaged Premises, the provisions of Paragraph 4.8 hereinabove shall determine the conditions precedent for utilizing such proceeds for such purpose.

ARTICLE 9 SECURITY AGREEMENT

9.1 **Security Interest.** This Mortgage shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until this Mortgage shall terminate, as provided in Article 2 hereinabove, a first and prior security interest under, the Uniform Commercial Code with respect to the Personalty, Fixtures, Construction Agreements, Plans, Leases and Rents. To this end, Mortgagee 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 and prior security interest in all of Mortgagee's rights, title, and interest in, to, under, and with respect to all personal property of any kind whatsoever, now or hereafter attached to, installed in or used (temporarily or permanently) or intended to be used in connection with the Mortgaged Premises or in the operation of the Improvements or in the operation or maintenance of such Improvements, plant or business situate thereon, including, but not limited to, the Personalty, Fixtures, Construction Agreements, Plans, Leases, and Rents to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations and the Specified Derivatives Obligations. As to all of the above-described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing under the Uniform Commercial Code, and is acknowledged and agreed to be a "mortgage" under the Uniform Commercial Code.

9.2 **Financing Statements.**

(a) Mortgagee hereby agrees with Mortgagee to authorize Mortgagee to file such financing statements, in form and substance satisfactory to Mortgagee, and to execute and deliver to Mortgagee such further assurances as Mortgagee may, from time to time, reasonably consider 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 as appropriate, at such times and places as may be required or permitted by law, to so create, perfect and preserve such security interest.

(b) Mortgagee hereby irrevocably authorizes Mortgagee at any time and from time to time to file in any filing office any initial financing statements and amendments thereto that (i) indicate

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the collateral as "all assets used or procured for use or otherwise relating to" the Mortgaged Premises or words of similar effect, or as being of equal or lesser scope or in greater detail, and to indicate the Mortgaged Premises as defined or in a manner consistent with the term as defined in this Mortgage and (ii) contain any other information required by part 5 of Article 9 of the Uniform Commercial Code or any such filing office for the sufficiency or filing office acceptance of any initial financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organizational identification number issued to Mortgagor. Mortgagor agrees to provide any such information to Mortgagee promptly upon request. Mortgagor also ratifies its authorization for Mortgagee to have filed in any filing office in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof. Mortgagor shall pay to Mortgagee, from time to time, upon demand, any and all reasonable costs and expenses incurred by Mortgagee in connection with the filing of any such initial financing statements and amendments, including reasonable attorneys' fees and all disbursements. If not paid within thirty (30) days after Mortgagee's request, such costs and expenses shall bear interest at the Post-Default Rate from the date paid by Mortgagee until the date repaid by Mortgagor, and such costs and expenses, together with such interest, shall be part of the Obligations and shall be secured by this Mortgage.

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

(d) If Mortgagor shall at any time acquire a commercial tort claim relating to the Mortgaged Premises, Mortgagor shall immediately notify Mortgagee in a writing signed by Mortgagor of the brief details thereof and grant to Mortgagee a security interest therein and in the proceeds thereof.

9.3 **Uniform Commercial Code Remedies.** Mortgagee shall have all the rights, remedies, and recourses with respect to the Personalty, Fixtures, Construction Agreements, Plans, Leases and Rents afforded to a "Secured Party" under the Uniform Commercial Code in addition to, and not in limitation of, the other rights, remedies, and recourses afforded by the Loan Documents.

9.4 **Fixture Filing.** The name of the "Secured Party," and the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, are as set forth in the first paragraph on page 1 of this Mortgage; and a statement indicating the taxes, or describing the items, of collateral is set forth in the definition of "Mortgaged Premises" *supra*. The exact legal name of the "Debtor", the identity or corporate structure and residence or principal place of business of "Debtor," the mailing address of "Debtor," the state-issued organizational identification number of "Debtor", and the federal tax identification number of "Debtor" are as set forth below:

Legal Name:	KTR ILL V LLC
Corporate Structure:	Delaware limited liability company
Principal Place of Business:	Melrose Park, Illinois
Mailing Address:	c/o KTR Capital Partners LP Five Tower Bridge 300 Barr Harbor Drive Suite 150 Conshohocken, Pennsylvania 19428

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Organizational Number: 5202082

Federal Tax
Identification Number: 35-2452517

9.5 **Foreclosure of Security Interest.** 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 7 or referred to in Paragraph 9.3 hereinabove or Article 10 hereinbelow, to proceed in the manner set forth in the Uniform Commercial Code, relating to the procedure to be followed when a security agreement covers both real and personal property. In the event Mortgagee proceeds under the Uniform Commercial Code against any personal property encumbered by this Mortgage, unless the Mortgaged Premises is perishable or threatens to decline speedily in value, ten (10) days' notice to Mortgagor or any other "debtor" described in the Uniform Commercial Code shall constitute commercially reasonable notice. Mortgagee shall also be entitled to proceed as to both the Land and all personal or mixed Mortgaged Premises and all fixtures in accordance with Mortgagee's rights and remedies with respect to the Land.

