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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 1523904040 Fee: \$108.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 08/27/2015 10:34 AM Pg: 1 of 36

Report Mortgage Fraud  
800-532-8785

8978454 Kowner D1 1093

Property of Cook County Clerk's Office

The property identified as: **PIN:** 17-09-127-016  
**Address:**  
**Street:** 372 WEST ONTARIO  
**Street line 2:**  
**City:** CHICAGO **State:** IL **ZIP Code:** 60654  
**Lender:** GENWORTH LIFE AND ANNUITY INSURANCE COMPANY  
**Borrower:** 372 WEST ONTARIO L.L.C.

**Loan / Mortgage Amount:** \$4,100,000.00

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

Box 400

S ✓  
P ✓  
S ✓  
SC ✓  
INT ✓

**Certificate number:** 207EB47E-1A56-4288-A212-58C1352599A7

**Execution date:** 8/11/2015

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PREPARED BY AND WHEN  
RECORDED MAIL TO:  
Stephen H. Malato, Esq.  
Hinshaw & Culbertson LLP  
222 N. LaSalle St., Suite 300  
Chicago, Illinois 60601

LOAN NO: 9010001006

ADDRESS:  
372 West Ontario  
Chicago, Illinois 60654

TAX NO.: 17-09-127-016

This space for Recorder's use only

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

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is made this ~~11th~~ day of ~~August~~, 2015, between 372 WEST ONTARIO L.L.C., an Illinois limited liability company (hereinafter referred to as "Mortgagor"), whose address is 445 North Wells, Suite 200, Chicago, Illinois, 60654 and GENWORTH LIFE AND ANNUITY INSURANCE COMPANY, a Virginia corporation (hereinafter referred to as "Mortgagee"), whose address is Servicing Department, 10851 Mastin, Suite 300, Overland Park, Kansas, 66210. For purposes of Article 9 of the Uniform Commercial Code, this Mortgage constitutes a security agreement and financing statement with Mortgagor being the Debtor and Mortgagee being the Secured Party. This Mortgage also constitutes a financing statement filed as a fixture filing pursuant to Article 9 of the Uniform Commercial Code.

Mortgagee is making a loan (the "Loan") in the principal amount of Four Million One Hundred Thousand and 00/100 Dollars (\$4,100,000.00) to be secured by that certain real property (the "Realty") described in Exhibit A attached hereto. The Loan, if not sooner paid, is due and payable in full on September 1, 2027 (the "Maturity Date").

In consideration of the Loan and to secure the full and absolute payment and performance of the Secured Obligations (hereinafter defined), Mortgagor does hereby irrevocably MORTGAGE, GRANT, BARGAIN, SELL AND CONVEY unto Mortgagee, its successors and assigns, forever, AND GRANT TO THE MORTGAGEE A SECURITY INTEREST IN, all of Mortgagor's estate, rights, title, claim, interest and demand, either in law or in equity, of, in and to the following property, whether the same be now owned or hereafter acquired (the "Property"):

(a) The Realty and all rights to the land lying in alleys, streets and roads adjoining or abutting the Realty;

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(b) All buildings, improvements and tenements now or hereafter located on the Realty;

(c) All fixtures and articles of property now or hereafter attached to, or used or adapted for use in the ownership, development, operation or maintenance of, the buildings, improvements and Realty (whether such items are leased, owned or subject to any title retaining or security instrument, or otherwise used or possessed), including without limitation all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus, all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces, all ranges, stoves, disposers, refrigerators and other appliances, all escalators and elevators, all baths and sinks, all cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash, all carpeting, underpadding, floor covering, paneling and draperies, all furnishings of public spaces, halls and lobbies, and all shrubbery and plants; all of which items shall be deemed part of the real property and not severable wholly or in part without material injury to the freehold; provided, however, that personal property and trade fixtures owned or supplied by tenants of the Property with the right of removal at the termination of their tenancies shall not be included within the scope of this paragraph;

(d) All easements, access, air and development rights, minerals and oil, gas and other hydrocarbon substances, royalties, water, water rights and water stock, and all other rights, hereditaments, privileges, permits, licenses, franchises and appurtenances now or hereafter belonging or in any way appertaining to the Realty;

(e) All of the rents, revenues, issues, profits and income of the Property and all present and future leases and other agreements for the occupancy or use of all or any part of the Realty, including without limitation, licenses, all cash or security deposits (whether or not in the form of cash), advance rentals and deposits or payments of similar nature, all fees or other consideration received by Mortgagor in connection with the termination or modification of any Lease of all or any portion of the Property and all guaranties of tenants' or occupants' performances under such leases and agreements; SUBJECT, HOWEVER, to the assignment of rents and other property to Mortgagee herein contained;

(f) All general intangibles relating to the development or use of the Property, including without limitation all permits, licenses and franchises, all names under or by which the Property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, logos and good will in any way relating to the Realty and all casualty insurance policies and liability insurance policies, and all monies and proceeds thereof, rights thereto and all unearned premiums returned upon cancellation thereof pertaining to the Property;

(g) All awards, compensation and settlements in lieu thereof made as a result of the taking by power of eminent domain of the whole or any part of the Property, including any awards for damages sustained to the Property for a temporary taking, change in grade of streets or taking of access;

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(h) All water rights relating to the Realty, including, without limitation, all certified rights and all shares of stock or other evidence of ownership of any part of the Realty that is owned by Mortgagor alone or in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Realty; and

(i) All products and proceeds of all of the foregoing;

TO SECURE THE FOLLOWING (collectively the "Secured Obligations"):

(1) Payment of the sum of \$4,100,000.00, with interest thereon, according to the terms and provisions of a promissory note of even date herewith, payable to Mortgagee, or order, and made by Mortgagor, and all modifications, extensions, renewals and replacements thereof (collectively the "Note");

(2) Payment of all sums advanced to protect the security of this Mortgage, together with interest thereon as herein provided;

(3) Payment of all other sums that are or that may become owing under the Loan Documents;

(4) Performance of all of Mortgagor's other obligations under the Loan Documents; and

(5) Payment of the principal and interest on all other future loans or advances made by Mortgagee to Mortgagor when the promissory note evidencing the loan or advance specifically states that it is secured by this Mortgage, including all modifications, extensions, renewals, and replacements of any such future loan or advance.

Notwithstanding the foregoing, the maximum amount secured by this Mortgage shall not exceed five hundred percent (500%) of the principal amount of the Loan.

As used herein, the term "Loan Documents" means the Note, this Mortgage, any loan agreement executed and Uniform Commercial Code Financing Statements filed in connection herewith, and any other instrument or document evidencing or securing the Loan or otherwise executed in connection therewith (except the Environmental Indemnity Agreement and any guaranties executed in connection with the Loan, none of which are secured by this Mortgage), together with all modifications, extensions, renewals and replacements thereof. This Mortgage shall not secure any Loan Document or any particular person's liabilities or obligations under any Loan Document to the extent that such Loan Document expressly states that it or such particular person's liabilities or obligations are not secured by this Mortgage.

**MORTGAGOR HEREBY REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:**

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## ARTICLE I TITLE AND USE

1.1 Warranty of Title. Mortgagor represents and warrants to Mortgagee that: (a) except as may otherwise be expressly stated in this Mortgage, Mortgagor has good and marketable title in fee simple to such of the Property as is real property and is the sole and absolute owner of all other Property; (b) the Property is free from liens, encumbrances, exceptions or other charges of any kind whatsoever other than non-delinquent installments of property taxes and assessments, general and special, the "Permitted Exceptions," if any, listed on Schedule B, Part I of the title insurance policy issued to and approved by Mortgagee in connection with the Loan and any other liens, encumbrances, exceptions or charges expressly permitted by the terms of this Mortgage, and no others, whether superior or inferior to this Mortgage, will be created or suffered to be created by Mortgagor during the life of this Mortgage without the prior written consent of Mortgagee; (c) no default on the part of Mortgagor or, to the best of Mortgagor's knowledge, any other person exists under any of the Permitted Exceptions and all Permitted Exceptions are in full force and effect and in good standing, without modification, except as disclosed on Exhibit A attached; (d) none of the Permitted Exceptions will be modified by Mortgagor without Mortgagee's prior written consent; (e) Mortgagor will fully comply with all the terms of the Permitted Exceptions; and (f) that Mortgagor has the right to grant, transfer, convey and assign the Property as herein provided and will forever warrant and defend the Property unto Mortgagee against all claims and demands of any other person whomsoever, subject only to non-delinquent installments of taxes and assessments and the Permitted Exceptions.

1.2 Hazardous Substances. Mortgagor represents and warrants to Mortgagee that: (i) to the best of Mortgagor's knowledge, no asbestos has ever been used in the construction, repair or maintenance of any building, structure or other improvement now or heretofore located on the Property unless disclosed in the environmental report ordered by Mortgagee regarding the Property; (ii) unless disclosed in the environmental report ordered by Mortgagee regarding the Property, no Hazardous Substance is currently being generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under or about the Property, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws; (iii) neither Mortgagor nor, to the best of Mortgagor's knowledge, any other person or entity has ever caused or permitted any Hazardous Substance to be generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under or about the Property, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws; (iv) except for the matters at issue in building code case #14 M1 402826, Mortgagor has not received any written notice of any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances; and (v) neither Mortgagor nor the Property is subject to any governmental or judicial claim, order, judgment or lien with respect to the clean-up of Hazardous Substances at or with respect to the Property. Mortgagor further represents and warrants to Mortgagee that the foregoing representations and warranties contained in this paragraph 1.2 are made after and are based upon the environmental report prepared by Mortgagee's environmental consultant. As used herein, the term "Hazardous Substance" means any hazardous, toxic or dangerous substance, waste or material which is or becomes regulated under any federal, state or

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local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or clean up, including without limitation any substance, waste or material which now or hereafter is: (A) designated as a "hazardous substance" under or pursuant to the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), (B) defined as a "hazardous waste" under or pursuant to the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), or (C) defined as a "hazardous substance" in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.).

