

# UNOFFICIAL COPY

## Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc# 1627839225 Fee \$184.00  
RHSP Fee:\$9.00RPF Fee \$1.00  
Karen A.Yarbrough  
Cook County Recorder of Deeds  
Date: 10/04/2016 01:53 PM Pg: 1 of 74

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 17-09-334-001-0000

**Address:**

**Street:** 111 N. Canal Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60606

**Lender:** TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

**Borrower:** 111 N. CANAL REALTY COMPANY LLC

**Loan / Mortgage Amount:** \$800,000,000.00

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

**Certificate number:** C9E8DEA8-780A-4381-9386-398B1B556CF3

**Execution date:** 9/30/2016

When Recorded Return to: P. DARGOJA  
First American Title Insurance Company  
National Commercial Services  
30 N. LaSalle St., Suite 2700  
Chicago, IL 60602  
File No: NCS 3070-806119 4566 BK

CCRD REVIEW A

74

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TIAA Authorization ID # AAA-7451  
TIAA Inv. ID #0007011-09  
The GoGo Building, 111 N. Canal St. (Chicago, IL)

When Recorded Return To: H. BARKOST  
First American Title Insurance Company  
National Commercial Services  
30 N. LaSalle St., Suite 2700  
Chicago, IL 60602  
File No: NCS 3020-806179  
4506 2M

111 N. CANAL REALTY COMPANY LLC, as mortgagor

to

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, as mortgagee

**SECOND PRIORITY MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

Dated: As of September 30, 2016

Location: 111 N. Canal Street  
Chicago, IL

~~PREPARED BY AND UPON  
RECORDATION RETURN TO:~~

Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104-2808  
Attention: Matthew Ginsburg, Esq.

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Property of Cook County Clerk's Office

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Property of Cook County Clerk's Office



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## SECOND PRIORITY MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS SECOND PRIORITY MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") made this 30<sup>th</sup> day of September, 2016 by 111 N. CANAL REALTY COMPANY LLC, a Delaware limited liability company (the "Borrower"), having its principal place of business c/o J.P. Morgan Investment Management Inc., 270 Park Avenue, 7th Floor, New York, New York 10017, as mortgagor, for the benefit of TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA ("Lender") a New York corporation, having an address at 730 Third Avenue, New York, New York 10017, as mortgagee.

### RECITALS:

A. Pursuant to that certain Loan Agreement dated as of April 4, 2014 (the "Initial Loan Agreement"), by and among Lender and certain affiliates of Borrower (each, an "Other Borrower", and collectively, the "Other Borrowers"), as amended by the certain First Omnibus Amendment to Loan Agreement and Loan Documents, dated as of January 22, 2015, among the Other Borrowers and Lender (the "First Amendment"), and as further amended by that certain Second Omnibus Amendment to Loan Agreement and Loan Documents, dated as of September 12, 2016, by and among the Other Borrowers and Lender (the "Second Amendment", and together with the Initial Loan Agreement and the First Amendment, collectively, the "Original Loan Agreement"), Lender made a loan (the "Loan") to the Other Borrowers in the aggregate principal amount of EIGHT HUNDRED MILLION AND NO/100 DOLLARS (\$800,000,000.00) (such amounts, or so much as is outstanding from time to time is referred to as the "Principal").

B. To evidence the Loan, each Other Borrower has (i) executed a Promissory Note, dated as of April 4, 2014 (each such promissory note, together with all modifications, increases and supplements thereof, an "Other Borrower's Note" and collectively, the "Other Borrowers' Notes") in favor of Lender, evidencing a portion of the Loan (with the sum of the principal amounts evidenced by the Notes, collectively, equal to the amount of the Loan) and providing for a maturity date of May 1, 2026 (the "Maturity Date"); (ii) executed a separate Guaranty (Payment and Performance) dated as of April 4, 2014 (as the same may be amended, supplemented, extended, restated or otherwise modified from time to time, each, an "Other Borrower's Guaranty" and collectively, the "Other Borrowers' Guaranties") in favor of Lender, pursuant to which each Other Borrower agreed to pay and perform certain obligations of the Other Borrowers under the Loan Documents; and (iii) executed an Environmental Indemnity dated as of April 4, 2014 (as the same may be amended, supplemented, extended, restated or otherwise modified from time to time, an "Environmental Indemnity") in favor of Lender, pursuant to which each Other Borrower agreed to pay and perform certain obligations of the Other Borrowers under the Loan Documents.

C. Pursuant to Section 4.2(a) of the Original Loan Agreement, Borrower and the Other Borrowers have requested that Lender consent to certain modifications to the Original Loan Agreement and the Loan Documents (as defined in the Loan Agreement (as defined below)), including, without limitation, (i) the joinder of Borrower as a "Borrower" under the Loan

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Documents, (ii) the inclusion of the Property (as defined below) as a "Property" under the Loan Documents and (iii) the release and discharge of the Las Olas Borrower and the Gaslight Borrower as set forth in the Third Amendment (as defined below) (such modifications, collectively, the "**Modification**").

D. The Modification is evidenced by, inter alia, (i) that certain Third Omnibus Amendment to Loan Agreement and Loan Documents, dated as of the date hereof (the "**Third Amendment**") and together with the Original Loan Agreement, as the same may be further amended, supplemented, extended, restated or otherwise modified from time to time, collectively, the "**Loan Agreement**") by and among Borrower, the Other Borrowers and Lender, (ii) that certain Promissory Note, dated as of the date hereof (as the same may be amended, supplemented, extended, restated or otherwise modified from time to time, the "**Borrower's Note**" and together with the Other Borrowers' Notes, collectively, the "**Notes**") executed by Borrower in favor of Lender, in the initial principal amount of NINETY MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$90,100,000.00) (such amount, or so much as is outstanding from time to time is referred to herein as the "**Borrower's Note Principal**") and (iii) that certain Guaranty (Payment and Performance), dated as of the date hereof (as the same may be amended, supplemented, extended, restated or otherwise modified from time to time, the "**Borrower's Guaranty**" and together with the Other Borrowers' Guaranties, each, a "**Guaranty**" and collectively, the "**Guaranties**") executed by Borrower in favor of Lender, pursuant to which Borrower agreed to pay and perform certain obligations of the Other Borrowers under the Loan Documents.

E. Borrower secured its obligations under the Borrower's Note and other Loan Documents executed by Borrower (other than the Borrower's Guaranty), by, inter alia, executing that certain First Priority Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of the date hereof (as the same may be amended, supplemented, extended, restated or otherwise modified from time to time, the "**First Priority Mortgage**") for the benefit of the Lender, which First Priority Mortgage encumbers, among other things, Borrower's fee interest in the real property located in the City of Illinois, County of Cook, State of Illinois, more particularly described in **Exhibit A** (the "**Land**") and all improvements now or hereafter erected thereon and is to be recorded immediately prior to this Mortgage.

F. As a condition to Lender consenting to the Modification, and to secure the Borrower's Guaranty and the Guaranteed Obligations (as defined below), this Mortgage encumbers, among other things, the Land and all improvements now or hereafter erected thereon.

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

**Section 1.1. Definitions.** Capitalized terms used in this Mortgage are defined in **Exhibit B** or in the text with a cross-reference in **Exhibit B**, provided that if any such term is not defined in **Exhibit B**, the same shall have the meaning set forth in the Loan Agreement, or, with respect to certain defined terms used in Section 2.1 and 2.3 hereof, the Uniform Commercial Code.

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Section 1.2. Rules of Construction. This Mortgage will be interpreted in accordance with the rules of construction set forth in Exhibit C.

## ARTICLE II

### GRANTING CLAUSES

Section 2.1. Encumbered Property. Borrower irrevocably grants, mortgages, warrants, conveys, assigns and pledges (subject to the Permitted Exceptions) to Lender, and grants to Lender a security interest in, the following property, rights, interests and estates to the extent now or in the future owned or held by Borrower (the "Property") for the uses and purposes set forth in this Mortgage forever (capitalized terms used in this Section 2.1 and 2.3 and not defined in this Mortgage have the meanings ascribed to them in the Uniform Commercial Code):

- (i) the Land;
- (ii) all buildings and improvements located on the Land (the "Improvements");
- (iii) all easements; rights of way or use, including any rights of ingress and egress; streets, roads, ways, sidewalks, alleys and passages; strips and gores; sewer rights; water, water rights, water courses, riparian rights and drainage rights; air rights and development rights; oil and mineral rights; and tenements, hereditaments and appurtenances, in each instance adjoining or otherwise appurtenant to or benefiting the Land or the Improvements;
- (iv) all General Intangibles (including Software) and Goods, related to, attached to, contained in or used in connection with the Land or the Improvements (excluding personal property owned by tenants);
- (v) all agreements, ground leases, grants of easements or rights-of-way, permits, declarations of covenants, conditions and restrictions, disposition and development agreements, planned unit development agreements, cooperative, condominium or similar ownership or conversion plans, management, leasing, brokerage or parking agreements or other material documents affecting Borrower or the Property, including the documents described on Exhibit D but expressly excluding the Leases (the "Property Documents");
- (vi) all Inventory held for sale, lease or resale or furnished or to be furnished under contracts of service, or used or consumed in the ownership, use or operation of the Property and all Documents evidencing any part of any of the foregoing;
- (vii) all Accounts, Documents, Goods, Instruments, money, Deposit Accounts, Chattel Paper, Letter-of-Credit Rights, Investment Property, General Intangibles and Supporting Obligations relating to the Property, including all deposits held from time to time by the Depository to provide reserves for Taxes and Assessments together with interest credited thereon (the "Accumulations") described in Section 6.2 of the Loan Agreement

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entitled "Accumulations" and all accounts established to maintain the deposits together with investments thereof and interest credited thereon;

(viii) all awards and other compensation paid after the date of this Mortgage for any Condemnation (the "Condemnation Awards");

(ix) all proceeds of and all unearned premiums on the Policies (the "Insurance Proceeds");

(x) all licenses, certificates of occupancy, contracts, management agreements, operating agreements, operating covenants, franchise agreements, permits and variances relating to the Property;

(xi) all books, records and other information, wherever located, which are in Borrower's possession, custody or control or to which Borrower is entitled at law or in equity and which are related to the Property, including all computer hardware and software or other equipment used to record, store, manage, manipulate or access the information; and

(xii) all after-acquired title to or remainder or reversion in any of the property described in this Section; all proceeds (excluding, however, sales or other dispositions of Inventory in the ordinary course of the business of operating the Land or the Improvements), replacements, substitutions, products, accessions and increases of or for the Property; all additions, accessions and extensions to, improvements of or for the Property; and all additional lands, estates, interests, rights or other property acquired by Borrower after the date of this Mortgage for use in connection with the Land or the Improvements, all without the need for any additional deed, mortgage, assignment, pledge or conveyance to Lender but Borrower will execute and deliver to Lender, upon Lender's request, any documents reasonably requested by Lender to further evidence the foregoing, provided, that, no such additional documents shall increase Borrower's liability or decrease Borrower's rights under this Mortgage other than in de minimis amounts.

Section 2.2. Habendum Clause. The Property is conveyed to Lender to have and to hold forever in fee simple.

Section 2.3. Security Agreement.

(a) The Property includes both real and personal property and this Mortgage is a real property mortgage and also a "security agreement" and a "financing statement" within the meaning of the Uniform Commercial Code. By executing and delivering this Mortgage, Borrower grants to Lender, as security for the Guaranteed Obligations, a security interest in the Property to the full extent that any of the Property may be subject to the Uniform Commercial Code.

(b) This Mortgage constitutes a fixture filing under the Laws of the State or Commonwealth in which the Property is located and for such purpose, Borrower represents, as of the date hereof, that the following information set forth in clauses (i), (v) and (vi), is true and correct:

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(i) The exact legal name and address of Debtor is: 111 N. Canal Realty Company LLC, a Delaware limited liability company, having an address c/o J.P. Morgan Investment Management Inc., 270 Park Avenue, 7th Floor, New York, New York 10017.

(ii) Name and address of Secured Party: Teachers Insurance and Annuity Association of America, a New York corporation, together with its successors and assigns, having an address at 730 Third Avenue, New York, New York 10017.

(iii) Description of the types (or items) of property covered by this Financing Statement: all of the property described in section ii-xii of the Section entitled "Encumbered Property" described or referred to herein and included as part of the Property.

(iv) Description of real estate to which collateral is attached or upon which it is located: Described in Exhibit A.

(v) Debtor's Organizational Identification Number is as follows: 5678377.

(vi) Debtor's chief executive office is located in the State of New York, and Debtor's state of formation is the State of Delaware.

Lender may file this Mortgage, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Mortgage or of any other security agreement or financing statement is sufficient as a financing statement.

Section 2.4. Conditions to Grant. This Mortgage is made on the express condition that if Borrower pays and performs the Guaranteed Obligations in full in accordance with the Loan Documents, then, unless expressly provided otherwise in the Loan Documents, this Mortgage will promptly be released of record by Lender, at Borrower's expense.

Section 2.5. Subordination to First Priority Mortgage. This Mortgage, (including, without limitation, the security interests granted hereunder) is subject and subordinate in all respects, to the right, title and interest granted Lender under the First Priority Mortgage.

## ARTICLE III

### OBLIGATIONS SECURED

Section 3.1. The Guaranteed Obligations. This Mortgage secures Borrower's obligations under the Borrower's Guaranty (the "Guaranteed Obligations").

