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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc# 1701210004 Fee \$146.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 01/12/2017 09:30 AM PG: 1 OF 55

Report Mortgage Fraud  
800-532-8785

165A6295944LFE-TWS (142)

Property of Cook County Clerk's Office

The property identified as: **PIN:** 08-09-302-025-0000

**Address:**

**Street:** 1454 W. Golf Road and 1647 1669 Algonquin Rd.

**Street line 2:**

**City:** Rolling Meadows

**State:** IL

**ZIP Code:** 60008

**Lender:** Thorofare Asset Based Lending REIT Fund IV, LLC

**Borrower:** ZERO INVESTMENT & MANAGEMENT CORP., an Illinois Corporation

**Loan / Mortgage Amount:** \$5,300,000.00

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

*Box 400*

S Y  
P 55  
S N  
SC Y  
INT Y

**Certificate number:** 5E926DDA-C807-490B-9D36-D9A243466246

**Execution date:** 12/30/2016

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RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

*PREPARED BY:*  
THOROFARE CAPITAL, INC.  
633 W. Fifth Street, Suite 2200  
Los Angeles, California 90071  
Attention: Robert J. Cooper

(Space Above For Recorder's Use)

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

Dated as of December 30, 2016

**ZERO INVESTMENT & MANAGEMENT CORP.**  
(Mortgagor)

TO

**THOROFARE ASSET BASED LENDING REIT FUND IV, LLC**, its successors and assigns  
(Mortgagee)

Addresses of the Property:	Permanent Index Numbers:
1454 W. Golf Road and 1647, 1669	08-09-302-025-0000
Algonquin Road, Rolling Meadows, IL	08-09-302-030-0000
60008	08-09-302-031-0000

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

**Maturity Date: September 30, 2017 (exclusive of extensions or renewals)**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**"), made as of December 30, 2016 (the "**Effective Date**"), by ZERO INVESTMENT & MANAGEMENT CORP., an Illinois corporation, having its principal place of business at and whose mailing address is c/o Malet Realty, 905 W. Jackson Road, Suite 4W, Chicago, Illinois 60607, Attention: Michael Semenow ("**Mortgagor**"), to THOROFARE ASSET BASED LENDING REIT FUND IV, LLC, a Delaware limited liability company, having its principal place of business at and whose mailing address is c/o Thorofare Capital, Inc., 633 W. Fifth Street, Suite 2200, Los Angeles, California 90071 (together with its/their successors and assigns, "**Mortgagee**").

### WITNESSETH:

To secure the payment of an indebtedness in the principal sum of Five Million Three Hundred Thousand and 00/100 Dollars (\$5,300,000.00), in lawful money of the United States of America, to be paid with interest and all other sums and fees payable according to a certain Promissory Note Secured By Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof made by Mortgagor to Mortgagee (together with all extensions, renewals or modifications thereof, being hereinafter collectively called the "**Note**"; and the loan evidenced by the Note being hereinafter referred to as the "**Loan**") and all indebtedness, obligations, liabilities and expenses due hereunder and under any other Loan Document (as hereinafter defined) (the indebtedness, interest, other sums, fees, obligations and all other sums due under the Note and/or hereunder and/or any other documents or instruments which evidence or secure the Loan (herein collectively called the "**Loan Documents**") being collectively called the "**Indebtedness**"), Mortgagor hereby irrevocably mortgages, encumbers, hypothecates, pledges, grants, bargains, sells, conveys, transfers, warrants, sets over, assigns and grants a security interest and assigns to and in favor of Mortgagee, the following property and rights, whether now owned or held or hereafter acquired (collectively, the "**Property**"):

### GRANTING CLAUSE ONE

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

### GRANTING CLAUSE TWO

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

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## GRANTING CLAUSE THREE

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

## GRANTING CLAUSE FOUR

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

## GRANTING CLAUSE FIVE

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

## GRANTING CLAUSE SIX

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

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

## GRANTING CLAUSE SEVEN

All leases and subleases (including, without limitation, all guarantees thereof) and other agreements affecting the use, enjoyment and/or occupancy of the Real Property or any part thereof, now or hereafter entered into (including any use or occupancy arrangements created pursuant to Section 365(h) of Title 11 of the United States Code (the “**Bankruptcy Code**”) or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings or any assignment for the benefit of creditors in respect of any tenant or occupant of any portion of the Real Property) (together with any extension or renewal of the same, the “**Leases**”) and all income, rents, issues, profits, revenues and proceeds including, but not limited to, all oil and gas or other mineral royalties and bonuses from the Real Property (including any payments received pursuant to Section 502(b) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings or any assignment for the benefit of creditors in respect of any tenant or occupant of any portion of the Real Property and all claims as a creditor in connection with any of the foregoing) (the “**Rents**”) and all proceeds from the sale, cancellation, surrender or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Indebtedness.

## GRANTING CLAUSE EIGHT

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

## GRANTING CLAUSE NINE

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

## GRANTING CLAUSE TEN

The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Real Property or any part thereof and to commence any action or proceeding to protect the interest of Mortgagee in the Real Property or any part thereof.

## GRANTING CLAUSE ELEVEN

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

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## GRANTING CLAUSE TWELVE

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

## GRANTING CLAUSE THIRTEEN

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

## GRANTING CLAUSE FOURTEEN

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

TO HAVE AND TO HOLD for the uses and purposes set forth herein the above granted and described Property unto and to the use and benefit of Mortgagee and its successors and assigns for the benefit of Mortgagee and the successors and assigns of Mortgagee forever.

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

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

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

## PART I - GENERAL PROVISIONS

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

2. **Warranty of Title.** Mortgagor has good and marketable title to the Property; Mortgagor has the right to mortgage, encumber, hypothecate, pledge, deed, give, grant, bargain,

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sell, alienate, convey, confirm, lease, assign, and grant a security interest in the Property; Mortgagor possesses an indefeasible fee estate in the Real Property; and Mortgagor owns the Property free and clear of all liens, encumbrances and charges whatsoever except those exceptions shown in the title insurance policy insuring the lien of this Mortgage (this Mortgage and the liens, encumbrances and charges shown as exceptions in such title policy, hereinafter collectively referred to as the "**Permitted Encumbrances**"). Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. **Insurance; Casualty.** Unless otherwise agreed, in writing by Mortgagee, in its sole and absolute discretion, Mortgagor, at its sole cost and expense, shall at all times maintain the insurance policies and coverages required by this Section 3. Mortgagor, at its sole cost and expense, shall keep the Property insured during the term of this Mortgage for the mutual benefit of each Mortgagor and Mortgagee against loss or damage by any peril covered by a standard "special perils" or "all-risk-of-physical-loss" insurance policy including, without limitation, riot and civil commotion, acts of terrorism, vandalism, malicious mischief, burglary, theft and mysterious disappearance in an amount (i) equal to at least one hundred percent (100%) of the then "full replacement cost" of the Improvements and Equipment, without deduction for physical depreciation and (ii) such that the insurer would not deem Mortgagor a coinsurer under such policies. The policies of insurance carried in accordance with this Section 3 shall be paid by Mortgagor annually in advance and shall contain the "Replacement Cost Endorsement" with a waiver of depreciation, and shall have a deductible no greater than \$25,000.00 unless so agreed by Mortgagee. In addition, Mortgagor may, at its option, retain the services of a firm to monitor the policies of insurance for conformance with this Mortgage, the cost of which shall be borne by Mortgagor provided that such cost shall not exceed \$100.00 per annum.