1.3 Location of Mortgagor. Mortgagor represents and warrants to Mortgagee that Mortgagor is a limited partnership organized under the laws of the State of an Illinois, whose place of business or its chief executive office (if it has more than one place of business) is located in the State of Illinois and Mortgagor's exact legal name is as set forth in the first paragraph on page 1 of this Mortgage. Mortgagor covenants that it will give Mortgagee thirty (30) days' prior written notice of any act, event or occurrence which will cause the representations and/or warranties in this paragraph to become untrue in any respect.

1.4 Personal Property. Mortgagor represents and warrants that it owns free and clear of liens or encumbrances, all fixtures, equipment and other items of personal property used in connection with the operation of the Property other than fixtures and other items of personal property owned by tenants.

## **ARTICLE II MORTGAGOR'S COVENANTS**

2.1 Payment and Performance of Secured Obligations. Mortgagor agrees to pay when due all sums that are now or that may become owing on the Note, and will pay and perform all other Secured Obligations, in accordance with their terms.

2.2 Payment of Taxes, Utilities, Liens and Charges.

(a) Taxes and Assessments. Except as the same may otherwise be paid under Article III, Mortgagor agrees to pay prior to delinquency directly to the payee thereof all taxes and assessments (including, without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Mortgage. Upon request, Mortgagor shall promptly furnish to Mortgagee all notices of amounts due under this subparagraph and all receipts evidencing such payments. However, Mortgagor may contest any such taxes or assessments by appropriate proceedings duly instituted and diligently prosecuted at Mortgagor's expense. Mortgagor shall not be obligated to pay such taxes or assessments while such contest is pending if the Property is not thereby subjected to imminent loss or forfeiture and, if Mortgagor has not provided evidence that it has deposited the entire amount assessed with the applicable governmental authority, it deposits the entire amount together with projected penalties and interest with Mortgagee or provides other security satisfactory to Mortgagee in its sole discretion.

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(b) Utilities. Mortgagor will pay when due all utility charges and assessments for services furnished the Property.

(c) Liens and Charges. Mortgagor will pay when due the claims of all persons supplying labor or materials to or in connection with the Property. Without waiving the restrictions of paragraph 4.1, Mortgagor will promptly discharge any lien or other charge, whether superior or inferior to this Mortgage, which may be claimed against the Property, provided, however, Mortgagor may contest such liens so long as Mortgagor deposits with Mortgagee sufficient funds to act as a security for the payment of the claim should Mortgagor not prevail in such case.

## 2.3 Insurance.

(a) Coverages Required. Mortgagor will keep the following insurance coverages in effect with respect to the Property:

(i) Insurance against loss by fire, vandalism, malicious mischief and such other hazards as may now or hereafter be embraced by the standard "all risk" or "special form" policy of insurance, in an amount equal at all times to the lesser of one hundred percent (100%) of the current replacement value of the improvements then located on the Property or the amount of the Loan. All such insurance coverage shall contain a "replacement cost endorsement," without deduction for depreciation.

(ii) Flood risk insurance in the maximum amount of insurance coverage available or the full replacement cost of the buildings on the Property, whichever is less, if the Property is now or hereafter designated as being located within a special flood hazard area under the Flood Disaster Protection Act of 1973 and if flood insurance is available.

(iii) Loss of rental value insurance and/or business interruption insurance, as follows: If all or any portion of the Property is rented or leased, loss of rental value insurance in an amount equal to twelve (12) months aggregate gross rents from the Property as is so occupied. If all or any portion of the Property is occupied by Mortgagor, business interruption insurance in an amount equal to twelve (12) months net income from such portion of the Property as is so occupied. The amount(s) of such coverage(s) shall be subject to adjustment, from time to time at Mortgagee's request, to reflect changes in the rental and/or income levels during the term of the Loan.

(iv) Commercial general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Property (including coverage for elevators and escalators, if any, on the Property), with the coverage being in an amount of not less than One Million and No/100 Dollars (\$1,000,000.00) combined single-limit liability coverage, or in such greater amount(s) as Mortgagee may reasonably require.

(v) Insurance covering the perils of terrorism and acts of terrorism.

(vi) Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator and escalator equipment, provided the improvements contain equipment of such nature, and insurance against

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loss of occupancy or use arising from breakdown of any of such items, in such amounts as Mortgagee may reasonably require.

(vii) Demolition, increased cost of construction and contingent building laws liability insurance, if and at any time the Property constitutes a legal, non-conforming use under applicable zoning or other governmental laws.

(viii) Sinkhole insurance if the Property is located in a sinkhole zone.

(ix) Wind storm insurance.

(x) Insurance (excluding, however, earthquake insurance) against such similar or other hazards, casualties, liabilities and contingencies, in such forms and amounts, as Mortgagee may from time to time reasonably require.

This paragraph sets forth Mortgagee's minimum insurance requirements and shall not be construed as a recommendation as to the nature, type of extend of any insurance, supplements or endorsements that Mortgagor could or should acquire, and Mortgagor shall, with the assistance of its own brokers and advisors, determine whether and to what extent any additional insurance coverages shall be obtained.

(b) Policies. Each insurance policy will be in form and content acceptable to Mortgagee, with a deductible of no greater than Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) and will be issued by a company acceptable to Mortgagee, which company shall, among other things, be (i) duly authorized to provide such insurance in the state in which the Property is located, and (ii) rated "A-" or better with a size rating of "V" or larger by A.M. Best Company in its most recent publication of ratings (provided, however, that if A.M. Best Company changes its designations, the basis for its ratings or ceases to provide ratings, Mortgagee shall be entitled to select replacement ratings in the exercise of its reasonable business judgment). Each hazard insurance policy will include a mortgagee endorsement in favor of and in form acceptable to Mortgagee naming Mortgagee as first mortgagee and loss payee, and which endorsement provides that the policy to which it relates will survive foreclosure of this Mortgage. Each liability insurance policy will name Mortgagee as an additional assured. An "agreed amount endorsement" will be included in any policy, containing a co-insurance clause, and Mortgagor agrees that any and all co-insurance clauses and "agreed amount endorsements" must be satisfactory to Mortgagee. If any required property insurance coverage is furnished as part of a "blanket policy," either the blanket policy will include an "agreed value endorsement" or "agreed amount endorsement," or Mortgagor will furnish to Mortgagee a copy of the insurer's "statement of value" for the Property. All required policies will provide for at least thirty (30) days' written notice to Mortgagee prior to the effective date of any cancellation or material amendment, which term shall include any reduction in the scope or limits of coverage and shall include a waiver of subrogation for any policy on which Mortgagor is a co-insured or additional insured. Mortgagor shall furnish to Mortgagee (x) the complete original of each required insurance policy, or (y) a certified copy thereof (including all declaration pages, policy forms and endorsements), which shall include an original signature of an authorized officer or agent of the insurer, or (z) an uncertified memorandum copy thereof (including all declaration pages, policy forms and endorsements), together with an original

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evidence of insurance or certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. As security for the Secured Obligations, Mortgagor hereby assigns to Mortgagee all required insurance policies, together with all monies and proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation (all such assigned items constituting "Property" for purposes of this Mortgage).

(c) Payment; Renewals. Mortgagor shall promptly furnish to Mortgagee all renewal notices relating to insurance policies. Except as the same may otherwise be paid under Article III, Mortgagor will pay all premiums on insurance policies directly to the carrier. At least thirty (30) days prior to the expiration date of each such policy, Mortgagor shall furnish to Mortgagee a renewal policy in a form acceptable to Mortgagee, together with evidence that the renewal premium has been paid.

(d) Insurance Proceeds.

(i) In the event of any loss, Mortgagor will give prompt written notice thereof to the insurance carrier and Mortgagee. In connection with any loss resulting in a claim exceeding Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), Mortgagor hereby grants Mortgagee a power of attorney, which power of attorney is coupled with an interest and is irrevocable, to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Mortgagee shall have no obligation to do so. If no event of default has occurred and is continuing, the immediately preceding sentence shall apply except that Mortgagee shall not be entitled to act as Mortgagor's attorney-in-fact and Mortgagor shall be entitled to participate jointly with Mortgagee in adjusting and compromising any claim, and appearing in any proceeding.

(ii) Except as may otherwise be required by applicable law, Mortgagee shall apply any insurance proceeds received hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and shall then apply the balance (the "Net Proceeds"), in its absolute discretion and without regard to the adequacy of its security, to:

(A) The payment of Secured Obligations, whether then due and payable or not. Any such application of proceeds to principal on the Note shall be without the imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof; or

(B) The reimbursement of Mortgagor, under Mortgagee's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Mortgagee may, at its option, condition the reimbursement on Mortgagee's approval of the plans and specifications of the reconstruction, contractor's cost estimates, construction budget and schedule, architects' certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Mortgagee may reasonably require.

