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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1618329031 Fee: \$148.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 07/01/2016 11:58 AM Pg: 1 of 56

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN: 18-25-406-016-0000**

Address:

Street: 7240 W. 79th Street

Street line 2:

City: Bridgeview

State: IL

ZIP Code: 60455

Lender: THOROFARE ASSET BASED LENDING REIT FUND IV, LLC

Borrower: AI BRIDGEVIEW IL, LLC

Loan / Mortgage Amount: \$1,860,000.00

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

Certificate number: 82B2B0EF-2983-4D89-8C02-9EDB9192B977

Execution date: 6/21/2016

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RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Thorofare Capital, Inc.
633 W. Fifth Street, Suite 2200
Los Angeles, California 90071
Attention: Robert J. Cooper

(Space Above For Recorder's Use)

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

Dated as of June 28, 2016

AI BRIDGEVIEW IL, LLC, a Delaware limited liability company
(Mortgagor)

TO

THOROFARE ASSET BASED LENDING REIT FUND IV, LLC, a Delaware limited
liability company,
and its successors and assigns
(Mortgagee)

Address of the Property:	Permanent Index Number:
7240 W. 79 th Street, Bridgeview, Illinois 60455	18-25-406-016-0000

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

Maturity Date: December 28, 2017 (exclusive of extensions or renewals)

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**"), made as of June 28, 2016 (the "**Effective Date**"), by AI BRIDGEVIEW IL, LLC, a Delaware limited liability company, having its principal place of business at and whose mailing address is 841 Apollo Street, Suite 150, El Segundo, California 90245, Attention: Kyle B. Matthews ("**Borrower**"), to THOROFARE ASSET BASED LENDING REIT FUND IV, LLC, a Delaware limited liability company, having its principal place of business at and whose mailing address is 633 W. Fifth Street Figueroa Street, Suite 2200, Los Angeles, California 90071 (together with its successors and assigns, "**Lender**").

WITNESSETH:

To secure the payment of an indebtedness in the principal sum of One Million Eight Hundred Sixty Thousand and 00/100 Dollars (\$1,860,000.00), in lawful money of the United States of America, to be paid with interest and all other sums and fees payable according to that certain Promissory Note dated the date hereof made by Borrower to Lender (together with all extensions, renewals or modifications thereof, being hereinafter collectively called the "**Note**"; and the loan evidenced by the Note being hereinafter referred to as the "**Loan**") and all indebtedness, obligations, liabilities and expenses due hereunder and under any other Loan Document (as hereinafter defined) (the indebtedness, interest, other sums, fees, obligations and all other sums due under the Note and/or hereunder and/or any other documents or instruments which evidence or secure the Loan (herein collectively called the "**Loan Documents**") being collectively called the "**Indebtedness**"), Borrower hereby irrevocably mortgages, warrants, encumbers, hypothecates, pledges, grants, bargains, sells, conveys, transfers, sets over, assigns and grants a security interest and assigns to and in favor of Lender, the following property and rights, whether now owned or held or hereafter acquired (collectively, the "**Property**").

GRANTING CLAUSE ONE

All right, title and interest in and to the real property or properties described on Exhibit A attached hereto (collectively, the "**Land**").

GRANTING CLAUSE TWO

All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise, be expressly made subject to the lien thereof (collectively, the "**Additional Land**").

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GRANTING CLAUSE THREE

Any and all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located on the Land or any part thereof (collectively, the “**Improvements**”; the Land, the Additional Land and the Improvements hereinafter collectively referred to as the “**Real Property**”).

GRANTING CLAUSE FOUR

All easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, oil, gas and mineral rights, air rights and development rights, zoning rights, tax credits or benefits and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever in any way now or hereafter belonging, relating or pertaining to the Real Property or any part thereof and the reversion and reversions, remainder and remainders and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land or any part thereof to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both in law and in equity, of Borrower in, of and to the Real Property and every part and parcel thereof, with the appurtenances thereto.

GRANTING CLAUSE FIVE

All machinery, equipment, fixtures and other property of every kind and nature whatsoever owned by Borrower or in which Borrower has or shall have an interest (to the extent of such interest) now or hereafter located upon the Real Property or appurtenant thereto and usable in connection with the present or future operation and occupancy of the Real Property and all building equipment, materials and supplies of any nature whatsoever owned by Borrower or in which Borrower has or shall have an interest (to the extent of such interest) now or hereafter located upon the Real Property or appurtenant thereto or usable in connection with the present or future operation and occupancy of the Real Property, including but not limited to all heating, ventilating, air conditioning, plumbing, lighting, communications and elevator machinery, equipment and fixtures (hereinafter collectively called the “**Equipment**”) and the right, title and interest of Borrower in and to any of the Equipment which may be subject to any Security Agreements (as defined in the Uniform Commercial Code of the State of Illinois, as amended (the “**Uniform Commercial Code**”)) superior, inferior or pari passu in lien to the lien of this Mortgage. In connection with Equipment which is leased to Borrower or which is subject to a lien or security interest which is superior to the lien of this Mortgage, this Mortgage shall also cover all right, title and interest of each Borrower in and to all deposits and the benefit of all payments now or hereafter made with respect to such Equipment.

GRANTING CLAUSE SIX

All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Real Property or any part thereof, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of

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or in anticipation of the exercise of said right), or for a change of grade or for any other injury to or decrease in the value of the Real Property.

GRANTING CLAUSE SEVEN

All leases and subleases (including, without limitation, all guarantees thereof), including, without limitation, the "IHOP Lease" (as defined below), and any and all other agreements affecting the use, enjoyment and/or occupancy of the Real Property or any part thereof, now or hereafter entered into (including any use or occupancy arrangements created pursuant to Section 365(h) of Title 11 of the United States Code (the "**Bankruptcy Code**") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings or any assignment for the benefit of creditors in respect of any tenant or occupant of any portion of the Real Property) (together with any extension or renewal of the same, the "**Leases**") and all income, rents, issues, profits, revenues and proceeds including, but not limited to, all oil and gas or other mineral royalties and bonuses from the Real Property (including any payments received pursuant to Section 502(b) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings or any assignment for the benefit of creditors in respect of any tenant or occupant of any portion of the Real Property and all claims as a creditor in connection with any of the foregoing) (the "**Rents**") and all proceeds from the sale, cancellation, surrender or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Indebtedness. "**IHOP Lease**" means that certain Lease Agreement, made and entered into as of July 16, 1997, by and between Borrower (as successor-in-interest to Net Lease Funding 2005, LP, a Delaware limited partnership, as successor-in-interest to CNL Income Fund XIII, LTD., a Florida limited partnership), as landlord, and IHOP Properties, Inc., a California corporation ("**IHOP**"), and that certain Amendment to Lease Agreements, made and entered into as of May 5, 2000, by and among Borrower, certain other parties, and IHOP.

GRANTING CLAUSE EIGHT

All proceeds of and any unearned premiums on any insurance policies covering the Real Property or any part thereof including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Real Property or any part thereof.

GRANTING CLAUSE NINE

All tax refunds, including interest thereon, tax credits and tax abatements and the right to receive or benefit from the same, which may be payable or available with respect to the Real Property.

GRANTING CLAUSE TEN

The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Real Property or any part thereof and to

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commence any action or proceeding to protect the interest of Lender in the Real Property or any part thereof.

GRANTING CLAUSE ELEVEN

All accounts receivable, utility or other deposits, intangibles, contract rights, interests, estates or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Real Property or any part thereof.

GRANTING CLAUSE TWELVE

All rights which Borrower now has or may hereafter acquire to be indemnified and/or held harmless from any liability, loss, damage, cost or expense (including, without limitation, attorneys' fees and disbursements) relating to the Real Property or any part thereof.

GRANTING CLAUSE THIRTEEN

All plans and specifications, maps, surveys, studies, reports, contracts, subcontracts, service contracts, management contracts, franchise agreements and other agreements, franchises, trade names, trademarks, symbols, service marks, approvals, consents, permits, special permits, licenses and rights, whether governmental or otherwise, respecting the use, occupation, development, construction and/or operation of the Real Property or any part thereof or the activities conducted thereon or therein, or otherwise pertaining to the Real Property or any part thereof.

GRANTING CLAUSE FOURTEEN

All proceeds, products, offspring, rents and profits from any of the foregoing, including, without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns for the benefit of Lender and the successors and assigns of Lender forever;

TO SECURE THE PAYMENT to Lender of the Indebtedness at the time and in the manner provided for its payment in the Note and in this Mortgage;

PROVIDED, HOWEVER, these presents are upon the express condition, if Borrower shall well and truly pay to Lender the Indebtedness at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void;

AND Borrower represents and warrants to and covenants and agrees with Lender as follows:

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PART I - GENERAL PROVISIONS

1. **Payment of Indebtedness and Incorporation of Covenants, Conditions and Agreements.** Borrower shall pay the Indebtedness at the time and in the manner provided in the Note, this Mortgage and the other Loan Documents. All the covenants, conditions and agreements contained in the Note and the other Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

2. **Warranty of Title.** Borrower has good and marketable title to the Property; Borrower has the right to deed, give, grant, bargain, sell, alienate, convey, confirm, pledge, lease, mortgage, assign, hypothecate and grant a security interest in the Property; Borrower possesses an indefeasible fee estate in the Real Property; and Borrower owns the Property free and clear of all liens, encumbrances and charges whatsoever except those exceptions shown in the title insurance policy insuring the lien of this Mortgage (this Mortgage and the liens, encumbrances and charges shown as exceptions in such title policy, hereinafter collectively referred to as the "**Permitted Encumbrances**"). Borrower shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

3. **Insurance; Casualty.** Unless otherwise agreed, in writing, by Lender, in its sole and absolute discretion, (which consent has been provided to Borrower approving the insurance held by IHOP as of the Effective Date satisfies this provision), Borrower, at its sole cost and expense, shall at all times maintain the insurance policies and coverages required by this Section 3. Borrower, at its sole cost and expense, shall keep the Property insured during the term of this Mortgage for the mutual benefit of each Borrower and Lender against loss or damage by any peril covered by a standard "special perils" or "all-risk-of-physical-loss" insurance policy including, without limitation, riot and civil commotion, acts of terrorism, vandalism, malicious mischief, burglary, theft and mysterious disappearance in an amount (i) equal to at least one hundred percent (100%) of the then "full replacement cost" of the Improvements and Equipment, without deduction for physical depreciation and (ii) such that the insurer would not deem Borrower a coinsurer under such policies. The policies of insurance carried in accordance with this Section 3 shall be paid by Borrower annually in advance and shall contain the "Replacement Cost Endorsement" with a waiver of depreciation, and shall have a deductible no greater than \$25,000.00 unless so agreed by Lender. In addition, Borrower may, at its option, retain the services of a firm to monitor the policies of insurance for conformance with this Mortgage, the cost of which shall be borne by Borrower.

(a) Borrower, at its sole cost and expense, for the mutual benefit of each Borrower and Lender, shall also obtain and maintain during the term of this Mortgage the following policies of insurance:

(i) Flood insurance if any part of the Real Property is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an

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amount at least equal to the outstanding principal amount of the Note or the maximum limit of coverage available with respect to the Improvements and Equipment under said Act, whichever is less, and/or excess flood coverage, inclusive of rental income coverage due to peril of flood.

(ii) commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate and One Million and No/100 Dollars (\$1,000,000.00) per occurrence (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement);

(iii) umbrella or excess liability insurance in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above;

(iv) Business interruption insurance in an amount equal to at least one hundred percent (100%) of the aggregate annual amount of all revenues generated from the Property, such business interruption insurance to cover losses of revenue for a period of at least one (1) year after the date of the fire or casualty in question and six (6) months of Extended Period of Indemnity coverage covering the shortfall in rental income after the Improvements are restored. The amount of such business interruption insurance shall be determined prior to the date hereof and at least once each year thereafter based on Lender's reasonable estimate of revenues from the operation of the Property for the succeeding twelve (12) month period.

(v) Insurance against loss or damage from explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements.

(vi) Such other insurance (including, without limitation, earthquake insurance) as may from time to time be reasonably required by Lender in order to protect its interests.