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

(i) Flood insurance if any part of the Real Property is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount at least equal to the outstanding principal amount of the Note or the maximum limit of coverage available with respect to the Improvements and Equipment under said Act, whichever is less, and/or excess flood coverage, inclusive of rental income coverage due to peril of flood;

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

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

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

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

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

(b) All policies of insurance (the "Policies") required pursuant to Section 3(a)(i) shall be issued by an insurer satisfactory to Mortgagee with at least an A/VIII rating by A.M. Best Company, (ii) without limiting the required endorsements to the Policies, shall contain a standard non-contributory mortgagee clause naming Mortgagee as the person to which all payments made by such insurance company shall be paid, and specifically referencing Mortgagee under such clause as Thorofare Asset Based Lending REIT Fund IV, L.L.C., 633 W. Fifth Street, Suite 2200, Los Angeles, California 90071, Attention: Mr. Kevin Miller, as Mortgagee, its successor and assigns, as their interests may appear, (x) as an additional insured under all liability insurance policies excluding worker's compensation policies, (y) as the first Mortgagee on all property insurance policies, and (z) as the loss payee on all loss of rents or loss of business income insurance policies and, if applicable, flood insurance policies, (i) shall be maintained throughout the term of this Mortgage at the sole cost and expense of Mortgagor without cost or expense to Mortgagee, (iv) shall be delivered to Mortgagee, (v) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Mortgagee in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of such insurance; (vi) shall waive all rights of subrogation against Mortgagee; (vii) shall contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Mortgagor nor Mortgagee nor any other party shall be a co-insurer under such Policies and that Mortgagee shall receive at least thirty (30) days prior written notice of any modification or cancellation and (viii) shall be satisfactory in form and substance to Mortgagee and shall be approved by Mortgagee as to amounts, form, risk coverage, deductibles, loss payees and insureds. All amounts recoverable thereunder are hereby assigned to Mortgagee. Not later than thirty (30) days prior to the expiration date of each of the Policies, Mortgagor will deliver to Mortgagee satisfactory evidence of the renewal of each of the Policies.



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

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

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

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

(iv) If the estimated cost of the Restoration shall exceed ten percent (10%) of the original principal amount of the Loan in the aggregate, at the request of Mortgagee, Mortgagor, before commencing any work, shall cause to be furnished to Mortgagee a surety bond or bonds, in form and substance reasonably satisfactory to Mortgagee, naming Mortgagor and Mortgagee as co-obligees, in an amount that is not less than the estimated cost of the Restoration, issued by a surety company or companies reasonably satisfactory to Mortgagee.

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

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

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

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

(d) If the insurance proceeds payable under the Policies or the costs of completing the Restoration are more than \$250,000, Mortgagor and Mortgagee shall jointly adjust and settle all insurance claims, provided, however, if an Event of Default shall have occurred and be continuing, Mortgagee shall have the right to adjust and settle such claims without the prior consent of Mortgagor. In the event of any insured loss, the payment for such loss shall be made directly to Mortgagor unless the insurance proceeds payable under the Policies for such loss are more than \$250,000 in which case the payment for such loss shall be made directly to Mortgagee. Any insurance proceeds under any of the Policies paid directly to Mortgagee in accordance with the terms hereof may, at the option of Mortgagee, be used in one or more of the following ways: (w) applied to the Indebtedness, whether such Indebtedness then be matured or unmatured (such application to be without prepayment fee or premium, except that if an Event of Default has occurred and remains uncured, then such application shall be subject to the applicable premium computed in accordance with the Note), (x) used to fulfill any of the covenants contained herein as Mortgagee may determine, (y) used to replace or restore the property to a condition satisfactory to Mortgagee, or (z) released to Mortgagor. Notwithstanding the foregoing, provided (1) not more than thirty percent (30%) of the gross area of the Improvements is directly affected by such damage, destruction or loss and the amount of the loss does not exceed ten percent (10%) of the original principal amount of the Loan, (2) no Event of Default has occurred hereunder, under the Note or under any of the other Loan Documents and remains uncured at the time of such application, (3) the insurer does not deny liability to any named insured, (4) intentionally deleted, (5) rental loss insurance is available and in force and effect to offset in full any abatement of rent to which any tenant may be entitled as a result of such damage, destruction or loss, (6) the remaining Improvements continue at all times to comply with all applicable building, zoning and other land use laws and regulations, (7) in Mortgagee's judgment, the Restoration is practicable and can be completed within six (6) months after the damage, destruction or loss and at least six (6) months prior to the Maturity Date (as such term is defined in the Note) and (8) rebuilding of the Improvements to substantially identical size, condition and use as existed prior to the casualty is permitted by all applicable laws and ordinances, then all of such proceeds shall be used for Restoration, any application of insurance proceeds to the Indebtedness shall be to the unpaid installments of principal due under the Note in the inverse order of their maturity, such that the regular payments under the Note shall not be reduced or altered in any manner. In the event (A) the above criteria are satisfied (including that no Event of Default has occurred and remains uncured hereunder, under the Note or other Loan Documents) or Mortgagee otherwise elects to allow the use of such proceeds for the Restoration and (B) the insurance proceeds under any of the Policies are paid directly to Mortgagee in accordance with the terms hereof, such proceeds shall be disbursed in accordance with the following provisions:

(i) Each request for an advance of insurance proceeds shall be made on seven (7) days prior notice to Mortgagee and shall be accompanied by a certificate of the Architect, if one be required under Section 3(d)(iii) above, otherwise by an executive officer or managing

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general partner or managing member of Mortgagor, stating (1) that all work completed to date has been performed in compliance with the approved plans and specifications and in accordance with all provisions of law, (2) the sum requested is properly required to reimburse Mortgagor for payments by Mortgagor to, or is properly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Restoration (giving a brief description of such services and materials), and that when added to all sums, if any, previously disbursed by Mortgagee, does not exceed the value of the work done to the date of such certificate and (3) that the amount of such proceeds remaining in the hands of Mortgagee will be sufficient on completion of the work to pay the same in full (giving, in such reasonable detail as Mortgagee may require, an estimate of the cost of such completion).