ARTICLE 10
ASSIGNMENT OF LEASES AND RENTS

10.1 **Assignment.**

(a) As additional consideration for the Indebtedness and to secure payment of the Indebtedness and performance of the Obligations and Specified Derivatives Obligations, Mortgagor hereby absolutely and presently assigns, conveys, and transfers to Mortgagee the following:

(i) all Leases, written or oral, now in existence or hereafter arising, and all agreements for the use and occupancy of all or any portion of the Mortgaged Premises, with the right, power and authority of Mortgagor to alter, modify or change the terms of such Leases or to surrender, cancel, or terminate such Leases without the consent of Mortgagee, together with any and all extensions and renewals thereof including subleases, if any; and

(ii) any and all Lessee's obligations under any of such Leases.

(b) As additional consideration for the Indebtedness and to provide a source of funds for the repayment of the Indebtedness and performance of the Obligations and the Specified Derivatives Obligations, Mortgagor hereby also absolutely and presently assigns, conveys, and transfers to Mortgagee the immediate and continuing right to collect and receive all of the Rent now due or which may become due or to which Mortgagor may now or shall hereafter become entitled or may demand or claim.

(c) Each such present and absolute assignment shall be subject in all respects, however, to the limited license granted hereby by Mortgagee to Mortgagor to collect and receive the Rents.

10.2 **License from Mortgagee to Mortgagor.** Provided that there exists no Event of Default, Mortgagor shall have the right under a license granted hereby and Mortgagee hereby grants to Mortgagor a license (but limited by the remedies of Mortgagee set forth herein) to collect, but not more than one (1) month in advance (other than customary and reasonable security deposits), all of the Rents arising from or out of the Leases or any renewals or extensions thereof, or from or out of the Mortgaged Premises or any part thereof and to act as the landlord under the Lease. Provided that no Event of Default exists,

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Mortgagee shall not take any action to exercise the right, power or authority of Mortgagee described in Paragraph 10.1 of this Mortgage.

10.3 Performance under Leases. Mortgagor shall: (a) observe, perform, and discharge duly and punctually all and singular the obligations, terms, covenants, conditions, and warranties of the Leases, (b) give prompt notice to Mortgagee of any failure on the part of Mortgagor to observe, perform, and discharge the same or of any claim made by the Lessee under any Lease of any such failure by Mortgagor, (c) enforce, short of termination of the Leases, or secure in the name of Mortgagee the performance of, each and every obligation, term, covenant, condition, and agreement in the Leases to be performed by any Lessee, (d) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of Mortgagor and any Lessee thereunder, doing so in the name and on behalf of Mortgagee upon request by Mortgagee, but at the expense of Mortgagor, and pay all reasonable costs and expenses of Mortgagee, including reasonable attorneys' fees and disbursements, in any action or proceeding in which Mortgagee may appear, (e) endeavor to lease the Mortgaged Premises at a good and sufficient rental and on terms and conditions in compliance with the Loan Documents, (f) deliver to Mortgagee executed copies of all existing and future Leases (together with any and all amendments, modifications, guaranties, and supplements thereof or with respect thereto) when executed upon all or any part of the Mortgaged Premises, and (g) make, execute and deliver to Mortgagee upon demand, and at any time or times, any and all assignments and other documents and instruments which Mortgagee may deem advisable to carry out the true purposes and intent of the assignment set forth in this Article 10.

10.4 Execution and Modification of Leases. Unless Mortgagor first obtains the express written consent of Mortgagee, except that the consent of Mortgagee shall not be needed in those instances which are expressly described in the Credit Agreement, Mortgagor shall not (a) execute any Lease of all or any portion of the Mortgaged Premises, (b) cancel, terminate, or consent to any surrender of any Lease, (c) commence any action of ejectment or any summary proceedings for dispossession of the Lessee under any Lease or exercise any right of recapture provided in any Lease, (d) amend, modify, supplement, or in any way alter the terms of any Lease, (e) waive or release the Lessee or any guarantors from any obligations or conditions to be performed by the Lessee under any Lease, (f) renew or extend the term of any Lease unless an option therefor was originally so reserved by the Lessee and for a fixed and definite rental, (g) consent to any modification of the express purposes for which the Mortgaged Premises has been leased, (h) consent to any subletting of the Mortgaged Premises or any part thereof, to any assignment of any Lease by any Lessee thereunder, or to any assignment or further subletting of any sublease except as may be required or permitted by the terms of such Lease, (i) receive or collect any Rents from any present or future Lessee for a period of more than one (1) month in advance (whether in cash or by evidence of indebtedness), (j) pledge, transfer, mortgage, or otherwise encumber or assign future payments of Rents, or (k) waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any Lessee under any Lease of and from any obligations, covenants, conditions, and agreements to be kept, observed, and performed by such Lessee, including, without limitation, the obligation to pay Rents thereunder, in the manner and at the time and place specified therein.