(b) All policies of insurance (the "**Policies**") required pursuant to this Section 3 (i) shall be issued by an insurer satisfactory to Lender with at least an A/VIII rating by A.M. Best Company, (ii) without limiting the required endorsements to the Policies, shall contain a standard non-contributory Lender clause naming Lender as the person to which all payments made by such insurance company shall be paid, and specifically referencing Lender under such clause as Thorofare Asset Based Lending REIT Fund IV, LLC, 633 W. Fifth Street, Suite 2200, Los Angeles, California 90071, Attention: Mr. Kevin Miller, as Lender, its successor and assigns, as their interests may appear, (x) as an additional insured under all liability insurance policies excluding worker's compensation policies, (y) as the first Lender on all property insurance policies, and (z) as the loss payee on all loss of rents or loss of business income insurance policies

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and, if applicable, flood insurance policies, (iii) shall be maintained throughout the term of this Mortgage at the sole cost and expense of Borrower without cost or expense to Lender, (iv) shall be delivered to Lender, (v) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Lender in accordance with the terms of such policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of such insurance; (vi) shall waive all rights of subrogation against Lender; (vii) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Borrower nor Lender nor any other party shall be a co-insurer under such Policies and that Lender shall receive at least thirty (30) days prior written notice of any modification or cancellation and (viii) shall be satisfactory in form and substance to Lender and shall be approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. All amounts recoverable thereunder are hereby assigned to Lender. Not later than thirty (30) days prior to the expiration date of each of the Policies, Borrower will deliver to Lender satisfactory evidence of the renewal of each of the Policies.

(c) If the Improvements shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice thereof to Lender and prior to the making of any repairs thereto. Following the occurrence of fire or other casualty, Borrower, regardless of whether insurance proceeds are payable under the Policies or, if paid, are made available to Borrower by Lender, shall promptly proceed with the repair, alteration, restoration, replacement or rebuilding of the Improvements as near as possible to their value, utility, condition and character prior to such damage or destruction. Such repairs, alterations, restoration, replacement and rebuilding are herein collectively referred to as the "**Restoration**". The Restoration shall be performed in accordance with the following provisions:

(i) Borrower shall procure, pay for and furnish to Lender true copies of all required governmental permits, certificates and approvals with respect to the Restoration.

(ii) Borrower shall furnish Lender, within thirty (30) days of the casualty, evidence reasonably satisfactory to Lender of the cost to complete the Restoration.

(iii) If the Restoration involves structural work or the estimated cost to complete the Restoration exceeds five percent (5%) of the original principal amount of the Loan, the Restoration shall be conducted under the supervision of an architect (the "**Architect**") selected by Borrower and approved by Lender (which approval shall not be unreasonably withheld), and no such Restoration shall be made except in accordance with detailed plans and specifications, detailed cost estimates and detailed work schedules approved by Lender (which approval shall not be unreasonably withheld).

(iv) If the estimated cost of the Restoration shall exceed ten percent (10%) of the original principal amount of the Loan in the aggregate, at the

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request of Lender, Borrower, before commencing any work, shall cause to be furnished to Lender a surety bond or bonds, in form and substance reasonably satisfactory to Lender, naming Borrower and Lender as co-obligees, in an amount that is not less than the estimated cost of the Restoration, issued by a surety company or companies reasonably satisfactory to Lender.

(v) The Restoration shall be prosecuted to completion with all due diligence and in an expeditious and first class workmanlike manner and in compliance with all laws and other governmental requirements, all permits, certificates and approvals, all requirements of fire underwriters and all insurance policies then in force with respect to the Real Property.

(vi) At all times when any work is in progress, Borrower shall maintain all insurance then required by law or customary with respect to such work, and, prior to the commencement of any work, shall furnish to Lender duplicate originals or certificates of the policies therefor.

(vii) Upon completion of the Restoration, Borrower shall obtain (A) any occupancy permit which may be required for the Improvements and (B) all other governmental permits, certificates and approvals and all permits, certificates and approvals of fire underwriters which are required for or with respect to the Restoration, and shall furnish true copies thereof to Lender.

(viii) An Event of Default (as hereinafter defined) shall be deemed to have occurred under this Mortgage if Borrower, after having commenced demolition or construction of any Improvements, shall abandon such demolition or the construction work or shall fail to complete such demolition and construction within a reasonable time after the commencement thereof.

(d) Borrower and Lender shall jointly adjust and settle all insurance claims, provided, however, if an Event of Default shall have occurred and be continuing, Lender shall have the right to adjust and settle such claims without the prior consent of Borrower. In the event of any insured loss, the payment for such loss shall be made directly to Lender. Any insurance proceeds payable under any of the Policies may, at the option of Lender, be used in one or more of the following ways: (w) applied to the Indebtedness, whether such Indebtedness then be matured or unmatured (such application to be without prepayment fee or premium (including the Exit Fee and/or Yield Protection Fee (as defined in the Note), which amounts shall be deferred until repayment of the Loan in full), except that if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred and remains uncured, then such application shall be subject to the applicable premium (including the Exit Fee and/or Yield Protection Fee) computed in accordance with the Note), (x) used to fulfill any of the covenants contained herein as Lender may determine, (y) used to replace or restore the property to a condition satisfactory to Lender, or (z) released to Borrower. Notwithstanding the foregoing, provided (1) not more than ten percent (10%) of the gross area of the Improvements is directly affected by such damage, destruction or loss and the amount of the loss does not exceed ten percent (10%) of the original

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principal amount of the Loan, (2) no Event of Default or event that with the passage of time or giving of notice or both would constitute a default has occurred hereunder, under the Note or under any of the other Loan Documents and remains uncured at the time of such application, (3) the insurer does not deny liability to any named insured, (4) each major and/or anchor tenant (as determined by Lender) whose Lease permits termination thereof as a result of such insured loss, agrees in writing to continue its Lease, (5) rental loss insurance is available and in force and effect to offset in full any abatement of rent to which any tenant may be entitled as a result of such damage, destruction or loss, (6) the remaining Improvements continue at all times to comply with all applicable building, zoning and other land use laws and regulations, (7) in Lender's judgment, the Restoration is practicable and can be completed within three (3) months after the damage, destruction or loss and at least three (3) months prior to the Maturity Date (as such term is defined in the Note) and (8) rebuilding of the Improvements to substantially identical size, condition and use as existed prior to the casualty is permitted by all applicable laws and ordinances, then all of such proceeds shall be used for Restoration. Any application of insurance proceeds to the Indebtedness shall be to the unpaid installments of principal due under the Note in the inverse order of their maturity, such that the regular payments under the Note shall not be reduced or altered in any manner. In the event the above criteria are satisfied (including that no Event of Default or event that, with the passage of time or giving of notice or both, would constitute a default has occurred hereunder, under the Note or other Loan Documents) or Lender otherwise elects to allow the use of such proceeds for the Restoration, such proceeds shall be disbursed in accordance with the following provisions:

(i) Each request for an advance of insurance proceeds shall be made on seven (7) days prior notice to Lender and shall be accompanied by a certificate of the Architect, if one be required under Section 3(d)(iii) above, otherwise by an executive officer or managing general partner or managing member of Borrower, stating (1) that all work completed to date has been performed in compliance with the approved plans and specifications and in accordance with all provisions of law, (2) the sum requested is properly required to reimburse Borrower for payments by Borrower to, or is properly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Restoration (giving a brief description of such services and materials), and that when added to all sums, if any, previously disbursed by Lender, does not exceed the value of the work done to the date of such certificate and (3) that the amount of such proceeds remaining in the hands of Lender will be sufficient on completion of the work to pay the same in full (giving, in such reasonable detail as Lender may require, an estimate of the cost of such completion).

(ii) Each request for an advance of insurance proceeds shall, to the extent permitted under applicable law, be accompanied by waivers of liens satisfactory to Lender covering that part of the Restoration previously paid for, if any, and by a search prepared by a title company or by other evidence reasonably satisfactory to Lender including without limitation a title endorsement satisfactory to Lender if available in the state where the Real Property is located, that there has not been filed

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with respect to the Real Property any mechanic's lien or other lien or instrument and that there exist no encumbrances on or affecting the Real Property other than the Permitted Encumbrances or otherwise approved by Lender. In addition to the foregoing, the request for the final advance shall be accompanied by (1) any final occupancy permit which may be required for the Improvements, (2) all other governmental permits, certificates and approvals and all other permits necessary for the occupancy and operation of the Real Property, (3) Tenant estoppels from tenants whose space was affected and (4) final lien waivers from all contractors, subcontractors and materialmen.

(iii) No advance of insurance proceeds shall be made if there exists an Event of Default or event which with the passage of time or the giving of notice or both would constitute a default on the part of Borrower under this Mortgage, the Note or any other Loan Document.

(iv) If the cost of the Restoration (as reasonably estimated by Lender) at any time shall exceed the amount of the insurance proceeds available therefor, insurance proceeds shall not be advanced until Borrower, before commencing the Restoration or continuing the Restoration, as the case may be, shall deposit the full amount of the deficiency (or other assurances reasonably satisfactory to Lender) with Lender and the amount so deposited shall first be applied toward the cost of the Restoration before any portion of the insurance proceeds is disbursed for such purpose.

(e) Upon completion of the Restoration and payment in full therefor, or upon failure on the part of Borrower promptly to commence or diligently to continue the Restoration, or at any time upon request by Borrower, Lender may apply the amount of any such proceeds then or thereafter in the hands of Lender to the payment of the Indebtedness; provided, however, that nothing herein contained shall prevent Lender from applying at any time the whole or any part of such proceeds to the curing of any default that has not been cured within the applicable cure period under this Mortgage, the Note or any other Loan Document.

(f) Insurance proceeds and any additional funds deposited by Borrower with Lender shall constitute additional security for the Indebtedness. Borrower shall execute, deliver, file and/or record, at its expense, such documents and instruments as Lender deems necessary or advisable to grant to Lender a perfected, first priority security interest in the insurance proceeds and such additional funds. If Lender elects to have the insurance proceeds applied to Restoration, (i) the insurance proceeds shall be, at Lender's election, disbursed in installments by Lender or by a disbursing agent ("**Depository**") selected by Lender and whose fees and expenses shall be paid by Borrower in the manner provided in Section 3(e) above and (ii) all costs and expenses incurred by Lender in connection with the Restoration, including, without limitation, reasonable counsel fees and costs, shall be paid by Borrower.

4. Payment of Taxes, Etc.

(a) Borrower shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "**Taxes**") and all ground rents, maintenance charges, other governmental impositions, and other

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charges, including, without limitation, vault charges and license fees (collectively, “**Other Charges**”) for the use of vaults, chutes and similar areas adjoining the Real Property, as the same become due and payable. Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes and Other Charges have been so paid and are not then delinquent. Borrower shall not suffer or permit any lien or charge (including, without limitation, any mechanic's lien) against all or any part of the Property and Borrower shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property. Borrower shall promptly pay for all utility services provided to the Property. In addition, Lender may, at its option, retain the services of a firm to monitor the payment of Taxes, the cost of which shall be borne by Borrower.

(b) Notwithstanding the provisions of subsection (a) of this Section 4, Borrower shall have the right to contest in good faith the amount or validity of any such Taxes, liens or Other Charges (including, without limitation, tax liens and mechanics' liens) referred to in subsection (a) above by appropriate legal proceedings and in accordance with all applicable law, after notice to, but without cost or expense to, Lender, provided that (i) no Event of Default or event that, with the passage of time or giving of notice or both, would constitute a default hereunder, under the Note or other Loan Documents has occurred and is continuing, (ii) Borrower pays such Taxes, liens or Other Charges as same become due and payable, unless Borrower delivers evidence satisfactory to Lender that, as a result of Borrower's contest, Borrower's obligation to pay such Taxes, liens or Other Charges has been deferred by the appropriate governmental authority, in which event, Borrower may defer such payment of such Taxes, liens or Other Charges until the date specified by such governmental authority, (iii) such contest shall be promptly and diligently prosecuted by and at the expense of Borrower, (iv) Lender shall not thereby suffer any civil penalty, or be subjected to any criminal penalties or sanctions, (v) such contest shall be discontinued and such Taxes, liens or Other Charges promptly paid if at any time all or any part of the Property shall be in imminent danger of being foreclosed, sold, forfeited or otherwise lost or if the title, lien and security interest created by this Mortgage or the priority thereof shall be in imminent danger of being impaired, (vi) Borrower shall have set aside adequate reserves (in Lender's judgment) for the payment of such Taxes, liens or Other Charges, together with all interest and penalties thereon and (vii) Borrower shall have furnished such security as may be required in the proceeding or as may be requested by Lender, to insure the payment of any such Taxes, liens or Other Charges together with all interest and penalties thereon.