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## ARTICLE IV

### TITLE AND AUTHORITY

#### Section 4.1. Title to the Property.

(a) Borrower has and will continue to have (i) good and marketable title in fee simple absolute to the Land and the Improvements and (ii) good and marketable title to the Fixtures and Personal Property, all free and clear of liens, encumbrances and charges except the Permitted Exceptions. To Borrower's knowledge, as of the date hereof, there are no facts or circumstances that are reasonably likely to give rise to a lien, encumbrance or charge on the Property.

(b) Borrower owns and will continue to own all of the other Property free and clear of all liens, encumbrances and charges except the Permitted Exceptions.

(c) This Mortgage is and will remain a valid and enforceable second lien on and security interest in the Property, subject only to the Permitted Exceptions.

Section 4.2. Authority. The provisions of Article V of the Loan Agreement are hereby incorporated by reference in their entirety, provided that references to Loan Documents shall be deemed to refer to this Mortgage, and references to any Borrower in such Article shall be deemed to refer to the Borrower named herein (and any representations, warranties or covenants in said Article V which are expressly limited to Borrowers other than the Borrower named herein are hereby excluded from the above-referenced incorporation by reference).

## ARTICLE V

### PROPERTY STATUS, MAINTENANCE AND LEASES

#### Section 5.1. Status of the Property.

(a) Borrower has obtained and will maintain in full force and effect all certificates, licenses, permits and approvals that are required by Law or by any entity having jurisdiction over the Property or over Borrower or that are necessary for the Permitted Use, for occupancy and operation of the Property, for the granting of this Mortgage or for the conduct of Borrower's business on the Property in accordance with the Permitted Use.

(b) The Property is and will continue to be serviced by all public utilities required for the Permitted Use of the Property.

(c) All roads and streets necessary for service of and access to the Property for the current or contemplated use of the Property have been completed and are and, to Borrower's knowledge, will continue to be serviceable, physically open and dedicated to and accepted by the Government for use by the public.

(d) The Property is free from damage caused by a Casualty.

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(e) All costs and expenses of labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

Section 5.2. Maintenance of the Property. Borrower will maintain the Property in thorough repair and good and safe condition, suitable for the Permitted Use, including, to the extent necessary, replacing the Fixtures and Personal Property with property at least equal in quality and condition to that being replaced and free of liens. Borrower will not erect any new buildings, building additions or other structures on the Land or otherwise perform any alterations on the Improvements without Lender's prior consent which may be withheld in Lender's sole discretion, provided that Borrower may perform non-structural alterations on the Improvements (i) costing less than \$4,505,000 or (ii) which alterations are interior tenant improvements or relate to signage (interior and/or exterior, other than material exterior signage) required under executed Leases entered into in accordance with the Loan Documents. The Property will be managed by the Property Manager or a Qualified Manager pursuant to a management agreement satisfactory to Lender and terminable by Borrower without charge or penalty upon thirty (30) days notice to the property manager. By acceptance of this Mortgage, Lender confirms that, as of the date hereof, the form and content of the existing Property Management Contract are acceptable to Lender.

Section 5.3. Change in Use. Borrower will use and permit the use of the Property for the Permitted Use and for no other purpose.

Section 5.4. Waste. Borrower will not commit or permit any waste (including economic and non-physical waste), impairment or deterioration of the Property or any demolition or removal of any of the Property (other than worn out or obsolete Property which has been replaced with substitute Property equal to or better in value than the Property replaced) without Lender's prior consent.

Section 5.5. Inspection of the Property. Subject to the rights of tenants under the Leases, Lender, or its agent or independent expert, has the right to enter and inspect the Property during normal business hours and will make a reasonable effort to provide two (2) Business Days prior notice, except in the case of an emergency or during the existence of an Event of Default, when no prior notice is necessary. Lender has the right to engage an independent expert to review and report on Borrower's compliance with Borrower's obligations under this Mortgage to maintain the Property, comply with Law and refrain from waste, impairment or deterioration of the Property and the alteration, demolition or removal of any of the Property except as may be permitted by the provisions of this Mortgage. If the independent expert's report discloses material failure to comply with such obligations or if Lender engages the independent expert during the continuance of an Event of Default, then the reasonable and actual expenses of the independent expert's review and report will be at Borrower's expense, payable promptly following demand.

Section 5.6. Leases and Rents.

(a) Borrower assigns the Leases and the Rents to Lender absolutely and unconditionally and not merely as additional collateral or security for the payment and performance of the Guaranteed Obligations, but subject to a license back to Borrower of the right to collect the Rents unless and until an Event of Default exists at which time the license will terminate automatically, all in

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accordance with the provisions of, as more particularly set forth in the Assignment, the provisions of which are incorporated in this Mortgage by reference.

(b) Borrower shall, within ten (10) days following Lender's demand, execute and deliver a document subordinating this Mortgage to the Leases, provided that the subordination will not affect (i) the priority of Lender's entitlement to Insurance Proceeds or Condemnation Awards or (ii) the priority of this Mortgage over intervening liens or liens arising under or with respect to the Leases. In the event Borrower fails to promptly deliver such document to Lender, Borrower appoints Lender as Borrower's attorney-in-fact to execute unilaterally and record same.

Section 5.7. Parking. Borrower will provide, maintain, police and light parking areas within the Property, including any sidewalks, aisles, streets, driveways, sidewalk cuts and rights-of-way to and from the adjacent public streets, in a manner consistent with the Permitted Use and sufficient to accommodate the greatest of: (i) the number of parking spaces required by Law; (ii) the number of parking spaces required by the Leases and the Property Documents; or (iii) not less than sixteen (16) parking spaces. The parking areas will be reserved and used exclusively for ingress, egress and parking for Borrower and the tenants under the Leases and their respective employees, customers and invitees and in accordance with the Leases and the Property Documents.

Section 5.8. Separate Tax Lots. The Property is and will remain assessed for real estate tax purposes as one or more wholly independent tax lots, separate from any property that is not part of the Property.

Section 5.9. Changes in Zoning or Restrictive Covenants. Borrower will not (i) initiate, join in or consent to any change in any Laws pertaining to zoning, any restrictive covenant or other restriction which would restrict the Permitted Uses for the Property; (ii) permit the Property to be used to fulfill any requirements of Law for the construction or maintenance of any improvements on property that is not part of the Property; (iii) permit the Property to be used for any purpose not included in the Permitted Use; or (iv) impair the integrity of the Property as a single, legally subdivided zoning lot separate from all other property.

Section 5.10. Lender's Right to Appear. Lender has the right to appear in and defend any Proceeding brought regarding the Property and to bring any Proceeding, in the name and on behalf of Borrower or in Lender's name, which Lender, in its sole discretion, determines should be brought to protect Lender's interest in the Property.

## ARTICLE VI

### IMPOSITIONS; ACCUMULATIONS

Section 6.1. Impositions. The provisions of Article VI of the Loan Agreement are hereby incorporated by reference in their entirety.

## ARTICLE VII



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## INSURANCE, CASUALTY, CONDEMNATION AND RESTORATION

### Section 7.1. Insurance Coverages.

(a) Borrower will maintain such insurance coverages and endorsements in form and substance as Lender may require in its sole discretion from time to time. The insurance will be in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements and Personal Property (without deduction for depreciation) and will include fire, extended coverage, vandalism, malicious mischief, sprinkler leakage, boiler and machinery, terrorism coverage, windstorm, earthquake and flood insurance (if located in an area identified as an earthquake or flood zone), day care facility general liability and umbrella coverage (if any portion of the Property is used as a day care or child care services facility), a minimum of twelve (12) months of rent loss insurance, and such other kinds of insurance as may be required by Lender in its sole discretion provided Lender requires similar coverages in connection with similar loans made by it with respect to similar and similarly situated properties. The insurance will also include commercial general liability coverage naming Lender as an additional insured in substance and amount satisfactory to Lender provided Lender requires similar coverages in connection with similar loans made by it with respect to similar and similarly situated properties. Until Lender notifies Borrower of changes in Lender's requirements, Borrower will maintain not less than the insurance coverages and endorsements Lender required for closing of the Modification.

(b) The insurance, including renewals, required under this Section will be issued on valid and enforceable policies and endorsements satisfactory to Lender (the "**Policies**"). Each Policy will contain a standard waiver of subrogation and a replacement cost endorsement and will provide that Lender will receive not less than thirty (30) days' prior written notice of any cancellation, termination or non-renewal of a Policy or any material change other than an increase in coverage and that Lender will be named under a standard mortgagee endorsement on the property insurance as mortgagee and loss payee.

(c) The insurance companies issuing the Policies (the "**Insurers**") must be authorized to do business in the State or Commonwealth where the Property is located, must have been in business for at least five (5) years, must carry an A.M. Best Company, Inc. policy holder rating of A- or better and an A.M. Best Company, Inc. financial category rating of Class VIII or better and must be otherwise satisfactory to Lender. Lender may select an alternative credit rating agency and may impose different credit rating standards for the Insurers if required by applicable laws or regulations. Notwithstanding Lender's right to approve the Insurers and to establish credit rating standards for the Insurers, Lender will not be responsible for the solvency of any Insurer.

(d) Notwithstanding Lender's rights under this Article, Lender will not be liable for any loss, damage or injury resulting from the inadequacy or lack of any insurance coverage.

(e) Borrower will comply, in all material respects, with the provisions of the Policies and with the requirements, notices and demands imposed by the Insurers and applicable to Borrower or the Property.

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(f) Borrower will timely pay the Insurance Premiums for each Policy and provide Lender with evidence of such payment within thirty (30) days of the expiration date of the Policy being replaced or renewed. Borrower will provide evidence of the renewed coverage by delivering to Lender an Acord 27 (2004/04 or 1993/03) or Acord 28 (2003/10) or the current industry equivalent and evidence that Borrower has complied with the Required Insurance Provisions within fifteen (15) days of the expiration date of the Policy being replaced or renewed.

(g) Borrower will not carry separate insurance concurrent in kind or form or contributing in the event of loss with any other insurance carried by Borrower.

(h) If Borrower elects to carry any of the insurance required under this Section on a blanket or umbrella policy, Borrower will deliver to Lender an Acord 27 (2004/04 or 1993/03) or Acord 28 (2003/10) or the current industry equivalent, evidencing the same coverage and protection as would a separate policy insuring only the Property, and evidence that Borrower has complied with the Required Insurance Provisions.

(i) Borrower will give the Insurers and Lender prompt notice of any change in ownership or occupancy of the Property that may result in a change in the insurance requirements for the Property. This subsection does not atrogate the prohibitions on transfers set forth in this Mortgage.

## Section 7.2. Casualty and Condemnation.

(a) Borrower will give Lender notice of any Casualty promptly after it has knowledge of the occurrence of same and will give Lender notice of any Condemnation Proceeding promptly after Borrower receives notice of commencement or notice that such a Condemnation Proceeding will be commencing. Borrower will promptly deliver to Lender copies of all material documents Borrower delivers or receives relating to the Casualty or the Condemnation Proceeding, as the case may be.

(b) (i) Borrower authorizes Lender, at Lender's option, to participate with Borrower in the collection, adjustment and compromise of any claims of at least \$2,500,000.00 for loss, damage or destruction under the Policies on such terms as Lender determines in Lender's sole discretion. Borrower authorizes Lender, at Lender's option, to participate with Borrower in connection with any Condemnation Proceeding with estimated Proceeds of at least \$2,500,000.00. Borrower will execute and deliver to Lender all documents requested by Lender and all documents as may be required by Law to confirm such authorizations. Nothing in this Section will be construed to limit or prevent Lender from joining with Borrower either as a co-defendant or as a co-plaintiff in any Condemnation Proceeding. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Lender agrees that it will not participate with Borrower as provided in this Section for so long as the estimated Proceeds from such Casualty or Condemnation Proceeding do not exceed \$2,500,000.00 and Borrower is diligently pursuing any collection, adjustment and compromise regarding such claims.

(ii) Borrower authorizes Lender to act on Borrower's behalf, upon the occurrence and during the continuance of an Event of Default, to collect, adjust and compromise any claims for loss, damage or destruction under the Policies on such terms as Lender determines in Lender's sole discretion. Borrower authorizes Lender to act, upon the occurrence and during the continuance of

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an Event of Default, at Lender's option, on Borrower's behalf in connection with any Condemnation Proceeding. Borrower will execute and deliver to Lender all documents requested by Lender and all documents as may be required by Law to confirm such authorizations. Nothing in this Section will be construed to limit or prevent Lender from joining with Borrower either as a co-defendant or as a co-plaintiff in any Condemnation Proceeding.