10.5 Power of Attorney.

(a) Subject to the license described and limited above, Mortgagor hereby constitutes and appoints Mortgagee its true and lawful attorney, coupled with an interest, and in the name, place, and stead of Mortgagor, to demand, sue for, attach, levy, recover, and receive all Rents and any premium, fee, or penalty payable upon the exercise by any Lessee under any Lease of a privilege of cancellation originally provided in such Lease and to give proper receipts, releases, and acquittances therefor and, after deducting reasonable expenses of collection, to apply the net proceeds as a credit upon any portion of the Indebtedness or the Obligations or Specified Derivatives Obligations selected by Mortgagee,

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notwithstanding the fact that such portion of said Indebtedness or the Obligations or Specified Derivatives Obligations may not then be due and payable, or that such portion of said Indebtedness or the Obligations or Specified Derivatives Obligations is otherwise adequately secured; and Mortgagor does hereby authorize and direct any such Lessee to deliver such payment to Mortgagee, in accordance with this Mortgage, and Mortgagor hereby ratifies and confirms all that its said attorney, Mortgagee, shall do or cause to be done by virtue of the powers granted hereby. The foregoing appointment shall be exercisable upon and during the continuance of an Event of Default (but after the occurrence of an Event of Default if such Event of Default is cured by Mortgagee) is irrevocable and continuing and such rights, powers and privileges shall be exclusive in Mortgagee, its successors and assigns, so long as any part of the Indebtedness secured hereby remains unpaid and undischarged. A Lessee need not inquire into the authority of Mortgagee to collect any Rents, and its obligations to Mortgagor shall be absolutely discharged to the extent of any payment to Mortgagee is irrevocable and continuing and such rights, powers, and privileges shall be exclusive in Mortgagee, its successors and assigns, so long as any part of the Indebtedness secured hereby remains unpaid and undischarged. A Lessee need not inquire into the authority of Mortgagee to collect any Rents, and its obligations to Mortgagor shall be absolutely discharged to the extent of any payment to Mortgagee.

(b) Subject to the license described and limited above, Mortgagor hereby constitutes and appoints Mortgagee its true and lawful attorney, coupled with an interest, and, in the name, place and stead of Mortgagor to subject and subordinate at any time and from time to time any Lease or any part thereof to the lien, conveyance and security interest of this Mortgage or any other mortgage, or security agreement on or to any ground lease of the Mortgaged Premises or to request or require such subordination, where such reservation, option or authority was reserved to Mortgagor under any such Lease, or in any case where Mortgagor otherwise would have the right, power or privilege so to do. The foregoing appointment shall be exercisable upon and during the continuance of an Event of Default (but after the occurrence of an Event of Default if such Event of Default is cured by Mortgagee) is irrevocable and continuing and such rights, powers and privileges shall be exclusive in Mortgagee, its successors and assigns, so long as any part of the Indebtedness secured hereby remains unpaid and undischarged, and Mortgagor hereby warrants that Mortgagor has not, at any time prior to the date hereof, exercised any such rights, and Mortgagor hereby covenants not to exercise any such right to subordinate any such Lease to the lien of this Mortgage or to any other mortgage, or security agreement or to any ground lease unless requested to do so by Mortgagee.

(c) The powers of attorney granted by Mortgagor to Mortgagee above are powers coupled with an interest shall be deemed to be granted in compliance with the Illinois Power of Attorney Act (755 ILCS 45 et seq.) and shall be irrevocable and unaffected by the disability of the principal so long as any portion of the Indebtedness, Obligations, Specified Derivatives Obligations and other payments and performances secured by this Mortgage remains unpaid or unperformed. Mortgagee shall have no obligation to exercise any of the rights and powers described therein in any event.

10.6 **Non-Merger.** So long as the Indebtedness secured hereby remains unpaid and undischarged and unless Mortgagee otherwise consents in writing, the fee and the leasehold estates in and to the Mortgaged Premises shall not merge but shall always remain separate and distinct, notwithstanding the union of such estates (without implying Mortgagor's consent to such union) either in Mortgagor, Mortgagee, any Lessee or any third party by purchase or otherwise. In the event this Mortgage is originally placed on a leasehold estate and Mortgagor later obtains fee title to the Mortgaged Premises, such fee title shall be subject and subordinate to this Mortgage.

10.7 **No Creation of Mortgagee in Possession.** The acceptance by Mortgagee of the assignment provided in this Article 10, together with all of the rights, powers, privileges and authority created in this Article 10 or elsewhere in this Mortgage, shall not, prior to entry upon and taking

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possession of the Mortgaged Premises by Mortgagee or thereafter, be deemed or construed to constitute Mortgagee a "mortgagee in possession," or at any time or in any event obligate Mortgagee to appear in or defend any action or proceeding relating to the Leases, the Rents or the Mortgaged Premises, or to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Lease, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Mortgagor by any Lessee and not assigned and delivered to Mortgagee, or obligate Mortgagee to lease the Mortgaged Premises or attempt to do the same, nor shall Mortgagee be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Premises, except to the extent caused by the gross negligence or willful misconduct of Mortgagee or its agents, employees, contractors or representatives.