(ii) Each request for an advance of insurance proceeds shall, to the extent permitted under applicable law, be accompanied by waivers of liens satisfactory to Mortgagee covering that part of the Restoration previously paid for, if any, and by a search prepared by a title company or by other evidence reasonably satisfactory to Mortgagee including without limitation a title endorsement satisfactory to Mortgagee if available in the state where the Real Property is located, that there has not been filed with respect to the Real Property any mechanic's lien or other lien or instrument and that there exist no encumbrances on or affecting the Real Property other than the Permitted Encumbrances or otherwise approved by Mortgagee. In addition to the foregoing, the request for the final advance shall be accompanied by (1) any final occupancy permit which may be required for the Improvements, (2) all other governmental permits, certificates and approvals and all other permits necessary for the occupancy and operation of the Real Property, (3) Tenant estoppels from tenants whose space was affected and (4) final lien waivers from all contractors, subcontractors and materialmen.

(iii) No advance of insurance proceeds shall be made if there exists an Event of Default under this Mortgage, the Note or any other Loan Document.

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

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

(e) Insurance proceeds and any additional funds deposited by Mortgagor with Mortgagee shall constitute additional security for the Indebtedness. Mortgagor shall execute,

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deliver, file and/or record, at its expense, such documents and instruments as Mortgagee deems necessary or advisable to grant to Mortgagee a perfected, first priority security interest in the insurance proceeds and such additional funds. If Mortgagee elects to have the insurance proceeds applied to Restoration, (i) the insurance proceeds shall be, at Mortgagee's election, disbursed in installments by Mortgagee and (ii) all costs and expenses incurred by Mortgagee in connection with the Restoration, including, without limitation, reasonable counsel fees and costs, shall be paid by Mortgagor.

#### 4. Payment of Taxes, Etc.

(a) Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including, without limitation, vault charges and license fees (collectively, "Other Charges") for the use of vaults, chutes and similar areas adjoining the Real Property, as the same become due and payable. Mortgagor will deliver to Mortgagee, promptly upon Mortgagee's request, evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid and are not then delinquent. Mortgagor shall not suffer or permit any lien or charge (including, without limitation, any mechanic's lien) against all or any part of the Property and Mortgagor shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property. Mortgagor shall promptly pay for all utility services provided to the Property. In addition, Mortgagee may, at its option, retain the services of a firm to monitor the payment of Taxes, the cost of which shall be borne by Mortgagor.

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

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(c) Tax and Insurance Reserve.

(i) Tax and Insurance Escrow Account. On the date hereof, from the proceeds of Loan, Mortgagor shall deposit with Mortgagee an amount equal to \$196,000.00 (the “**Initial Tax Deposit**”) on account of the Taxes (as hereinafter defined) next coming due and \$10,000.00 (the “**Initial Insurance Premiums Deposit**”) on account of the premiums for the Policies (“**Insurance Premiums**”) next coming due. Additionally, Mortgagor shall pay to Mortgagee on the date each regularly scheduled payment of interest is due (a) one-twelfth of the Taxes that Mortgagee reasonably estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Mortgagee sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (b) one-twelfth of the Insurance Premiums that Mortgagee estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Mortgagee sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (the foregoing amounts so deposited with Mortgagee are hereinafter called the “**Tax and Insurance Escrow Funds**” and the account in which such amounts are held shall hereinafter be referred to as the “**Tax and Insurance Escrow Account**”).

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

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

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## 5. Additional Reserves.

### (a) Delta Interest Reserve.

(i) Fifty Nine Thousand and 00/100 Dollars (\$59,000.00) of the Loan shall be funded on the date hereof to a reserve account controlled by Mortgagee (the "**Delta Interest Reserve**"), which funds shall be utilized by Mortgagee for application to monthly installments of Debt Service pursuant to the terms of this Agreement and for application to the monthly servicing fees payable pursuant to Section 66 of this Mortgage. On each Monthly Payment Date during the initial term of the Loan, Mortgagee shall disburse and apply (i) Five Thousand Five Hundred Fifty-Five and 00/100 Dollars (\$5,555.55) from the Delta Interest Reserve to the monthly installment of Debt Service payable pursuant to the Note on such Monthly Payment Date (each such Installment, the "**Delta Interest Reserve Monthly Application Amount**") and (ii) One Thousand and 00/100 Dollars (\$1,000.00) from the Delta Interest Reserve in payment of the monthly servicing fee payable; for the avoidance of doubt, Mortgagor shall be responsible for the payment to Mortgagee of the amount by which the monthly debt service on the Loan exceeds the Delta Interest Reserve Monthly Application Amount.

(ii) Mortgagor hereby pledges to Mortgagee, and grants a security interest in, any and all monies now or hereafter deposited in the Delta Interest Reserve as additional security for the payment of the Loan. The Delta Interest Reserve shall be held in Mortgagee's name and may be commingled with Mortgagee's own funds at financial institutions selected by Mortgagee in its reasonable discretion. During the continuance of an Event of Default, Mortgagee may apply any sums then present in the Delta Interest Reserve to the payment of the Indebtedness in any order in its sole discretion. Until expended or applied as above provided, the Delta Interest Reserve shall constitute additional security for the Loan. Mortgagee shall have no obligation to release any of the Delta Interest Reserve during the continuance of an Event of Default. In connection with a repayment of the Loan in full, the monies then remaining on deposit with Mortgagee under this Section 5(a) shall be applied as a credit against the outstanding principal balance of the Loan at the time of such repayment.

(iii) For the avoidance of doubt, from and after the date hereof, interest shall accrue on the entire amount of the Delta Interest Reserve at the Interest Rate (as defined in the Note) or Default Rate (as defined in the Note), as applicable, pursuant to the Note.