(c) **Tax and Insurance Reserve.** Borrower shall pay to Lender on the date each regularly scheduled payment of interest is due (a) one-twelfth of the Taxes that Lender reasonably estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (b) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (the foregoing amounts so deposited with Lender are hereinafter called the “**Tax and Insurance Escrow Funds**” and the account in which such amounts are held shall hereinafter be referred to as the “**Tax and Insurance Escrow Account**”).

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Borrower's obligations hereunder shall be suspended for so long as IHOP is paying Taxes and maintaining all of the insurance required to be maintained pursuant to the IHOP Lease.

(ii) Disbursements from Tax and Insurance Escrow Funds. Provided no Event of Default has occurred and is continuing, Lender will apply the Tax and Insurance Escrow Funds to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3 and 4 hereof. In making any payment relating to the Tax and Insurance Escrow Funds, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Funds shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 3 and/or 4 hereof, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Escrow Funds. Any amount remaining in the Tax and Insurance Escrow Funds after the Indebtedness has been paid in full shall be returned to Borrower or credited against the aggregate payoff amount, as determined by Lender. In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Property. If at any time Lender reasonably determines that the Tax and Insurance Escrow Funds are not or will not be sufficient to pay Taxes and Insurance Premiums by the due dates thereof, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be.

(c) Balance in the Tax and Insurance Escrow Account. The insufficiency of any funds on deposit in the Tax and Insurance Escrow Account shall not relieve Borrower from the obligation to make any payments of Taxes or Insurance Premiums as and when due pursuant to the terms of this Agreement and the other Loan Documents, provided that Borrower receives notice from Lender of the amount of any deficiency in the Tax and Insurance Escrow Account

5. TI/LC Reserve and Operating Cost Reserve. In the event that, on or prior to January 16, 2017, Borrower (a) fails to provide Lender with evidence that Lincoln exercised its first renewal option pursuant to Section 10 of the IHOP Lease or (b) Borrower and IHOP have not entered into an amendment to the IHOP Lease approved by Lender pursuant to Section 7 of this Security Agreement, then the following provisions shall apply:

(i) On the earlier to occur of (1) May 16, 2017 or (2) the date that IHOP vacates the premises demised under the IHOP Lease (if such vacation occurs prior to May 16, 2017), Borrower shall deposit with Lender in immediately available funds an amount equal to One Hundred Seventy Thousand and 00/100 Dollars (\$170,000.00). Such funds shall be held by Lender in a reserve account controlled by Lender (the "**TI/LC Reserve**") and disbursed by Lender to Borrower for tenant improvements and leasing commissions on such terms and conditions as Lender shall reasonably determine, including, without limitation, (i) Lender's approval of a replacement tenant and replacement lease for the space demised under the IHOP

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Lease, and (ii) Lender's approval of the tenant improvements and leasing commissions for which disbursement is requested by Borrower.

(ii) On the earlier to occur of (1) May 16, 2017 or (2) the date IHOP vacates the premises demised under the IHOP Lease (if such vacation occurs prior to May 16, 2017), Borrower shall deposit with Lender in immediately available funds an amount equal to One Hundred Thousand and 00/100 Dollars (\$100,000.00). Such funds shall be deposited by Lender in such proportion as Lender shall determine to (xx) the Delta Interest Holdback (for application to the payment of Debt Service pursuant to the terms of that certain Holdback and Disbursement Agreement dated as of the date hereof between Borrower and Lender [the "**Holdback Agreement**"]) and (yy) to a reserve account controlled by Lender for the payment of Carrying Costs (the "**Carrying Cost Reserve**"). On or prior to November 26, 2017, Borrower shall deposit with Lender in immediately available funds an additional amount equal to One Hundred Thousand and 00/100 Dollars (\$100,000.00), which shall be similarly allocated and deposited to the Delta Interest Reserve and the Carrying Cost Reserve. Funds on deposit in the Carrying Costs shall be disbursed by Lender to Borrower for the payment of Carrying Costs (as defined below) on such terms and conditions as Lender shall reasonably determine. As used herein, "**Carrying Costs**" means (aa) Taxes, (bb) Insurance Premiums, (cc) ordinary maintenance charges, and (dd) other basic carrying costs of ownership of the Property approved by Lender.

(iii) Borrower's failure to make any of the deposits required pursuant to this Section 5 shall constitute an immediate event of Default without application or any grace, notice or cure period.

(iv) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the funds in the TI/LC and/or Carrying Cost Reserve to the Indebtedness in any order in its sole discretion.

6. Condemnation. Borrower shall promptly give Lender written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Following the occurrence of a condemnation, Borrower, regardless of whether an award is available, shall promptly proceed to restore, repair, replace or rebuild the Improvements to the extent practicable to be of at least equal value and of substantially the same character as prior to such condemnation, all to be effected in accordance with applicable law. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Indebtedness at the time and in the manner provided for its payment in the Note, in this Mortgage and the other Loan Documents and the Indebtedness shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Lender to the discharge of the Indebtedness. Borrower shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Borrower, to be paid directly to Lender. Lender may, at Lender's election, use the award in any one or more of the following ways: (a) apply any such award or payment (for purposes of this Section 6, the award or payment that may be made in any condemnation or eminent domain proceeding shall mean the entire award allocated to Borrower in any capacity)

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to the discharge of the Indebtedness whether or not then due and payable (such application to be without prepayment fee or premium (including the Exit Fee and/or Yield Maintenance Fee, which amounts shall be deferred until repayment of the Loan in full), except that if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the applicable premium (including the Exit Fee and/or Yield Protection Fee) computed in accordance with the Note), (b) use the same or any part thereof to fulfill any of the covenants contained herein as Lender may determine, (c) use the same or any part thereof to replace or restore the Property to a condition satisfactory to Lender, or (d) release the same to Borrower. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of such award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment or a portion thereof sufficient to pay the Indebtedness.

Borrower hereby specifically, unconditionally and irrevocably waives all rights of a property owner granted under Illinois law which provides for allocation of condemnation proceeds between a property owner and a lienholder, and any other law, including case law, or successor statute of similar import.

7. Leases and Rents.

(a) Borrower does hereby absolutely and unconditionally assign to Lender its right, title and interest in all current and future Leases and Rents and all proceeds from the sale, cancellation, surrender or other disposition of the Leases, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Lender shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise to impose any obligation upon Lender. Borrower agrees to execute and deliver to Lender such additional instruments in form and substance satisfactory to Lender, as may hereafter be requested by Lender to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section 7, Lender grants to Borrower a revocable license to operate and manage the Property and to collect the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Indebtedness, in trust for the benefit of Lender for use in the payment of such sums. Upon the occurrence of an Event of Default, the license granted to Borrower herein shall be automatically revoked and Lender shall immediately be entitled to possession of all Rents, whether or not Lender enters upon or takes control of the Property. Lender is hereby granted and assigned by Borrower the right, at its option, upon the revocation of the license granted herein to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Indebtedness in such priority and proportion as Lender in its discretion shall deem proper. It is further the intent of Borrower and Lender that the Rents hereby absolutely assigned are no longer, during the term of this Mortgage, property of Borrower or property of any estate of Borrower as defined in Section 541 of the Bankruptcy Code and shall not constitute collateral, cash or otherwise, of Borrower.

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(b) All Leases executed after the date of this Mortgage shall provide that they are subordinate to this Mortgage and that the lessee agrees to attorn to Lender; provided, however, that nothing herein shall affect Lender's right to designate from time to time any one or more Leases as being superior to this Mortgage and Borrower shall execute and deliver to Lender and shall cause to be executed and delivered to Lender from each tenant under such Lease any instrument or agreement as Lender may deem necessary to make such Lease superior to this Mortgage. Upon request, Borrower shall promptly furnish Lender with executed copies of all Leases.

(c) Borrower shall not, without the prior consent of Lender, (i) lease all or any part of the Property, (ii) alter or change the terms of any Lease or cancel or terminate, abridge or otherwise modify the terms of any Lease, (iii) consent to any assignment of or subletting under any Lease not in accordance with its terms, (iv) cancel, terminate, abridge or otherwise modify any guaranty of any Lease or the terms thereof, (v) collect or accept prepayments of installments of Rents for a period of more than one (1) month in advance or (vi) further assign the whole or any part of the Leases or the Rents.

(d) With respect to each Lease, Borrower shall (i) observe and perform each and every provision thereof on the lessor's part to be fulfilled or performed under each Lease and not do or permit to be done anything to impair the value of the Lease as security for the Loan, including surrender or voluntary termination of any Lease, (ii) promptly send to Lender copies of all notices of default which Borrower shall send or receive thereunder, (iii) enforce all of the terms, covenants and conditions contained in such Lease upon the lessee's part to be performed, short of termination thereof, (iv) execute and deliver, at the request of Lender, all such further assurances, confirmations and assignments in connection with the Property as Lender shall, from time to time, require, (v) upon request, furnish Lender with executed copies of all Leases, and (vi) comply in every respect with Borrower's obligations as a landlord under applicable Illinois law. Upon the occurrence of any Event of Default under this Mortgage, Borrower shall pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of the Property or part of the Property as may be occupied by Borrower or any one Borrower and upon default in any such payment Borrower shall vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

(e) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Borrower and, if cash, shall (i) be deposited by Borrower at such commercial or savings bank or banks as may be reasonably satisfactory to Lender. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Lender, (ii) if permitted pursuant to any legal requirements, name Lender as payee or Lender thereunder (or at Lender's option, be fully assignable to Lender) and (iii) in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence reasonably satisfactory to Lender of Borrower's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default,

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Borrower shall, upon Lender's request, if permitted by any applicable legal requirements, turn over to Lender the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Property, to be held by Lender subject to the terms of the Leases.

8. Maintenance and Use of Property. Borrower shall, at its sole cost and expense, keep and maintain the Property, including, without limitation, parking lots and recreational and landscaped portions thereof, if any, in good order and condition. The Improvements and the Equipment shall not be diminished, removed, demolished or materially altered (except for normal replacement of Equipment) and Borrower shall not erect any new buildings, structures or building additions on the Property without the prior consent of Lender. So long as no Event of Default shall have occurred and be continuing, Borrower shall have the right at any time and from time to time after providing Lender with written notice to make or cause to be made reasonable alterations of and additions to the Property or any part thereof, provided that any alteration or addition (a) shall not change the general character of the Property or reduce the fair market value thereof below its value immediately before such alteration or addition, or impair the usefulness of the Property, (b) is effected with due diligence, in a good and workmanlike manner and in compliance with all applicable laws and with all provisions of any insurance policy covering or applicable to the Property and all requirements of the issuers thereof, (c) is promptly and fully paid for, or caused to be paid for, by Borrower, (d) the estimated cost of such alteration or addition does not exceed five percent (5%) of the original principal amount of the Loan, (e) is made under the supervision of a qualified architect or engineer, (f) shall not violate the terms of any Leases, and (g) upon completion, Borrower shall provide Lender with (aa) a satisfactory final improvement survey if the footprint of the building has been altered, (bb) any final occupancy permit which may be required for the Improvements, (cc) all other governmental permits, certificates and approvals and all other permits, certificates and approvals of fire underwriters which are required with respect to the alterations and additions and the use and occupancy thereof, and shall furnish true copies thereof to Lender, and (dd) final lien waivers from all contractors, subcontractors and materialmen. Borrower shall promptly comply with all laws, orders and ordinances affecting the Property, or the use thereof, provided, however, that nothing in the foregoing clause shall require Borrower to comply with any such law, order or ordinance so long as Borrower shall in good faith, after notice to, but without cost or expense to, Lender, contest the validity of such law, order or ordinance by appropriate legal proceedings and in accordance with all applicable law, which proceedings must operate to prevent (i) the enforcement thereof, (ii) the payment of any fine, charge or penalty, (iii) the sale or forfeiture of the Property or any part thereof, (iv) the lien of this Mortgage and the priority thereof from being impaired, (v) the imposition of criminal liability on Lender and (vi) the imposition, unless stayed, of civil liability on Lender; provided that during such contest Borrower shall, at the option of Lender, provide cash, bonds or other security satisfactory to Lender, indemnifying and protecting Lender against any liability, loss or injury by reason of such non-compliance or contest, and provided further, that such contest shall be promptly and diligently prosecuted by and at the expense of Borrower. Borrower shall promptly, at its sole cost and expense, repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated. Borrower shall not commit any waste at the Property. Borrower shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use

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of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit such nonconforming use to be discontinued or abandoned without the express consent of Lender. Borrower covenants and agrees that at all times the Property shall be operated as an IHOP restaurant pursuant to the IHOP Lease. Within forty-five (45) days following the Effective Date, Borrower shall complete (or cause to be completed) the Immediate Required Repairs (as defined below) and shall deliver evidence of completion of such Immediate Required Repairs to Lender. **“Immediate Required Repairs”** mean the following: (1) the addition of handicap signage with van accessible signage to one handicap parking space and (2) the addition of emergency lighting, smoke detectors and audible alarms with strobe lights to each of the public restrooms.