(c) If Lender elects not to act on Borrower's behalf or participate with Borrower as provided in this Section or in Section 7.2 of the First Priority Mortgage or if such compromise or settlement is less than \$2,500,000.00, then Borrower promptly will file and prosecute all claims (including Lender's claims) relating to the Casualty and will prosecute or defend (including defense of Lender's interest) any Condemnation Proceeding. Borrower will have the authority to settle or compromise the claims or Condemnation Proceeding, as the case may be, provided that Lender has approved any compromise or settlement that exceeds \$2,500,000.00. Any check for Insurance Proceeds or Condemnation Awards, as the case may be (the "**Proceeds**") will be made payable to Lender and Borrower. Borrower will endorse the check to Lender promptly following Lender presenting the check to Borrower for endorsement or if Borrower receives the check first, will endorse the check promptly upon receipt and forward it to Lender. If any Proceeds in excess of \$2,500,000.00 are paid to Borrower, Borrower will promptly deposit the Proceeds with Lender, to be applied or disbursed in accordance with the provisions of the First Priority Mortgage, provided that after payment in full (and performance of all) of the obligations secured by the First Priority Mortgage, all Proceeds (or, as the case may be, remaining Proceeds) shall be deposited with the Lender to be applied or disbursed in accordance with the provisions of this Mortgage. Lender will be responsible for only the Proceeds actually received by Lender. Any check for Proceeds of \$2,500,000.00 or less shall be held by Borrower and applied first toward Restoration of the Property, provided, however, that if an Event of Default has occurred and is continuing, such check shall be paid to Lender.

Section 7.3. Application of Proceeds. Subject to the provisions of Section 7.4, after deducting the reasonable out-of-pocket costs incurred by Lender in collecting the Proceeds, Lender may, in its sole discretion, (i) apply any Proceeds deposited with Lender hereunder as a credit against the Guaranteed Obligations ; (ii) apply any Proceeds deposited with Lender hereunder to Restore the Improvements, provided that Lender will not be obligated to see to the proper application of the Proceeds and provided further that any amounts released for Restoration will not be deemed a payment on the Debt; or (iii) deliver any Proceeds deposited with Lender hereunder to Borrower.

Section 7.4. Conditions to Availability of Proceeds for Restoration. Notwithstanding the preceding Section, after a Casualty or a Condemnation affecting the Property (a "**Destruction Event**"), the Proceeds will be made available for Restoration in accordance with the provisions of the First Priority Mortgage, provided that after payment in full (and performance of all) of the obligations secured by the First Priority Mortgage, Lender will make all Proceeds deposited with Lender in accordance with the terms hereof (less any reasonable out-of-pocket costs incurred by Lender in collecting the Proceeds) available for Restoration in accordance with the conditions for disbursements set forth in the Section entitled "**Restoration**", provided that the following conditions are met:

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(i) 111 N. Canal Realty Company LLC or the transferee under a Transfer permitted in accordance with the terms of the Loan Agreement, if any, continues to be Borrower at the time of the Destruction Event and at all times thereafter until the Proceeds have been fully disbursed;

(ii) no Event of Default under the Loan Documents exists at the time of the Destruction Event;

(iii) all material Property Documents in effect immediately prior to the Destruction Event continue in full force and effect notwithstanding the Destruction Event, except as otherwise approved by Lender;

(iv) if the Destruction Event is a Condemnation, Borrower delivers to Lender evidence satisfactory to Lender that the Improvements can be restored to an economically and architecturally viable unit;

(v) Borrower delivers to Lender evidence satisfactory to Lender that the Proceeds are sufficient to complete Restoration or if the Proceeds are insufficient to complete Restoration, Borrower either first deposits with Lender funds ("**Additional Funds**") that when added to the Proceeds will be sufficient to complete Restoration or otherwise provides evidence reasonably acceptable to Lender that Borrower has sufficient funds to complete Restoration;

(vi) if the Destruction Event is a Casualty, Borrower delivers to Lender evidence satisfactory to Lender that the Insurer under each affected Policy has not denied liability under the Policy as to Borrower or the insured under the Policy;

(vii) Lender is reasonably satisfied that the proceeds of any rent loss insurance in effect together with other available gross revenues from the Property and the other Properties are sufficient to pay Debt Service Payments after paying the Impositions, Insurance Premiums, and reasonable and customary operating expenses until Restoration is complete;

(viii) Lender is satisfied that Restoration will be completed on or before the date (the "**Restoration Completion Date**") that is the earliest of: (A) twelve (12) months prior to the Maturity Date; (B) twenty-four (24) months after the Destruction Event; (C) the earliest date required for completion of Restoration under any Required Lease or any Property Document; or (D) any date required by Law; and

(ix) for the twelve (12) month period immediately preceding the Destruction Event, the annual Debt Service Coverage Ratio was at least 1.15:1.00, and at the time of the Destruction Event, is at least 1.15:1.00, provided that, if the Net Operating Income does not provide such Debt Service Coverage Ratio, Borrower shall have the right to post cash or a letter of credit in escrow with Lender in an amount determined by Lender to satisfy such shortfall through the Restoration Completion Date, and if Borrower does not elect to post such collateral, then Borrower expressly authorizes and instructs Lender (at Lender's sole

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discretion) to apply an amount from the Proceeds to reduction of Principal in order to reduce the annual Debt Service Payments sufficiently for such Debt Service Coverage Ratio to be achieved, and any remaining balance of such Proceeds shall be applied to the Restoration. The reduced debt service payments will be calculated using the Fixed Interest Rate. Borrower will execute any documentation that Lender deems reasonably necessary to evidence the reduced Principal and Debt Service Payments.

## Section 7.5. Restoration.

(a) If the total Proceeds for any Destruction Event are \$7,000,000.00 or less and Lender elects or is obligated by Law or under this Article to make the Proceeds available for Restoration, Lender will disburse to Borrower the entire amount received by Lender and Borrower will commence Restoration promptly after the Destruction Event and complete Restoration not later than the Restoration Completion Date.

(b) If the Proceeds for any Destruction Event exceed \$7,000,000.00 and Lender elects or is obligated by Law or under this Article to make the Proceeds available for Restoration, Lender will disburse the Proceeds and any Additional Funds deposited under the First Priority Mortgage or this Mortgage (collectively, the "**Restoration Funds**") in accordance with the terms of the First Priority Mortgage and if the obligations secured by the First Priority Mortgage have been paid in full Lender will disburse the Restoration Funds (or, as the case may be, the remaining Restoration Funds) upon Borrower's request as Restoration progresses generally in accordance with normal construction lending practices for disbursing funds for construction costs, provided that the following conditions are met:

(i) Borrower commences Restoration promptly after the Destruction Event and completes Restoration on or before the Restoration Completion Date;

(ii) if Lender requests, Borrower delivers to Lender prior to commencing Restoration, for Lender's reasonable approval, plans and specifications and a detailed budget for the Restoration;

(iii) Borrower delivers to Lender reasonably satisfactory evidence of the costs of Restoration incurred prior to the date of the request and such other documents as Lender may reasonably request including mechanics' lien waivers, title searches and, with respect to any Property located in a jurisdiction in which mechanics' liens could prime an existing mortgage as determined by Lender, title insurance endorsements as reasonably required by Lender;

(iv) Borrower pays all costs of Restoration whether or not the Restoration Funds are sufficient and, if at any time during Restoration, Lender reasonably determines that the undisbursed balance of the Restoration Funds is insufficient to complete Restoration, Borrower either deposits with Lender, as part of the Restoration Funds, an amount equal to the deficiency within thirty (30) days of receiving notice of the deficiency from Lender or otherwise provides evidence reasonably acceptable to Lender that Borrower has sufficient funds to complete Restoration; and

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(v) there is no Event of Default under the Loan Documents at the time Borrower requests funds or at the time Lender disburses funds.

(c) During the continuance of an Event of Default, Lender will have no further obligation to make any remaining Proceeds available for Restoration and after payment in full of obligations under the First Priority Mortgage may apply any remaining Proceeds as a credit against any portion of the Guaranteed Obligations selected by Lender in its sole discretion.

(d) Lender may elect at any time prior to commencement of Restoration or while work is in progress to retain, at Borrower's expense, an independent engineer or other environmental consultant to review the plans and specifications, to inspect Restoration as it progresses and to provide reports. If any matter included in a report by the engineer or consultant is unsatisfactory to Lender, Lender may suspend disbursement of the Restoration Funds until the unsatisfactory matters contained in the report are resolved to Lender's reasonable satisfaction.

(e) If Borrower fails to commence and complete Restoration in accordance with the terms of this Article, then in addition to the Remedies, Lender may after application of the Restoration Funds in accordance with the First Priority Mortgage elect to restore the Improvements on Borrower's behalf and reimburse itself out of the Restoration Funds for costs and expenses incurred by Lender in restoring the Improvements, or Lender may apply the Restoration Funds as a credit against any portion of the Guaranteed Obligations selected by Lender in its sole discretion.

(f) Lender may commingle the Restoration Funds with its general assets and will not be liable to pay any interest or other return on the Restoration Funds unless otherwise required by Law. Lender will not hold any Restoration Funds in trust. Lender may elect to deposit the Restoration Funds with a depository satisfactory to Lender under a disbursement and security agreement satisfactory to Lender in which event, such funds will be deposited into an interest bearing account.

(g) Borrower will pay all of Lender's reasonable out-of-pocket expenses incurred in connection with a Destruction Event or Restoration. If Borrower fails to do so, then in addition to the Remedies, Lender may from time to time reimburse itself out of the Restoration Funds.

(h) If any excess Proceeds remain after Restoration, Lender will promptly deliver the excess to Borrower.

## ARTICLE VIII

### **COMPLIANCE WITH LAW & AGREEMENTS; OTHER AGREEMENTS**

Borrower hereby confirms that, as of the date hereof, the representations and warranties contained in this Article VIII are true, correct and complete and covenants that until the Guaranteed Obligations have been repaid in full, it shall take the actions or refrain from taking the actions as required by this Article VIII and shall cause any representations and warranties that are expressly prospective in nature to be true, correct and complete on every day that the Guaranteed Obligations are outstanding:

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Section 8.1. Compliance with Law. Borrower, the Property and the use of the Property comply and will continue to comply with Law and with all agreements and conditions necessary to preserve and extend all rights, licenses, permits, privileges, franchises and concessions (including zoning variances, special exceptions and non-conforming uses) relating to the Property or Borrower. Borrower will notify Lender of the commencement of any investigation or Proceeding relating to a possible violation of Law promptly after Borrower receives notice thereof and will deliver promptly to Lender copies of all documents Borrower receives or delivers in connection with the investigation or Proceeding. Borrower will not alter the Property (or cause the Property to be altered) in any manner that would materially increase Borrower's responsibilities for compliance with Law.

Section 8.2. Compliance with Agreements. There are no material defaults, material events of defaults or events which, with the passage of time or the giving of notice, would constitute a material event of default under the Property Documents. Borrower will pay and perform in all material respects all of its obligations under the Property Documents as and when required by the Property Documents. Borrower will use its commercially reasonable efforts to cause all other parties to the Property Documents to pay and perform their obligations under the Property Documents as and when required by the Property Documents. Borrower will not amend or waive any material provisions of the Property Documents; exercise any options under the Property Documents; give any approval required or permitted under the Property Documents that would adversely affect the Property or Lender's rights and interests under the Loan Documents; cancel or surrender any of the Property Documents (other than Property Documents which are replaced by substitute documents providing for similar terms and conditions); or release or discharge or permit the release or discharge of any party to or entity bound by any Property Document, without, in each instance, Lender's prior approval (excepting therefrom all service contracts or other agreements entered into in the normal course of business that are cancelable upon not more than thirty (30) days notice). Borrower promptly will deliver to Lender copies of any notices of default or of termination that Borrower receives or delivers relating to any Property Document. Notwithstanding anything in this Section 8.2 to the contrary, to the extent a Property Document is specifically identified in this Mortgage, the terms and conditions of this Mortgage shall control with respect to such Property Document.

Section 8.3. ERISA Compliance; Anti-Terrorism; Section 6045(e) Filing and Special Purpose Entity. The provisions of Sections 7.3, 7.4, 7.5 and 7.6 of the Loan Agreement are hereby incorporated by reference in their entirety, provided that specific references to any particular Borrower in such Sections shall be deemed to refer to the Borrower named herein.

## ARTICLE IX

### ENVIRONMENTAL

#### Section 9.1. Environmental Representations and Warranties.

Except as disclosed in the Environmental Report and to Borrower's knowledge as of the date of this Mortgage:

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(i) no Environmental Activity has occurred or is occurring on the Property other than the use, storage, and disposal of Hazardous Materials which (A) is in the ordinary course of business consistent with the Permitted Use; (B) is in compliance with all Environmental Laws and (C) has not resulted in Material Environmental Contamination of the Property; and

(ii) no Environmental Activity has occurred or is occurring on any property in the vicinity of the Property which has resulted in Material Environmental Contamination of the Property.

## Section 9.2. Environmental Covenants.

(a) Borrower will not cause or permit any Material Environmental Contamination of the Property.

(b) Borrower will not cause or permit any Environmental Activity to occur on the Property other than the use, storage and disposal of Hazardous Materials which (A) is in the ordinary course of business consistent with the Permitted Use; (B) is in compliance with all Environmental Laws; (C) does not create a risk of Material Environmental Contamination of the Property; and (D) is used in de minimis quantities incidental to the operation of such Property.

(c) Borrower will notify Lender promptly upon Borrower becoming aware of (i) any Material Environmental Contamination of the Property or (ii) any Environmental Activity with respect to the Property that is not in accordance with the preceding subsection (b). Borrower promptly will deliver to Lender copies of all documents delivered to or received by Borrower regarding the matters set forth in this subsection, including notices of Proceedings or investigations concerning any Material Environmental Contamination of the Property or Environmental Activity or concerning Borrower's status as a potentially responsible party (as defined in the Environmental Laws). Borrower's notification of Lender in accordance with the provisions of this subsection will not be deemed to excuse any default under the Loan Documents resulting from the violation of Environmental Laws or the Material Environmental Contamination of the Property or Environmental Activity that is the subject of the notice. If Borrower receives notice of a suspected violation of Environmental Laws in the vicinity of the Property that poses a risk of Material Environmental Contamination of the Property, Borrower will give Lender notice and copies of any documents received relating to such suspected violation.