### (b) TI/LC Reserve.

(i) Eighty Thousand and 00/100 Dollars (\$80,000.00) of the Loan shall be funded on the date hereof to a reserve account controlled by Mortgagee (the "**TI/LC Reserve**"), which funds shall be disbursed by Mortgagee to Mortgagor for Approved Leasing Expenses. As used herein, "**Approved Leasing Expenses**" means actual out-of-pocket expenses incurred by Mortgagor, on market terms and conditions, in leasing space at the Property pursuant to leases entered into in accordance with this Deed of Trust, including brokerage commissions and tenant improvements, which expenses (i) (1) are approved by Mortgagee in connection with approving the applicable lease, which approval shall not be unreasonably withheld, conditioned or delayed (and, if a lease is deemed approved by Mortgagee in accordance with Section 7(c) of this Mortgage, then associated leasing expenses and tenant improvements shall be deemed to have also been approved by Mortgagee), or (ii) are otherwise approved in writing by Mortgagee,

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which approval shall not be unreasonably withheld, conditioned or delayed, and (ii) are substantiated by executed lease documents and brokerage agreements; provided however, that in no event shall Approved Leasing Expenses include amounts payable to Mortgagor, Guarantor or any person or entity that owns a direct or indirect interest in Mortgagor.

(ii) Provided that no Event of Default is continuing, Mortgagee shall make disbursements to Mortgagor of funds in the TI/LC Reserve to Mortgagor solely for Approved Leasing Expenses incurred by Mortgagor in connection with Leases entered into in accordance with this Mortgage upon satisfaction by Mortgagor of each of the following conditions with respect to each such disbursement: (a) Mortgagor shall submit Mortgagee's standard form of draw request for payment to Mortgagee at least ten (10) business days prior to the date on which Mortgagor requests such payment be made, which request shall specify the Approved Leasing Expense to be paid and shall be accompanied by copies of paid invoices for the amounts requested; (b) Mortgagee shall have reviewed and approved the applicable lease (or, if applicable, the applicable lease shall have been deemed approved in accordance with Section 7(c) of this Mortgage) giving rise to the Approved Leasing Expense to be paid; and (c) Mortgagee shall have received (i) a Mortgagor's Certificate (A) stating that the items to be funded by the requested disbursement are Approved Leasing Expenses, and a description thereof, (B) stating that all tenant improvements at the Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable legal requirements, (C) identifying each person or entity that supplied materials or labor in connection with the tenant improvements to be funded by the requested disbursement or the broker entitled to the leasing commission, (D) stating that each such person or entity has been paid in full or will be paid in full upon such disbursement, (E) stating that the Approved Leasing Expenses to be funded have not been the subject of a previous disbursement, (F) stating that all previous disbursements of TI/LC Reserve funds for Approved Leasing Expenses have been used to pay the previously identified Approved Leasing Expenses, and (G) stating that all outstanding trade payables relating to the Approved Leasing Expenses (other than those to be paid from the requested disbursement) have been paid in full, (ii) a copy of any license, permit or other approval by any governmental authority required in connection with the tenant improvements and not previously delivered to Mortgagee, (iii) lien waivers or other evidence of payment satisfactory to Mortgagee and releases from all parties furnishing materials and/or services in connection with the requested payment, (iv) at Mortgagee's option, a title search for the Property indicating that the Property is free from all Liens, claims and other encumbrances not previously approved by Mortgagee, and (v) such other evidence as Mortgagee shall reasonably request to demonstrate that the Approved Leasing Expenses to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Mortgagor. Mortgagee shall make disbursements as requested by Mortgagor on a monthly basis in increments of no less than \$25,000 per disbursement. Mortgagee may require an inspection of the Property at Mortgagor's expense prior to making a monthly disbursement in order to verify completion of improvements for which reimbursement is sought.

(ii) Mortgagor hereby pledges to Mortgagee, and grants a security interest in, any and all monies now or hereafter deposited in the TI/LC Reserve as additional security for the payment of the Loan. The TI/LC Reserve shall be held in Mortgagee's name and may be commingled with Mortgagee's own funds at financial institutions selected by Mortgagee in its reasonable discretion. During the continuance of an Event of Default, Mortgagee may apply any sums then present in the TI/LC Reserve to the payment of the Indebtedness in any order in its

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sole discretion. Until expended or applied as above provided, the TI/LC Reserve shall constitute additional security for the Loan. Mortgagee shall have no obligation to release any portion of the TI/LC Reserve during the continuance of an Event of Default. In connection with a repayment of the Loan in full, the monies then remaining on deposit with Mortgagee under this Section 5(b) shall be applied as a credit against the outstanding principal balance of the Loan at the time of such repayment.

(iii) For the avoidance of doubt, from and after the date hereof, interest shall accrue on the entire amount of the TI/LC Reserve at the Interest Rate (as defined in the Note) or Default Rate (as defined in the Note), as applicable, pursuant to the Note.

6. **Condemnation.** Mortgagor shall promptly give Mortgagee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Following the occurrence of a condemnation, Mortgagor, regardless of whether an award is available, shall promptly proceed to restore, repair, replace or rebuild the Improvements to the extent practicable to be of at least equal value and of substantially the same character as prior to such condemnation, all to be effected in accordance with applicable law. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the Indebtedness at the time and in the manner provided for its payment in the Note, in this Mortgage and the other Loan Documents and the Indebtedness shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Mortgagee to the discharge of the Indebtedness. Mortgagor shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Mortgagor, to be paid directly to Mortgagee. Mortgagee may, at Mortgagee's election, use the award in any one or more of the following ways: (a) apply any such award or payment (for purposes of this Section 6, the award or payment that may be made in any condemnation or eminent domain proceeding shall mean the entire award allocated to Mortgagor in any capacity) to the discharge of the Indebtedness whether or not then due and payable (such application to be without prepayment fee or premium, except that if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the applicable premium computed in accordance with the Note), (b) use the same or any part thereof to fulfill any of the covenants contained herein as Mortgagee may determine (c) use the same or any part thereof to replace or restore the Property to a condition satisfactory to Mortgagee, or (d) release the same to Mortgagor. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment or a portion thereof sufficient to pay the Indebtedness.

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

## 7. **Leases and Rents.**



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(a) Upon the occurrence and during the continuance of an Event of Default, Mortgagor does hereby absolutely and unconditionally assign to Mortgagee its right, title and interest in all current and future Leases and Rents and all proceeds from the sale, cancellation, surrender or other disposition of the Leases. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise to impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments in form and substance satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Indebtedness, in trust for the benefit of Mortgagee for use in the payment of such sums. Upon and during the occurrence of an Event of Default, Mortgagee shall immediately be entitled to possession of all Rents, whether or not Mortgagee enters upon or takes control of the Property, provided that any such entry shall be made by Mortgagee in compliance with all applicable laws. Upon the occurrence and during the continuance of an Event of Default, Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents (provided that such entry shall be made in compliance with all applicable laws). Any Rents collected by or on behalf of Mortgagee during the continuance of an Event of Default may be applied toward payment of the Indebtedness in such priority and proportion as Mortgagee in its discretion shall deem proper.