9. Transfer or Encumbrance of the Property or Interests in Borrower; Other Indebtedness.

(a) Borrower acknowledges that Lender has examined and relied on the creditworthiness and experience of Borrower in owning and operating properties such as the Property in agreeing to make the Loan, and that Lender will continue to rely on Borrower’s ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Indebtedness. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Indebtedness, Lender can recover the Indebtedness by a sale of the Property. Borrower shall not, without the prior written consent of Lender, directly or indirectly, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer in trust or otherwise the Property or any part thereof or any direct or indirect interest therein or in Borrower, or permit the Property or any part thereof or any direct or indirect interest in Borrower to be sold, conveyed, alienated, deeded, encumbered, pledged or otherwise transferred (each a **“Transfer”**), provided the foregoing shall not prohibit or require Lender’s consent for Permitted Encumbrances.

(b) Without limitation on the foregoing, a Transfer within the meaning of this Section 9 shall be deemed to include (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments, (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower’s right, title and interest in and to any Leases or any Rents, (iii) if Borrower or any general partner, manager or managing member of Borrower is a corporation, the Transfer of such corporation’s stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than twenty percent (20%) of such corporation’s stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation, (iv) if Borrower or Guarantor or any general partner, manager or managing member of Borrower or Guarantor is a limited or general partnership, joint venture or limited liability company, (A) the change, removal, resignation or addition of a general partner, managing partner, controlling joint venturer, manager or managing member, or (B) the Transfer of the partnership interest of any general partner or managing partner or the Transfer of the interest of any controlling joint venturer or manager or managing member, (v) if Borrower or Guarantor is an entity, whether one of the above-mentioned entities or not, (A) any

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change in the control of such entity, (B) any merger, consolidation or dissolution affecting such entity, or (C) the Transfer of any controlling interest in such entity or in any person, directly or indirectly, controlling such entity or in any general partner, controlling joint venturer, manager or managing member thereof, whether at one time or in a series of related transactions, and (vi) any change in control of Borrower.

(c) Notwithstanding the foregoing provisions of this Section 9, transfers of interests in Borrower by an indirect (but not direct) member of Borrower to (i) immediate family members (including spouses) of such member due to death or for estate planning purposes or (ii) charitable entities in which such immediately family members are income or remainder beneficiaries, are hereby pre-approved by Lender and shall not require Lender's consent, the payment of any transfer fee, and shall not be deemed a Transfer. Borrower shall promptly notify Lender of any such occurrences and hereby agrees to execute documents reasonably required by Lender to evidence the same. Borrower shall be responsible for all reasonable fees and expenses (including Lender's legal fees) relating to said transfers. Nothing contained in this Section 9(c), however, shall limit or negate the provisions of Section 20(i) of this Mortgage.

(d) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Indebtedness immediately due and payable upon Borrower's Transfer of the Property without Lender's consent if required hereunder. Except as otherwise set forth herein, this provision shall apply to every sale, conveyance, alienation, deed, encumbrance, pledge or transfer in trust or otherwise of the Property regardless of whether voluntary or not, or whether or not Lender has consented to any previous sale, conveyance, alienation, deed, encumbrance, pledge or transfer of the Property.

(e) Lender's consent to a Transfer of the Property shall not be deemed to be a waiver of Lender's right to require such consent to any future occurrence of same. Any Transfer made in contravention of this Section 9 shall be null and void and of no force and effect.

(f) Borrower agrees to bear and shall pay or reimburse Lender on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Lender in connection with the review, approval and documentation of any such sale, conveyance, alienation, deed, encumbrance, pledge or transfer in trust or otherwise.

(g) Borrower has not incurred and will not incur any indebtedness, secured or unsecured, other than the Loan and debt (i) incurred in the ordinary course of business to vendors and suppliers of services to the Property which does not exceed three percent (3%) of the original principal balance of the Loan, (ii) not secured by the Property, or any portion thereof, or by interests in Borrower or any constituent entity thereof and (iii) not accompanied by any rights to control or to obtain control of Borrower or any constituent entity thereof. No indebtedness other than the Loan may be secured (subordinate or pari passu) by the Property, or any portion thereof, or by interests in Borrower or any constituent entity thereof.

(h) Notwithstanding anything to the contrary herein, the manager of Borrower may reorganize to effectuate any increase in the ownership interest of Kyle Matthews without

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satisfying the requirements the requirements of this Section 9 or paying any fees or costs to Lender. Borrower shall provide notice to Lender within thirty (30) days of such reorganization.

10. Estoppel Certificates. Borrower, within ten (10) business days after request by Lender, shall furnish Lender from time to time with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest in the Note, (iv) the date through which all installments of interest, commitment fees and/or principal have been paid, (v) any offsets or defenses to the payment of the Indebtedness, if any, (vi) that the Note and this Mortgage have not been modified or if modified giving particulars of such modification and (vii) such other information as shall be requested by Lender. Within thirty (30) days following Lender's request for the same, Borrower shall provide Lender with estoppel certificates from any tenants under then existing Leases, which certificates shall be in form and substance as required by such Leases, or if not required, then in form and substance reasonably satisfactory to Lender.

11. No Cooperative or Condominium. Borrower represents and warrants that the Property has not been subjected to a cooperative or condominium form of ownership. Borrower hereby covenants and agrees that it will not file a declaration of condominium, map or any other document having the effect of subjecting the Property to a condominium or cooperative form of ownership.

12. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Indebtedness or any portion thereof from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the principal amount of the Note or Lender's interest in the Property, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by notice of not less than sixty (60) days, to declare the Indebtedness immediately due and payable without prepayment fee or premium, except that if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, the applicable premium computed in accordance with the Note shall apply.

13. No Credits on Account of the Indebtedness. Borrower will not claim or demand or be entitled to any credit or credits on account of the Indebtedness for any part of the Taxes assessed against the Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Property, or any part thereof, by reason of this Mortgage or the Indebtedness. In the event such claim, credit or deduction shall be required by law, Lender shall have the option, by notice of not less than sixty (60) days, to declare the Indebtedness immediately due and payable without prepayment fee or premium, except that if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, the applicable premium computed in accordance with the Note shall apply.

14. Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to

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the Note or this Mortgage, or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

15. **Right of Entry.** Lender and its agents shall have the right to enter and inspect the Property at any time during reasonable business hours upon twenty-four (24) hour notice to Borrower, except in the case of an emergency, in which event Lender and its agents may enter and inspect the Property at any time.

16. **Books and Records.**

(a) Borrower will maintain full, accurate and complete books of accounts and other records, reflecting the results of the operations of the Property as well as its other operations and will furnish, or cause to be furnished, to Lender the following:

(i) within forty-five (45) days after the end of each fiscal year, Borrower will furnish to Lender, a statement of Borrower's financial condition, including a balance sheet and profit and loss statement, and a statement of annual income and expenses reasonably satisfactory in form and substance to Lender with respect to the operation of the Property, in detail reasonably satisfactory to Lender, prepared and certified as true and correct in all material respects by the financial officer of Borrower who is responsible for the preparation of such annual financial statements (which certification shall be on behalf of Borrower and not by such financial officer individually), and, in addition, within fifteen (15) days after the end of each calendar month, Borrower shall provide the above information and statements for the Property prepared and certified as true and correct in all material respects by the financial officer of Borrower who is responsible for the preparation of such annual financial statements.

(ii) Within fifteen (15) days after the end of each calendar month, Borrower will furnish, or cause to be furnished, to Lender a rent roll, and a report with respect to aged tenant delinquencies, in each case in form and substance reasonably acceptable to Lender.

(iii) within fifteen (45) days after the end of each calendar quarter, a balance sheet and contingent liabilities report for Guarantor dated as of the end of such quarter, certified as true and correct in all material respects by Guarantor.

(b) Borrower shall submit to Lender an operating budget, including all planned capital expenditures, for the Property prepared by Borrower for each calendar year (an "**Annual Budget**"), not later than thirty (30) days prior to the commencement of each such year in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's approval (each such Annual Budget, an "**Approved Annual Budget**"), not to be unreasonably withheld, conditioned or delayed. In the event that Lender objects to a proposed Annual Budget submitted by Borrower which requires the approval of Lender hereunder, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and

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deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget which requires the approval of Lender hereunder, the most recently Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and Other Charges.

(c) In the event that Borrower must incur an extraordinary operating expense or capital expenditure not set forth in the Approved Annual Budget (each an “**Extraordinary Expense**”), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender’s approval.

(d) Borrower shall deliver to Lender such additional information regarding Borrower, its business, and the Property as Lender may reasonably request within ten (10) business days after Lender’s request therefor. Borrower shall permit Lender to examine such records, books and papers of Borrower which reflect upon its financial condition and the income and expenses of the Property.

(e) If Borrower fails to provide to Lender or its designee any of the financial statements, certificates, reports or information (the “**Required Records**”) required by this Section 16 within the applicable time periods set forth in this Section 16, Borrower shall pay to Lender, at Lender’s option and in its discretion, an amount equal to One Thousand Dollars (\$1,000) for each Required Record that is not delivered within twenty (20) days after written notice thereof. In addition, if Borrower fails to deliver any Required Records to Lender within the applicable time periods set forth in this Section 16, Lender shall have the option, upon fifteen (15) days’ notice to Borrower, to gain access to Borrower’s books and records and prepare or have prepared at Borrower’s expense, any Required Records not delivered by Borrower. In addition, it shall be an Event of Default if any of the following shall occur: (i) any failure of Borrower to provide to Lender any of the Required Records within the applicable time periods set forth in this Section 16, if such failure continues for twenty (20) days after written notice thereof, or (ii) in the event any Required Records shall be materially inaccurate or materially false, or (iii) in the event of the failure of Borrower to permit Lender or its representatives to inspect said books, records and accounts upon request of Lender as required by this Section 16.

(f) Borrower shall maintain a separate, individual bank account (each, an “**Operating Account**”) for the Property into which the receipts and revenues from the operation and management of the Property shall at all times be deposited and from which all expenses with respect to the Property shall be paid. Within five (5) business days of Lender’s request, Borrower shall provide true, correct and complete copies of statements for the Operating Account.

17. Performance of Other Agreements. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property.

18. Representations and Covenants Concerning Loan. Borrower represents, warrants and covenants as follows:

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(a) The Note, this Mortgage and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor would the operation of any of the terms of the Note, this Mortgage and the other Loan Documents, or the exercise of any right thereunder, render this Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(b) To Borrower's knowledge, after due inquiry, all certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy of the Property, have been obtained and are in full force and effect. To Borrower's knowledge, after due inquiry and except as disclosed in the physical conditions report obtained by Lender in connection with the origination of the Loan (the "PCR"), the Property is free of material damage and is in good repair, and there is no proceeding pending for the total or partial condemnation of, or affecting, the Property.

(c) To Borrower's knowledge, except as disclosed on the ALTA survey delivered to Lender, all of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Land encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by title insurance. To Borrower's knowledge, after due inquiry, all of the Improvements comply with all requirements of applicable zoning and subdivision laws and ordinances in all material respects.

(d) The Property is not subject to any Leases other than the IHOP Lease. No person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the IHOP Lease. The IHOP Lease is in full force and effect and there are no defaults thereunder by any party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder.

(e) Except as disclosed in the zoning report obtained by Lender in connection with the Loan or the PCR, the Property is in compliance with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property.

(f) There has not been committed by Borrower or, to Borrower's knowledge, any other person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture.