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(iii) Notwithstanding the provisions of paragraph 2.3(d)(ii) above, Mortgagee agrees that the Net Proceeds from a loss described in this paragraph 2.3(d) will be made available under clause (ii)(B) above to reimburse Mortgagor for the cost of restoration or repair of the Property, provided that each of the following conditions is satisfied:

(A) At the time the proceeds are received, and at all times during the restoration or repair of the Property, no event or circumstance which is or with the passage of time, the giving of notice or both will constitute an Event of Default;

(B) The Net Proceeds are less than the indebtedness then secured by this Mortgage;

(C) The proceeds are received more than one (1) year prior to the maturity date of the Note, including any acceleration of the maturity date by Mortgagee if the Note gives Mortgagee a right of acceleration;

(D) Mortgagor gives Mortgagee written notice within thirty (30) days after the proceeds are received that it intends to restore or repair the Property and requests that the Net Proceeds be made available therefor, and Mortgagor thereafter promptly commences the restoration or repair and completes the same with reasonable diligence in accordance with plans and specifications approved by Mortgagee, which approval shall not be unreasonably withheld;

(E) The Net Proceeds are sufficient, in Mortgagee's judgment, to restore or repair the Property substantially to its condition prior to the damage or destruction or, if in Mortgagee's reasonable business judgment they are not, Mortgagor deposits with Mortgagee funds in an amount equal to the deficiency, which funds Mortgagee may, at its option, require be expended prior to use of the Net Proceeds; and

(F) Mortgagee receives evidence reasonably satisfactory to Mortgagee that the Property can lawfully be restored or repaired to its condition prior to the damage and destruction and that, upon completion of the restoration or repair, the Property can be operated substantially as it was before and will produce substantially as much income from tenant leases as it did before the damage or destruction.

(iv) Except to the extent, if any, that insurance proceeds are applied to payment of the Secured Obligations, nothing herein contained shall be deemed to excuse Mortgagor from restoring, repairing or maintaining the Property as provided in paragraph 2.4, regardless of whether there are insurance proceeds available or whether any such proceeds are sufficient in amount.

(e) Transfer of Title. If the Property is sold pursuant to Article VIII, or if Mortgagee otherwise acquires title to the Property, Mortgagee shall have all of the right, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

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## 2.4 Preservation and Maintenance of Property; Right of Entry.

(a) Preservation and Maintenance. Mortgagor (i) will not commit or suffer any waste or permit any impairment or deterioration of the Property, (ii) will not abandon the Property, (iii) will restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) will keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and shall replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and (v) will generally operate and maintain the Property in a commercially reasonable manner.

(b) Alterations. No building or other improvement on the Realty will be structurally altered, removed or demolished, in whole or in part, without Mortgagee's prior written consent, nor will any fixture or chattel covered by this Mortgage and adapted to the use and enjoyment of the Property be removed at any time without like consent unless actually replaced by an article of equal suitability, owned by Mortgagor, free and clear of any lien or security interest except such as may be approved in writing by Mortgagee.

(c) Right of Entry. Mortgagee is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform hereunder.

## 2.5 Hazardous Substances.

(a) No Future Hazardous Substances. Mortgagor will not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process any Hazardous Substance (as defined in this Mortgage), nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant or other user or occupier of the Property, a releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of any Hazardous Substance onto the Property or any other property or into any waters, except in compliance with all such laws. Notwithstanding anything to the contrary, however, Mortgagor shall not cause or permit the installation, operation or presence on the Property of any underground storage tank or system used or to be used for the storage, handling or dispensing of petroleum or any other substance regulated under the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), as now or hereafter amended, or any state or local statute, ordinance, rule, regulation or other law now or hereafter in effect regulating underground storage tanks or systems.

(b) Notification; Clean Up. Mortgagor will immediately notify Mortgagee if Mortgagor becomes aware of (i) any Hazardous Substance problem or liability with respect to the Property, (ii) any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances, or (iii) any lien or action with respect to any of the foregoing. Mortgagor will, at its sole expense,

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take all actions as may be necessary or advisable for the clean-up of Hazardous Substances on or with respect to the Property, including without limitation all removal, containment and remedial actions in accordance with all applicable laws and in all events in a manner satisfactory to Mortgagee, and shall further pay or cause to be paid all clean-up, administrative and enforcement costs of governmental agencies with respect to Hazardous Substances on or with respect to the Property if obligated to do so by contract or by law.

(c) Verification. For the purposes of inspecting the Property to ascertain the accuracy of all representations and warranties in this Mortgage relating to Hazardous Substances, and the observance of all covenants contained in this paragraph 2.5, (i) Mortgagee is hereby authorized to enter and inspect the Property, including the interior of any structures, at reasonable times and after reasonable notice; and (ii) if and at any time Hazardous Substances are being handled on the Property, Mortgagor shall furnish Mortgagee with such information and documents as may be reasonably requested by Mortgagee to confirm that such Hazardous Substances are being handled in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws. Mortgagor shall reimburse Mortgagee upon demand for all costs and expenses, including without limitation attorneys' fees, incurred by Mortgagee in connection with any such entry and inspection and the obtaining of such information and documents.

(d) Indemnity for Certain Matters. Mortgagor shall be responsible for, and indemnify, defend, and hold harmless Mortgagee from and against, any claim, judgment, loss, damage, demand, cost, expense or liability, known or unknown, contingent or otherwise, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence (whether prior to or after the date of this Mortgage) of Hazardous Substances on, in, under or about the Property including all costs and expenses incurred by Mortgagee, including reasonable attorneys' and consultants' fees. The foregoing indemnification obligation shall be limited to the actual damages incurred by Mortgagee, including all advances or payments paid or agreed to be paid by Mortgagee pursuant to its rights to require environmental assessments, join or participate in any proceedings, cure Mortgagor's default or enforce its remedies, (a) prior to and after any judicial foreclosure of this Mortgage or deed delivered and accepted in lieu thereof, or (b) prior to any nonjudicial foreclosure of this Mortgage or deed delivered and accepted in lieu thereof. The obligations of Mortgagor under this Section shall be mutually exclusive of any liabilities arising after a judicial foreclosure of this Mortgage or the delivery and acceptance of a deed in lieu of such judicial foreclosure, which are evidenced by the Environmental Indemnity, and are not secured hereby.

2.6 Parking. If any part of the automobile parking areas included within the Property is taken by condemnation, and before the parking areas are reduced for any other reason, Mortgagor will take all actions as are necessary to provide parking facilities in kind, size and location to comply with all governmental zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Mortgagor will furnish to Mortgagee satisfactory assurance of completion thereof free of liens and in conformity with all government zoning and other regulations.

2.7 Use of Property. Mortgagor will comply in all material respects with, and will cause all tenants, invitees and other users of the Property to comply in all material respects with,

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all federal, state and municipal laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions, applicable to the Property, and pay all fees and charges in connection therewith. The Property may not be converted to a cooperative or condominium without Mortgagee's prior written consent, which consent may be withheld in Mortgagee's absolute discretion. Mortgagor shall not cause or permit all or any of the Realty to be used for a gasoline station, service station or other fueling facility which in whole or in part handles, sells or distributes gasoline, diesel fuel, gasohol or any other substance used in self-propelled motor vehicles. Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor will not allow changes in the use for which all or any part of the Property was intended at the time this Mortgage was executed. Mortgagor will not initiate or acquiesce in a change in the zoning classification of the Property without Mortgagee's prior written consent.

## 2.8 Condemnation.

(a) Proceedings. Mortgagor will promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking (including without limitation change of grade), whether direct or indirect, of the Property or part thereof or interest therein, and Mortgagor will appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Mortgagor grants Mortgagee a power of attorney, which power of attorney is coupled with an interest and is irrevocable, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking; provided, however, that Mortgagee shall have no obligation to do so. All awards, payments, damages, direct, consequential and otherwise, claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Mortgagee (all such assigned items constituting "Property" for purposes of this Mortgage); all proceeds of any such awards, payments, damages or claims shall be paid to Mortgagee.

(b) Application of Proceeds. Mortgagee shall apply any such proceeds in the manner and upon the terms and conditions set forth in paragraph 2.5(d)(ii) relating to the application of insurance proceeds, without regard to the provisions of paragraph 2.5(d)(iii).

2.9 Protection of Mortgagee's Security. Mortgagor will give notice to Mortgagee of and will, at its expense, appear in and defend any action or proceeding that might affect the Property or title thereto or the interests of Mortgagee therein or the rights or remedies of Mortgagee. If any such action or proceeding is commenced or if Mortgagee is made a party to any such action or proceeding by reason of this Mortgage, or if Mortgagor fails to perform any obligation on its part to be performed hereunder, then Mortgagee, in its own discretion, may make any appearances, disburse any sums, make any entries upon the Property and take any actions as may be necessary or desirable to protect or enforce the security of this Mortgage, to remedy Mortgagor's failure to perform its obligations (without, however, waiving any default by Mortgagor) or otherwise to protect Mortgagee's interests. Mortgagor will pay all losses, damages, fees, costs and expenses, including reasonable attorneys' fees, of Mortgagee thus incurred. This paragraph shall not be construed to require Mortgagee to incur any expenses, make any appearances or take any actions.

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2.10 Reimbursement of Mortgagee's Expenses. All amounts disbursed by Mortgagee pursuant to paragraph 2.9 or any other provision of this Mortgage, with interest thereon, shall be additional indebtedness of Mortgagor secured by this Mortgage. All such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the interest rate in effect on the Note from time to time, or at the maximum rate which may be collected from Mortgagor on such amounts by the payee thereof under applicable law if that is less.