(d) From time to time at Lender's request, Borrower will deliver to Lender any information known and documents available to Borrower relating to the environmental condition of the Property.

(e) Lender may perform or engage an independent consultant to perform, during normal business hours and with a reasonable effort to provide two (2) Business Days prior notice, except in the case of an emergency or during the existence of an Event of Default at which time no notice is required, an assessment of the environmental condition of the Property and of Borrower's compliance with this Section on an annual basis, or at any other time for reasonable cause, or during the continuance of an Event of Default. In connection with the assessment: (i) Lender or consultant



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may, subject to the rights of tenants, enter and inspect the Property and perform tests of the air, soil, ground water and building materials; (ii) Borrower will cooperate and use its commercially reasonable efforts to cause tenants and other occupants of the Property to cooperate with Lender or consultant; (iii) Borrower will receive a copy of any final report prepared after the assessment, to be delivered to Borrower not more than ten (10) days after Borrower requests a copy and executes Lender's standard confidentiality and waiver of liability letter; (iv) Borrower will accept custody of and arrange for lawful disposal of any Hazardous Materials required to be disposed of as a result of the tests; and (v) Lender will not have liability to Borrower with respect to the results of the assessment. The consultant's assessment and reports will be at Borrower's expense (i) if the reports disclose any material adverse change in the environmental condition of the Property from that disclosed in the Environmental Report; (ii) if Lender engaged the consultant when Lender had reasonable cause to believe Borrower was not in compliance with the terms of this Article and, after written notice from Lender, Borrower failed to provide promptly reasonable evidence that Borrower is in compliance; or (iii) if Lender engaged the consultant after the occurrence and during the continuance of an Event of Default.

(f) If Lender has reasonable cause to believe that there is Environmental Activity at the Property, Lender may elect in its sole discretion to release from the lien of this Mortgage any portion of the Property affected by the Environmental Activity and Borrower will accept the release.

## ARTICLE X

### FINANCIAL REPORTING

Section 10.1. Financial Reporting. The provisions of Article VIII of the Loan Agreement are hereby incorporated by this reference in their entirety, provided that specific references to any particular Borrower in such Sections shall be deemed to refer to the Borrower named herein.

## ARTICLE XI

### EXPENSES; NON-RELIANCE; DUTY TO DEFEND

#### Section 11.1. Payment of Expenses.

(a) Borrower is obligated to pay all reasonable fees and expenses (the "Expenses") that are (i) incurred by Lender in respect of the Loan, the Modification, any Loan Document, the Property or Borrower; (ii) charged by Lender in consideration of processing any request by or on behalf of Borrower for an action or consent of Lender under the Loan Documents, which charges will be determined by Lender in its reasonable discretion; or (iii) are otherwise payable in connection with the Loan, the Modification, the Property or Borrower, including attorneys' fees and expenses and any reasonable out-of-pocket fees and expenses relating to (A) the preparation, execution, acknowledgment, delivery and recording or filing of the Loan Documents; (B) any Proceeding or other claim asserted against Lender or any Proceeding described in the Section entitled "Lender's Right to Appear"; (C) any inspection, assessment, survey and test permitted under the Loan Documents; (D) any Destruction Event; (E) the preservation of Lender's security and the exercise of any rights or remedies available at Law, in equity or otherwise; (F) administration of the Loan

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(excluding third-party loan servicing fees other than during the continuance of an Event of Default or in connection with any material Loan modification); (G) the Leases and the Property Documents; and (H) any Proceeding in or for bankruptcy, insolvency, reorganization or other debtor relief or similar Proceeding relating to Borrower, the Property or any person liable under any guarantee, indemnity or other credit enhancement delivered in connection with the Loan and/or the Modification.

(b) Borrower will pay the Expenses promptly on demand, together with any applicable interest, premiums or penalties. If Lender pays any of the Expenses, Borrower will reimburse Lender the amount paid by Lender within ten (10) days following demand, together with interest on such amount at the Default Interest Rate from the date Lender demanded payment of the Expenses through and including the date Borrower reimburses Lender. The Expenses together with any applicable interest, premiums or penalties constitute a portion of the Guaranteed Obligations secured by this Mortgage.

Section 11.2. Non-Reliance. Except as otherwise explicitly provided herein or in any other Loan Document, Borrower agrees that any diligence or investigation performed by or on behalf of Lender in underwriting or servicing the Loan (including, without limitation, information obtained about the Property, Borrower, or its equity investors or Affiliates) does not in any respect limit or excuse any representations, warranties, covenants or agreements set forth in the Loan Agreement or any of the other Loan Documents. The fact that Lender has performed diligence does not affect Lender's ability or right to rely fully upon the representations, warranties, covenants and agreements made by Borrower in the Loan Documents, or to pursue any available remedy for a breach thereof. If Lender delivers or has delivered to Borrower (or to Borrower's agents, equity investors or representatives) any information obtained or developed by Lender relating to the Loan, the Modification, the Property or Borrower, Borrower acknowledges and agrees that such information has been delivered for informational purposes only and Lender has no liability or responsibility to Borrower with respect to such information, including, without limitation, the completeness or accuracy of any such information. No due diligence consultant engaged by Lender is or shall be deemed an agent of Lender.

Section 11.3. Duty to Defend. If Lender or any of its trustees, officers, participants, employees or affiliates is a party in any Proceeding relating to the Property, Borrower, the Loan, or the Modification, Borrower will indemnify and hold harmless the party and will defend the party with attorneys and other professionals retained by Borrower and approved by Lender. If Lender determines that the interests of Lender and Borrower in any Proceeding conflict in such a manner and to such an extent as to require, consistent with applicable standards of professional responsibility, the retention of separate counsel, Lender may elect to engage its own attorneys and other professionals to defend or to assist in the defense of the party and the reasonable and actual out-of-pocket cost of such defense shall be paid by Borrower. In all events, case strategy will be determined by Lender if Lender so elects and no Proceeding will be settled without Lender's prior approval which may be withheld in its sole discretion.

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## ARTICLE XII

### TRANSFERS, LIENS AND ENCUMBRANCES

Section 12.1. Prohibitions on Transfers, Liens and Encumbrances. The provisions of Article IX of the Loan Agreement are hereby incorporated by this reference in their entirety, provided that specific references to any particular Borrower in such Sections shall be deemed to refer to the Borrower named herein.

Section 12.2. Right to Contest Liens. Borrower, at its own expense, may contest the amount, validity or application, in whole or in part, of any mechanic's, materialmen's or environmental liens in which event Lender will refrain from exercising any of the Remedies, provided that the following conditions are met:

- (i) Borrower delivers to Lender notice of the proposed contest not more than thirty (30) days after Borrower has knowledge that the lien has been filed;
- (ii) the contest is by a Proceeding promptly initiated and conducted in good faith and with due diligence;
- (iii) there is no Event of Default in existence other than the default arising from the filing of the lien;
- (iv) the Proceeding suspends enforcement or collection of the lien, imposition of criminal or civil penalties and sale or forfeiture of the Property and Lender will not be subject to any civil suit;
- (v) the Proceeding is not prohibited by and is not conducted in violation of the Leases and the Property Documents;
- (vi) upon Lender's reasonable request, Borrower sets aside reserves or furnishes a bond (or causes reserves to be set aside or a bond to be furnished) or other security satisfactory to Lender, in either case in an amount sufficient to pay the claim giving rise to the lien, together with all interest and penalties, or Borrower pays the contested lien under protest; and
- (vii) with respect to an environmental lien, Borrower is using best efforts to mitigate or prevent any deterioration of the Property resulting from the alleged violation of any Environmental Laws or the alleged Environmental Activity.

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## ARTICLE XIII

### ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS

#### Section 13.1. Further Assurances.

(a) Borrower will, promptly following Lender's demand, execute, acknowledge and deliver to Lender, or to any other Person Lender designates, any additional or replacement documents and perform any additional actions that Lender determines are reasonably necessary to evidence, perfect or protect Lender's second lien on and prior security interest in the Property or to carry out the intent or facilitate the performance of the provisions of the Loan Documents, provided no such documents or additional actions shall increase Borrower's liability or decrease Borrower's rights under the Loan Documents other than in de minimis amounts.

(b) Borrower appoints Lender as Borrower's attorney-in-fact to perform, at Lender's election, any actions and to execute and record any of the additional or replacement documents referred to in this Section, in each instance only at Lender's election and only to the extent Borrower has failed to comply with the terms of this Section.

Section 13.2. Additional Representations, Warranties and Covenants. The provisions of Sections 14.4 of the Loan Agreement are hereby incorporated by this reference in their entirety, provided that specific references to any particular Borrower in such Sections shall be deemed to refer to the Borrower named herein.

## ARTICLE XIV

### DEFAULTS AND REMEDIES

Section 14.1. Events of Default. The term "Event of Default" means the occurrence of any of the following events:

(i) (a) if Borrower or any Other Borrower fails to pay any payment of principal and/or interest due, as and when required, under any Loan Document and the failure continues for a period of five (5) days, or (b) if Borrower or any Other Borrower fails to pay any other amount due, as and when required, under any Loan Document and the failure continues for a period of five (5) days following notice to Borrower from Lender;

(ii) if Borrower makes a general assignment for the benefit of creditors or generally is not paying, or is unable to pay, or admits in writing its inability to pay, its debts as they become due; or if Borrower or any other party commences any Proceeding (A) relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, in each instance with respect to Borrower; (B) seeking to have an order for relief entered with respect to Borrower; (C) seeking attachment, distraint or execution of a judgment with respect to Borrower; (D) seeking to adjudicate Borrower as bankrupt or insolvent; (E)

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seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to Borrower or Borrower's debts; or (F) seeking appointment of a Receiver, trustee, custodian, conservator or other similar official for Borrower or for all or any substantial part of Borrower's assets, provided that if the Proceeding is commenced by a party other than Borrower or any of Borrower's general partners or members, Borrower will have one hundred twenty (120) days to have the Proceeding dismissed or discharged before an Event of Default occurs;

(iii) if Borrower is in default beyond any applicable grace and cure period under any other mortgage, deed of trust, deed to secure debt, pledge agreement or other security agreement encumbering the Property whether junior or senior to the lien of this Mortgage;

(iv) if there is a default beyond any applicable grace and cure period under any indemnity or guaranty in favor of Lender delivered to Lender in connection with the Loan and/or the Modification or in connection with any loan cross-collateralized with the Loan;

(v) if there is a default beyond any applicable grace and cure period under any other Loan Document;

(vi) if a Transfer occurs except in accordance with the provisions of this Mortgage or the Loan Agreement;

(vii) if Borrower abandons the Property or ceases to conduct its business at the Property;

(viii) if there is a default in the performance of any other provision of any Loan Document or if there is any inaccuracy or falsehood in any representation or warranty contained in any Loan Document or any indemnity or guaranty in favor of Lender delivered to Lender in connection with the Loan and/or the Modification or in connection with any loan cross-collateralized with the Loan, which is not remedied within thirty (30) days after Borrower receives notice thereof, provided that if the default, inaccuracy or falsehood is of a nature that it cannot be cured within the thirty (30) day period and during that period Borrower commences to cure, and thereafter diligently continues to cure, the default, inaccuracy or falsehood, then the thirty (30) day period will be extended for a reasonable period not to exceed one hundred twenty (120) days after the notice to Borrower; or

(ix) if Borrower violates any covenant contained in Section 7.6 of the Loan Agreement relating to Special Purpose Entity requirements.

## Section 14.2. Remedies.

(a) If an Event of Default occurs, Lender may take any of the following actions (the "Remedies") without notice to Borrower:

(i) declare all or any portion of the Guaranteed Obligations immediately due and payable ("Acceleration");

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- (ii) pay or perform any Guaranteed Obligation;
  - (iii) institute a Proceeding for the specific performance of any Guaranteed Obligation;
  - (iv) apply for and obtain the appointment of a Receiver to be vested with the fullest powers permitted by Law, without bond being required, which appointment may be made ex parte, as a matter of right and without regard to the value of the Property, the amount of the Guaranteed Obligations or the solvency of Borrower or any other person liable for the payment or performance of any portion of the Guaranteed Obligations;
  - (v) directly, by its agents or representatives or through a Receiver appointed by a court of competent jurisdiction, enter on the Land and Improvements, take possession of the Property, dispossess Borrower and exercise Borrower's rights with respect to the Property, either in Borrower's name or otherwise;
  - (vi) institute a Proceeding for the foreclosure of this Mortgage or, if applicable, sell by power of sale, all or any portion of the Property;
  - (vii) institute proceedings for the partial foreclosure of this Mortgage for the portion of the Guaranteed Obligations then due and payable, subject to the continuing lien of this Mortgage for the balance of the Guaranteed Obligations not then due;
  - (viii) exercise any and all rights and remedies granted to a secured party under the Uniform Commercial Code; and
  - (ix) pursue any other right or remedy available to Lender at Law, in equity or otherwise.
- (b) During the continuance of an Event of Default, the license granted to Borrower in the Loan Documents to collect Rents will terminate automatically without any action required of Lender.