(e) All information submitted by Borrower or Guarantor to Lender including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower in this Mortgage, or Borrower or Guarantor in any other Loan Document, are accurate, complete and correct in all material respects. There has been no material adverse

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change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations and/or the financial condition of Borrower or Guarantor. Borrower and Guarantor have disclosed to Lender all material facts and have not failed to disclose any material fact that could cause any information provided by or on behalf of Borrower or Guarantor to Lender or representation or warranty made herein or in the other Loan Documents to be materially misleading.

(h) Improper Financial Transactions.

(i) Borrower is, and shall remain at all times, in full compliance with all applicable laws and regulations of the United States of America that prohibit, regulate or restrict financial transactions, and any amendments or successors thereto and any applicable regulations promulgated thereunder (collectively, the “**Financial Control Laws**”), including but not limited to those related to money laundering offenses and related compliance and reporting requirements (including any money laundering offenses prohibited under the Money Laundering Control Act, 18 U.S.C. Sections 1956 and 1957 and the Bank Secrecy Act, 31 U.S.C. Sections 5311 *et seq.*) and the Foreign Assets Control Regulations, 31 C.F.R. Section 500 *et seq.* (and all successor acts, laws and regulations).

(ii) Borrower represents and warrants that: (x) Borrower is not a Barred Person (hereinafter defined); (y) Borrower is not owned or controlled, directly or indirectly, by any Barred Person; and (z) Borrower is not acting, directly or indirectly, for or on behalf of any Barred Person.

(iii) Borrower represents and warrants that it understands and has been advised by legal counsel on the requirements of the Financial Control Laws.

(iv) Under any provision of this Mortgage or any of the other Loan Documents where Lender shall have the right to approve or consent to any particular action, including without limitation any (A) sale, transfer, assignment of the Property or of any direct or indirect ownership interest in Borrower, (B) leasing of the Property, or any portion thereof, or (C) incurring of additional financing secured by Property, or any portion thereof, or by any direct or indirect ownership interest in Borrower, Lender shall have the right to withhold such approval or consent in its sole and absolute discretion (notwithstanding any other standard for consent specified) if Lender has determined that the granting of such approval or consent could be construed as a violation of any of the Financial Control Laws.

(v) Borrower covenants and agrees that it will upon request provide Lender with (or cooperate with Lender in obtaining) information required by Lender for purposes of complying with any Financial Control Laws.

As used in this Mortgage, the term “**Barred Person**” shall mean (A) any person, group or entity named as a “Specially Designated National and Blocked Person” or as a person who commits, threatens to commit, supports, or is associated with terrorism as designated by the United States Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”), (B) any

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person, group or entity named in the lists maintained by the United States Department of Commerce (Denied Persons and Entities), (C) any government or citizen of any country that is subject to a United States Embargo identified in regulations promulgated by OFAC and (D) any person, group or entity named as a denied or blocked person or terrorist in any other list maintained by any agency of the United States government.

(i) Special Purpose Entity. Borrower shall be and remain a special purpose bankruptcy remote entity and shall at all times comply with the following covenants:

(i) The purpose for which Borrower is organized shall be limited to (a) owning, holding, selling, leasing, transferring, exchanging, operating and managing Borrower's interest in the Property, (b) entering into the Loan, (c) refinancing the Property in connection with a permitted repayment of the Loan, and (d) transacting any and all lawful business that is incident, necessary and appropriate to accomplish the foregoing.

(ii) Borrower does not own and will not own any asset or property other than (i) the Property and (ii) incidental personal property necessary for and used in connection with the ownership or operation of the same.

(iii) Borrower shall not engage in a business other than the ownership, operation and management of the Property and any other property which is hereafter acquired by Borrower with Lender's prior written consent.

(iv) Borrower will not enter into any contract or agreement with any affiliate, Guarantor or any affiliate of Guarantor; provided, however, that Borrower shall be permitted to enter into any contract or agreement with any affiliate, Guarantor (as defined in the Loan Documents) or any affiliate of Guarantor so long as: (i) Borrower obtains Lender's prior written consent to such transaction; and (ii) the terms of such contract or agreement shall be consistent with and/or similar to those of an arms-length transaction between Borrower and a bona fide third party.

(v) Borrower has not incurred and will not incur any indebtedness, secured or unsecured, other than (1) the Loan and incidental costs and expenses associated therewith, (2) indebtedness incurred in the ordinary course of business to vendors and suppliers of services to the Property (not more than thirty (30) days past due), and (3) non-delinquent property taxes and assessments.

(vi) Borrower has not made and will not make any loans or advances to any person or entity and shall not acquire obligations or securities of an affiliate.

(vii) Borrower is and will remain solvent and Borrower will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, provided that this covenant shall not imply any capital contribution obligation.

(viii) Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Borrower will not

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amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Borrower without the written consent of Lender.

(ix) Borrower shall maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates. Borrower's assets will not be listed as assets on the financial statement of any other person. Borrower shall have its own separate financial statement. Borrower will file its own tax returns and will not file a consolidated federal income tax return with any other corporation. Borrower shall maintain its books, records, resolutions and agreements as official records.

(x) Borrower will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other person or entity, shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name and shall not identify itself or any of its affiliates as a division or part of the other.

(xi) Borrower will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(xii) Neither Borrower nor any constituent party will seek the dissolution, winding up, liquidation, consolidation or merger, in whole or in part, or the sale of material assets of Borrower.

(xiii) Borrower will not commingle the funds and other assets of Borrower with those of any other person, and will not participate in a cash management system with any such person

(xiv) Borrower will not commingle its assets with those of any other person and will hold all of its assets in its own name.

(xv) Borrower will not guarantee or become obligated for the debts of any other person and does not and will not hold itself out as being responsible for the debts or obligations of any other person.

(xvi) Borrower shall not pledge its assets for the benefit of any other person, other than with respect to the Loan.

(xvii) Without the unanimous consent of each of Borrower's members, partners or other equity interest holders, Borrower shall not file a petition for relief under the Bankruptcy Code, or under any other present or future state of federal law regarding bankruptcy, reorganization or other debtor relief law.

19. Appraisals. Lender shall have the right to obtain a new or updated appraisal of the Property from time to time, provided, however, that so long as no Event of Default has occurred Lender shall do so not more often than once in every eighteen (18) month period.

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Borrower shall cooperate with Lender in this regard. Borrower shall pay for any such new or updated appraisal within ten (10) days of Lender's written demand therefor.

20. Events of Default; Remedies. Each of the following events shall constitute an "Event of Default" hereunder:

- (a) in the event of the occurrence of any of the Events of Default described in Section 5.1 of the Note;
- (b) if any Taxes payable directly to the billing authority by Borrower are not paid before interest becomes payable on the amount due or a penalty is assessed (provided that the foregoing provisions of this clause (b) shall be subject to the right to contest Taxes granted to Borrower in Section 4(b) of this Mortgage, but only for so long as the conditions in Section 4(b) of this Mortgage remain satisfied);
- (c) if the Policies are not kept in full force and effect and are not delivered to Lender when required hereunder, or if the Policies are not delivered to Lender within ten (10) days after request by Lender;
- (d) if any of the provisions of Sections 5, 7, 9, 16 or 39 herein are violated or not complied with;
- (e) if any of the events described in Section 41 shall occur;
- (f) if any lender (or beneficiary) under a mortgage (or deed of trust) on the Property, whether superior or subordinate to this Mortgage (i) demands payment in full or otherwise accelerates any indebtedness of Borrower or (ii) otherwise commences the exercise of any remedy available to such party under any such mortgage (or deed of trust) or other loan document related to such mortgage (or deed of trust);
- (g) if Borrower fails to cure promptly any violation of any law or ordinance affecting the Property (provided that the foregoing provisions of this clause (g) shall be subject to any right to contest such violation specifically granted to Borrower in Section 8 of this Mortgage);
- (h) if any guaranty of the Indebtedness or any portion thereof (herein called a "Guaranty") is terminated or any event or condition occurs which, in the sole judgment of Lender, may impair the ability of any Guarantor to perform its obligations under any Guaranty or any Guarantor attempts to withdraw, cancel or disclaim any Guaranty;
- (i) if any Guarantor is a natural person, the death of such Guarantor shall occur (provided, however, that any such death shall not result in an Event of Default hereunder provided that, within thirty (30) days following such death, a reputable individual who satisfies the net worth and liquidity requirements in the Guaranty executed by such Guarantor and who is otherwise reasonably satisfactory to Lender, executes and delivers to Lender a replacement Guaranty in form and substance identical to the Guaranty executed by such deceased Guarantor

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and executes and delivers to Lender any other indemnity documents executed by such deceased Guarantor in form and substance identical to such indemnity documents);

(j) if there shall be any breach or default by Borrower of the terms of that certain Cash Management Agreement of even date herewith between Borrower and Lender;

(k) if any of the provisions of Sections 42(d) and/or Section 42(f) are violated or not complied with, and/or if any representation or warranty in Section 42(b) and/or 42(c) shall prove false or misleading in any respect and/or if any of the events described in Section 42(e) shall occur;

(l) if Borrower votes to change, changes, permits a vote to change or permits a change of the property manager of the Property without the prior written consent of Lender, which shall not be unreasonably withheld, in accordance with the terms of the Loan Documents (hereafter defined) or if a default or Event of Default occurs under the property management agreement, if any;

(m) if there shall be an "Event of Default" under any other deed of trust, mortgage or security instrument given by Borrower or any affiliate of Borrower to Lender as security for the Loan; or

(n) the filing of an action to partition the Property or the occurrence of such partition and any sale pursuant to any such action.

Upon the occurrence of any Event of Default, the Indebtedness shall immediately become due at the option of Lender.

Upon the occurrence of any Event of Default, Borrower shall pay interest on the entire unpaid principal balance of the Note, as defined in and provided for in the Note.

Upon the occurrence of any Event of Default, Lender may, to the extent permitted under applicable law, elect to treat the fixtures included in the Property either as real property or as personal property, or both, and proceed to exercise such rights as apply thereto. With respect to any sale of real property included in the Property, Lender may, to the extent permitted by applicable law, include in such sale any fixtures included in the Property and relating to such real property.

21. Additional Remedies.

(a) Upon the occurrence of any Event of Default, Lender may take such action, without notice or demand, as it shall deem advisable to protect and enforce its rights against Borrower and in and to the Property or any part thereof or interest therein, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender (i) enter into or upon the Real Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, and thereupon Lender may (A) use, operate, manage, control,

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insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat, (B) complete any construction on the Property in such manner and form as Lender deems advisable, (C) make alterations, additions, renewals, replacements and improvements to or on the Property, (D) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Property and every part thereof and (E) apply the receipts from the Property to the payment of the Indebtedness, after deducting therefrom all expenses (including reasonable attorneys' fees and expenses) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Property, as well as just and reasonable compensation for the services of Lender and its counsel, agents and employees, or (i) institute proceedings for the complete foreclosure of this Mortgage in which case the Property may be sold for cash or upon credit in one or more parcels, or (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Mortgage for the balance of the Indebtedness not then due, or (iv) sell for cash or upon credit the Property or any part thereof and all or any part of any estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien on the remaining portion of or estate in the Property, or (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note or any other Loan Document, or (vi) recover judgment on the Note or any Guaranty either before, during or after any proceedings for the enforcement of this Mortgage, or (vii) pursue such other remedies as Lender may have under applicable law.

(b) The purchase money proceeds or avails of any sale made under or by virtue of this Section 21, together with any other sums which then may be held by Lender under this Mortgage, whether under the provisions of this Section 21 or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of any such sale, including reasonable compensation to Lender, their agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Lender under this Mortgage, together with interest as provided herein on all advances made by Lender and all taxes or assessments, except any taxes, assessments or other charges subject to which the Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal, together with any and all applicable interest, fees and late charges.

Third: To the payment of any other sums required to be paid by Borrower pursuant to any provision of this Mortgage or of the Note or any other Loan Document.

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

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

(c) Lender may adjourn from time to time any sale to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Lender, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by Lender under or by virtue of this Section 21, Lender or an officer of any court empowered to do so, as the case may be, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Lender is hereby irrevocably appointed the true and lawful attorney of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property and rights so sold and for that purpose Lender may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this Section 21, whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower.