10.8 Representations Concerning Leases. Mortgagor hereby represents and warrants that Mortgagor has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the Leases to be kept, observed, and performed on Mortgagor's part, and that the Lessees thereunder are not in material default of any of the terms or provisions of the respective Leases. Mortgagor hereby further represents and warrants that, except as indicated herein, in any estoppel certificate provided to Mortgagee by a Lessee or the rent roll delivered to Mortgagee, (a) the Leases are in full force and effect and unmodified; (b) Mortgagor has not previously sold or assigned, transferred, mortgaged, or pledged the Leases or the Rents, whether now due or hereafter to become due (except in connection with a loan that was discharged and released with the initial advance of proceeds of the Credit Facility); the Rents now due or to become due for any periods subsequent to the date hereof have not been collected and payment thereof has not been anticipated for a period of more than one (1) month in advance, waived or released, discounted, set off, or otherwise discharged, or compromised except as set forth in the Leases; (c) Mortgagor has not received any funds or deposits from any Lessee for which credit has not already been made on account of accrued rents (except for security deposits); and (d) Mortgagor has not done any thing which might prevent Mortgagee from or limit Mortgagee in operating under or enforcing the terms hereof.

10.9 Attornment. Upon the occurrence of an Event of Default hereunder and the enforcement by Mortgagee of any remedy under this Mortgage, the Lessee under each Lease shall, at Mortgagee's request, attorn to Mortgagee or any other person succeeding to the interest of Mortgagee as a result of such enforcement and shall recognize Mortgagee or such successor in interest as landlord under the Lease without change in the provisions thereof; provided, however, that Mortgagee or such successor in interest shall not be bound by (a) any payment of an installment of rent or additional rent which may have been made more than thirty (30) days before the due date of such installment, (b) any amendment or modification to the Lease made without the express written consent of Mortgagee or such successor in interest; (c) any act or omission of any prior landlord (including Mortgagor) under the Lease; or (d) any offsets, claims or defenses which the Lessee might have against any prior landlord (including Mortgagor), except as otherwise provided in any Subordination, Non-Disturbance and Attornment Agreement or comparable agreement executed by Mortgagee and any Lessee.

ARTICLE 11 MISCELLANEOUS

11.1 Performance at Mortgagor's Expense. Without in any way limiting Paragraph 10.3 hereof, Mortgagor shall pay to Mortgagee immediately upon demand all reasonable costs and expenses incurred by Mortgagee or any Lender in connection with: (a) the preparation of this Mortgage and any and all other Loan Documents contemplated hereby (including any amendments hereto or thereto or consents, releases or waivers hereunder or thereunder); (b) the administration of this Mortgage and the other Loan Documents for the term of the Notes; and (c) the enforcement or satisfaction by Mortgagee or any Lender of any of Mortgagor's obligations under this Mortgage or under the Loan Documents. For all

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purposes of this Mortgage, Mortgagee's and Lenders' costs and expenses shall include, without limitation, all appraisal fees, cost engineering and inspection fees, architectural fees and costs incurred by Mortgagee or any Lender, engineering fees, legal fees (including, without limitation, fees for trial, appeal or other proceedings), environmental consultant fees (if any), auditor fees, and the cost to Mortgagee or any Lender of any documentary taxes, recording fees, brokerage fees, title insurance premiums and title surveys. Except to the extent that certain of these costs and expenses are included within the definition of Indebtedness, the payment by Mortgagor of any of these costs and expenses shall not be credited, in any way or to any extent, against any portion of the Indebtedness. If any of the services described in this Paragraph 11.1 are provided by an employee of Mortgagee or any Lender, Mortgagor shall reimburse Mortgagee or such Lender its reasonable standard charge for such services.

11.2 Survival of Obligations. Each and all of the Obligations, Specified Derivatives Obligations, and the representations and warranties made by Mortgagor in this Mortgage shall survive the execution and delivery of the Loan Documents, and the consummation of the Credit Facility called for therein, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

11.3 Further Assurances. Mortgagor, upon the request of Mortgagee, will execute, acknowledge, deliver, and record and/or file such further instruments and do such further acts as may be reasonably necessary, desirable, or proper to carry out more effectively the purpose of the Loan Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, betterments, or appurtenances to the then Mortgaged Premises.

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

11.5 Notices. All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be given as set forth in the Credit Agreement. Mortgagor hereby acknowledges and agrees that notice given under any provision of the Loan Documents shall also satisfy the notice requirements under any other provision of the Loan Documents relating to the same factual circumstances, and in no event shall Mortgagee be required to give more than one (1) notice for any default of the Obligations (or Specified Derivatives Obligations) or failure to pay the Indebtedness.