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

(c) Mortgagor shall use commercially reasonable efforts to cause the Property to be leased to tenants to increase the occupancy thereof; provided, however, that Mortgagor shall not, without the prior approval of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed (unless an Event of Default has occurred and is continuing in which case such consent may be withheld in Mortgagee's sole and absolute discretion), (i) enter into any Lease, (ii) amend the terms of any Lease, (iii) cancel or terminate any Lease, (iv) consent to any assignment of or subletting under any Major Lease not in accordance with its terms, (v) cancel, terminate, abridge or otherwise modify any guaranty of any Lease or the terms thereof, (vi) collect or accept prepayments of installments of Rents under any Lease for a period of more than one (1) month in advance (unless delivered to Mortgagee) or (vii) further assign the whole or any part of the Leases or the Rents as security for any indebtedness or transfer the Leases and Rents to any other party. All new Leases and renewals or amendments of Leases shall be entered into on an arms-length basis with tenants that are not affiliates of Mortgagor and contain terms and conditions that a prudent landlord in the market in which the Property is located would deem to be commercially reasonable (and in any event, such terms and conditions would not reasonably be expected to result in a material adverse effect on the value of the Property or Mortgagor's ability to repay the Loan pursuant to the Loan Documents). With

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respect to Mortgagee's approval of the matters and agreements described above, if Mortgagee shall fail to respond to such request for approval for a period of seven (7) business days, then Mortgagee shall be deemed to have approved the applicable matter or agreement.

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

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

**8. Maintenance and Use of Property.** Mortgagor shall, at its sole cost and expense, keep and maintain the Property, including, without limitation, parking lots and recreational and landscaped portions thereof, if any, in good order and condition. The Improvements and the Equipment shall not be diminished, removed, demolished or materially altered (except for normal replacement of Equipment) and Mortgagor shall not erect any new buildings, structures or building additions on the Property without the prior consent of Mortgagee. So long as no Event of Default shall have occurred and be continuing, Mortgagor shall have the right at any time and from time to time after providing Mortgagee with written notice to make or cause to be made reasonable alterations of and additions to the Property or any

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part thereof, provided that any alteration or addition (a) shall not change the general character of the Property or reduce the fair market value thereof below its value immediately before such alteration or addition, or impair the usefulness of the Property, (b) is effected with due diligence, in a good and workmanlike manner and in compliance with all applicable laws and with all provisions of any insurance policy covering or applicable to the Property and all requirements of the issuers thereof, (c) is promptly and fully paid for, or caused to be paid for, by Mortgagor, (d) the estimated cost of such alteration or addition does not exceed five percent (5%) of the original principal amount of the Loan, (e) is made under the supervision of a qualified architect or engineer, (f) shall not violate the terms of any Leases, and (g) upon completion, Mortgagor shall provide Mortgagee with (aa) a satisfactory final improvement survey if the footprint of the building has been altered, (bb) any final occupancy permit which may be required for the Improvements, (cc) all other governmental permits, certificates and approvals and all other permits, certificates and approvals of fire underwriters which are required with respect to the alterations and additions and the use and occupancy thereof, and shall furnish true copies thereof to Mortgagee, and (dd) final lien waivers from all contractors, subcontractors and materialmen. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Property, or the use thereof, provided, however, that nothing in the foregoing clause shall require Mortgagor to comply with any such law, order or ordinance so long as Mortgagor shall in good faith, after notice to, but without cost or expense to, Mortgagee, contest the validity of such law, order or ordinance by appropriate legal proceedings and in accordance with all applicable law, which proceedings must operate to prevent (i) the enforcement thereof, (ii) the payment of any fine, charge or penalty, (iii) the sale or forfeiture of the Property or any part thereof, (iv) the lien of this Mortgage and the priority thereof from being impaired, (v) the imposition of criminal liability on Mortgagee and (vi) the imposition, unless stayed, of civil liability on Mortgagee; provided that during such contest Mortgagor shall, at the option of Mortgagee, provide cash, bonds or other security satisfactory to Mortgagee, indemnifying and protecting Mortgagee against any liability, loss or injury by reason of such non-compliance or contest, and provided further, that such contest shall be promptly and diligently prosecuted by and at the expense of Mortgagor. Mortgagor shall promptly, at its sole cost and expense, repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated. Mortgagor shall not commit any waste at the Property. Mortgagor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express consent of Mortgagee. Mortgagor covenants and agrees that it shall operate the Property as a retail property.

## **9. Transfer or Encumbrance of the Property or Interests in Mortgagor; Other Indebtedness.**

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness and experience of Mortgagor in owning and operating properties such as the Property in agreeing to make the Loan, and that Mortgagee will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Indebtedness. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the

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repayment of the Indebtedness, Mortgagee can recover the Indebtedness by a sale of the Property. Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer in trust or otherwise the Property or any part thereof or interest therein or in Mortgagor, or permit the Property or any part thereof or any interest in Mortgagor to be sold, conveyed, alienated, deeded, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, deed, encumbrance, pledge or transfer within the meaning of this Section 9 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Property or any part thereof for a price to be paid in installments, (ii) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents, (iii) if Mortgagor, any guarantor, any indemnitor of environmental liabilities or any general partner or managing member of Mortgagor or of any such guarantor or indemnitor is a corporation, the voluntary or involuntary sale, assignment, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than ten percent (10%) of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation, (iv) if Mortgagor, any guarantor, any indemnitor of environmental liabilities or any general partner or managing member of Mortgagor or any such guarantor or indemnitor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, manager, limited partner, joint venturer or member or the transfer of the partnership interest of any general partner, managing partner or limited partner or the transfer of the interest of any joint venturer or member, and (v) if Mortgagor, any guarantor or any indemnitor of environmental liabilities is an entity, whether one of the above-mentioned entities or not, any change in the ownership or control of such entity, any merger, consolidation or dissolution or syndication affecting such entity, or the transfer, sale, assignment or pledge of any interest in such entity or in any person, directory or indirectly, controlling such entity or in any general partner or managing member thereof, whether at one time or in a series of related transactions.

(c) Notwithstanding anything to the contrary contained in this Section 9 or any other Section of this Mortgage, the following transfers shall be deemed to be permitted hereunder without the consent of Mortgagee: One or more transfers of interests in Borrower by the holder of an interest in Borrower to a trust or other estate planning vehicle established for the benefit of an Immediate Family Member of such holder; provided, however, that (i) no such transfer shall result in a change of control of Borrower, (ii) Borrower shall give Mortgagee written notice of such transfer promptly following the consummation of such transfer, together with copies of the relevant transfer documentation, and (iii) the single purpose nature and bankruptcy remoteness of Borrower after such Transfer shall remain in accordance with the requirements of this Mortgage, and (D) nothing contained in the foregoing provisions of this Section 9(c) shall limit or negate the provisions of Section 20(l) of this Deed of Trust. As used herein, "**Immediate Family Member**" shall mean a sibling, spouse, child, step-child, grandchild and great-grandchild of an interest holder in Borrower.