(e) In the event of any sale made under or by virtue of this Section 21 (whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale) the entire Indebtedness, if not previously due and payable, immediately thereupon shall, anything in the Note, this Mortgage, any Guaranty or any other Loan Document to the contrary notwithstanding, become due and payable.

(f) Upon any sale made under or by virtue of this Section 21 (whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Lender may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness (including any prepayment premium due thereof) the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Lender is authorized to deduct or receive under this Mortgage.

(g) No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Property or upon any other property of Borrower shall affect in any manner or to any extent, the lien of this Mortgage upon the Property or any part thereof, or any

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liens, rights, powers or remedies of Lender hereunder, but such liens, rights, powers and remedies of Lender shall continue unimpaired as before.

22. **Right to Cure Defaults.** Upon the occurrence of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Without limiting the foregoing, Lender may enter upon the Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Property, and the cost and expense thereof (including, without limitation, attorneys' fees and disbursements to the extent permitted by law), with interest as provided in this Section 22, shall be immediately due and payable to Lender upon demand by Lender therefor. All such costs and expenses incurred by Lender in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (as such term is defined in the Note), for the period from the date that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses, together with interest thereon at the Default Rate, shall be added to the Indebtedness and shall be secured by this Mortgage. If the principal sum of the Note or any other amount required to be paid on the Maturity Date under the Note shall not be paid on the Maturity Date, interest shall thereafter be computed and paid at the Default Rate.

23. **Late Payment Charge.** If any monthly principal and/or interest payment is not paid in accordance with the Note, a late charge (the "Late Charge") shall be due as provided in the Note.

24. **Prepayment.** The Indebtedness may be prepaid only in accordance with the terms of the Note.

25. **Prepayment After Event of Default.** A tender of the amount necessary to satisfy the entire indebtedness, paid at any time following an Event of Default or acceleration (which acceleration shall be at Lender's sole option), including at a foreclosure sale or during any subsequent redemption period, if any, shall be deemed a voluntary prepayment, which payment shall include the Exit Fee and/or Yield Protection Fee (if such sale occurred prior to six months), the calculation of which shall be in accordance with the terms of the Note and shall depend upon whether the Event of Default or acceleration first occurred (i) prior to the time, if any, the prepayment of the principal balance is not permitted pursuant to the terms of the Note and prior to the date on which the full amount of the balance of principal and interest then remaining unpaid shall be due or (ii) on or after the date on which prepayment of the principal balance is permitted pursuant to the terms of the Note.

26. **Appointment of Receiver.** Lender, upon the occurrence of an Event of Default or in any action to foreclose this Mortgage or upon the actual or threatened waste to any part of the Property, shall be entitled to the appointment of a receiver without notice and without regard to the value or condition of the Property as security for the Indebtedness or the solvency or insolvency of any person liable for the payment of the Indebtedness.

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Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry as provided herein and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property, unless such receivership is sooner terminated.

27. Security Agreement.

(a) This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property (to the extent attached to or used exclusively in anyway in connection with the Property or its operations) and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. Borrower, by executing and delivering this Mortgage grants to Lender (to the extent provided herein), as security for the Indebtedness, a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code (such portion of the Property so subject to the Uniform Commercial Code being called in this Section 27 the "Collateral"). Borrower hereby authorizes Lender to file financing statements in order to create, perfect, preserve and continue the security interest(s) herein granted. This Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code and shall cover all items of the Collateral that are or are to become fixtures. Information concerning the security interest(s) herein granted may be obtained from Lender upon request.

If an Event of Default shall occur, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender, Borrower shall at its expense assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees and disbursements, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such sale, disposition or action shall constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Indebtedness in such priority and proportions as Lender in its discretion shall deem proper.

Borrower shall notify Lender of any change in name, identity or structure of Borrower and shall promptly execute, file and record, at its sole cost and expense, such Uniform Commercial Code forms as are necessary to maintain the priority of the lien of Lender upon and security interest in the Collateral. In addition, Borrower shall promptly execute, file and record such additional Uniform Commercial Code forms or continuation statements as Lender shall deem necessary and shall pay all expenses and fees in connection with the filing and recording thereof, provided that no such additional documents shall increase the obligations of Borrower

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under the Note, this Mortgage or the other Loan Documents. Borrower hereby grants to Lender an irrevocable power of attorney, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Lender, as secured party, in connection with the Collateral covered by this Mortgage.

(b) That portion of the Property consisting of personal property and equipment, shall be owned by Borrower and shall not be the subject matter of any lease or other transaction whereby the ownership or any beneficial interest in any of such property is held by any person or entity other than Borrower nor shall Borrower create or suffer to be created any security interest covering any such property as it may from time to time be replaced, other than the security interest created herein.

28. Authority.

(a) Borrower has full power, authority and legal right to execute this Mortgage, and to deed, give, grant, bargain, sell, alienate, convey, confirm, pledge, hypothecate and assign and grant a security interest in the Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Borrower's part to be performed.

(b) Borrower represents and warrants to Lender that Borrower is not a "foreign person" and covenants with Lender that Borrower will not, throughout the term of the Note, become a "foreign person" within the meaning of §1445 and §7701 of the Internal Revenue Code of 1986 (26 USC §§1445, 7701) and the related Treasury Department regulations, including, without limitation, temporary regulations (hereinafter collectively the "Code"); that is, Borrower is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code.

(c) Borrower represents and warrants to Lender that it is a limited liability company, organized and existing under the laws of the State of Delaware and is qualified to do business in the State of Illinois.

29. Actions and Proceedings. Lender shall have the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, shall decide should be brought to protect their respective interests in the Property.

30. Further Acts, Etc. Borrower will, at the sole cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require, for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby given, granted, bargained, sold, aliened, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage and, on demand, will execute and deliver within five (5) business days after request of Lender, and if Borrower fails to so deliver, hereby authorizes Lender thereafter to execute in the name of Borrower without the

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signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 30.

31. Recording of Mortgage, Etc. Borrower forthwith upon the execution and delivery of this Mortgage, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Property, to be filed, registered or recorded and, thereafter, from time to time, each such other instrument of further assurance to be filed, registered or recorded, all in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interests of Lender in, the Property. Borrower will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the making, execution, delivery and/or recording of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, except where prohibited by law so to do. Borrower shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making, execution, delivery and/or recording of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance.

32. Usury Laws. This Mortgage and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance due under the Note at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by law to contract or agree to pay. If by the terms of this Mortgage or the Note, Borrower is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of such maximum rate, the rate of interest under the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note and the principal balance of the Note shall be reduced by such amount in the inverse order of maturity.

33. Sole Discretion of Lender. Wherever pursuant to this Mortgage, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Lender and shall be final and conclusive, except as may be otherwise specifically provided herein.

34. Recovery of Sums Required To Be Paid. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Indebtedness as

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the same become due, without regard to whether or not the balance of the Indebtedness shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

35. Marshalling and Other Matters. Borrower waives, to the extent permitted by law, the benefit of all valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

36. Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Lender to Borrower.

37. Remedies of Borrower. In the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Mortgage or the other Loan Documents, it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.

38. Reporting Requirements. At the request of Lender, Borrower shall supply or cause to be supplied to Lender either (a) a copy of a completed Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange, Proceeds prepared by Borrower's attorney or other person responsible for the preparation of such form, together with a certificate from the person who prepared such form to the effect that such form has, to the best of such person's knowledge, been accurately prepared and that such person will timely file such form or (b) a certification from Borrower that the Loan is a refinancing of the Property or is otherwise not required to be reported to the Internal Revenue Service pursuant to Section 6045(e) of the Code. Borrower hereby indemnifies, defends and holds Lender harmless from and against all loss, cost, damage and expense (including without limitation, attorneys' fees and disbursements and costs incurred in the investigation, defense and settlement of claims) that Lender may incur, directly or indirectly, as a result of or in connection with the assertion against Lender of any claim relating to the failure of Borrower to comply with this Section 38.

39. Hazardous Materials.

(a) Borrower represents and warrants that (i) the Property is now and at all times during Borrower's ownership thereof has been free of contamination from any petroleum product and all hazardous or toxic substances, wastes or substances, any substances which

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because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any asbestos (whether or not friable) and any asbestos-containing materials, Mold (defined as the presence of any form of (a) multicellular fungi that live on plant or animal matter and an indoor environment (including without limitation Cladosporium, Penicillium, Alternaria, Aspergillus, Fusarium, Trichoderma, Memnoniella, Mucor, and Stachybotrys chartarum (SC) often found in water damaged building materials), (b) spores, scents or byproducts produced or released by fungi, including mycotoxins and (c) microbial matter which reproduces through mold, mildew and viruses, whether or not such microbial matter is living (collectively "**Mold**")), waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials or any hazardous or toxic wastes or substances which are included under or regulated by any federal, state or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments ("**Hazardous Materials**"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. section 9601 *et seq.* ("**CERCLA**"); The Federal Resource Conservation and Recovery Act, 42 U.S.C. section 6901 *et seq.* ("**RCRA**"); Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499 ("**SARA**"); Toxic Substances Control Act, 15 U.S.C. section 2601 *et seq.* ("**TSCA**"); the Hazardous Materials Transportation Act, 49 U.S.C. section 1801 *et seq.*; and any other state superlien or environmental clean-up or disclosure statutes (all such laws, rules and regulations being referred to collectively as "**Environmental Laws**"), (ii) Borrower has not caused or suffered to occur any discharge, spill, uncontrolled loss or seepage of any Hazardous Materials onto any property adjoining the Property, (iii) Borrower has not received any complaint, notice, letter, or other communication from occupants, tenants, guests, employees, licensees or any other person regarding odors, poor indoor air quality, Mold, or any activity, condition, event or omission that causes or facilitates the growth of Mold and Borrower further represents to the best of its knowledge that no Mold or any activity, condition, event or omission that causes or facilitates the growth of Mold exists at the Property, and (iv) neither Borrower nor any tenant or occupant of all or part of the Property is now or has been involved in operations at the Property which could lead to liability for Borrower or any other owner of the Property or the imposition of a lien on the Property under any Environmental Law.

(b) At its sole cost and expense, Borrower shall comply with and shall cause all tenants and other occupants of the Property to comply with all Environmental Laws now in effect or hereafter enacted with respect to the discharge, generation, removal, transportation, storage and handling of Hazardous Materials. Borrower shall promptly notify Lender if Borrower shall become aware of any Hazardous Materials on or near the Property and/or if Borrower shall become aware that the Property is in direct or indirect violation of any Environmental Laws and/or if Borrower shall become aware of any condition on or near the Property which shall pose a threat to the health, safety or welfare of humans. Borrower shall promptly remove all Hazardous Materials from the Property, such removal to be performed in

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accordance with all applicable federal, state and local laws, statutes, rules and regulations. Borrower shall pay immediately when due the cost of removal of any Hazardous Materials and shall keep the Property free of any lien imposed pursuant to any Environmental Laws now in effect or hereinafter enacted.

(c) Borrower grants Lender and its employees and agents an irrevocable and non-exclusive license, subject to the rights of tenants, to enter the Property to conduct testing and to remove any Hazardous Materials, and the costs of such testing and removal shall immediately become due to Lender and shall be secured by this Mortgage. Borrower, promptly upon the request of Lender, from time to time, shall provide Lender with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content satisfactory to Lender. Borrower shall maintain the integrity of all storage tanks and drums on or under the Property during the term of the Loan in compliance with all Environmental Laws now in effect or hereinafter enacted. Borrower shall follow an operation and maintenance program with respect to all storage tanks and drums on or under the Property, which program has been approved in writing by Lender.

(d) Borrower shall indemnify Lender and hold Lender harmless from and against all liability, loss, cost, damage and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Lender may incur as a result of or in connection with the assertion against Lender (whether as past or present Lender of this Mortgage, as Lender in possession or as past or present owner of the Property by virtue of a foreclosure or acceptance of a deed in lieu of foreclosure or otherwise) of any claim relating to the presence and/or release, threatened release, storage, disposal, generating or removal of any Hazardous Materials or compliance with any Environmental Laws now in effect or hereinafter enacted. The obligations and liabilities of Borrower under this Section 39 shall survive full payment of the Loan, entry of a judgment of foreclosure or acceptance of a deed in lieu of foreclosure or any subsequent transfer to a third party. It is understood that the presence and/or release of substances referred to in this section hereof does not pertain to a presence and/or release which first occurs solely after (A) repayment of the Loan in full in accordance with the Loan Documents or (B) acquisition of title to the Property by Lender upon a foreclosure or acceptance of a deed in lieu of foreclosure or otherwise and surrender of possession and occupancy of the Property by Borrower, its agents, affiliates, employees and independent contractors. Borrower shall have the burden of proving that the conditions in subsection (d) were satisfied by clear and convincing evidence and shall continue to defend with counsel satisfactory to Lender and shall indemnify and hold Lender harmless for all matters set forth in this Section 39, unless and until a court of competent jurisdiction finds that Borrower has met such burden.