11.6 No Waiver.

(a) 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 same or of any other term, provision or condition thereof, and Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by Mortgagor of any and all such terms, provisions and conditions. No delay or omission by Mortgagee, or by any holder of any of the Notes, to exercise any right, power or remedy accruing upon any breach or Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such breach or Event of Default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. No consent or waiver, expressed or implied, by Mortgagee to or of any breach or Event of Default by Mortgagor in the performance of the Obligations of Mortgagor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same or any other Obligations of Mortgagor hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or to declare an Event of Default, irrespective of

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how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers, or remedies of Mortgagee hereunder.

(b) No act or omission by Mortgagee shall release, discharge, modify, change, or otherwise affect the original liability under the Notes, this Mortgage or any other Obligations or Specified Derivatives Obligations of Mortgagor or any subsequent purchaser of the Mortgaged Premises or any part thereof, or any maker, co-signer, endorser, surety, or guarantor, or preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or by any subsequent Event of Default, or alter the security interest or lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Mortgagee. Without limiting the generality of the foregoing, Mortgagee may: (i) grant forbearance or an extension of time for the payment of all or any portion of the Indebtedness; (ii) take other or additional security for the payment of the Indebtedness; (iii) waive or fail to exercise any right granted hereunder or in the Notes; (iv) change any of the terms, covenants, conditions, or agreements of the Notes or this Mortgage; (v) consent to the filing of any map, plat, or replat affecting the Mortgaged Premises; (vi) consent to the granting of any easement or other right affecting the Mortgaged Premises; (vii) make or consent to any agreement subordinating the security interest or lien hereof; or (viii) take or omit to take any action whatsoever with respect to the Notes, this Mortgage, the Mortgaged Premises or any document or instrument evidencing, securing or in any way relating to the Indebtedness, all without releasing, discharging, modifying, changing, or affecting any such liability, or precluding Mortgagee from exercising any such right, power or privilege, or affecting the security interest or lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Premises, Mortgagee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Premises or the Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing and/or discharging any liabilities, Obligations, or undertakings.

11.7 Mortgagee's Right to Perform the Obligations. If Mortgagor shall fail to make any payment or perform any act required by the Loan Documents, then at any time after the expiration of any applicable notice and cure period, and without notice to or demand upon Mortgagor and without waiving or releasing any other right, remedy or recourse Mortgagee may have because of same, Mortgagee may (but shall not be obligated to) in accordance with all Legal Requirements, make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter the Land and Improvements for such purpose and to take all such action thereon and with respect to the Mortgaged Premises as it may deem necessary or appropriate; provided, however, that Mortgagee shall not exercise its rights under this Paragraph 11.7 to make such payments or perform such acts until such time as there has occurred (a) an Event of Default or (b) an emergency situation which adversely affects Mortgagee's security interest in the Mortgaged Premises, as determined by Mortgagee in its sole and absolute discretion (and all such entry and performance by or on behalf of Mortgagee shall be made subject to all of the terms, conditions, requirements, and limitations of the Leases, including, but not limited to, the provision by Mortgagee of required notices to the Lessees thereunder prior to entry and compliance with the security and confidentiality procedures set forth in the Leases), and further provided, however, that Mortgagee shall not pay any such statement, invoice, lien, or tax bill at any time during which Mortgagor shall be contesting or disputing the validity or amount thereof or the obligation of Mortgagor to pay the same in accordance with the provisions of this Mortgage, and Mortgagor hereby irrevocably constitutes and appoints Mortgagee as its attorney-in-fact, which appointment shall be deemed coupled with an interest, to take the actions described in this Paragraph 11.7. If Mortgagee shall elect to pay any Imposition or other sums due with reference to the Mortgaged Premises, Mortgagee may do so in reliance on any bill, statement, or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Mortgagee shall not be bound to

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inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim, or charge before making an advance for the purpose of preventing or removing the same. Mortgagor shall defend, indemnify and hold Mortgagee harmless from and against all losses, expenses, damages, claims, and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Mortgagee pursuant to the provisions of this Paragraph 11.7 or by reason of any other provision in the Loan Documents, except to the extent the same arise by reason of the gross negligence or willful misconduct of Mortgagee or its agents, employees, representatives or contractors. All sums paid by Mortgagee pursuant to this Paragraph 11.7, and all other sums expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the Post-Default Rate from the date of such payment or expenditure to the date of payment, including after the entry of any judgment, shall constitute additions to the Indebtedness, shall be secured by the liens, security interests and rights created by the Loan Documents and shall be paid by Mortgagor to Mortgagee upon demand.

11.8 **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 Premises.

11.9 **Successors and Assigns.** All of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives, and all other persons claiming by, through or under them; provided, however, Mortgagor may not assign, transfer, or in any way hypothecate its interest in the Loan Documents or, except as expressly permitted by the Loan Documents, the Mortgaged Premises.