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

(e) Mortgagee's consent to a sale, conveyance, alienation, deed, encumbrance, pledge or transfer in trust or otherwise of the Property shall not be deemed to be a waiver of Mortgagee's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, deed, encumbrance, pledge or transfer in trust or otherwise of the Property made in contravention of this Section 9 shall be null and void and of no force and effect.

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

## 10. Estoppel Certificates; Subordination.

(a) Estoppel Certificates. Mortgagor, within ten (10) business days after request by Mortgagee, shall furnish Mortgagee from time to time with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest in the Note, (iv) the date through which all installments of interest, commitment fees and/or principal have been paid, (v) any offsets or defenses to the payment of the Indebtedness, if any, (vi) that the Note and this Mortgage have not been modified or if modified giving particulars of such modification and (vii) such other information as shall be requested by Mortgagee. Within thirty (30) days following Mortgagee's request for the same, Mortgagor shall use commercially reasonable efforts to provide Mortgagee with estoppel certificates from any tenants under then existing Leases, which certificates shall be in form and substance as required by such Leases, or if no particular form or substance is specified, then in form and substance reasonably satisfactory to Mortgagee.

(b) SNDAS. Mortgagor shall use commercially reasonable efforts to obtain subordination, non-disturbance and attornment agreements from each tenant of the Property within forty-five days of the date hereof.

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11. **No Cooperative or Condominium.** Mortgagor represents and warrants that the Property has not been subjected to a cooperative or condominium form of ownership. Mortgagor hereby covenants and agrees that it will not file a declaration of condominium, map or any other document having the effect of subjecting the Property to a condominium or cooperative form of ownership. To the extent that the Declaration (as defined below) could be construed as creating a cooperative or condominium form of ownership, the foregoing representations and warranties shall be deemed to reference the Declaration as an exception to such representations and warranties. As used herein, the "**Declaration**" means that certain Declaration of Covenants, Restrictions and Easements recorded June 23, 1999 as Document No. 99606491 in the Official Records of Cook County, Illinois.

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

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

14. **Documentary Stamps.** If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

15. **Right of Entry.** Mortgagee and its agents shall have the right to enter and inspect the Property at any time during reasonable business hours upon forty-eight (48) hour notice to Mortgagor, except in the case of an emergency, in which event Mortgagee and its agents may enter and inspect the Property at any time. Any such entry and inspection shall be made by Mortgagee and its agents in compliance with applicable laws and in such manner as to minimize disruption of the ordinary operations of the businesses of tenants of the Property.

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## 16. Books and Records.

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

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

(ii) within fifteen (15) days after the end of each calendar month, Mortgagor will furnish to Mortgagee, (i) a certified current rent roll for the Property, which shall include, among other things, tenant names, lease commencement and expiration dates, square footage, annual rent, annual operating expense and real estate tax contributions, a statement as to whether or not there are any purchase options and/or co-tenancy requirements, and any and all other fees paid by tenants and security deposits currently held, (ii) an aged schedule of delinquent accounts receivable by tenant and type of charge for the Property, (iii) a copy of the general ledger maintained by Mortgagor's property manager and (iv) bank statements for the operating account for the Property showing all deposits and disbursements (which operating account shall be a separate account solely for Property operations which is maintained by Borrower or Borrower's property manager for the benefit of Borrower).

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

(b) In the event that Mortgagor delivers an Extension Notice pursuant to the Note, then promptly thereafter, Mortgagor shall submit to Mortgagee for its approval an operating budget, including all planned capital expenditures, for the Property prepared by Mortgagor for the twelve (12) month period commencing on the initial Maturity Date, which approval shall not be unreasonably withheld, conditioned or delayed.

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

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(d) If Mortgagor fails to provide to Mortgagee or its designee any of the financial statements, certificates, reports or information (the “**Required Records**”) required by this Section 16 within the applicable time periods set forth in this Section 16, Mortgagor shall pay to Mortgagee, at Mortgagee’s option and in its discretion, an amount equal to Two Thousand Five Hundred Dollars (\$2,500) for each Required Record that is not delivered within twenty (20) days after written notice thereof. In addition, if Mortgagor fails to deliver any Required Records to Mortgagee within the applicable time periods set forth in this Section 16, Mortgagee shall have the option, upon fifteen (15) days’ notice to Mortgagor, to gain access to Mortgagor’s books and records and prepare or have prepared at Mortgagor’s expense, any Required Records not delivered by Mortgagor. In addition, it shall be an Event of Default if any of the following shall occur: (i) any failure of Mortgagor to provide to Mortgagee any of the Required Records within the applicable time periods set forth in this Section 16, if such failure continues for twenty (20) days after written notice thereof, or (ii) in the event any Required Records shall be materially inaccurate or materially false, or (iii) in the event of the failure of Mortgagor to permit Mortgagee or its representatives to inspect said books, records and accounts upon request of Mortgagee as required by this Section 16.

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

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

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

(b) All certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy of the Property, have been obtained and are in full force and effect. The Property is free of material damage and is in good repair, and there is no proceeding pending for the total or partial condemnation of, or affecting, the Property.

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

(d) The Property is not subject to any Leases other than the Leases described in the rent roll delivered to Mortgagee in connection with this Mortgage. No person has any



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possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the Leases. Except as otherwise disclosed in writing to Mortgagee, the current Leases are in full force and effect and there are no defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. Except as otherwise disclosed in writing to Mortgagee, all presently existing Leases are subordinate to the Mortgage.

(e) The Property and the Leases are in compliance with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property.

(f) There has not been and shall never be committed by Mortgagor or any other person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Mortgagor's obligations under any of the Loan Documents. Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture.

(g) All information submitted by Mortgagor to Mortgagee including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Mortgagor in this Mortgage or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations and/or the financial condition of Mortgagor or Guarantor. Mortgagor and Guarantor have disclosed to Mortgagee all material facts and have not failed to disclose any material fact that could cause any information provided by or on behalf of Mortgagor to Mortgagee or representation or warranty made herein or in the other Loan Documents to be materially misleading.

(h) Improper Financial Transactions.

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

(ii) Mortgagor represents and warrants that: (x) Mortgagor is not a Barred Person (hereinafter defined); (y) Mortgagor is not owned or controlled, directly or

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indirectly, by any Barred Person; and (z) Mortgagor is not acting, directly or indirectly, for or on behalf of any Barred Person.