### Section 14.3. General Provisions Pertaining to Remedies.

- (a) The Remedies are cumulative and may be pursued concurrently or otherwise, at such time and in such order as Lender may determine in its sole discretion and without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Borrower.
- (b) The enumeration in the Loan Documents of specific rights or powers will not be construed to limit any general rights or powers or impair Lender's rights with respect to the Remedies.
- (c) If Lender exercises any of the Remedies, Lender will not be deemed a mortgagee-in-possession unless Lender has elected affirmatively to be a mortgagee-in-possession.
- (d) Absent Lender's gross negligence or willful misconduct, Lender will not be liable for any act or omission of Lender in connection with the exercise of the Remedies.

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(e) Lender's right to exercise any Remedy will not be impaired by any delay in exercising or failure to exercise the Remedy and the delay or failure will not be construed as extending any cure period or constitute a waiver of the default or Event of Default.

(f) If an Event of Default occurs, Lender's payment or performance or acceptance of payment or performance will not be deemed a waiver or cure of the Event of Default.

(g) Lender's acceptance of partial payment or receipt of Rents will not extend or affect any grace period, constitute a waiver of a default or Event of Default or constitute a rescission of Acceleration.

Section 14.4. Cross-Collateralization. Borrower acknowledges that (a) it has also executed the First Priority Mortgage encumbering the Property described herein as security for the obligations under the Borrower's Note and (b) each Other Borrower has executed first and second priority Mortgages with respect to each other Property as additional security for either (i) each respective Other Borrower's obligations under the Other Borrower's Note executed by such Other Borrower or (ii) each respective Other Borrower's obligations under the Guaranty executed by such Other Borrower (each such other Mortgage described in (a) and (b) above, a "**Crossed Mortgage**" and collectively, the "**Crossed Mortgages**"). The Crossed Mortgages are more specifically set forth on Exhibit G of the Loan Agreement. Upon the occurrence of an Event of Default, Lender shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Mortgage and any or all of the Crossed Mortgages whether by court action, if applicable, power of sale, or otherwise, under any applicable provision of this Mortgage, and the Crossed Mortgages shall continue in full force and effect without loss of priority as liens and security interests securing the payment of that portion of the Debt and other obligations secured hereby or thereby (including, without limitation, the Guaranteed Obligations) then due and payable but still outstanding. Neither the acceptance of this Mortgage, the Crossed Mortgages or the other Loan Documents nor the enforcement thereof in any one State, Commonwealth or County, whether by court action, foreclosure, if applicable, power of sale, or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, if applicable, power of sale, or otherwise, of this Mortgage or the other Loan Documents, or the Crossed Mortgages or any of the documents evidencing or securing the Debt and other obligations secured hereby or as the case may be thereby through one or more additional proceedings in that State, Commonwealth or County or in any other State, Commonwealth or County. Any and all sums received by Lender as a result of exercising its Remedies under this Mortgage, the Crossed Mortgages or the other Loan Documents shall be applied to the Debt and such other obligations in such order and priority, as Lender shall determine in its sole discretion.

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Section 14.5. Severance. Upon the occurrence and during the continuance of an Event of Default, and without limiting any of the rights and remedies of Lender under the Loan Documents, Lender may unilaterally, but shall have no obligation to, and Borrower hereby authorizes Lender to (a) release this Mortgage or (b) amend this Mortgage to specifically exclude certain Mortgages, as determined by Lender in its sole discretion, from the defined term "Crossed Mortgages" contained in this Mortgage, by a written recordable instrument executed by Lender only.

Section 14.6. General Provisions Pertaining to Receiver and other Remedies.

(a) During the continuance of an Event of Default, any court of competent jurisdiction may, upon application by Lender, appoint a Receiver as designated in the application and issue an injunction prohibiting Borrower from interfering with the Receiver, collecting Rents, disposing of any Rents or any part of the Property, committing waste or doing any other act that will tend to affect the preservation of the Leases, the Rents and the Property and Borrower approves the appointment of the designated Receiver or any other Receiver appointed by the court. Borrower agrees that the appointment may be made *ex parte* and as a matter of right to Lender, either before or after sale of the Property, without further notice, and without regard to the solvency or insolvency, at the time of application for the Receiver, of the person or persons, if any, liable for the payment of any portion of the Guaranteed Obligations and the performance of any portion of the Guaranteed Obligations and without regard to the value of the Property or whether the Property is occupied as a homestead and without bond being required of the applicant.

(b) The Receiver will be vested with the fullest powers permitted by Law including all powers necessary or usual in similar cases for the protection, possession and operation of the Property and all the powers and duties of Lender as a mortgagee-in-possession as provided in this Mortgage and may continue to exercise all the usual powers and duties until the Receiver is discharged by the court.

(c) In addition to the Remedies and all other available rights, Lender or the Receiver may take any of the following actions:

(i) take exclusive possession, custody and control of the Property and manage the Property so as to prevent waste;

(ii) require Borrower to deliver to Lender or the Receiver all keys, security deposits, operating accounts, prepaid Rents, past due Rents, Financial Books and Records and all original counterparts of the Leases and the Property Documents;

(iii) collect, sue for and give receipts for the Rents and, after paying all expenses of collection, including reasonable receiver's, broker's and attorney's fees, apply the net collections to any portion of the Guaranteed Obligations selected by Lender in its sole discretion;

(iv) enter into, modify, extend, enforce, terminate, renew or accept surrender of Leases and evict tenants except that in the case of a Receiver, such actions may be taken only with the written consent of Lender as provided in this Mortgage and in the Assignment;



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(v) enter into, modify, extend, enforce, terminate or renew Property Documents except that in the case of a Receiver, such actions may be taken only with the written consent of Lender as provided in this Mortgage and in the Assignment;

(vi) appear in and defend any Proceeding brought in connection with the Property and bring any Proceeding to protect the Property as well as Borrower's and Lender's respective interests in the Property (unless any such Proceeding has been assigned previously to Lender in the Assignment, or if so assigned, Lender has not expressly assigned such Proceeding to the Receiver and consented to such appearance or defense by the Receiver); and

(vii) perform any act in the place of Borrower that Lender or the Receiver deems necessary (A) to preserve the value, marketability or rentability of the Property; (B) to increase the gross receipts from the Property; or (C) otherwise to protect Borrower's and Lender's respective interests in the Property.

(d) Borrower appoints Lender as Borrower's attorney-in-fact, at Lender's election, to perform any actions and to execute and record any instruments necessary to effectuate the actions described in this Section, in each instance only at Lender's election and only to the extent Borrower has failed, within ten (10) days following demand, to comply with the provisions of this Section.

Section 14.7. General Provisions Pertaining to Foreclosures and the Power of Sale. The following provisions will apply to any Proceeding to foreclose and to any sale of the Property by power of sale, if applicable, or pursuant to a judgment of foreclosure and sale:

(i) Lender's right to institute a Proceeding to foreclose or to sell by power of sale will not be exhausted by a Proceeding or a sale that is defective or not completed;

(ii) any sale may be postponed or adjourned by Lender by public announcement at the time and place appointed for the sale without further notice;

(iii) with respect to any sale pursuant to a judgment of foreclosure and sale or by power of sale, the Property may be sold as an entirety or in parcels, at one or more sales, at the time and place, on terms and in the order that Lender deems expedient in its sole discretion;

(iv) if a portion of the Property is sold pursuant to this Article, the Loan Documents will remain in full force and effect with respect to any unmatured portion of the Guaranteed Obligations and this Mortgage will continue as a valid and enforceable second lien on and security interest in the remaining portion of the Property, subject only to the Permitted Exceptions, without loss of priority and without impairment of any of Lender's rights and remedies with respect to the unmatured portion of the Guaranteed Obligations;

(v) Lender may bid for and acquire the Property at a sale and, in lieu of paying cash, may credit the amount of Lender's bid against any portion of the Guaranteed Obligations selected by Lender in its sole discretion after deducting from the amount of

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Lender's bid the expenses of the sale, costs of enforcement and other amounts that Lender is authorized to deduct at Law, in equity or otherwise; and

(vi) Lender's receipt of the proceeds of a sale will be sufficient consideration for the portion of the Property sold and Lender will apply the proceeds as set forth in this Mortgage.

Section 14.8. Application of Proceeds. Lender may apply the proceeds of any sale of the Property by power of sale or pursuant to a judgment of foreclosure and sale and any other amounts collected by Lender in connection with the exercise of the Remedies to payment of the Guaranteed Obligations in such priority and proportions as Lender may determine in its sole discretion or in such priority and proportions as required by Law.

Section 14.9. Power of Attorney. Borrower appoints Lender as Borrower's attorney-in-fact to perform any actions necessary and incidental to exercising the Remedies, but only to the extent Borrower has failed, within ten (10) days following Lender's demand, to perform any such actions.

Section 14.10. Tenant at Sufferance. If Lender or a Receiver enters the Property in the exercise of the Remedies and Borrower is allowed to remain in occupancy of the Property, Borrower will pay to Lender or the Receiver, as the case may be, in advance, a reasonable rent for the Property occupied by Borrower. If Borrower fails to pay the rent, Borrower may be dispossessed by the usual Proceedings available against defaulting tenants.

## ARTICLE XV

### LIMITATION OF LIABILITY

Section 15.1. Limitation of Liability. The provisions of Article XI of the Loan Agreement are hereby incorporated by reference in their entirety, provided that specific references to any particular Borrower (or to Borrowers collectively) in such Article shall be deemed to refer only to the Borrower named herein.

## ARTICLE XVI

### WAIVERS

Section 16.1. WAIVER OF STATUTE OF LIMITATIONS. BORROWER WAIVES THE RIGHT TO CLAIM ANY STATUTE OF LIMITATIONS AS A DEFENSE TO BORROWER'S PAYMENT AND PERFORMANCE OF THE GUARANTIED OBLIGATIONS.

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**Section 16.2. WAIVER OF NOTICE. BORROWER WAIVES THE RIGHT TO RECEIVE ANY NOTICE FROM LENDER WITH RESPECT TO THE LOAN DOCUMENTS EXCEPT FOR THOSE NOTICES THAT LENDER IS EXPRESSLY REQUIRED TO DELIVER PURSUANT TO ANY OF THE LOAN DOCUMENTS.**

**Section 16.3. WAIVER OF MARSHALLING AND OTHER MATTERS. BORROWER WAIVES THE BENEFIT OF ANY RIGHTS OF MARSHALLING OR ANY OTHER RIGHT TO DIRECT THE ORDER IN WHICH ANY OF THE PROPERTY WILL BE (i) SOLD; OR (ii) MADE AVAILABLE TO ANY ENTITY IF THE PROPERTY IS SOLD BY POWER OF SALE OR PURSUANT TO A JUDGMENT OF FORECLOSURE AND SALE. BORROWER ALSO WAIVES THE BENEFIT OF ANY LAWS RELATING TO APPRAISEMENT, VALUATION, STAY, EXTENSION, REINSTATEMENT, MORATORIUM, HOMESTEAD AND EXEMPTION RIGHTS OR A SALE IN INVERSE ORDER OF ALIENATION.**

**Section 16.4. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER (BY ITS ACCEPTANCE OF THIS MORTGAGE), EACH WAIVE TRIAL BY JURY IN ANY PROCEEDING BROUGHT BY OR AGAINST, OR COUNTERCLAIM OR CROSS-COMPLAINT ASSERTED BY OR AGAINST, THE OTHER PARTY HERETO RELATING TO THE LOAN, THE PROPERTY DOCUMENTS OR THE LEASES.**

**Section 16.5. WAIVER OF COUNTERCLAIM. BORROWER WAIVES THE RIGHT TO ASSERT A COUNTERCLAIM OR CROSS-COMPLAINT, OTHER THAN COMPULSORY OR MANDATORY COUNTERCLAIMS OR CROSS-COMPLAINTS, IN ANY PROCEEDING LENDER BRINGS AGAINST BORROWER RELATING TO THE LOAN, INCLUDING ANY PROCEEDING TO ENFORCE REMEDIES.**

**Section 16.6. WAIVER OF JUDICIAL NOTICE AND HEARING. BORROWER WAIVES ANY RIGHT BORROWER MAY HAVE UNDER LAW TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THE LOAN DOCUMENTS TO LENDER AND BORROWER WAIVES THE RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN DOCUMENTS ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING.**

**Section 16.7. WAIVER OF SUBROGATION. BORROWER WAIVES ALL RIGHTS OF SUBROGATION TO LENDER'S RIGHTS OR CLAIMS RELATED TO OR AFFECTING THE PROPERTY OR ANY OTHER SECURITY FOR THE LOAN UNTIL THE LOAN IS PAID IN FULL AND ALL FUNDING OBLIGATIONS UNDER THE LOAN DOCUMENTS HAVE BEEN TERMINATED.**

**Section 16.8. GENERAL WAIVER. BORROWER ACKNOWLEDGES THAT (A) BORROWER AND BORROWER'S PARTNERS, MEMBERS OR PRINCIPALS, AS THE CASE MAY BE, ARE KNOWLEDGEABLE BORROWERS OF COMMERCIAL FUNDS AND EXPERIENCED REAL ESTATE DEVELOPERS OR INVESTORS WHO**