11.10 **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, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to hereinabove shall be affected thereby, but rather, shall be enforced to the greatest extent permitted by law. Should this instrument be or ever become ineffective as a Mortgage, then it shall be construed and enforceable as a realty mortgage (with Mortgagor as the mortgagor and Mortgagee as the mortgagee).

11.11 **Entire Agreement and Modification.** The Loan Documents contain the entire agreement 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 not be amended, revised, waived, discharged, released, or terminated orally, but 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. Mortgagor expressly agrees that for purposes of this Mortgage: (i) this Mortgage shall be a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1 et seq. (the "Credit Act"); (ii) the Credit Act applies to this transaction including, but not limited to, the execution of this Mortgage; and (iii) any action on or in any way related to this Mortgage shall be governed by the Credit Act.

11.12 **Use and Management of Mortgaged Premises.** Mortgagor will at all times operate the Mortgaged Premises as a warehouse/distribution center. Mortgagor shall not be permitted to alter or change the use of the Mortgaged Premises or to abandon the Mortgaged Premises without the prior express written consent of Mortgagee (except as may be expressly permitted by the terms of the Leases), which consent shall not be unreasonably withheld, conditioned, or delayed.

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11.13 **Assignment.** This Mortgage is assignable by Mortgagee and any assignment hereof by Mortgagee shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Mortgagee.

11.14 **Time is of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under this Mortgage, the Notes and any and all other Loan Documents.

11.15 **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.

11.16 **Applicable Law.** This Mortgage shall be governed by and construed according to the laws of the State of Illinois.

11.17 **Subrogation.** If any or all of the proceeds of the Notes have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Premises, then, to the extent of such funds so used, the indebtedness and this Mortgage shall be subrogated to all of the rights, claims, liens, titles, and interests heretofore existing against the Mortgaged Premises to secure the indebtedness so extinguished, extended, or renewed, and the former rights, claims, liens, titles, and interests, if any, are not waived, but rather, are continued in full force and effect in favor of Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the satisfaction of the Obligations and the Specified Derivatives Obligations.

11.18 **Credit Agreement.** Reference is hereby made for all purposes to the Credit Agreement pertaining to the funding of advances of the principal amount of the Credit Facility. In the event of a conflict between the terms and provisions hereof and those of the Credit Agreement, the Credit Agreement shall govern and control.

11.19 **Headings.** The Article, Paragraph and subparagraph headings herein are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing, the text of this Mortgage.

11.20 **No Joint Venture or Partnership.** Notwithstanding anything in any of the Loan Documents or in any other agreement or commitment to the contrary, neither the Loan Documents nor the transactions described in the Loan Documents nor the rights and obligations granted therein shall in any way create or contribute to the creation of a partnership or joint venture or similar arrangement between Mortgagor and Mortgagee or between Guarantor and Mortgagee.

11.21 **Statute of Limitations.** The pleading of any statute of limitations as a defense to any obligation secured by this Mortgage is waived by the Mortgagor to the full extent permitted by law.

11.22 **Statement Fee.** For any statement requested by Mortgagor regarding the Obligations and/or Specified Derivatives Obligations secured hereby, or regarding the amounts of any funds or trusts reserved hereunder, Mortgagee may charge a reasonable fee at the time of the request therefor.

11.23 **No Third Parties Benefitted.** This Mortgage is made and entered into for the sole protection of and benefit of Mortgagor and Mortgagee, and their successors and assigns, and no other person or persons shall have any right to action hereon or rights to the Credit Facility funds at any time.

11.24 **Waiver of Right to Trial By Jury.** **MORTGAGOR AND MORTGAGEE, BY ACCEPTING THIS MORTGAGE, EACH HEREBY EXPRESSLY WAIVE ANY RIGHT TO**

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TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS MORTGAGE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH; OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS MORTGAGE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND MORTGAGOR AND MORTGAGEE EACH HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS MORTGAGE AND MORTGAGOR OR MORTGAGEE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS PARAGRAPH 11.24 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE MORTGAGOR AND MORTGAGEE TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

11.25 **Hazardous Substances.** As used below, and in any of the other Loan Documents, "Hazardous Substances" shall mean and include all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), or any other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereinafter referred to as "CERCLA"), as amended, 42 U.S.C. Sec. 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976 (hereinafter referred to as "RCRA"), 42 U.S.C. Sec. 6901 *et seq.*, or state lien or state superlien or environmental clean-up statutes (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). Mortgagor hereby warrants, represents, covenants, and indemnifies as follows:

(a) Mortgagor has had performed reasonable investigations, studies and tests as to any environmental contamination, liabilities or problems with respect to the Mortgaged Premises, including, without limitation, the storage, disposal, presence, discharge, or release of any Hazardous Substances at or with respect to the Mortgaged Premises, and that such investigations, studies, and tests have disclosed no Hazardous Substances or possible violations of any Environmental Laws, except as otherwise disclosed in that certain Phase I Environmental Assessment, prepared by [] for KTR Capital Partners, LLC, dated [], Project Number [].