(e) Nothing contained herein shall constitute or be construed as a waiver of any statutory or judicial federal, state or local law which may provide rights or remedies to Lender against Borrower or others in connection with any claim relating to the Property and pertaining to the presence and/or release, threatened release, storage, disposal, generating or removal of any Hazardous Materials or to the failure to comply with any Environmental Laws now or hereafter enacted.

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40. Asbestos. Borrower shall not install or permit to be installed in the Property, friable asbestos or any substance containing asbestos. With respect to any such material currently present in the Property, Borrower, at Borrower's expense, shall promptly comply with and shall cause all occupants of the Property to comply with all present and future applicable federal, state or local laws, rules, regulations or orders relating to asbestos, friable asbestos and asbestos containing materials. In the event any asbestos, friable asbestos or asbestos containing material is discovered at the Property, Borrower shall obtain a comprehensive asbestos report prepared by a licensed engineer or asbestos consultant acceptable to Lender describing the form, extent, location and condition of such asbestos and recommending methods of removal or abatement. Borrower shall promptly comply at its sole cost and expense with the recommendations contained in such report, such compliance to be performed in accordance with all applicable federal, state and local laws, statutes, rules and regulations. Borrower shall indemnify Lender and hold Lender harmless from and against all loss, cost, damage and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Lender may incur as a result of or in connection with the assertion against Lender (whether as past or present Lender of this Mortgage, as Lender in possession, or as past or present owner of the Property by virtue of a foreclosure or acceptance of a deed in lieu of foreclosure or otherwise) of any claim relating to the presence or removal of any asbestos substance referred to in this Section 40, or compliance with any federal, state or local laws, rules, regulations or orders relating thereto. The obligations and liabilities of Borrower under this Section 40 shall survive full payment of the Loan, foreclosure or the acceptance of a deed in lieu of foreclosure.

41. Bankruptcy or Insolvency. In the event that Borrower or any Guarantor or, if Borrower or any Guarantor is a general or limited partnership, any general partner of any such entity (a) admits in writing its inability to pay its debts generally as they become due, or does not pay its debts generally as they become due, (b) commences as debtor any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, or seeks or consents to the appointment of a receiver, conservator, trustee, custodian, manager, liquidator or similar official for it or the whole or any substantial part of its property, (c) has a receiver, conservator, trustee, custodian, manager, liquidator, or similar official appointed for it or the whole or any substantial part of its property, by any governmental authority with jurisdiction to do so, (d) makes a proposal or any assignment for the benefit of its creditors, or enters into an arrangement or composition or similar plan or scheme with or for the benefit of creditors generally occurring in circumstances in which such entity is unable to meet its obligations as they become due or (e) has filed against it any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law which (i) is consented to or not timely contested by such entity, (ii) results in the entry of an order for relief, appointment of a receiver, conservator, trustee, custodian, manager, liquidator or similar official for such entity or the whole or any substantial part of its property or (iii) is not dismissed within sixty (60) days, an Event of Default shall have occurred and as a result, the entire principal balance of the Note and all obligations under any Guaranty shall become immediately due and payable at the option of Lender without notice to Borrower or any Guarantor and Lender may exercise any remedies available to it hereunder, under any other Loan Document, at law or in equity.

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42. Compliance with ERISA and State Statutes on Governmental Plans.

(a) Lender represents and warrants to Borrower that, as of the date of this Mortgage and throughout the term of this Mortgage, the source of funds from which Lender extends this Mortgage is its general account, which is subject to the claims of its general creditors under state law.

(b) Borrower represents and warrants that, as of the date of this Mortgage and throughout the term of this Mortgage, (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA and (ii) the assets of Borrower do not constitute "plan assets" of one or more such plans within the meaning of ERISA Section 3(42) and 29 C.F.R. § 2510.3-101.

(c) Borrower represents and warrants to Lender that, as of the date of this Mortgage and throughout the term of this Mortgage (i) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (ii) transactions by or with Borrower or any Borrower are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

(d) Borrower covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of this Mortgage, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" or a "governmental plan", (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans, and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

(B) Less than 25 percent of all equity interests in Borrower are held by "benefit plan investors" within the meaning of ERISA Section 3(42); or

(C) Borrower qualifies as a "venture capital operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(d) or (e).

(e) Any of the following shall constitute an Event of Default under this Mortgage, entitling Lender to exercise any and all remedies to which it may be entitled under this Mortgage, and any other Loan Documents (i) the failure of any representation or warranty made by Borrower under this Section 42 to be true and correct in all respects, (ii) the failure of Borrower to provide Lender with the written certifications and evidence referred to in this Section 42 or (iii) the consummation by Borrower of a transaction which would cause the establishment or maintenance of this Mortgage or the other Loan Documents, or any exercise of Lender's rights under this Mortgage, or the other Loan Documents to constitute a non-exempt prohibited transaction under ERISA or a violation of a state statute regulating governmental plans, or otherwise subjecting Lender to liability for violation of ERISA or such state statute.

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(f) Borrower shall indemnify Lender and defend and hold Lender harmless from and against all civil penalties, excise taxes, or other loss, cost, damage and expense (including, without limitation, attorneys' fees and disbursements and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under this Section 42. This indemnity shall survive any termination, satisfaction or foreclosure under this Mortgage.

43. Assignments. Lender shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Mortgage.

44. Cooperation. Borrower acknowledges that Lender and its successors and assigns may (a) sell this Mortgage, the Note and other Loan Documents to one or more investors as a whole loan, or (b) participate the Loan to one or more investors. Borrower shall, at its expense, cooperate with Lender in effecting any such transaction. Lender shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Borrower, the Guarantor, if any, the Property and the tenants under the Leases. Borrower acknowledges that certain information regarding the Loan and the parties thereto and the Property may be included in a private placement memorandum, prospectus or other disclosure documents.

45. Use of Proceeds. Borrower represents and warrants to Lender that the proceeds of the obligations secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Lender, and the entire principal obligations secured by this Mortgage constitute (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

46. Maximum Indebtedness. The total amount secured by this Mortgage (excluding interest, costs, expenses, charges, fees, protective advances and indemnification obligations, all of any type or nature) shall not exceed an amount of THREE MILLION SEVEN HUNDRED THOUSAND TWENTY THOUSAND AND 00/100 DOLLARS (\$3,720,000.00).

47. Notices. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Mortgage, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by notice to the other party specify):

To Lender:

c/o Thorofare Capital, Inc.
633 W. Fifth Street, Suite 2200

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Los Angeles, California 90071
Attention: Mr. Kevin Miller

and with a copy concurrently to:

c/o Thorofare Capital, Inc.
633 W. Fifth Street, Suite 2200
Los Angeles, California 90071
Attention: General Counsel

To Borrower:

AI Bridgeview II, LLC
841 Apollo Street, Suite 150
El Segundo, California 90245
Attention: Kyle B. Matthews

and with a copy concurrently to:

Friedman Stroffe & Cerard, P.C.
19800 MacArthur Blvd., Suite 1100
Irvine, CA 92612-2425
Attention: Jennifer V. Stroffe

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the day such material is sent or (iii) if delivered by certified mail, on the third day after the same is deposited with the United States Postal Service as provided above.

48. Non-Waiver. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) failure of Lender to comply with any request of Borrower or any Guarantor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note, any Guaranty or the other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Indebtedness or portion thereof or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, any Guaranty, this Mortgage or the other Loan Documents. Lender may resort for the payment of the Indebtedness to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Indebtedness, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Mortgage. The rights of Lender under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and

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remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded by law.

49. **Joint and Several Liability.** If there is more than one party comprising Borrower, then the obligations and liabilities of each party under this Mortgage shall be joint and several.

50. **Severability.** If any term, covenant or condition of the Note, any Guaranty or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Note, any Guaranty and this Mortgage shall be construed without such provision.

51. **Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

52. **Indemnity and Lender's Costs.** Borrower agrees to pay all costs, including, without limitation, attorneys' fees and expenses, incurred by Lender in enforcing the terms hereof and/or the terms of any of the other Loan Documents or the Note or any Guaranty, whether or not suit is filed and waives to the full extent permitted by law all right to plead any statute of limitations as a defense to any action hereunder. Borrower agrees to indemnify and hold Lender harmless from any and all liability, loss, damage or expense (including, without limitation, attorneys' fees and disbursements) that Lender may or might incur hereunder or in connection with the enforcement of any of their rights or remedies hereunder, any action taken by Lender hereunder, or by reason or in defense of any and all claims and demands whatsoever that may be asserted against Lender arising out of the Property; and should Lender incur any such liability, loss, damage or expense, the amount thereof with interest thereon at the Default Rate shall be payable by Borrower immediately without demand, shall be secured by this Mortgage, and shall be a part of the Indebtedness.

53. **No Oral Change.** This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or any one Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

54. **No Foreign Person.** Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department Regulations, including temporary regulations.

55. **Separate Tax Lot.** Borrower represents and warrants that the Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

56. **Right to Release Any Portion of the Property.** Lender may release or reconvey any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Mortgage,

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or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a lien and security interest in the remaining portion of the Property.

57. Subrogation. Lender shall be subrogated for further security to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the Loan secured by this Mortgage.

58. Administrative Fees. Lender may charge administrative fees and be reimbursed for all reasonable costs and expenses, including reasonable attorneys' fees and disbursements, associated with reviewing and processing post-closing requests of Borrower.

59. Headings, Etc. The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

60. Address of Real Property. The street address of the Real Property is 7240 W. 79th Street, Bridgeview, Illinois 60455.

61. Method of Payment. All payments of principal and interest and other amounts due under this Mortgage shall be paid to Lender in United States Dollars.

62. Publicity. Borrower agrees that Lender, at its expense, may publicize the financing of the Property in trade and similar publications.

63. Relationship. The relationship of Lender to Borrower under this Mortgage is strictly and solely that of Lender and Borrower and nothing contained in this Mortgage or any other Loan Document is intended to create, or shall in any event or under any circumstance be construed to create, a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between Lender and Borrower other than that of Lender and Borrower.

64. No Third Party Beneficiaries. Nothing contained herein is intended or shall be deemed to create or confer any rights upon any third person not a party hereto, whether as a third-party Lender or otherwise, except as expressly provided herein.

65. Entire Agreement. This Mortgage, the Note and the other Loan Documents constitute the entire agreement among Borrower and Lender with respect to the subject matter hereof and all understandings, oral representations and agreements heretofore or simultaneously had among the parties are merged in, and are contained in, such documents and instruments.

66. Servicer. Lender may from time to time appoint a servicer (the "Servicer") to administer the Loan, which Servicer shall have the power and authority to exercise all of the rights and remedies of Lender and to act as agent of Lender hereunder. With respect to such

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Servicer, Borrower shall be responsible for (a) payment on first (1st) day of each month during the term of the Loan of a servicing fee in the amount of seven hundred fifty and 50/100 dollars (\$750.00), (b) payment of the servicing costs identified on Exhibit C attached hereto for the items specified therein, and (c) to the extent not specified in Exhibit C, other customary servicing costs and expenses incurred by Lender.