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**UNDERSTAND FULLY THE EFFECT OF THE ABOVE PROVISIONS; (B) LENDER WOULD NOT MAKE THE LOAN WITHOUT THE PROVISIONS OF THIS ARTICLE; (C) THE LOAN IS A COMMERCIAL OR BUSINESS LOAN UNDER THE LAWS OF THE STATE OR COMMONWEALTH WHERE THE PROPERTY IS LOCATED, NEGOTIATED BY LENDER AND BORROWER AND THEIR RESPECTIVE ATTORNEYS AT ARMS LENGTH; AND (D) ALL WAIVERS BY BORROWER IN THIS ARTICLE HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER BORROWER FIRST HAS BEEN INFORMED BY COUNSEL OF BORROWER'S OWN CHOOSING AS TO POSSIBLE ALTERNATIVE RIGHTS, AND HAVE BEEN MADE AS AN INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A KNOWN RIGHT AND PRIVILEGE. THE FOREGOING ACKNOWLEDGMENT IS MADE WITH THE INTENT THAT LENDER AND ANY SUBSEQUENT HOLDER OF THE NOTE WILL RELY ON THE ACKNOWLEDGMENT.**

**ARTICLE XVII****NOTICES**

Section 17.1. Notices. All acceptances, approvals, consents, demands, notices, requests, waivers and other communications (the "Notices") required or permitted to be given under the Loan Documents must be in writing and (a) delivered personally by a process server providing a sworn declaration evidencing the date of service, the individual served, and the address where the service was made; (b) sent by certified mail, return receipt requested; or (c) delivered by nationally recognized overnight delivery service that provides evidence of the date of delivery (for next morning delivery if sent by overnight delivery service) in all cases with charges prepaid, addressed to the appropriate party at its address listed below:

If to Lender:

Teachers Insurance and Annuity  
Association of America  
730 Third Avenue  
New York, New York 10017  
Attention: Senior Director, Head of Loan  
Closing/Asset Management  
Global Real Estate  
TIAA Authorization #AAA-7451  
Investment ID #0007011-09

with a copy to:

Teachers Insurance and Annuity  
Association of America  
730 Third Avenue  
New York, New York 10017  
Attention: Associate General Counsel and Director  
Asset Management Law  
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and: Commercial Loan Services  
929 Gessner, Suite 1740  
Houston, Texas 77024  
Attention: Chief Legal Officer

If to Borrower c/o J.P. Morgan Investment Management Inc.  
270 Park Avenue, 7th Floor  
New York, New York 10017  
Attn: Cyndi Q. Strzyz  
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c/o J.P. Morgan Investment Management Inc.  
PO Box 5005  
New York, New York 10163-5005  
TIAA Authorization #AAA-7451  
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with a copy to: Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038  
Attn: Diana M. Brummer  
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Lender and Borrower each may change from time to time the address to which Notices must be sent, by notice given in accordance with the provisions of this Section. All Notices given in accordance with the provisions of this Section will be deemed to have been received on the earliest of (i) actual receipt; (ii) the intended recipient's rejection of delivery; or (iii) three (3) Business Days after having been deposited in any mail depository regularly maintained by the United States postal service, if sent by certified mail, or one (1) Business Day after having been deposited with a nationally recognized overnight delivery service, if sent by overnight delivery or on the date of personal service, if served by a process server.

Section 17.2. Change in Borrower's Legal Name, Place of Business or State of Formation. Borrower will notify Lender in writing prior to any change in Borrower's legal name, place of business or State or Commonwealth of organization, formation, or incorporation, as applicable, including as a result of, or in connection with, any Transfer, including any Permitted Transfer.

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The GoGo Building, 111 N. Canal St. (Chicago, IL)

## ARTICLE XVIII

### MISCELLANEOUS

Section 18.1. Applicable Law. The Loan Documents are governed by and will be construed in accordance with the Laws of New York, except for matters relating to the creation, perfection and foreclosure of liens and the enforcement of Remedies against the Property which will be governed by and construed in accordance with the Laws of the State or Commonwealth where the Property is located, except to the extent that the Uniform Commercial Code requires otherwise.

Section 18.2. Usury Limitations. Borrower and Lender intend to comply with all Laws with respect to the charging and receiving of interest. Any amounts charged or received by Lender for the use or forbearance of the Principal to the extent permitted by Law, will be amortized and spread throughout the Term until payment in full so that the rate or amount of interest charged or received by Lender on account of the Principal does not exceed the Maximum Interest Rate. If any amount charged or received under the Loan Documents that is deemed to be interest is determined to be in excess of the amount permitted to be charged or received at the Maximum Interest Rate, the excess will be deemed to be a prepayment of Principal when paid, without premium or penalty, and any portion of the excess not capable of being so applied will be refunded to Borrower. If during the Term the Maximum Interest Rate, if any, is eliminated, then for the purposes of the Loan, there will be no Maximum Interest Rate.

Section 18.3. Lender's Discretion. Wherever under this Mortgage any matter is required to be satisfactory to Lender, Lender has the right to approve or determine any matter or Lender has an election, Lender's approval, determination or election will be made in Lender's reasonable discretion unless expressly provided to the contrary.

Section 18.4. Unenforceable Provisions. If any provision in the Loan Documents is found to be illegal or unenforceable or would operate to invalidate any of the Loan Documents, then the provision will be deemed expunged and the Loan Documents will be construed as though the provision was not contained in the Loan Documents and the remainder of the Loan Documents will remain in full force and effect.

Section 18.5. Survival of Borrower's Obligations. Borrower's representations, warranties and covenants contained in the Loan Documents relating to "ERISA Compliance", "Anti-Terrorism; OFAC" and "Hazardous Materials" will continue in full force and effect and survive (i) satisfaction of the Guaranteed Obligations; (ii) release of the lien of this Mortgage; (iii) assignment or other transfer of all or any portion of Lender's interest in the Loan Documents or the Property; (iv) Lender's exercise of any of the Remedies or any of Lender's other rights under the Loan Documents; (v) a Transfer; (vi) amendments to the Loan Documents; and (vii) any other act or omission that might otherwise be construed as a release or discharge of Borrower; provided that with respect to the representations, warranties and covenants contained in the Loan Documents relating solely to "Hazardous Materials", such survival shall be only until such time as the Borrowers are released from liability under the terms and conditions of the Environmental Indemnity.

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## Section 18.6. Relationship Between Borrower and Lender; No Third Party Beneficiaries.

(a) Lender is not a partner of or joint venturer with Borrower or any other entity as a result of the Loan, the Modification or Lender's rights under the Loan Documents; the relationship between Lender and Borrower is strictly that of creditor and debtor. Each Loan Document is an agreement between the parties to that Loan Document for the mutual benefit of the parties and no entities other than the parties to that Loan Document will be a third party beneficiary or will have any claim against Lender or Borrower by virtue of the Loan Document. As between Lender and Borrower, any actions taken by Lender under the Loan Documents will be taken for Lender's protection only, and Lender has not and will not be deemed to have assumed any responsibility to Borrower or to any other entity by virtue of Lender's actions.

(b) All conditions to Lender's performance of its obligations under the Loan Documents are imposed solely for the benefit of Lender. No entity other than Lender will have standing to require satisfaction of the conditions in accordance with their provisions or will be entitled to assume that Lender will refuse to perform its obligations in the absence of strict compliance with any of the conditions.

Section 18.7. Partial Releases; Extensions; Waivers. Lender may: (i) release any part of the Property or any entity obligated for any of the Guaranteed Obligations; (ii) extend the time for payment or performance of any of the Guaranteed Obligations or otherwise amend the provisions for payment or performance by agreement with any entity that is obligated for the Guaranteed Obligations or that has an interest in the Property; (iii) accept additional security for the payment and performance of the Guaranteed Obligations, and (iv) waive any entity's performance of a Guaranteed Obligation, release any entity or individual now or in the future liable for the performance of the Guaranteed Obligation or waive the exercise of any Remedy or option. Lender may exercise any of the foregoing rights without notice, without regard to the amount of any consideration given, without affecting the priority of the Loan Documents, without releasing any entity not specifically released from its obligations under the Loan Documents, without releasing any guarantor(s) or surety(ies) of any of the Guaranteed Obligations, without effecting a novation of the Loan Documents and, with respect to a waiver, without waiving future performance of the Guaranteed Obligation or exercise of the Remedy waived.

Section 18.8. Service of Process. Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, return receipt requested, to Borrower at its address set forth in the Article entitled "Notices".

Section 18.9. Entire Agreement. Oral agreements or commitments between Borrower and Lender to lend money, to extend credit or to forbear from enforcing repayment of a debt, including promises to extend or renew the debt, are not enforceable. Any agreements between Borrower and Lender relating to the Loan or the Modification are contained in the Loan Documents, which contain the complete and exclusive statement of the agreements between Borrower and Lender, except as Borrower and Lender may later agree in writing to amend the Loan Documents. The language of each Loan Document will be construed as a whole according to its fair meaning and will not be construed against the party by or for whom it was drafted.

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Section 18.10. No Oral Amendment. The Loan Documents may not be amended, waived or terminated orally or by any act or omission made individually by Borrower or Lender but may be amended, waived or terminated only by a written document signed by the party against which enforcement of the amendment, waiver or termination is sought.

Section 18.11. Lost or Destroyed Note. If the Note is lost, mutilated, destroyed or stolen, Borrower will deliver to Lender a new, substitute note containing the same provisions as the Note, provided that Borrower is furnished with reasonably satisfactory evidence of the loss, mutilation, destruction or theft of the Note, and, in connection with loss or theft, Borrower is indemnified by Lender against any actual damages incurred as a result of any such loss or theft.

Section 18.12. Covenants Run with the Land. Subject to the restrictions on transfer contained in the Loan Agreement, all of the covenants of this Mortgage and the Assignment run with the Land, will bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all occupants and subsequent owners of the Property, and will inure to the benefit of Lender and all subsequent holders of the Note and this Mortgage.

Section 18.13. Time of the Essence. Time is of the essence with respect to Borrower's payment and performance of the Guaranteed Obligations.

Section 18.14. Subrogation. If the Principal or any other amount advanced by Lender is used directly or indirectly to pay off, discharge or satisfy all or any part of an encumbrance affecting the Property, then Lender is subrogated to the encumbrance and to any security held by the holder of the encumbrance, all of which will continue in full force and effect in favor of Lender as additional security for the Guaranteed Obligations.

Section 18.15. Joint and Several Liability. If Borrower consists of more than one person or entity, the obligations and liabilities of each such person or entity under this Mortgage are joint and several.

Section 18.16. Successors and Assigns. The Loan Documents bind the parties to the Loan Documents and their respective successors, assigns, heirs, administrators, executors, agents and representatives and inure to the benefit of Lender and its successors, assigns, heirs, administrators, executors, agents and representatives.

Section 18.17. Duplicates and Counterparts. Duplicate counterparts of any of the Loan Documents, other than the Note, may be executed and together will constitute a single original document.

## ARTICLE XIX

### ADDITIONAL PROVISIONS PERTAINING TO STATE LAWS

Section 19.1. Illinois Provisions. If any provision set forth in this Article XIX contradicts any other provision set forth in this Mortgage, the provision set forth in this Article XIX shall control.



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## Section 19.2. ILLINOIS MORTGAGE FORECLOSURE LAW.

(a) The law applicable to any foreclosure of this instrument shall be the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes, Chapter 735, Act 5, Section 15 1101, et seq., as from time to time amended (the "Act").

(b) In the event that 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.

(c) 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, to the maximum extent permitted by law, 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 of this Mortgage shall grant to Lender any rights or remedies upon the occurrence and during the continuation of an Event of Default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

(d) Without limiting the generality of the foregoing, all expenses incurred by Lender upon the occurrence and during the continuation of an Event of Default to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Debt.

(e) Borrower acknowledges that the transaction of which the Borrower is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and upon the occurrence and during the continuation of an Event of Default to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

## Section 19.3. Mortgage Waivers.

(a) Except to the extent contrary to law, Borrower agrees that upon the occurrence and during the continuation of an Event of Default, Borrower will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Borrower, for Borrower and all who may claim through or under Borrower, so far as Borrower or those claiming through or under Borrower now or hereafter lawfully may, hereby waives upon the occurrence and during the continuation of an Event of Default the benefit of all such laws. Except to

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the extent contrary to law, Borrower hereby waives upon the occurrence and during the continuation of an Event of Default any and all right to have the Property marshaled upon any foreclosure of this Mortgage, or sold in inverse order of alienation, and agrees that Lender or any court having jurisdiction to foreclose this Mortgage may sell the Property as an entirety. If any law now or hereafter in force referred to in this paragraph of which the parties or their successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph, to the extent not prohibited by law.

(b) In the event of the commencement of judicial proceedings to foreclose this Mortgage, Borrower, on behalf of Borrower, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Property subsequent to the date of this Mortgage: (i) expressly waives any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage; and (ii) to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

Section 19.4. Maximum Amount Secured. This Mortgage shall secure the payment of the Guarantied Obligations under the Borrower's Guaranty, the Assignment or under other documents stating that such amounts are secured hereby. This Mortgage also secures any and all future obligations arising under or in connection with this Mortgage, the Borrower's Guaranty and the Assignment which future obligations shall have the same priority as if all such obligations were made on the date of execution hereof. Nothing in this Section 19.4 or in any other provisions of this Mortgage shall be deemed an obligation on the part of Lender to make any future advances of any sort. Notwithstanding any future advances or other advances referred to in this Section 19.4 or Section 19.6 or any other provision of this Mortgage to the contrary, the maximum principal indebtedness secured by this Mortgage shall not exceed two hundred percent (200%) of the amount the Guarantied Obligations. As of the date of this Mortgage, the principal amount secured by the Borrower's Guaranty is the sum of \$709,900,000.