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

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

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

As used in this Mortgage, the term "**Barred Person**" shall mean (A) any person, group or entity named as a "Specially Designated National and Blocked Person" or as a person who commits, threatens to commit, supports, or is associated with terrorism as designated by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), (B) any person, group or entity named in the lists maintained by the United States Department of Commerce (Denied Persons and Entities), (C) any government or citizen of any country that is subject to a United States Embargo identified in regulations promulgated by OFAC and (D) any person, group or entity named as a denied or blocked person or terrorist in any other list maintained by any agency of the United States government.

(i) Special Purpose Entity. Until the Indebtedness is repaid in full, Mortgagor shall be and shall remain a special purpose bankruptcy remote entity and shall at all times comply with the following covenants:

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

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

(iii) Mortgagor shall not engage in a business other than the ownership, operation and management of the Property.

(iv) Mortgagor will not enter into any contract or agreement with any affiliate, Guarantor or any affiliate of Guarantor.

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

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

(vii) Mortgagor intends to remain solvent and Mortgagor will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, provided that this covenant shall not require any capital contribution obligation by any direct or indirect partner, member or shareholder of Mortgagor.

(viii) Mortgagor has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Mortgagor will not amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Mortgagor without the written consent of Mortgagee.

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

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

(xi) Mortgagor will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations, provided that this covenant shall not require any capital contribution obligation by any direct or indirect partner, member or shareholder of Mortgagor.

(xii) Neither Mortgagor nor any direct or indirect partner, member or shareholder of Mortgagor will seek the dissolution, winding up, liquidation, consolidation or merger, in whole or in part, or the sale of material assets of Mortgagor.

(xiii) Mortgagor will not participate in a cash management system with any person other than Mortgagee pursuant to the cash management system for the extension term of the Loan as set forth in the Loan Documents.

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

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

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

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

19. Intentionally Omitted.

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

(a) In the event of the occurrence of any of the Events of Default described in Section 5.1 of the Note;

(b) if any Taxes payable directly to the billing authority by Mortgagor are not paid before interest becomes payable on the amount due or a penalty is assessed (provided that the foregoing provisions of this clause (b) shall be subject to the right to contest Taxes granted to Mortgagor in Section 4(b) of this Mortgage, but only for so long as the conditions in Section 4(b) of this Mortgage remain satisfied);

(c) if the Policies are not kept in full force and effect and are not delivered to Mortgagee when required hereunder, or if the Policies are not delivered to Mortgagee within ten (10) days after request by Mortgagee;

(d) if any of the provisions of Sections 7, 9, 16 or 39 herein are violated or not complied with in any material respect;

(e) if any of the events described in Section 41 shall occur;

(f) if any mortgagee (or beneficiary) under a mortgage (or deed of trust) on the Property, whether superior or subordinate to this Mortgage (i) demands payment in full or otherwise accelerates any indebtedness of Mortgagor or (ii) otherwise commences the exercise of any remedy available to such party under any such mortgage (or deed of trust) or other loan document related to such mortgage (or deed of trust);

(g) if Mortgagor fails to cure any violation of any law or ordinance affecting the Property within thirty (30) days following the date that Mortgagor first becomes aware of such violation, subject to such additional reasonable period of time as is necessary to effectuate such cure (provided that the foregoing provisions of this clause (g) shall be subject to any right to contest such violation specifically granted to Mortgagor in Section 8 of this Mortgage);

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(h) if any guaranty of the Indebtedness or any portion thereof (herein called a “**Guaranty**”) is terminated or any event or condition occurs which, in the sole judgment of Mortgagee, may impair the ability of any Guarantor to perform its obligations under any Guaranty or any Guarantor attempts to withdraw, cancel or disclaim any Guaranty;

(i) if there shall be any breach or default by Mortgagor of the terms of that certain Cash Management Agreement to be entered into during the extension term of the Loan (the “**Cash Management Agreement**”);

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

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

(l) if Guarantor is a natural person, the death of such Guarantor shall occur (provided, however, that such death shall not result in an Event of Default hereunder provided that, within thirty (30) days following such death, a reputable individual who satisfies the net worth and liquidity requirements in the Guaranty executed by Guarantor and who is otherwise reasonably satisfactory to Mortgagee, executes and delivers to Mortgagee a replacement Guaranty in form and substance identical to the Guaranty executed by such deceased Guarantor and executes and delivers to Mortgagee any other indemnity documents executed by such deceased Guarantor in form and substance identical to such indemnity documents);

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

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

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

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

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

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## 21. Additional Remedies

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it shall deem advisable to protect and enforce its rights against Mortgagor and in and to the Property or any part thereof or interest therein, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee (i) enter into or upon the Real Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat, (B) complete any construction on the Property in such manner and form as Mortgagee deems advisable, (C) make alterations, additions, renewals, replacements and improvements to or on the Property, (D) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Property and every part thereof and (E) apply the receipts from the Property to the payment of the Indebtedness, after deducting therefrom all expenses (including reasonable attorneys' fees and expenses) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee and its counsel, agents and employees, or (ii) institute proceedings for the complete foreclosure of this Mortgage in which case the Property may be sold for cash or upon credit in one or more parcels, or (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Mortgage for the balance of the Indebtedness not then due, or (iv) sell for cash or upon credit the Property or any part thereof and all or any part of any estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien on the remaining portion of or estate in the Property, or (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note or any other Loan Document, or (vi) recover judgment on the Note or any Guaranty either before, during or after any proceedings for the enforcement of this Mortgage, or (vii) pursue such other remedies as Mortgagee may have under applicable law. Any entry by Mortgagee or its agents pursuant to this Section 21 shall be made by Mortgagee or its agents in accordance with applicable law.

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

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

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

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

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

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

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

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

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

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

(g) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Property or upon any other property of Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

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

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

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

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



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and interest then remaining unpaid shall be due or (ii) on or after the date on which prepayment of the principal balance is permitted pursuant to the terms of the Note.

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

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

**27. Security Agreement.**

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

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

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Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Indebtedness in such priority and proportions as Mortgagee in its discretion shall deem proper.

Mortgagor shall notify Mortgagee of any change in name, identity or structure of Mortgagor and shall promptly execute, file and record, at its sole cost and expense, such Uniform Commercial Code forms as are necessary to maintain the priority of the lien of Mortgagee upon and security interest in the Collateral. In addition, Mortgagor shall promptly execute, file and record such additional Uniform Commercial Code forms or continuation statements as Mortgagee shall deem necessary and shall pay all expenses and fees in connection with the filing and recording thereof, provided that no such additional documents shall increase the obligations of Mortgagor under the Note, this Mortgage or the other Loan Documents. Mortgagor hereby grants to Mortgagee an irrevocable power of attorney, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage.