2.11 Books and Records; Financial Statements. Mortgagor will keep and maintain at Mortgagor's address stated above, or such other place as Mortgagee may approve in writing, books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination, inspection and copying at any reasonable time by Mortgagee. Mortgagor will furnish to Mortgagee, within twenty (20) days after Mortgagee's request therefor, the following documents, each certified to Mortgagee by Mortgagor as being true, correct and complete: (a) a copy of all leases and other agreements for the occupancy or use of all or any part of the Property, (b) a rent roll for the Property, showing the name of each tenant, and for each tenant, the suite occupied, the number of square feet rented, the lease expiration date, the rent payable, the date through which rent has been paid, the amount of any security deposit and the number and term of any renewal options, (c) a copy of the most recent real and personal property tax statements for the Property, (d) a copy of the most recent statements for the insurance coverages maintained under paragraph 2.3(a) of this Mortgage, and (e) a statement of income and expenses of the Property for the most recently ended fiscal year of Mortgagor. In addition, Mortgagor and any general partner therein will furnish to Mortgagee, within twenty (20) days after Mortgagee's request therefor, a complete and current financial statement, in reasonable detail and certified as correct by Mortgagor or such partner. Mortgagor and any general partner therein hereby irrevocably authorize Mortgagee to obtain credit reports on Mortgagor and any such general partner on one or more occasions during the term of the Loan.

2.12 Prohibited Person Compliance. For purposes of this paragraph, "Debtor Entity" means Mortgagor, any guarantor of the Loan, any indemnitor under the Environmental Indemnity, and their respective affiliates (including individuals and entities), members, partners, shareholders and other owners. Mortgagor warrants, represents and covenants that no Debtor Entity is or will be an entity or person (i) that is listed in the Annex to, or otherwise subject to the provisions of, Executive Order 13224 issued on September 24, 2001 ("EO 13224"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums, including, but not limited to, the OFAC website (<http://www.treas.gov/ofac/tl1sdn.pdf>)); (iii) who commits, threatens to commit or supports "terrorism," as the term is defined in EO 13224; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in subparts (i)-(iv) above are herein referred to as a "Prohibited Person"). Mortgagor covenants and agrees that no Debtor Entity will (A) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to the making or receiving of any contribution funds, goods, or services, to or for the benefit of a Prohibited Person, or (B) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO 13224. Upon

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Mortgagee's request, Mortgagor further covenants and agrees to deliver to Mortgagee any certification of other evidence as may be requested by Mortgagee in its sole and absolute discretion, confirming that no Debtor Entity is a Prohibited Person or has taken any action described in subparts (A) and (B) above.

2.13 Commercial Purpose. The proceeds of the Loan will be used exclusively for commercial, business or investment purposes.

## ARTICLE III RESERVES

3.1 Deposits. If required by Mortgagee, Mortgagor will, at the time of making each installment payment under the Note, deposit with Mortgagee a sum, as reasonably estimated by Mortgagee, equal to (a) the rents under any ground lease, (b) the taxes and special assessments next due on the Property, and (c) the premiums that will next become due on insurance policies as may be required under this Mortgage, less all sums already deposited therefor, divided by the number of months to elapse before two (2) months prior to the date when such rents, taxes, special assessments and premiums will become delinquent. Mortgagee may require Mortgagor to deposit with Mortgagee, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Mortgagor or the Property as Mortgagee reasonably deems necessary to protect Mortgagee's interests (herein "Other Impositions"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Mortgagee's option. If required by Mortgagee, Mortgagor will promptly deliver to Mortgagee all bills and notices with respect to any rents, taxes, assessments, premiums and Other Impositions. All sums deposited with Mortgagee under this paragraph 3.1 are hereby pledged as security for the Secured Obligations.

3.2 Application of Deposits. All such deposited sums shall be held by Mortgagee and applied in such order as Mortgagee elects to pay such rents, taxes, assessments, premiums and Other Impositions or, upon the occurrence of an "event of default" (as defined below), may be applied in whole or in part, to the Secured Obligations. The arrangement provided for in this Article III is solely for the added protection of Mortgagee and, except as may otherwise be required by applicable law, entails no responsibility on Mortgagee's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Mortgage by Mortgagee, any funds on hand shall be turned over to the assignee and any responsibility of Mortgagee with respect thereto shall terminate. Each transfer of the Property shall automatically transfer to the transferee all rights of Mortgagor with respect to any funds accumulated hereunder. Upon payment in full of the Secured Obligations, Mortgagee shall promptly refund to Mortgagor the remaining balance of any deposits then held by Mortgagee

3.3 Adjustments to Deposits. If the total deposits held by Mortgagee exceed the amount deemed necessary by Mortgagee to provide for the payment of such rents, taxes, assessments, premiums and Other Impositions as the same fall due, then such excess shall, provided no event of default then exists hereunder, be credited by Mortgagee on the next due installment or installments of such deposits. If at any time the total deposits held by Mortgagee are less than the amount deemed necessary by Mortgagee to provide for the payment thereof as

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the same fall due, then Mortgagor will deposit the deficiency with Mortgagee within thirty (30) days after written notice to Mortgagor stating the amount of the deficiency.

## **ARTICLE IV** **RESTRICTIONS ON TRANSFER OR ENCUMBRANCE**

### 4.1 Restrictions on Transfer or Encumbrance of the Property.

(a) A "Transfer" is: any sale (by contract or otherwise), lien, encumbrance, conveyance or other transfer of the Property or any part thereof or interest therein (including, without limitation, any of the foregoing actions between any person or entity that is a part of Mortgagor and any other person or entity that is a part of Mortgagor); or any change in the ownership of any stock interest in a corporate Mortgagor, in the ownership of any membership interest or in the manager of a limited liability company Mortgagor, in the ownership of any general partnership interest in any general or limited partnership Mortgagor or in the ownership of any beneficial interest in any other Mortgagor which is not a natural person or persons (including without limitation a trust); or any change in the ownership of any such stock, membership, general partnership or other beneficial interest in any corporation, limited liability company, partnership, trust or other entity, organization or association directly or indirectly owning an interest in Mortgagor, or a change in the manager of a limited liability company or any pledge, assignment or encumbrance of any direct or indirect ownership or equity interest in Mortgagor, including assignments of direct or indirect ownership or equity interests made in connection with mezzanine or preferred equity financing or any partition of the Property. A change in the ownership of a limited partnership interest in a limited partnership shall not be deemed a "Transfer". Mortgagor shall not Transfer the Property nor allow a Transfer to occur without Mortgagee's prior written consent.

(b) Mortgagee will give its written consent to Transfers of interests in Mortgagor and of interests in an entity with an ownership interest in Mortgagor to the transferor's spouse or lineal descendants or to an estate planning trust whose trustees and beneficiaries are the transferor or the transferor's spouse or lineal descendants, if Mortgagor gives Mortgagee prior written notice of the Transfer accompanied by a Mortgagee's customary transfer review fee and any actual costs incurred by Mortgagee. None of the foregoing conditions shall apply, however, in the case of a Transfer under any will, trust or applicable law of descent arising because of the death of an individual, so long as Mortgagee is given prompt notice of the Transfer and the transferee. Mortgagee's consent to any Transfer or its waiver of an Event of Default by reason of a Transfer shall not constitute a consent or waiver of any right, remedy or power accruing to Mortgagee by reason of any subsequent Transfer.

(c) For any Transfer permitted under this Mortgage or requested by Mortgagor, Mortgagee may condition its consent upon: the Property having been and assurances that it shall continue to be maintained and managed in a manner satisfactory to Mortgagee in its sole and absolute discretion; Mortgagee's approval of the Transfer terms, documents and background materials; there being no uncured event of default under this Mortgage after applicable notice and cure periods; Mortgagor furnishing an endorsement to Mortgagee's title insurance policy insuring the continued validity and priority of the lien of this Mortgage following the Transfer and such subordination agreements and other documents as may be

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required by Mortgagee or its title company to issue the endorsement and Mortgagor furnishes proof of payment of any taxes arising in connection with such transfer. Unless Mortgagee in its sole discretion otherwise agrees in writing at that time, no Transfer shall release the transferor from any liability under the Loan Documents or the Environmental Indemnity. By accepting a Transfer, the transferee assumes any and all liability of the transferor under the Loan Documents and the Environmental Indemnity to the extent the transferor has personal liability. At Mortgagee's request, the parties shall execute agreements, guaranties and indemnities in form and substance acceptable to Mortgagee. Regardless whether Mortgagee consents to a Transfer request, Mortgagor agrees to pay all of Mortgagee's reasonable out-of-pocket expenses incurred in connection with any Transfer request, including without limitation title fees and attorneys' fees and costs, and Mortgagee may condition its willingness to consider a Transfer request upon a deposit to pay for Mortgagee's expenses.

(d) in addition to all other Transfers permitted pursuant to this Article IV, Mortgagee shall give its written consent to Transfers: (a) of gifts for estate planning purposes of any individual ownership interests in Mortgagor, or of interests in any entity with an ownership interest in Mortgagor, to the transferor's spouse or lineal descendants, or to an estate planning trust whose beneficiaries are the transferor or the transferor's spouse or lineal descendants, so long as at all times HOWARD R. CONANT, JR. continue(s), directly or indirectly, to have sole and absolute authority for management and control of Mortgagor; (b) of ownership interests in Mortgagor to an existing member of Mortgagor or to a third party so long as at all times HOWARD R. CONANT, JR. and/or his immediate family members collectively (directly or indirectly), maintain(s) no less than fifty percent (50%) ownership interest in the Mortgagor and HOWARD R. CONANT, JR. continue(s), directly or indirectly, to have sole and absolute authority for management and control of Mortgagor; and (c) under any will, trust or applicable law of descent arising because of the death of an individual, so long as managerial control of the Property remains satisfactory to Mortgagee in its reasonable discretion. In all cases above, Mortgagor shall give Mortgagee (i) prior written notice of the proposed Transfer, (ii) copies of all transfer documentation (which shall be reviewed and approved by Mortgagee in its sole and absolute discretion), and (iii) a \$1,500.00 transfer review fee. Notwithstanding the foregoing, no transferee of the Ownership Interests is a person or entity (A) that is listed in the Annex (to, or is otherwise subject to the provisions of, Executive Order 13224 issued on September 24, 2001 ("EO 13244"); (B) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons - (which list may be published from time to time in various mediums, including, but not limited to, the OFAC website (<http://www.treasury.gov/ofac/downloads/t11sdn/pdf>); (C) who commits, threatens to commit or supports "terrorism," as that term is defined in EO 13224; or (D) who is otherwise affiliated with any entity or person listed above.