(b) Neither the Mortgaged Premises nor any other personal or real property owned by Mortgagor is subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Substances or environmental problems, impairments or liabilities with respect to the Mortgaged Premises or such other property, or the direct or indirect violation of any Environmental Laws.

(c) Mortgagor shall immediately notify Mortgagee should Mortgagor become aware of (i) any Hazardous Substance or other environmental problem or liability with respect to the Mortgaged Premises, or (ii) any lien, action, or notice of the nature described in subparagraph (b) above. Mortgagor shall, at its own cost and expense, take all actions as shall be necessary or advisable for the clean-up of the Mortgaged Premises, including all removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner reasonably satisfactory to Mortgagee), and shall further pay or cause to be paid at no expense to Mortgagee all clean-up, administrative and enforcement costs of applicable government agencies which may be asserted against the Mortgaged Premises or the owner thereof.

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All warranties, representations and indemnities above shall be deemed to be continuing and shall remain true and correct in all material respects until the Credit Facility has been repaid in full and terminated and any limitations period expires. Mortgagor's covenants above shall survive any exercise of any remedy for Mortgagee under the Loan Documents, including foreclosure of this Mortgage (or deed in lieu thereof), even if, as a part of such foreclosure or deed in lieu of foreclosure, the Credit Facility amount is satisfied in full. It shall, at the option of Mortgagee, be an Event of Default hereunder should any of the representations or warranties be or become untrue or misleading or should the Mortgaged Premises, or any other property owned by Mortgagor, become subject to any claim, notice, or action of a nature described in subparagraph (b) above. In addition to all other remedies that Mortgagee may have as a result of an Event of Default, Mortgagee may accelerate payment of the Credit Facility as provided in Paragraph 7.1(a) of this Mortgage. Notwithstanding the foregoing to the contrary, Mortgagor shall have no liability under this Mortgage with respect to Hazardous Substances in, upon, about or beneath the Mortgaged Premises or migrating to the Mortgaged Premises (or any violation or claim of violation of Environmental Laws with respect to the Mortgaged Premises, or any governmental or judicial claim, order or judgment with respect to the Mortgaged Premises) to the extent that such presence or migration of Hazardous Substances or violation or claim of violation of Environmental Laws or claim, order, or judgment (A) first occurs after the date upon which the lien of the Mortgage is foreclosed or a deed in lieu thereof is accepted by Mortgagee or is first arising or occurring after Mortgagee (directly and not through a receiver) takes possession of the Mortgaged Premises, but only if such presence or migration of Hazardous Substances or violation or claim of violation of Environmental Laws or claim, order, or judgment does not arise from the acts or omissions of Mortgagor, Guarantor, or their respective affiliates or (B) results solely from the gross negligence or willful misconduct of Mortgagee or its agents, employees, representatives, or contractors.

11.26 **Commercial Loan.** The Mortgagor hereby stipulates and warrants that the proceeds of Credit Facility shall be used solely for business purposes and in furtherance of the regular business affairs of the Mortgagor, and the entire principal obligations secured by this Mortgage constitute (a) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (b) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

11.27 **Certification of Receipt.** The undersigned certifies and acknowledges receipt of a true, correct, and complete copy of this Mortgage and the Notes.

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

(a) Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent

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permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Mortgage, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.

(b) Wherever provision is made in this Mortgage or the Credit Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale.

(c) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Mortgaged Premises or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties and provisions for in Sections 15-1701 and 15-1703 of the Act.

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

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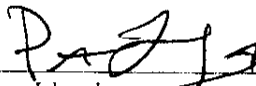
**Signature Page to
MORTGAGE, ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY
AGREEMENT AND FIXTURE FILING (MELROSE PARK, ILLINOIS)**

IN WITNESS WHEREOF, the Mortgagor, intending to be legally bound hereby, has executed and delivered this Mortgage, Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (Melrose Park, Illinois), all as of the date first above written.

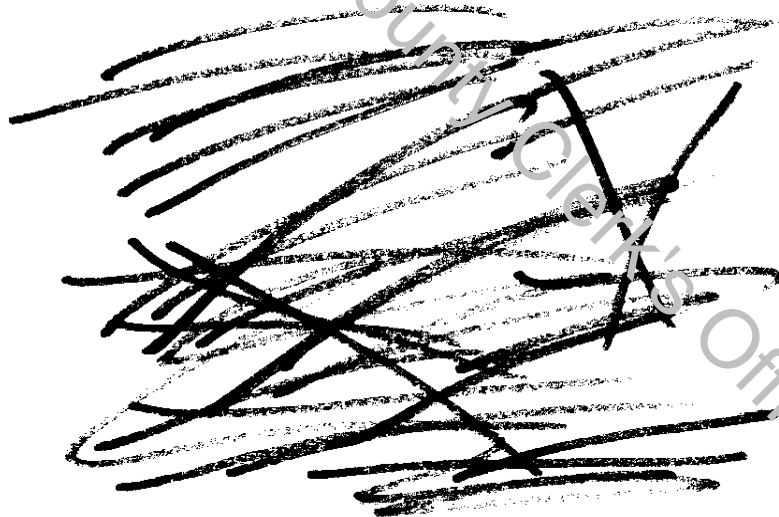
MORTGAGOR:

KTR ILL V LLC, a Delaware limited liability company

By: **KTR Property Trust III**, a Maryland real estate investment trust, its Sole Member

By: 
J. Peter Lloyd
Senior Vice President

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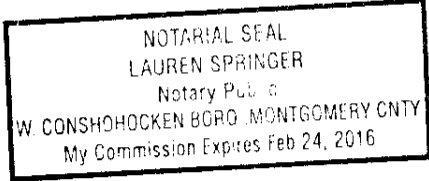
COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF Montgomery : SS

On this 18th day of December 2013, before me, Lauren Springer
a Notary Public in and for the Commonwealth of Pennsylvania, personally appeared J. PETER LLOYD,
personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is
subscribed to the within instrument and acknowledge to me that he executed the same in his authorized
capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the
person acted, executed the instrument.

WITNESS my hand and official seal aforesaid

Signature Lauren Springer
My commission expires 2/24/16



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EXHIBIT "A"

ATTACHED TO AND MADE A PART OF THAT CERTAIN
MORTGAGE, ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY
AGREEMENT AND FIXTURE FILING (MELROSE PARK, ILLINOIS) EXECUTED BY KTR
ILL V LLC, AS MORTGAGOR, IN FAVOR OF WELLS FARGO BANK, NATIONAL
ASSOCIATION, IN ITS CAPACITY AS ADMINISTRATIVE AGENT FOR CERTAIN
LENDERS FROM TIME TO TIME, AS MORTGAGEE,
DATED DECEMBER 20, 2013

LEGAL DESCRIPTION

For Information Only:

2407-2457 West North Avenue, Melrose Park, Illinois 60160
Tax Parcel Numbers: 12-34-300-004-0000, 12-34-304-002-0000, 12-34-
304-006-8001, and 12-34-304-006-8002 on the Tax Map of Cook
County, Illinois.

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THE WEST 570 FEET OF THAT PART OF THE SOUTHWEST FRACTIONAL QUARTER, SOUTH OF THE INDIAN BOUNDARY LINE OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE INDIANA HARBOR BELT RAILROAD COMPANY AND NORTH OF THE NORTH LINE OF THE RIGHT OF WAY OF WEST NORTH AVENUE AS WIDENED, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SAID SOUTHWEST FRACTIONAL QUARTER AND THE NORTH LINE OF RIGHT OF WAY OF WEST NORTH AVENUE, SAID POINT BEING 102.43 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SOUTHWEST FRACTIONAL QUARTER; THENCE NORTH ALONG THE WEST LINE OF SAID SOUTHWEST FRACTIONAL QUARTER, 1342.37 FEET TO THE INTERSECTION OF SAID LINE WITH THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE INDIANA HARBOR BELT RAILROAD COMPANY, SAID POINT BEING 342.74 FEET SOUTH OF THE INDIAN BOUNDARY LINE, THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF SAID RAILROAD ALONG A LINE FORMING AN ANGLE OF 136 DEGREES 30 MINUTES 52 SECONDS FROM SOUTH TO EAST TO NORTH WITH THE WEST LINE OF SAID SOUTHWEST FRACTIONAL QUARTER, 828.28 FEET TO INTERSECTION OF SAID RIGHT OF WAY LINE WITH THE EAST LINE OF THE WEST 570 FEET OF SAID SOUTHWEST FRACTIONAL QUARTER; THENCE SOUTH ALONG A LINE 570 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST FRACTIONAL QUARTER, 1945.14 FEET TO THE INTERSECTION OF SAID PARALLEL LINE WITH THE NORTH LINE OF RIGHT OF WAY OF WEST NORTH AVENUE, SAID POINT BEING 102.78 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHWEST FRACTIONAL QUARTER; THENCE WEST ALONG THE NORTH RIGHT OF WAY LINE OF WEST NORTH AVENUE 570 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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EXHIBIT "B"

ATTACHED TO AND MADE A PART OF THAT CERTAIN
MORTGAGE, ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY
AGREEMENT AND FIXTURE FILING (MELROSE PARK, ILLINOIS) EXECUTED BY KTR
ILL V LLC, AS MORTGAGOR, IN FAVOR OF WELLS FARGO BANK, NATIONAL
ASSOCIATION, IN ITS CAPACITY AS ADMINISTRATIVE AGENT FOR CERTAIN
LENDERS FROM TIME TO TIME, AS MORTGAGEE,
DATED DECEMBER 20, 2013

Permitted Encumbrances

Those certain exceptions listed on Schedule B of that certain title commitment number [_____] dated effective [_____] issued by First American Title Insurance Company and updated through the date hereof.



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