Section 19.5. Business Loan. Borrower covenants and agrees that (i) all of the proceeds of the Loan secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Borrower, (ii) the beneficiary of Borrower is a "business," as that term is defined in the Illinois Interest Act, Illinois Compiled Statutes, Chapter 815 ILCS 205/0.01, et seq., including Section 4(1)(c) thereof, (iii) the entire principal obligation secured hereby constitutes: (A) a "business loan," as that term is used in Section 205/4(1)(c) thereof; and (B) a "loan secured by a mortgage on real estate" within the purview and operation of Section 205/4(1)(l) thereof, and (iv) the indebtedness secured hereby is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Section 1601m, et seq. and has been entered into solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said section.

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Section 19.6. Protective and Other Advances. Without limiting any of the other terms or provisions of this Mortgage or any other Loan Documents, all advances, disbursements and/or expenditures made by Lender from time to time in accordance with the terms of this Mortgage and/or any other Loan Document(s) to which Borrower is a party, or otherwise authorized or contemplated by the Act (or other applicable law), whether made before, during or after a foreclosure of this Mortgage, before or after judgment of foreclosure therein, before or after any sale of the Property or before, during or after the pendency of any claims, demands, proceedings, causes of action or suits related to any of the foregoing, together with applicable interest thereon (as provided for in and/or contemplated by this Mortgage, any other Loan Document(s) to which Borrower is a party or applicable law), shall be secured by this Mortgage (and shall constitute part of the Obligations hereunder) and shall have the benefit of all applicable provisions of the Act (or other applicable law, as the case may be). Without in any way limiting the generality of the foregoing, any advances, disbursements or expenditures described in Section 15-1302(b) of the Act that are made by Lender from time to time shall have the benefit of the provisions of the Act applicable thereto, and any advances, disbursements or expenditures in the nature of "future advances", as described or defined in the Act or any other applicable Illinois law, that are made by Lender from time to time shall have the benefit of the provisions of the Act or such other applicable law (as the case may be). Nothing contained in this Section 19.6 shall be deemed or construed to obligate Lender to make any advance, disbursement or expenditure of any kind.

Section 19.7. Maturity Date. The Loan shall be due and payable in full on or before May 1, 2026.

Section 19.8. Collateral Protection Act. Pursuant to the terms of the Collateral Protection Act, Illinois Compiled Statutes, Chapter 815 ILCS 180/1 et seq., Borrower is hereby notified that, unless Borrower provides Lender with evidence of the insurance required by this Mortgage or any other Loan Document, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Property or any other collateral for the indebtedness secured hereby. This insurance may, but need not, protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property or any other collateral for the indebtedness secured hereby. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required under this Mortgage or any other Loan Document. If Lender purchases insurance for the Property or any other collateral for the indebtedness secured hereby, Borrower shall be responsible for the costs of that insurance, including the insurance premiums, interest and any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.

Section 19.9. Fixture Filing. This Mortgage also constitutes a "fixture filing" pursuant to Section 9-502 of the Illinois Uniform Commercial Code, Illinois Compiled Statutes, Chapter 810 ILCS 5/9-101, et. seq. and shall be filed in the real estate records of the applicable county's real estate records office.

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The GoGo Building, 111 N. Canal St. (Chicago, IL)

- (a) Name of Debtor: 111 N. Canal Realty Company LLC.
- (b) Debtor's Mailing Address: As set forth in the introductory paragraph of this Mortgage.
- (c) Debtor's Organizational ID: 5678377.
- (d) Address of the Property: Set forth on Exhibit A.
- (e) Debtor is the record owner of the Property.
- (f) Debtor's chief executive office is located in the State of New York.
- (g) Debtor's State of formation is Delaware.
- (h) Name of Secured Party: As set forth in the introductory paragraph of this Mortgage.
- (i) Address of Secured Party: As set forth in the introductory paragraph of this Mortgage.
- (j) Some of the above goods are or are to become fixtures on the real estate described herein. Borrower is the record owner of the real estate described herein upon which the foregoing fixtures and other items and types of property are located set forth on Exhibit A.

**Section 19.10. Receiver.** 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 as provided for in the Act, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, as granted and ordered by a court of competent jurisdiction, to be placed in possession of the Property or at its request to motion the court to have a receiver appointed, and any such court appointed receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, the right to petition/motion the court for all rights, powers, immunities, and duties as provided for in Sections 15-1702 and 15-1703 of the Act.

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IN WITNESS WHEREOF, Borrower has executed and delivered this Mortgage as of the date first set forth above.

**BORROWER:**

**111 N. CANAL REALTY COMPANY LLC,**  
a Delaware limited liability company

By: Commingled Pension Trust Fund (Strategic Property) of JPMorgan Chase Bank, N.A., a trust governed by the laws of the State of New York, its sole member

By: JPMorgan Chase Bank, N.A., not individually, but solely in its capacity as trustee

By:   
Name: Lauren E Sterk  
Title: Vice President

Property of Cook County Clerk's Office

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## ACKNOWLEDGMENT

STATE OF New York )  
 )  
COUNTY OF New York )

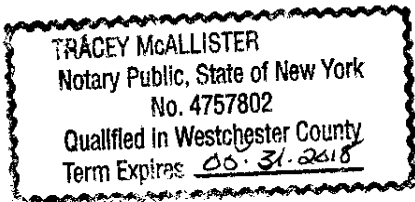
I, Tracey McAllister, a Notary Public for the said County and State of New York, do hereby certify that Lauren E Sterk JPMorgan Chase Bank, N.A., not individually, but solely in its capacity as trustee of the Commingled Pension Trust Fund (Strategic Property) of JP Morgan Chase Bank, N.A., a trust governed by the laws of the State of New York, as the sole member of 111 N. Canal Realty Company LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

WITNESS my hand and official stamp or seal, this 26th day of September, 2016.

Notary Public *Tracey McAllister*

[SEAL]

My commission expires: May 31, 2018



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The GoGo Building, 111 N. Canal St. (Chicago, IL)

## Exhibit A

### LEGAL DESCRIPTION

Real property in the City of Chicago, County of Cook, State of Illinois, described as follows:

LOTS 2, 3, 6, 7 AND 10 IN BLOCK 44 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9,  
TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN  
COOK COUNTY, ILLINOIS

Common Address: 111 North Canal Street, Chicago, Illinois

Tax I.D. No.: 17-09-334-001-0000 Vol. 590

**COOK COUNTY  
RECORDER OF DEEDS**

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The GoGo Building, 111 N. Canal St. (Chicago, IL)

## Exhibit B

### DEFINITIONS

“**Acceleration**” is defined in Section 14.2(a)(i).

“**Accumulations**” is defined in Section 2.1(vii).

“**Additional Funds**” is defined in Section 7.4(v).

“**Assessments**” is defined as all assessments now or hereafter levied, assessed or imposed against the Property.

“**Assignment**” is defined as the Second Priority Assignment of Leases and Rents dated of even date with this Mortgage made by Borrower for the benefit of Lender.

“**Bankruptcy Code**” means Title 11 of the United States Code.

“**Borrower**” is defined in the introductory paragraph.

“**Borrower’s Guaranty**” is defined in the Recitals.

“**Borrower’s Note**” is defined in the Recitals.

“**Borrower’s Note Principal**” is defined in the Recitals.

“**Business Days**” is defined as any day on which commercial banks are not authorized or required by Law to close in New York, New York.

“**Casualty**” is defined as damage to or destruction of the Property by fire or other casualty.

“**CERCLA**” is defined as the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 and by the Small Business Liability Relief and Brownfields Revitalization Act and by the Asset Conservation, Lender Liability and Deposit Insurance Protection Act of 1996, and as further amended from time to time.

“**Code**” is defined as the Internal Revenue Code of 1986 and the regulations promulgated thereunder.

“**Condemnation**” is defined as the permanent or temporary taking of all or any portion of the Property, or any interest therein or right accruing thereto, by the exercise of the right of eminent domain (including any transfer in lieu of or in anticipation of the exercise of the right), inverse condemnation or any similar injury or damage to or decrease in the value of the Property, including severance and change in the grade of any streets and a Condemnation will be deemed to have occurred on the date title to the Property taken passes or if the Condemnation is temporary, on the date Borrower no longer has use of the affected property.



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**“Condemnation Awards”** is defined in Section 2.1(viii).

**“Condemnation Proceeding”** is defined as a Proceeding that could result in a Condemnation.

**“CPA”** is defined as an independent certified public accountant satisfactory to Lender.

**“Debt”** is defined as the Principal, the Interest, the Late Charges, the Prepayment Premiums, the Expenses, any additional advances made by Lender to Borrower or any Other Borrower in connection with the Property, the other Properties or the Loan and all other amounts payable by Borrower or any Other Borrower under the Loan Documents.

**“Debt Service Coverage Ratio”** has the meaning set forth in the Loan Agreement.

**“Debt Service Payments”** is defined as the monthly installments of principal and interest payable by each Borrower to Lender as set forth in the Note executed by it.

**“Default Interest Rate”** is defined as the lower of 8.38% per annum or the Maximum Interest Rate, if any.

**“Depository”** is defined as the depository bank with respect to the deposit account into which the Accumulations are deposited and/or held.

**“Destruction Event”** is defined in Section 7.4.

**“Environmental Activity”** is defined as any actual, suspected or threatened abatement, cleanup, disposal, generation, handling, manufacture, possession, release, remediation, removal, storage, transportation, treatment or use of any Hazardous Material. The actual, suspected or threatened presence of any Hazardous Material or the actual, suspected or threatened noncompliance with any Environmental Laws, will be deemed Environmental Activity.

**“Environmental Indemnity”** is defined in the Recitals.

**“Environmental Laws”** is defined as all Laws pertaining to health, safety, protection of the environment, natural resources, conservation, wildlife, waste management, Hazardous Materials and pollution, including CERCLA.

**“Environmental Report”** is defined as the report prepared by ATC Group Services LLC, dated September 19, 2016.

**“Event of Default”** is defined in Section 14.1.

**“Expenses”** is defined in Section 11.1(a).

**“Financial Books and Records”** is defined as detailed accounts of the income and expenses of the Property and of Borrower and all other data, records and information that either are specifically referred to in the Article entitled **“FINANCIAL REPORTING”** or are necessary to

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the preparation of any of the statements, reports or certificates required under such Article and includes all supporting schedules prepared or used by the CPA in auditing the Annual Financial Statement or in issuing its opinion.

**“First Amendment”** is defined in the Recitals.

**“First Priority Mortgage”** is defined in the Recitals.

**“Fixed Interest Rate”** is defined as 4.38% per annum.

**“Fixtures”** is defined as all of the Property that constitutes “fixtures” as defined on the Uniform Commercial Code.

**“Government”** is defined as any federal, state or municipal governmental or quasi-governmental authority including any executive, legislative or judicial branch and any division, subdivision or agency of any of them and any entity to which any of them has delegated authority.

**“Guarantied Obligations”** has the meaning set forth in Section 3.1.

**“Guaranty”** or **“Guaranties”** each is defined in the Recitals.

**“Hazardous Materials”** is defined as (i) any by-product, chemical, compound, contaminant, pollutant, product, substance, waste or other material that is hazardous or toxic, (ii) any by-product, chemical, compound, contaminant, pollutant, product, substance, waste or other material, the abatement, cleanup, discharge, disposal, emission, exposure to, generation, handling, manufacture, possession, presence, release, removal, remediation, storage, transportation, treatment or use of which is controlled, prohibited or regulated by any Environmental Laws, including asbestos, petroleum, petroleum products and polychlorinated biphenyls and (iii) mold, mildew, fungi, bacteria, viruses and other microbial matter.

**“Impositions”** is defined as all Taxes, Assessments, ground rent, if any, water and sewer rents, fees and charges, levies, permit, inspection and license fees and other dues, charges or impositions, including all charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, maintenance and similar charges and charges for utility services, in each instance whether now or in the future, directly or indirectly, levied, assessed or imposed on the Property or Borrower and whether levied, assessed or imposed as excise, privilege or property taxes.

**“Improvements”** is defined in Section 2.1(ii).

**“Initial Loan Agreement”** is defined in the Recitals.

**“Insurance Premiums”** is defined as all present and future premiums and other charges due and payable on policies of fire, rental value and other insurance covering the Property and required pursuant to the provisions of this Mortgage.

**“Insurance Proceeds”** is defined in Section 2.1(ix).

Exhibit B-3

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“**Insurers**” is defined in Section 7.1(c).

“**Interest**” is defined as the fixed interest payable under each Note at the Fixed Interest Rate and any other sums which are deemed to be interest under Law.

“**Land**” is defined in the Recitals.

“**Late Charge**” is defined in the Note.

“**Law**” is defined as all present and future codes, constitutions, cases, opinions, rules, manuals, regulations, determinations, laws, orders, ordinances, requirements and statutes, as amended, of any Government that affect or that may be interpreted to affect the Property, Borrower or the Loan, including amendments and all guidance documents and publications promulgated thereunder.

“**Leases**” is defined as all present and future leases, subleases, licenses and other agreements for the use and occupancy of the Land and Improvements, any related guarantees and any use and occupancy arrangements created pursuant to Section 365(h) of the Bankruptcy Code or otherwise in connection with the commencement or continuation 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 other occupant of the Land and Improvements.