(e) Mortgagee shall consent to one (1) additional, secondary financing to be secured by the Property, provided that each of the following conditions is met in a manner satisfactory to Mortgagee in its sole and absolute discretion as of the time of the secondary financing:

(i) There is no event of default (defined in this Mortgage as a default beyond all applicable grace and cure periods) under the Loan Documents or other event or

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occurrence that, with the passage of time or the giving of notice or both, would be an event of default under the Loan Documents;

(ii) Mortgagor gives Mortgagee written notice of the secondary financing and copies of the loan documents associated with the secondary financing at least thirty (30) days before the closing of the secondary financing;

(iii) The mortgage or deed of trust securing the secondary financing (the "Subordinate Mortgage") must provide that the Subordinate Mortgage will, at all times and in all respects, be inferior and subordinate to this Mortgage;

(iv) A default on the secondary financing will, at Mortgagee's option, constitute an immediate "Event of Default" under this Mortgage;

(v) The amount of the secondary financing does not exceed an amount that, when added to outstanding balance of the Loan and any required amounts to be advanced by Mortgagee under the Loan in the future, if any, is greater than 75% of the value of the Property, as determined by Mortgagee in its sole and absolute discretion;

(vi) The combined aggregate annual payments of the Loan and the secondary financing will not exceed 80% of the Property's "net operating income," as determined by Mortgagee in its sole and absolute discretion;

(vii) Mortgagor pays Mortgagee a Secondary Financing Review Fee equal to the greater of (i) 0.25% of the maximum principal balance of the secondary financing or (ii) \$5,000;

(viii) Mortgagor pays all of Mortgagee's out-of-pocket costs, including, but not limited to, attorney's fees and servicer fees, incurred by Mortgagee in connection with review and processing of the secondary financing request;

(ix) The secondary financing is provided by a US bank, savings and loan association, savings bank, life insurance company or by such other institutional lender as may be approved by Mortgagee;

(x) Prior to the closing of the secondary financing, Mortgagee shall have reviewed and approved all documents, agreements and instruments relating to the additional financing including, but not limited to, the secondary note, deed of trust (or mortgage) and other loan documents; and

(xi) If required by Mortgagee, the lender of the additional financing, executes and delivers an intercreditor agreement and a subordination agreement prepared by and in form and substance acceptable to Mortgagee.

The proceeds of each Additional Financing may be used only for (i) capital improvements to the Property, (ii) leasing commissions paid to third party leasing agents pursuant to arm's-length leasing commission agreements in connection with new or renewing tenants and (iii) tenant improvements associated with new or renewing tenants (collectively, the "Approved

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Expenditures"). All Approved Expenditures must be acceptable to and approved by Mortgagee in advance and must reflect market rates, terms and conditions. Mortgagor must provide Mortgagee, upon request and from time to time, with evidence satisfactory to Mortgagee that the proceeds of each Additional Financing have been spent for Approved Expenditures and for no other purpose.

(f) Notwithstanding any provision of this Mortgage to the contrary, Mortgagee will consent to one (1) sale of the Property to, and the related and concurrent assumption of Mortgagor's obligations under the Loan by, an unrelated third party ("Buyer") (a "Loan Assumption"), provided that each of the following conditions is met in a manner acceptable to Mortgagee, in its sole and absolute discretion, at the time of the Loan Assumption:

(i) There is no "Event of Default" under the Loan Documents or other event or occurrence that, with the passage of time or the giving of notice or both, would be an Event of Default under the Loan Documents;

(ii) Mortgagor gives Mortgagee at least thirty (30) days prior written notice of the Loan Assumption and copies of the final form of the proposed transfer and assumption documents;

(iii) Buyer evidences a satisfactory history of property management or contracts for property management with a property management firm satisfactory to Mortgagee;

(iv) If the Loan balance at the time of the assumption is greater than 75% of the sale price of the Property associated with Loan Assumption (the "Sale Price"), Mortgagor must make a principal curtailment on the Loan in an amount sufficient to reduce the Loan's principal balance to 75% of the Sale Price and must pay the applicable prepayment fee on such principal curtailment;

(v) Mortgagor must pay Mortgagee (i) an assumption fee equal to the greater of (A) \$7,500 or (B) one percent (1%) of the outstanding balance of the Loan at the time of the Loan Assumption, plus (ii) Mortgagee's reasonable legal fees and administrative expenses;

(vi) Mortgagor furnishes to Mortgagee, at Mortgagor's expense, an endorsement to Mortgagee's title insurance policy in form and with content acceptable to Mortgagee, insuring the continued validity, enforceability and priority of this Mortgage following the Loan Assumption;

(vii) In the event that the Loan is closed with a holdback or deposit for repairs, all repairs related to the holdback or deposit have been completed as agreed;

(viii) Mortgagee reviews and approves all elements relating to the sale and assumption, including, but not limited to, the sale agreement, the transfer documents, the organizational documents, the Buyer and the credit records, financial statements, and tax returns of the Buyer;

(ix) Mortgagee reviews and approves both: (i) the new borrower ownership structure and (ii) the new guarantor, and is able to confirm that no person or entity

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associated with the new borrower or guarantor (A) is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order 13224 issued on September 24, 2001 ("EO 13224"); (B) name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums, including, but not limited to, the OFAC website (<http://www.treasury.gov/ofac/downloads/tllsdn.pdf>); (C) is a person who commits, threatens to commit or supports "terrorism," as that term is defined in EO 13224; or (D) is otherwise affiliated with any entity or person listed above; and

(x) Mortgagor, Guarantor(s) and the Buyer enter into an assumption agreement and other documents as are requested by Mortgagee in order to effect the assumption and protect the liens and other security for the Loan.

Mortgagee may, at its option, require the payment of the Reserves, pursuant to Article III of this Mortgage, after the assumption.

Mortgagee shall, in connection with a Loan Assumption effected in accordance with the foregoing, release the transferring Mortgagor and the original Guarantors from liability under the Non-Recourse Exceptions and the Environmental Indemnity Agreement to the extent that such liability arose from acts or omissions occurring on or after the closing of the Loan Assumption; provided, however, that where the time when any act or omission took place is in dispute, the transferring Mortgagor and/or released Guarantor, as applicable, shall have the burden of proof that such act or occurrence took place after the closing of the assumption.

## ARTICLE V

### UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

5.1 Grant to Mortgagee. Mortgagor grants and conveys to Mortgagee a continuing security interest under the Uniform Commercial Code and this Mortgage constitutes a security agreement pursuant to the Uniform Commercial Code with respect to:

(a) Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Mortgage; and

(b) Any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Mortgagor as Debtor and Mortgagee as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of this Mortgage);

and Mortgagor hereby grants Mortgagee a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations. Mortgagor and Mortgagee agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall ever be construed as in any way derogating from the parties' stated intention that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Mortgage is and at all times shall be regarded for all purposes as part of the real property.

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5.2 Mortgagee's Rights and Remedies. With respect to Property subject to the foregoing security interest, Mortgagee has all of the rights and remedies (i) of a secured party under the Uniform Commercial Code, (ii) provided herein, including without limitation the right to cause such Property to be sold by Mortgagee under the power of sale granted by this Mortgage, and (iii) provided by law. In exercising its remedies, Mortgagee may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies. Upon demand by Mortgagee following an event of default hereunder, Mortgagor will assemble any items of personal property and make them available to Mortgagee at the Property, a place which is hereby deemed to be reasonably convenient to both parties. Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law. All expenses incurred in realizing on such Property shall be borne by Mortgagor.

5.3 Fixture Filing. This Mortgage covers goods which are or are to become fixtures on the Property, and this Mortgage constitutes and is filed as a "fixture filing" (as that term is defined in the Illinois Uniform Commercial Code) upon such of the Property which is or may become fixtures. The exact names of Mortgagor, as "Debtor," and Mortgagee, as "Secured Party," and their respective addresses are set forth on page 1 of this Mortgage. Mortgagor has an interest of record in the Property. The organizational number of the Mortgagor is C002066.

5.4 Mortgagee Authorization to File Financing Statement; Mortgagor Cooperation. Mortgagor hereby authorizes Mortgagee to file one or more Uniform Commercial Code Financing Statements with respect to the Property. Mortgagor covenants and agrees that it will promptly furnish to Mortgagee, upon Mortgagee's request, such information as may be required in order for Mortgagee to do so.

## ARTICLE VI

### **ASSIGNMENT OF RENTS AND LEASES; LEASES OF PROPERTY; APPOINTMENT OF RECEIVER; MORTGAGEE IN POSSESSION**

6.1 Assignment of Rents and Leases. As security for the Secured Obligations, Mortgagor hereby assigns and transfers to Mortgagee all right, title and interest of Mortgagor in and to (a) any and all present and future leases and other agreements for the occupancy or use of all or any part of the Property, and any and all extensions, renewals and replacements thereof (collectively "Leases"), (b) all cash or security deposits (whether or not in the form of cash), advance rentals and deposits, all fees of other consideration received by Mortgagor in connection with the termination or modification of Leases of all or a portion of the Property or other payments of similar nature under the Leases, (c) any and all guaranties of tenants' or occupants' performances under any and all Leases, and (d) all rents, issues, profits and revenues (collectively "Rents") now due or which may become due or to which Mortgagor may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including without limitation minimum, additional, percentage and deficiency rents and liquidated damages.