67. Governing Law; Consent to Jurisdiction. IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION, PERFORMANCE AND ENFORCEMENT OF THIS MORTGAGE AND THE OBLIGATIONS ARISING HEREUNDER, THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF ILLINOIS. INTERPRETATION AND CONSTRUCTION OF THIS MORTGAGE SHALL BE ACCORDING TO THE CONTENTS HEREOF AND WITHOUT PRESUMPTION OR STANDARD OF CONSTRUCTION IN FAVOR OF OR AGAINST BORROWER OR LENDER. BORROWER AGREES THAT ANY ACTION, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS MORTGAGE MAY BE INITIATED AND PROSECUTED IN THE STATE COURTS, AS THE CASE MAY BE, LOCATED IN COOK COUNTY, STATE OF ILLINOIS OR ANY UNITED STATES DISTRICT COURTS AS MAY BE LOCATED IN COOK COUNTY, STATE OF ILLINOIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER CONSENTS TO AND SUBMITS TO THE EXERCISE OF JURISDICTION OVER THE SUBJECT MATTER, WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT ITS ADDRESS SET FORTH ABOVE OR TO ANY OTHER ADDRESS AS MAY APPEAR IN THE LENDER'S RECORDS AS THE ADDRESS OF BORROWER (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW). TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ANY ACTION, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS MORTGAGE, BORROWER WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN SECURED BY THIS MORTGAGE, THE APPLICATION FOR THE LOAN SECURED BY THIS MORTGAGE, THE LOAN DOCUMENTS, OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY, INTENTIONALLY AND VOLUNTARILY BY BORROWER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH OF THEM HAS RELIED ON THIS WAIVER IN ENTERING INTO THIS NOTE AND THE OTHER LOAN DOCUMENTS AND THAT EACH OF THEM WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. BORROWER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS

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JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER ALSO WAIVES (I) THE RIGHT TO INTERPOSE ANY SET-OFF OR COUNTERCLAIM OF ANY NATURE OR DESCRIPTION, (II) ANY OBJECTION BASED ON FORUM NON CONVENIENS OR VENUE, AND (III) ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES.

69. **Waiver of Homestead and Redemption.** Borrower hereby expressly waives any and all rights of redemption and reinstatement in connection with foreclosure of this Mortgage, it being the intent hereof that any and all such rights of redemption and reinstatement of the Borrower and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by the Act (as defined in **Exhibit B** attached hereto) or any other applicable law or replacement statutes.

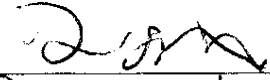
71. **Incorporation of State Law.** Certain provisions/sections of this Mortgage and certain additional provisions/sections that are required by laws of the State in which the Property is located are be amended, described and/or otherwise set forth in more detail on **Exhibit B** attached hereto, which such Exhibit by this reference, is incorporated into and made a part of this Mortgage. In the event of any conflict between such state law provisions and any provision herein, the state law provisions set forth in **Exhibit B** shall control.

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IN WITNESS WHEREOF, Borrower has duly executed and delivered this Mortgage as of the day and year first above written.

BORROWER:

AI BRIDGEVIEW IL, LLC,
a Delaware limited liability company

By: 
Name: Daniel S. G. G. G.
Title: Assistant Secretary

Property of Cook County Clerk's Office

[SIGNATURE PAGE TO MORTGAGE]

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ACKNOWLEDGMENT TO MORTGAGE

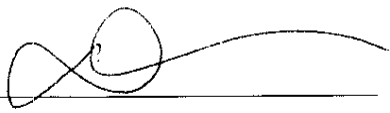
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CA
COUNTY OF LA

On 6/24, 2016, before me, Daran Segelken, a Notary Public, personally appeared Daniel S. Prozost, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



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EXHIBIT A

LEGAL DESCRIPTION

THAT PART OF THE SOUTHWEST 1/4 OF THE SOUTH 1/2 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 25, 604.18 FEET EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 25; THENCE NORTH 154.03 FEET ALONG A LINE PARALLEL TO THE WEST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 25, TO A POINT; THENCE NORTHEASTERLY ALONG THE ARC OF A CURVE WHOSE RADIUS IS 963 FEET CONVEXED SOUTHEASTERLY, AND THE CENTER OF SAID CURVED LINE BEING 1095 FEET NORTH OF THE SOUTH LINE AND 925 FEET WEST OF THE EAST LINE OF SAID SOUTHEAST 1/4 OF SECTION 25, A DISTANCE OF 58.25 FEET, MORE OR LESS, TO THE EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 25; THENCE SOUTH ON SAID EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 25, 168.30 FEET TO THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 25; THENCE WEST ALONG SAID SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 25, 57.10 FEET TO THE PLACE OF BEGINNING, ALSO THE WEST 134 FEET OF THE SOUTH 379.26 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. EXCEPTING THEREFROM THAT PORTION THEREOF DEDICATED FOR HIGHWAY PURPOSES BY DOCUMENT NUMBER 18158724, RECORDED MAY 10, 1961.

PROPERTY INDEX NUMBER: 18-25-406-016-0000

PROPERTY ADDRESS: 7240 W. 79th Street, Bridgeview, Illinois 60455

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EXHIBIT B

APPLICABLE STATE LAWS

1. **Principles Of Construction.** In the event of any inconsistencies between the terms and conditions of this Exhibit B and the other terms and conditions of this Mortgage, the terms and conditions of this Exhibit B shall control and be binding.

2. **ILLINOIS MORTGAGE FORECLOSURE LAW.** It is the intention of Borrower and Lender that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Borrower agrees and covenants that:

- (a) Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of a Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Mortgage, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.
- (b) Wherever provision is made in this Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Lender shall continue in Lender as judgment creditor or mortgagee until confirmation of sale.
- (c) In addition to any provision of this Mortgage authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender

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shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties and provisions for in Sections 15-1701 and 15-1703 of the Act.

- (d) Borrower acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.
- (e) Borrower hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Borrower and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.
- (f) As provided for in the Note, the interest rate payable in respect of the obligations secured by this Mortgage is (a) for the period commencing on the Effective Date and ending on June 30, 2017, an interest rate equal to nine and 75/100 percent (9.75%) per annum, (b) for the period commencing on July 1, 2017 and all times thereafter, an interest rate equal to ten and 75/100 percent (10.75%) per annum. Interest for any month or fractional part thereof shall be calculated on the basis of a 360-day year and the daily amount so determined shall be multiplied by the actual number of days for which interest is being paid, as more fully provided for in Section 1 of the Note.
- (g) The following notice is provided pursuant to paragraph (3) of 815 ILCS 180/10: Unless Borrower provides evidence of the insurance coverage required by the Loan Documents, Lender may purchase insurance at Borrower's expense to protect Lender's interests in Borrower's Property. This insurance may, but need not, protect Borrower's interests. The coverage that Lender purchases may not pay any claim that Borrower may make or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing evidence that Borrower has obtained insurance as required by the parties' agreement. If Lender purchases insurance for the Property, Borrower will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges that Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the obligations secured hereby. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on Borrower's own.
- (h) If certain conditions are satisfied, Lender is obligated under the terms of the Loan Documents to make advances as provided therein, and Borrower acknowledges

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and intends that all such advances, including future advances whenever hereafter made, shall be secured by the lien of this Mortgage, as provided in Section 15-1302(b)(1) of the Act. Borrower covenants and agrees that this Mortgage shall secure the payment of all loans and advances made as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of Lender or otherwise (but not advances or loans made more than 20 years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and although there may be no advances made at the time of the execution of this Mortgage and although there may be no other indebtedness outstanding under the Loan Documents at the time any advance is made. The lien of this Mortgage shall be valid as to all such obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Property is located. The total amount of the obligations secured hereby may increase or decrease from time to time. This Mortgage shall be valid and shall have priority over all subsequent liens and encumbrances, including any statutory liens except taxes and assessments levied on the Property or such other liens that shall have priority by operation of law, to the extent of the maximum amount secured hereby.

- (i) All advances, disbursements and expenditures made by Lender in accordance with the terms of this Mortgage, and the other Loan Documents, whether before and during a foreclosure of this Mortgage, and before and after judgment of foreclosure therein, and at any time prior to sale of the Property, and, where applicable, after sale of the Property, and during the pendency of any related proceedings, in addition to those otherwise authorized by the Act, shall have the benefit of all applicable provisions of the Act, including without limitation advances, disbursements and expenditures for the following purposes:
- (i) all advances by Lender in accordance with the terms of the Mortgage or the other Loan Documents to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Property; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, as referred to in Section 15-1302(b)(5) of the Act;
 - (ii) payments by Lender of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance, (ii) real estate taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof, (iii) other obligations authorized by the Mortgage, or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;
 - (iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

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- (iv) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of the Mortgage or arising from the interest of Lender hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the Property;
 - (v) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the Act;
 - (vi) expenses deductible from proceeds of sale as referred to in Sections 15-1512(a) and (b) of the Act; and
 - (vii) expenses incurred and expenditures made by Lender for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Borrower's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Lender takes possession of the Property imposed by Section 15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Lender to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (vii) if any portion of the credit facilities secured hereby is a construction loan, costs incurred by Lender for demolition, preparation for and completion of construction, as may be authorized by the applicable Loan Documents; (viii) payments required to be paid by Borrower or Lender pursuant to any lease or other agreement for occupancy of the Property; and (ix) if the Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.
- (j) Notwithstanding anything contained in the Mortgage to the contrary, the proceeds of any foreclosure sale of the Property shall be distributed and applied in accordance with Section 15-1512 of the Act in the following order of priority: first, on account of all reasonable costs and expenses incident to the foreclosure

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proceedings or such other remedy, including all such items as are mentioned in subsection (i) above; second, on account of all reasonable costs and expenses in connection with securing possession of the Property prior to such foreclosure sale, and the reasonable costs and expenses incurred by or on behalf of Lender in connection with holding, maintaining and preparing the Property for sale, including all such items as are mentioned in subsection (i) above; third, in satisfaction of all claims in the order of priority adjudicated in the foreclosure judgment or order confirming sale; and fourth, any remainder in accordance with the order of court adjudicating the foreclosure proceeding.

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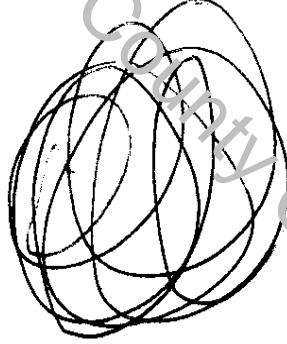
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EXHIBIT C

CERTAIN SERVICING COSTS

[See attached]

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Additional Servicing Fees			
Description	Compensation	Payment Frequency	Comments
Conversion Fee	\$3,000	Initial one-time charge per each newly-originated Loan or Equity Investment paid by the Borrower as part of closing costs	Invoiced upon First Mortgage or Mezzanine Loan being released into production on servicing system; Fee includes Cohen handling one (1) Reserve Disbursement per month at no charge to the Borrower
Reserve Disbursement Administration Fee (CapEx, TI/LC, maintenance, etc.)	\$250	Per disbursement request processed.	Earned for the processing of any draw request, to the extent that Thorofare requests that Cohen perform the work/analysis - paid for by the Borrower
Construction and Major Rehab Draw - Funding Administration Fee	\$500	Per disbursement request processed.	A Borrower paid fee
NSF/Returned Check	\$60	Per occurrence	Borrower paid fee
Payoff/Yield Maintenance Quote Processing	\$250	Per occurrence	Initial quote request provided to Borrower at no charge, subsequent requests in the same month incur Borrower paid fee listed.
Collateral Lien Release Process	\$250	Per occurrence	Borrower paid fee
Individual Condominium Unit Release Fee	\$125	Per individual unit released	Borrower paid fee
Borrower Initiated Request Fees			
Description	Compensation	Payment Frequency	Comments
Property Management/Facility Operator Change	\$1,000	Per request	A Borrower paid fee
Easements and Condemnation	\$2,000	Per request	A Borrower paid fee
Lease Review and Consent	\$1,500	Per request	A Borrower paid fee
Subordination and Non-Disturbance Agreements	\$1,500	Per request	A Borrower paid fee
Assumption	\$7,500	Per request	A Borrower paid fee
Transfer of Title or Beneficial Interest (not an assumption)	\$5,500	Per request	A Borrower paid fee
Conditional Collateral Release (provided for in the loan documents)	\$2,500	Per request	A Borrower paid fee
Collateral Release with Substitution (provided for in the loan documents)	\$5,000	Per request	A Borrower paid fee
Subordinate Financing	\$5,500	Per request	A Borrower paid fee
Subordination of Mortgage	\$2,500	Per request	A Borrower paid fee
Loan Extensions (provided for in the loan documents)	\$2,500	Per request	A Borrower paid fee
Loan Extensions: (not specified in the loan documents)	\$5,000	Per request	A Borrower paid fee
Release of Liability (provided for in the loan documents)	\$2,000	Per request	A Borrower paid fee
Defeasance Administration	\$3,500	Per request	A Borrower paid fee