“**Lender**” is defined in the introductory paragraph.

“**Loan**” is defined in the Recitals.

“**Loan Agreement**” is defined in the Recitals.

“**Loan Documents**” is defined as the Loan Agreement, the Notes, this Mortgage, the other Mortgages, the Assignment, the other Assignments of Leases and Rents and all documents now or hereafter executed by Borrower or any Other Borrower or held by Lender relating to the Loan, including all amendments but excluding any indemnities or guaranties delivered in connection with the Loan and/or the Modifications, other than the Guaranty, as any of the same may be amended, restated, replaced, supplemented or otherwise modified in accordance with the terms of this Mortgage and the other Loan Documents.

“**Material Environmental Contamination**” is defined as contamination of the Property with Hazardous Materials (i) that constitutes a violation of one or more Environmental Laws; (ii) for which there is a significant possibility that remediation will be required under Environmental Laws; (iii) that results in a material risk of liability or expense to Lender; or (iv) that diminishes the value of the Property.

“**Maturity Date**” is defined in the Recitals.

“**Maximum Interest Rate**” is defined as the maximum rate of interest, if any, permitted by Law to be charged with respect to the Loan.

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**“Modification”** is defined in the Recitals.

**“Mortgage”** is defined as this Second Priority Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing.

**“Net Operating Income”** has the meaning set forth in the Loan Agreement.

**“Note”** or **“Notes”** each as defined in the Recitals.

**“Notices”** is defined in Section 17.1.

**“Operating Expenses”** has the meaning set forth in the Loan Agreement.

**“Original Loan Agreement”** is defined in the Recitals.

**“Other Borrower”** or **“Other Borrowers”** each is as defined in the Recitals.

**“Other Borrower’s Guaranty”** or **“Other Borrowers’ Guaranties”** each as defined in the Recitals.

**“Other Borrower’s Note”** or **“Other Borrowers’ Notes”** each is defined in the Recitals.

**“Permitted Exceptions”** is defined as the matters shown in Schedule B, Part 1 and 2 of the title insurance policy insuring the lien of this Mortgage. The Permitted Exceptions include the First Priority Mortgage.

**“Permitted Transfer”** has the meaning set forth in the Loan Agreement.

**“Permitted Use”** is defined as use as a first-class residential apartment complex and uses incidentally and directly related to such use.

**“Person”** shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

**“Personal Property”** is defined as the Property, other than Fixtures, the Land or the Improvements.

**“Policies”** is defined in Section 7.1(b).

**“Prepayment Premium”** is defined in the Note.

**“Principal”** is defined in the Recitals.

**“Proceeding”** is defined as a pending or threatened action, claim or litigation before a legal, equitable or administrative tribunal having proper jurisdiction.

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“**Proceeds**” is defined in Section 7.2(c).

“**Property**” is defined in Section 2.1.

“**Property Documents**” is defined in Section 2.1(v).

“**Receiver**” is defined as a receiver, custodian, trustee, liquidator or conservator of the Property.

“**Remedies**” is defined in Section 14.2(a).

“**Rents**” is defined as all present and future rents, prepaid rents, percentage, participation or contingent rents, issues, profits, proceeds, parking fees, revenues and other consideration accruing under or in connection with the Leases or otherwise derived from the use and occupancy of the Land or the Improvements, including tenant contributions to expenses, security deposits (if and when forfeited) and royalties, if any, all other fees or payments paid to or for the benefit of Borrower, including liquidated damages after a default under a Lease, any termination, cancellation, modification or other fee or premium payable by a tenant for any reason, the proceeds of any rental insurance and any payments received pursuant to Sections 502(b) or 365 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 other occupant of the Land or the Improvements and all claims as a creditor in connection with any of the foregoing.

“**Required Insurance Provisions**” means: (i) certificates and/or paid invoices evidencing the policy number, insurance carrier, inception and expiration date, named insured(s), and limits of coverage; (ii) standard mortgagee endorsement with thirty (30) days written notice of cancellation; (iii) “waiver of subrogation” endorsement or “transfer of rights of recovery against others to us” endorsement; (iv) evidence that the location the Lender has an interest in is covered under the policy (i.e. location listing); and (v) evidence that the Lender is named as mortgagee, “loss payee” and “additional insured” for the location (i.e. policy wording that states the Lender is added automatically via the issuance of the evidence of property and liability insurance).

“**Required Lease**” is defined as any Lease (i) demising in excess of twenty thousand (20,000) square feet or (ii) which, if terminated and no longer affecting the Property as of any applicable date of determination, would cause the Debt Service Coverage Ratio of the Property for the twelve (12) month period following such termination to be less than 1.15:1.00.

“**Restoration**” is defined as the restoration of the Property after a Destruction Event as nearly as possible to its condition immediately prior to the Destruction Event, in accordance with the plans and specifications, in a first-class workmanlike manner using materials substantially equivalent in quality and character to those used for the original improvements, in accordance with Law and free and clear of all liens, encumbrances or other charges other than this Mortgage and the Permitted Exceptions.

“**Restoration Completion Date**” is defined in Section 7.4(viii).

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**Restoration Funds** is defined in Section 7.5(b).

**Second Amendment** is defined in the Recitals.

**Taxes** is defined as all present and future real estate taxes or personal property taxes, if any, levied, assessed or imposed against the Property.

**Term** is defined as the scheduled term of this Mortgage commencing on the date Lender makes the first disbursement of the Loan and terminating on the Maturity Date.

**Third Amendment** is defined in the Recitals.

**Transfer** has the meaning set forth in the Loan Agreement.

**Uniform Commercial Code** is defined as the Uniform Commercial Code as in effect from time to time in the jurisdiction where the Land is located or, to the extent required by the Uniform Commercial Code, where the Borrower is located, as applicable.

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## Exhibit C

### RULES OF CONSTRUCTION

(a) References in any Loan Document to numbered Articles or Sections are references to the Articles and Sections of that Loan Document. References in any Loan Document to any numbered or lettered Exhibits or Schedules are references to the Exhibits or Schedules attached to that Loan Document, all of which are incorporated in and constitute a part of that Loan Document. Article, Section, Exhibit and Schedule captions used in any Loan Document are for reference only and do not describe or limit the substance, scope or intent of that Loan Document or the individual Articles, Sections, Exhibits or Schedules of that Loan Document.

(b) The terms “include”, “including” and similar terms are construed as if followed by the phrase “without limitation”.

(c) The terms “Land”, “Improvements”, “Fixtures”, “Personal Property”, “Condemnation Awards”, “Insurance Proceeds” and “Property” are construed as if followed by the phrase “or any part thereof”.

(d) Any agreement by or duty imposed on Borrower in any Loan Document to perform any obligation or to refrain from any act or omission constitutes a covenant running with the ownership or occupancy of the Land and the improvements, which will bind all parties hereto and their respective successors and assigns, and will inure to the benefit of Lender and all subsequent holders of the Note and this Mortgage and includes a covenant by Borrower to cause its partners, members, principals, agents, representatives and employees to perform the obligation or to refrain from the act or omission in accordance with the Loan Documents.

(e) The term “to Borrower’s knowledge” is construed as meaning to the best of Borrower’s knowledge after diligent inquiry.

(f) The singular of any word includes the plural and the plural includes the singular. The use of any gender includes all genders.

(g) The terms “person”, “party” and “entity” include natural persons, firms, partnerships, limited liability companies and partnerships, corporations and any other public or private legal entity.

(h) The term “provisions” includes terms, covenants, conditions, agreements and requirements.

(i) The term “amend” includes modify, supplement, renew, extend, replace or substitute and the term “amendment” includes modification, supplement, renewal, extension, replacement and substitution.

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(j) Reference to any specific Law or to any document or agreement, including the Note, this Mortgage, any of the other Loan Documents, the Leases and the Property Documents, includes any future amendments to the Law, document or agreement, as the case may be.

(k) No inference in favor of or against a party with respect to any provision in any Loan Document may be drawn from the fact that the party drafted the Loan Document.

(l) The term "certificate" means the sworn, notarized statement of the entity giving the certificate, made by a duly authorized person satisfactory to Lender affirming the truth and accuracy of every statement in the certificate. Any document that is "certified" means the document has been appended to a certificate of the entity certifying the document that affirms the truth and accuracy of everything in the document being certified. In all instances the entity issuing a certificate must be satisfactory to Lender.

(m) Any appointment of Lender as Borrower's attorney-in-fact is irrevocable and coupled with an interest. Lender may appoint a substitute attorney-in-fact.

(n) Any document, instrument or agreement to be delivered by Borrower will be in form and content satisfactory to Lender.

(o) All obligations, rights, remedies and waivers contained in the Loan Documents will be construed as being limited only to the extent specifically set forth or otherwise required to be enforceable under the Law.

(p) The unmodified word "days" means calendar days.



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## Exhibit D

### PROPERTY DOCUMENTS

1. General real estate taxes for the year(s) 2015 (final installment), 2016 and subsequent years.  
 The first installment of the 2015 taxes in the amount of \$926,041.42 is Paid.  
 The final installment of the 2015 taxes in the amount of \$2,565,234.15 is Paid.  
 The 2016 taxes are not yet ascertainable or payable.  
 Permanent Index Number: 17-09-334-001-0000 Vol. 590  
 If applicable, an original tax bill must be presented if taxes are to be paid at time of closing.
2. The land lies within the boundaries of Special Service Area Number 12 as disclosed by ordinance recorded as document 91075841 and is subject to additional taxes under the terms of said ordinance and subsequent related ordinances.
3. Existing unrecorded leases, if any, and rights of all parties claiming thereunder.
4. Survey prepared by National Survey Service, Inc., dated March 31, 2014 and last revised April 9, 2014, under Job No. N-129359, shows the following:
  - a) Encroachments of corners of building located mainly on the land onto the property East and adjoining by approximately 0.02.
  - b) Encroachment of the granite coping located mainly on the land onto the property North and adjoining by approximately 1.67 to 3.68, East and adjoining by approximately 1.75 to 1.78, South and adjoining by approximately 1.78 to 3.74 and West and adjoining by approximately 1.57 to 2.78.
  - c) Encroachment of the coping at the roof located mainly on the land onto the property North and adjoining by approximately 1.66 to 1.77, East and adjoining by approximately 1.82 to 1.83, South and adjoining by approximately 1.80 to 1.85 and West and adjoining by approximately 1.57 to 1.67 of a foot.
  - d) Encroachment of the granite at various points located mainly on the land onto the property North and adjoining ranging from approximately 0.43 to 2.72, East and adjoining by approximately 0.50 to 0.55, South and adjoining ranging from approximately 0.58 to 2.81 and West and adjoining ranging from approximately 0.36 to 2.78.
  - e) Encroachment of bricks at various points located mainly on the land onto the property North and adjoining by approximately 0.03, East and adjoining by approximately 0.03, South and adjoining by approximately 0.08 to 0.14 and West and adjoining by approximately 0.05 to 2.78

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f) Encroachment of the bricks at the roof located mainly on the land onto the property North and adjoining by approximately 0.95 to 1.01, East and adjoining by approximately 1.08 to 1.20, South and adjoining by approximately 1.05 to 1.14 and West and adjoining by approximately 0.81 to 1.00 of a foot.

g) Encroachment of the vaults located mainly on the land onto the property North and adjoining by approximately 14.0 to 14.5, South and adjoining by approximately 10.6 to 12.2 and West and adjoining by approximately 12.4 to 14.0.

h) Encroachment of the concrete loading dock/platform at lower level located mainly on the land onto the property North and adjoining by an undisclosed amount and East and adjoining by 3.99 to 4.09, and as disclosed by ordinance passed by the City Council on December 8, 1977, pages no. 6477-78.

i) Encroachment of the columns and concrete bases to the columns at street level located mainly on the land onto the property East and adjoining by undisclosed amounts, the concrete columns at street level onto the property East and adjoining by approximately 0.01 to 0.21, and the columns at lower level onto the property East and adjoining by approximately 0.01 to 0.28.

j) Encroachment of the 4 auto sprinklers onto the land North and adjoining and 6 auto sprinklers onto the land West and adjoining by undisclosed amounts.

k) Encroachment of the brickwall with stone cap located in the Southeast corner of the land and running across the public alley East and adjoining, which then connects to a concrete wall with stone cap and a steel bumper guard and a metal railing, all located mainly on the land onto the public alley of the elevated roadway East and adjoining, at ground level.

l) Encroachment of the control box located mainly on the land onto the concrete wall running through the public alley East of and adjoining the land.

m) Overhead exhaust pipe at lower level by approximately 11.34, two 3 inch overhead pipes at lower level by approximately 2.49 to 2.57, two 12 inch overhead exhaust pipes at lower level by approximately 4.59 and 6.43, a pipe at lower level at a point that is 1.80 and jogs to another point at 3.95 and continues to jog out to the East by an undisclosed amount, located on the land onto the public alley East and adjoining.

n) The exhaust pipes from 2nd floor to the roof by approximately 1.41 to 3.53 and 2.18 to 2.73, located mainly on the land onto the public alley East and adjoining at roof level.

o) Rights of the public, in and to that part of the land, if any, used for ingress and egress upon, over and through the elevated roadway located mainly on the alley East and adjoining and ordinance passed by the City Council on December 8, 1977, pages no. 6479-80