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6.2 Collection of Rents. Prior to written notice given by Mortgagee to Mortgagor of an Event of Default (defined below), Mortgagor shall collect and receive all Rents of the Property as trustee for the benefit of Mortgagee and Mortgagor, and apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency, second to the cost of insurance, maintenance and repairs required by the terms of this Mortgage, third to the costs of discharging any obligation or liability of Mortgagor under the Leases, and fourth to the indebtedness secured hereby, with the balance, if any, so long as no such Event of Default has occurred, to the account of Mortgagor. Upon delivery of written notice by Mortgagee to Mortgagor of an Event of Default and stating that Mortgagee exercises its rights to the Rents, and without the necessity of Mortgagee entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Mortgagee shall immediately be entitled to possession of all Rents from the Property as the same become due and payable, including without limitation Rents then due and unpaid, and all such Rents shall immediately upon delivery of such notice be held by Mortgagor as trustee for the benefit of Mortgagee only. Upon delivery of such written notice by Mortgagee, Mortgagee may make written demand upon all or some of the tenants and occupants of the Property to pay all Rents to Mortgagee, and Mortgagor hereby agrees that each such tenant and occupant shall have no liability to inquire further as to the existence of a default by Mortgagor. Upon written demand by Mortgagee, Mortgagor hereby agrees to direct each tenant or occupant of the Property to pay all Rents to Mortgagee. Payments made to Mortgagee by tenants or occupants shall, as to such tenants and occupants, be in discharge of the payors' obligations to Mortgagor. Mortgagee may exercise, in Mortgagee's or Mortgagor's name, all rights and remedies available to Mortgagor with respect to collection of Rents. Nothing herein contained shall be construed as obligating Mortgagee to perform any of Mortgagor's obligations under any of the Leases.

6.3 Mortgagor's Representations and Warranties. Mortgagor represents and warrants to Mortgagee that Mortgagor has not executed and will not execute any other assignment of said Leases or Rents, that Mortgagor has not performed and will not perform any acts and has not executed and will not execute any instrument which would prevent Mortgagee from exercising its rights under this Article VI, and that at the time of execution of this Mortgage there has been no anticipation or prepayment of any of the Rents of the Property for more than two (2) months prior to the due dates thereof. Mortgagor further represents and warrants to Mortgagee that all existing Leases are in good standing and there is no default thereunder, whether by Mortgagor or lessee, nor to Mortgagor's knowledge any event or condition which, with notice or the passage of time or both, would be a default thereunder.

6.4 Leases of the Property. Mortgagor will comply with and observe Mortgagor's obligations as landlord under all Leases and will do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or setoff. Without Mortgagee's written consent, Mortgagor will not collect or accept payment of any Rents of the Property more than two (2) months prior to the due dates thereof. Mortgagee's prior written consent for Mortgagor to enter into, execute, modify or extend any Lease now existing or hereafter proposed to be made shall only be required where: (a) the Lease provides for a term (assuming that all renewal options, if any, are exercised unless such renewals are at the fair market rental value for the space involved, in which case the renewal term shall not be included in determining the Lease term) of more than five (5) years; and (b) the area demised by the Lease is more than twenty-five percent (25%) of the net rentable area of the building(s) at the Property. To request Mortgagee's consent

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("Mortgagee's Consent") to such a new, modified or extended lease (a "Proposed Lease") for those Leases required to be submitted to Mortgagee for its prior approval pursuant to the previous sentence, Mortgagor must deliver to Mortgagee, at the addresses and in the manner specified below, a complete copy of the final documentation associated with the Proposed Lease, together with any related information requested by Mortgagee (the "Lease Consent Request Package"). Upon request, Mortgagee shall preliminarily approve a "term sheet" for a Proposed Lease, subject to a later review of the Proposed Lease in question. Notwithstanding the foregoing, Mortgagee shall not be required to provide a tenant a Subordination, Non-Disturbance and Attornment Agreement if Mortgagee has not reviewed and approved the Proposed Lease, whether or not such Proposed Lease was required to be submitted to Mortgagee for its prior approval.

If the Proposed Lease meets all of the parameters set forth below (the "Deemed Approval Lease Parameters"), Mortgagee's Consent shall be deemed given if: (i) Mortgagee has received the Lease Consent Request Package, (ii) Mortgagee has not otherwise approved, rejected or requested additional information from Mortgagor with regard to the Lease Consent Request Package within ten (10) business days after Mortgagee's receipt of the Lease Consent Request Package and (iii) Mortgagor sends a second notice to Mortgagee with the following language in all capital letters and bold, underlined and italicized font stating "**THIS REQUEST FOR LEASE APPROVAL SHALL BE DEEMED APPROVED IF MORTGAGEE DOES NOT RESPOND WITHIN 5 BUSINESS DAYS OF RECEIPT OF THIS NOTICE**" and Mortgagee does not otherwise approve, reject or request additional information from Mortgagor with regard to the Lease Consent Request Package within five (5) business days after Mortgagee's receipt of the second notice of Lease Consent Request Package. The Deemed Approval Lease Parameters are:

- (a) All leases must be documented using a standard lease form pre-approved by Mortgagee, with commercially reasonable modifications thereto;
- (b) The term of the lease shall be for a minimum of three (3) years and a maximum of ten (10) years (assuming the exercise of all renewal and extension options in connection therewith unless such renewals and extensions are at the fair market rental value for the space involved, in which case the renewal or extension shall not be included in determining the Lease term);
- (c) The base rent is not less than the fair market rental value for such space;
- (d) The tenant's permitted or actual use of the leased premises under the Proposed Lease does not result in an increase in insurance premiums charged in connection with the hazard or liability insurance coverage on the Property unless such increased costs are the tenant's obligation under the Lease, or conflict with prohibitions elsewhere in the Loan Documents on certain specified uses or hazardous materials or substances;
- (e) The Proposed Lease must be entered into on an arm's-length basis with persons or entities not affiliated, directly or indirectly, with Mortgagor; and

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(f) The Proposed Lease may not contain options or rights of first refusal to purchase all or a portion of the Property; may not permit prepayment of rent thereunder more than one (1) month in advance; may not require improvements on the Property to be expanded or structurally modified; and may not grant rights or contain provisions that violate the terms of any other leases or portions of the Property.

If the Proposed Lease does not meet all of the Deemed Approval Lease Parameters, Mortgagee's Consent may be given only by prior written consent from Mortgagee and shall not be "deemed given" in any circumstance without such prior written consent.

Mortgagee's receipt of the Lease Consent Request Package shall not occur, and therefore the time frames set forth above shall not begin, unless and until (1) the Lease Consent Request Package shall have been sent to Mortgagee's notice address in the Deed of Trust and to the two addresses shown below and shall actually have been received by Mortgagee and (2) Mortgagor shall have confirmed such receipt by Mortgagee (to be evidenced by email or other written confirmation from Mortgagee). The Lease Consent Request Package must be sent by national express courier or certified US mail to Mortgagee at the following addresses (or such other addresses as Mortgagee may hereafter designate in writing):

Genworth Life and Annuity Insurance Company  
c/o Genworth Financial, Inc.  
3001 Summer Street  
Stamford, CT 06905-4317  
Attention: Real Estate Servicing Manager

And

Draper & Kramer  
33 West Monroe Street  
Chicago, IL 60603  
Attention: Andy Margolis

With a copy to:

Genworth Life and Annuity Insurance Company  
c/o Genworth Financial, Inc.  
3001 Summer Street  
Stamford, CT 06905-4317  
Attention: Real Estate Investments Counsel

Each Lease of the Property will be subordinate to the lien of this Mortgage, unless Mortgagee elects that the Lease shall be superior to this Mortgage, and each future tenant shall execute an appropriate subordination or attornment agreement as may be required by Mortgagee. To the extent required by Mortgagee, each tenant shall execute an estoppel certificate and acknowledge receipt of a notice of the assignment to Mortgagee of its Lease, all satisfactory in form and content to Mortgagee. Without Mortgagee's written consent, Mortgagor will not request or consent to the subordination of any Lease to any lien subordinate to this Mortgage.

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6.5 Mortgagee in Possession; Appointment of Receiver. Upon the occurrence of an Event of Default, Mortgagee may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Mortgagee's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Mortgagor could do the same, including without limitation the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Mortgagee to protect the security of this Mortgage. From and after the occurrence of any such Event of Default, if any owner of the Property shall occupy the Property or part thereof such owner shall pay to Mortgagee in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Mortgagee shall be entitled to remove such owner from the Property by any appropriate action or proceedings. Following an Event of Default, Mortgagee shall be entitled (without notice and regardless of the adequacy of Mortgagee's security and as a matter of strict right) to the appointment of a receiver, Mortgagor hereby consenting to the appointment of such receiver, and the receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receivers (including, without limitation, the power to collect rents), all the rights and powers granted to Mortgagee in this Article VI. Mortgagee or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

6.6 Application of Rents. All Rents collected subsequent to delivery of written notice by Mortgagee to Mortgagor of an Event of Default shall be applied first to the actual, out-of-pocket costs, if any, of taking control of and managing the Property and collecting the Rents, including without limitation attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Mortgagor under the Leases, and then to the indebtedness secured hereby. Mortgagee or the receiver shall be liable to account only for those Rents actually received. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Property by reason of anything done or left undone by Mortgagee under this Article VI, except for matters which are the sole and direct result of Mortgagee's gross negligence or willful misconduct, provided, however, that Mortgagor shall bear the burden of proof with respect to whether a matter was the result of the gross negligence or wilful misconduct of Mortgagee.

6.7 Deficiencies. To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Mortgagor under the Leases, exceed the Rents of the Property, the excess sums expended for such purposes shall be indebtedness secured by this Mortgage. Such excess sums shall be payable upon demand by Mortgagee and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Mortgagor therefor under applicable law if that is less.

6.8 Mortgagee Not Mortgagee in Possession. Nothing herein shall constitute Mortgagee a "mortgagee in possession" prior to its actual entry upon and taking possession of

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the Property. Entry upon and taking possession by a receiver shall not constitute possession by Mortgagee.

6.9 **Enforcement.** Mortgagee may enforce this assignment without first resorting to or exhausting any security or collateral for the indebtedness. As used in this Article VI, the word "lease" shall mean "sublease" if this Mortgage is on a leasehold. This assignment shall terminate at such time as this Mortgage ceases to secure payment of indebtedness held by Mortgagee.

## **ARTICLE VII EVENTS OF DEFAULT**

7.1 **Events of Default.** The occurrence of any one or more of the following shall constitute an "Event of Default" hereunder:

(a) Mortgagor's failure to pay any amount outstanding under the Note on the Maturity Date.

(b) Mortgagor's failure to make any other payment when due under the Note, this Mortgage or any of the other Loan Documents, followed by Mortgagor's failure to make such payment within ten (10) days after written notice thereof given to Mortgagor by Mortgagee; provided, however, that Mortgagee shall not be obligated to give Mortgagor written notice prior to exercising its remedies with respect to such default if Mortgagee had previously given Mortgagor during the previous twelve (12) month period a notice of default for failure to make a payment of similar type.

(c) Mortgagor's failure to perform any other covenant, agreement or obligation under the Note, this Mortgage or any of the other Loan Documents, followed by Mortgagor's failure to cure such default within thirty (30) days after written notice thereof given to Mortgagor by Mortgagee (or if such cure cannot be completed within such thirty (30) day period through the exercise of diligence, the failure by Mortgagor to commence the required cure within such thirty (30) day period and thereafter to continue the cure with diligence and to complete the cure within ninety (90) days following Mortgagee's notice of default).

(d) Mortgagor or any guarantor of any portion of Mortgagor's obligations hereunder (whether one or more, "Guarantor") files, or there is filed against Mortgagor or any Guarantor (and such involuntary filing is not dismissed within ninety (90) days), or any portion of the Property becomes the subject of, a petition in bankruptcy or action seeking reorganization, arrangement, liquidation, dissolution or similar relief under any bankruptcy or other federal or state insolvency or other law relating to relief from indebtedness, or a receiver, trustee or liquidator is appointed with respect to Mortgagor, any Guarantor or any portion of the Property.

(e) A decree or order is entered for the appointment of a trustee, receiver or liquidator for Mortgagor or Mortgagor's property, and such decree or order is not vacated within ninety (90) days after the date of entry.

(f) Mortgagor commences any proceeding for dissolution or liquidation; or any such proceeding is commenced against Mortgagor and the proceeding is not dismissed within ninety (90) days after the date of commencement.

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(g) Mortgagor makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due.

(h) There is an attachment, execution or other judicial seizure of any portion of Mortgagor's assets and such seizure is not discharged within thirty (30) days.

(i) Any representation or disclosure made to Mortgagee by Mortgagor or any guarantor in connection herewith proves to be materially false or intentionally misleading when made, whether or not that representation or disclosure is contained in the Loan Documents.

(j) Any Transfer (as defined in Section 4.1 above) requiring Mortgagee's prior written consent is made without Mortgagee's prior written consent.

(k) The death of any Guarantor unless, within the earlier of (i) sixty (60) days of the death of such Guarantor; and (ii) the date the assets of the decedent have been distributed, Mortgagor provides a new replacement guarantor reasonably acceptable to Mortgagee who executes Mortgagee's standard form guaranty agreement and environmental indemnity agreement and assumes all of the deceased Guarantor's obligations under the Loan Documents. Mortgagee will be deemed to be reasonable in refusing to approve a proposed replacement guarantor whose creditworthiness, net worth and liquidity is materially less than that of the original decedent Guarantor at the time of the closing of the Loan.

7.2 Form of Notice. At Mortgagee's option, any written notice of default required to be given to Mortgagor under paragraph 7.1 may be given in the form of a statutory notice of default under the laws of the State of Illinois relating to non-judicial foreclosures of mortgages.

## ARTICLE VIII REMEDIES

8.1 Acceleration Upon Default; Additional Remedies. In the event of default hereunder, Mortgagee may, at its option and without notice to or demand upon Mortgagor, take any one or more of the following actions:

(a) Declare any or all indebtedness secured by this Mortgage to be due and payable immediately.

(b) Bring a court action to enforce the provisions of this Mortgage or any of the indebtedness or obligations secured by this Mortgage.

(c) Bring a court action to foreclose this Mortgage.

(d) Exercise any or all of the rights and remedies provided for under this Mortgage and the other Loan Documents.

(e) Exercise any other right or remedy available under law or in equity.

8.2 Right to Foreclose. If an event of default shall occur hereunder, the Mortgagee may, either with or without entry or taking possession, proceed by suit or suits at law or in equity

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or by any other appropriate proceedings or remedy to enforce payment of the indebtedness secured by this Mortgage or the performance of any other term hereof or any other right and the Mortgagor hereby authorizes and fully empowers the Mortgagee to foreclose this Mortgage by judicial proceedings or by advertisement with power of sale and grants to the Mortgagee full authority to sell the Property at public auction and convey title to the Property to the purchaser, either in one parcel or separate lots and parcels, all in accordance with and in the manner prescribed by law, and out of the proceeds arising from sale and foreclosure to retain the principal and interest due on the Note and the indebtedness secured by this Mortgage, together with all such sums of money as Mortgagee shall have expended or advanced pursuant to this Mortgage or pursuant to statute, together with interest thereon at the applicable rate of interest provided in the Note as referred to below, and all costs and expenses of such foreclosure, including reasonable lawful attorney's fees, with the balance, if any, to be paid to the persons entitled thereto by law. In any such proceeding the Mortgagee may apply all or any portion of the indebtedness secured by this Mortgage to the amount of the purchase price.

8.3 Receiver. If an Event of Default shall occur hereunder, the Mortgagee shall be entitled as a matter of right without notice and without giving bond and without regard to the solvency or insolvency of the Mortgagor, or waste of the Property, or adequacy of the security of the Property, to apply for the appointment of a Receiver:

(a) who shall have all the rights, powers and remedies as provided by applicable laws and who shall apply the rents, issues and profits as provided by applicable laws and thereafter to all expenses for maintenance of the Property and to the costs and expenses of the receivership, including reasonable attorneys' fees and to the payment of the indebtedness secured by this Mortgage; or

(b) pursuant to the Assignment of Rents executed by the Mortgagor to the Mortgagee given contemporaneously with this Mortgage who shall in addition to the rights, powers and remedies as provided by statute have such rights, powers and remedies as provided in such Assignment of Rents and who shall apply the rents, issues and profits as provided therein.

A waiver by either party of a breach of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by Mortgagee to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Mortgagee under this Mortgage are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Mortgagor shall not affect Mortgagee's right to declare a default and exercise its remedies under this Mortgage.

8.4 Waiver of Order of Sale and Marshalling. Mortgagee shall have the right to determine the order in which any and all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of any remedies to the extent permitted by applicable law, Mortgagor, and any person who consents to this Mortgage and any person who now or hereafter acquires a security interest in the Property hereby waives, to the extent permitted by law, any and all right to require marshalling of assets in connection with any remedies herein or to direct the order in which any of the Property will be sold in the event of any sale under this Mortgage.

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8.5 Non-Waiver of Defaults. The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

8.6 Expenses During Redemption Period. If this Mortgage is foreclosed, the purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the default rate of interest stated in the Note or the highest lawful rate if that is less shall be added to and become a part of the amount required to be paid for redemption from such sale to the extent allowed by applicable law.

8.7 Foreclosure Subject to Tenancies. Mortgagee shall have the right at its option to foreclose this Mortgage subject to the rights of any tenant or tenants of the Property.

8.8 Evasion of Prepayment Terms. If an Event of Default hereunder has occurred and is continuing, a tender of payment of the amount necessary to satisfy the Secured Obligations made at any time prior to foreclosure sale of the Property by Mortgagor or anyone on behalf of Mortgagor shall constitute an evasion of the prepayment terms of the Note and shall constitute voluntary prepayment thereunder and any such tender shall to the extent permitted by law include the additional payment required under the prepayment privilege, if any, contained in the Note or, if at that time there is no prepayment privilege, then such payment shall to the extent permitted by law include an additional payment of five percent (5%) of the then principal Loan balance.

8.9 Remedies Cumulative. To the extent permitted by law, every right and remedy provided in this Mortgage is distinct and cumulative to all other rights or remedies under this Mortgage or afforded by law or equity or any other agreement between Mortgagee and Mortgagor, and may be exercised concurrently, independently or successively, in any order whatsoever. Mortgagee may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

8.10 Mortgagee's Expenses. Mortgagor will pay all of Mortgagee's out-of-pocket expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any suit is filed, including without limitation reasonable legal fees and disbursements, foreclosure costs and title charges. All such sums, with interest thereon, shall be additional indebtedness of Mortgagor secured by this Mortgage. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Mortgagor under applicable law if that is less.

8.11 Right to Discontinue Proceedings. In the event Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under this Mortgage and shall thereafter elect to discontinue or abandon the same for any reason, Mortgagee shall have the unqualified right to do so and in such event Mortgagor and Mortgagee shall be restored to their former positions with

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respect to the indebtedness secured by this Mortgage. This Mortgage, the Property and all rights, remedies and recourse of the Mortgagee shall continue as if the same had not been invoked.

8.12 Acknowledgment of Waiver of Hearing Before Sale. Mortgagor understands and agrees that if any default is made under the terms of this Mortgage, Mortgagee has the right, inter alia, to foreclose this Mortgage by advertisement pursuant to applicable laws, as hereafter amended, or pursuant to any similar or replacement statute hereafter enacted; that if the Mortgagee elects to foreclose by advertisement, it may cause the Property, or any part thereof, to be sold at public auction; that notice of such sale must be published for six (6) successive weeks at least once a week in a newspaper of general circulation and that no personal notice is required to be served upon Mortgagor. Mortgagor further understands that in the event of such default the Mortgagee may also elect its rights under the Uniform Commercial Code and take possession of the Personal Property (as defined in the Mortgage) and dispose of the same by sale or otherwise in one or more parcels provided that at least ten (10) days' prior notice of such disposition must be given, all as provided for by the Uniform Commercial Code, as hereafter amended or by any similar or replacement statute hereafter enacted. Mortgagor further understands that under the Constitution of the United States and the Constitution of the State of Illinois it may have the right to notice and hearing before the Property may be sold and that the procedure for foreclosure by advertisement described above does not insure that notice will be given to the Mortgagor and neither said procedure for foreclosure by advertisement nor the Uniform Commercial Code requires any hearing or other judicial proceeding. MORTGAGOR HEREBY EXPRESSLY CONSENTS AND AGREES THAT THE PROPERTY MAY BE FORECLOSED BY ADVERTISEMENT AND THAT THE PERSONAL PROPERTY MAY BE DISPOSED OF PURSUANT TO THE UNIFORM COMMERCIAL CODE, ALL AS DESCRIBED ABOVE. MORTGAGOR ACKNOWLEDGES THAT IT IS REPRESENTED BY LEGAL COUNSEL; THAT BEFORE SIGNING THIS DOCUMENT THIS PARAGRAPH AND MORTGAGOR'S CONSTITUTIONAL RIGHTS WERE FULLY EXPLAINED BY SUCH COUNSEL AND THAT MORTGAGOR UNDERSTANDS THE NATURE AND EXTENT OF THE RIGHTS WAIVED HEREBY AND THE EFFECT OF SUCH WAIVER.

## ARTICLE IX GENERAL

9.1 Application of Payments. Except as applicable law or this Mortgage may otherwise provide, all payments received by Mortgagee under the Note or this Mortgage shall be applied by Mortgagee in the following order of priority: (a) Mortgagee's expenses incurred in any efforts to enforce any terms of this Mortgage; (b) amounts payable to Mortgagee by Mortgagor under Article III for reserves; (c) interest and late charges payable on the Note; (d) principal of the Note; (e) interest payable on advances made to protect the security of this Mortgage; (f) principal of such advances; and (g) any other sums secured by this Mortgage in such order as Mortgagee, at its option, may determine; provided, however, that Mortgagee may, at its option, apply any such payments received to interest on and principal of advances made to protect the security of this Mortgage prior to applying such payments to interest on or principal of the Note.

9.2 Release of Mortgage. Upon payment of all sums secured by this Mortgage, this Mortgage and all assignments contained herein shall be void, and this Mortgage shall be released

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by the Mortgagee at the actual out-of-pocket costs and expenses of the Mortgagor, otherwise to remain in full force and effect.

9.3 Mortgagee's Powers. Without affecting the liability of any person for payment or performance of the Secured Obligations or any of Mortgagee's rights or remedies, or the priority of the Mortgage, Mortgagee, at its option, may extend the time for payment of the Secured Obligations or any part thereof, reduce payment thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of the indebtedness, release the lien of this Mortgage on any part of the Property, take or release other or additional security, release or cause to be released all or any part of the Property, or consent to the making of any map or plat of the Property, consent to the granting of any easement or creating any restriction on the Property, or join in any subordination or other agreement affecting this Mortgage or the lien or charge hereof. Mortgagor shall pay Mortgagee a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Mortgagee's option, for any such action if taken at Mortgagor's request.

9.4 Subrogation. Mortgagee shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Loan or any other indebtedness secured hereby.

9.5 Limitation on Interest and Charges. Interest, fees and charges collected or to be collected in connection with the Secured Obligations shall not exceed the maximum, if any, permitted by any applicable law. If any such law is interpreted so that said interest, fees and/or charges would exceed any such maximum and Mortgagor is entitled to the benefit of such law, then: (a) such interest, fees and/or charges shall be reduced by the amount necessary to reduce the same to the permitted maximum; and (b) any sums already paid to Mortgagee which exceeded the permitted maximum will be refunded. Mortgagee may choose to make the refund either by treating the payments, to the extent of the excess, as prepayments of principal or by making a direct payment to the person(s) entitled thereto. No prepayment premium shall be assessed on prepayments under this paragraph. The provisions of this paragraph shall control over any inconsistent provision of this Mortgage or the Note or any other Loan Documents.

9.6 Additional Documents; Power of Attorney. Additional Documents; Power of Attorney. Mortgagor, from time to time, will execute, acknowledge and deliver to Mortgagee upon request, and hereby grants Mortgagee a power of attorney, which power of attorney is coupled with an interest and is irrevocable, to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Mortgagee, as Mortgagee may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Mortgage, and the priority thereof. Mortgagor will pay to Mortgagee upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document. Mortgagor shall execute such further documents and do any and all such further things, including, but not limited to, correcting any errors or omissions in the Loan Documents, as may be necessary to implement and carry out the intent of this Mortgage.

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9.7 Waiver of Statute of Limitations. To the full extent Mortgagor may do so, Mortgagor hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or any other obligation secured by this Mortgage.

9.8 Forbearance by Mortgagee Not a Waiver. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Mortgagee of any particular default by Mortgagor shall constitute a waiver of any other default or of any similar default in the future. Without limiting the generality of the foregoing, the acceptance by Mortgagee of payment of any sum secured by this Mortgage after the due date thereof shall not be a waiver of Mortgagee's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage, nor shall Mortgagee's receipt of any awards, proceeds or damages under paragraphs 2.3 and 2.8 hereof operate to cure or waive Mortgagor's default in payment of sums secured by this Mortgage.

9.9 Modifications and Waivers. This Mortgage cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

9.10 Notice. Except as applicable law may otherwise require, all notices and other communications shall be in writing and shall be deemed given when delivered by personal service or when mailed, by certified or registered mail, postage prepaid, or by a nationally recognized overnight courier service, addressed to the address set forth at the beginning of this Mortgage. Any party may at any time change its address for such purposes by delivering or mailing to the other parties hereto as aforesaid a notice of such change.

9.11 Governing Law; Severability; Captions. This Mortgage shall be governed by the laws of the State of Illinois. If any provision or clause of this Mortgage conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. The captions and headings of the paragraphs and articles of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

9.12 Definitions. As used herein: the term "Mortgagor" means the Mortgagor herein named, together with any subsequent owner of the Property or any part thereof or interest therein, and the term "Mortgagee" means the Mortgagee herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

9.13 Successors and Assigns; Joint and Several Liability; Agents. This Mortgage shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Article IV hereof. Each person executing this Mortgage as Mortgagor shall be jointly and severally liable for all

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obligations of Mortgagor hereunder. In exercising any rights hereunder or taking actions provided for herein, Mortgagee may act through their respective employees, agents or independent contractors as authorized by Mortgagee.

9.14 Number; Gender. This Mortgage shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

9.15 Time. Time is of the essence in connection with all obligations of Mortgagor herein.

9.16 Request for Notice. Mortgagor hereby requests that a copy of any notice of default and notice of sale hereunder be mailed to it at its address set forth at the beginning of this Mortgage.

9.17 Commercial Loan. The Note memorializes a "commercial loan" and a "business loan" as such terms are defined in Illinois and governed by Illinois.

9.18 Waiver of Jury Trial. **THE MORTGAGOR AND THE MORTGAGEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE MORTGAGOR AGREES THAT IT WILL NOT ASSEK ANY CLAIM (UNLESS A MANDATORY COUNTER-CLAIM) AGAINST THE MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.**

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**EXHIBIT "A"**  
**TO**  
**MORTGAGE**

**PROPERTY SCHEDULE**

**LEGAL DESCRIPTION:**

The property which is the subject of this Mortgage is situated in the County of Cook, State of Illinois, and is legally described as follows:

LOTS 5, 6 AND 7 IN YOUNG'S SUBDIVISION OF PART OF KINGSBURY TRACT IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 372 W. Superior, Chicago, Illinois 60654

PIN: 17-09-127-016

Property of Cook County Clerk's Office

**UNOFFICIAL COPY****EXHIBIT "B"  
TO  
MORTGAGE****LEASES**

<b>Tenant</b>	<b>Date of Lease</b>	<b>Street Address</b>
Citizens of Reilly	10/1/2011	
HBRA Architects Incorporated	7/15/2010	
Marketing Solutions Inc. and _____	5/1/2014	
Birdfeud, LLC	8/1/2014	
Summary USA, Inc.	10/15/2014	
Liquidus Marketing, Inc.	7/1/2006	
Beneficial Reuse Management, Inc.	8/1/2013	
The Art Fair Company	3/1/2012	
Beat Studios, LLC	3/15/2013	