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

## 28. Authority.

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

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

(c) Mortgagor represents and warrants to Mortgagee that it is a corporation, duly organized and in good standing under the laws of the State of Illinois.

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

30. Further Acts, Etc. Mortgagor will, at the sole cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, assignments, notices of assignments, transfers and assurances

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as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby given, granted, bargained, sold, aliened, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage and, on demand, will execute and deliver within five (5) business days after request of Mortgagee, and if Mortgagor fails to so deliver, hereby authorizes Mortgagee thereafter to execute in the name of Mortgagor without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including without limitation such rights and remedies available to Mortgagee pursuant to this Section 30.

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

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

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

34. **Recovery of Sums Required To Be Paid.** Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Indebtedness as the same become due, without regard to whether or not the balance of the Indebtedness shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

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

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

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

38. **Reporting Requirements.** At the request of Mortgagee, Mortgagor shall supply or cause to be supplied to Mortgagee either (a) a copy of a completed Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Proceeds prepared by Mortgagor's attorney or other person responsible for the preparation of such form, together with a certificate from the person who prepared such form to the effect that such form has, to the best of such person's knowledge, been accurately prepared and that such person will timely file such form or (b) a certification from Mortgagor that the Loan is a refinancing of the Property or is otherwise not required to be reported to the Internal Revenue Service pursuant to Section 6045(e) of the Code. Mortgagor hereby indemnifies, defends and holds Mortgagee harmless from and against all loss, cost, damage and expense (including without limitation, attorneys' fees

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and disbursements and costs incurred in the investigation, defense and settlement of claims) that Mortgagee may incur, directly or indirectly, as a result of or in connection with the assertion against Mortgagee of any claim relating to the failure of Mortgagee to comply with this Section 38.

## 39. Hazardous Materials.

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

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(b) At its sole cost and expense, Mortgagor shall comply with and shall cause all tenants and other occupants of the Property to comply with all Environmental Laws now in effect or hereafter enacted with respect to the discharge, generation, removal, transportation, storage and handling of Hazardous Materials. Mortgagor shall promptly notify Mortgagee if Mortgagor shall become aware of any Hazardous Materials on or near the Property and/or if Mortgagor shall become aware that the Property is in direct or indirect violation of any Environmental Laws and/or if Mortgagor shall become aware of any condition on or near the Property which shall pose a threat to the health, safety or welfare of humans. Mortgagor shall promptly remove all Hazardous Materials from the Property, such removal to be performed in accordance with all applicable federal, state and local laws, statutes, rules and regulations. Mortgagor shall pay immediately when due the cost of removal of any Hazardous Materials and shall keep the Property free of any lien imposed pursuant to any Environmental Laws now in effect or hereinafter enacted.

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

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

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

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

**41. Bankruptcy or Insolvency.** In the event that Mortgagor or any Guarantor or, if Mortgagor or any Guarantor is a general or limited partnership, any general partner of any such entity (a) admits in writing its inability to pay its debts generally as they become due, or does not pay its debts generally as they become due, (b) commences as debtor any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, or seeks or consents to the appointment of a receiver, conservator, trustee, custodian, manager, liquidator or similar official for it or the whole or any substantial part of its property, (c) has a receiver, conservator, trustee, custodian, manager, liquidator, or similar official appointed for it or the whole or any substantial part of its property, by any governmental authority with jurisdiction to do so, (d) makes a proposal or any assignment for the benefit of its creditors, or enters into an arrangement or composition or similar plan or scheme with or for the benefit of creditors generally occurring in circumstances in which such entity is unable to meet its obligations as they become due or (e) has filed against it any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law which (i) is consented to or not timely contested by such entity, (ii) results in the entry of an order for relief, appointment of a receiver, conservator, trustee, custodian, manager, liquidator or similar official for such entity or the whole or any substantial part of its property or (iii) is not dismissed within

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sixty (60) days, an Event of Default shall have occurred and as a result, the entire principal balance of the Note and all obligations under any Guaranty shall become immediately due and payable at the option of Mortgagee without notice to Mortgagor or any Guarantor and Mortgagee may exercise any remedies available to it hereunder, under any other Loan Document, at law or in equity.

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

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

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

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

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

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

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

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

(e) Any of the following shall constitute an Event of Default under this Mortgage, entitling Mortgagee to exercise any and all remedies to which it may be entitled under this Mortgage, and any other Loan Documents (i) the failure of any representation or warranty made by Mortgagor under this Section 42 to be true and correct in all respects, (ii) the failure of Mortgagor to provide Mortgagee with the written certifications and evidence referred to in this Section 42 or (iii) the consummation by Mortgagor of a transaction which would cause the



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establishment or maintenance of this Mortgage or the other Loan Documents, or any exercise of Mortgagee's rights under this Mortgage, or the other Loan Documents to constitute a non-exempt prohibited transaction under ERISA or a violation of a state statute regulating governmental plans, or otherwise subjecting Mortgagee to liability for violation of ERISA or such state statute.

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

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

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

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

**46. Maximum Indebtedness.** The total amount secured by this Mortgage (excluding interest, costs, expenses, charges, fees, protective advances and indemnification obligations, all of any type or nature) shall not exceed an amount of FIVE MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$5,300,000.00).

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

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address or person as either party or person entitled to notice may by notice to the other party specify):

To Mortgagee:

Thorofare Asset Based Lending REIT Fund IV, LLC  
 c/o Thorofare Capital, Inc.  
 633 W. Fifth Street, Suite 2200  
 Los Angeles, California 90071  
 Attention: Mr. Kevin Miller

To Mortgagor:

Zero Investment & Management Corp.  
 c/o Malek Realty  
 900 W. Jackson Road, Suite 4W  
 Chicago, Illinois 60607  
 Attention: Michael Semenow

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

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

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

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

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

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

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

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

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

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

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

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

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

60. **Address of Real Property**. The street address of the Real Property is 1454 W. Golf Road, 1647 Algonquin Road and 1669 Algonquin Road, Rolling Meadows 60008.

61. **Method of Payment**. All payments of principal and interest and other amounts due under this Mortgage shall be paid to Mortgagee by Automated Clearing House debit against Mortgagor's account. Mortgagor agrees to provide Mortgagee with all necessary authorizations.

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

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

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

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

66. **Servicer**. Mortgagee may from time to time appoint a servicer (the "Servicer") to administer the Loan, which Servicer shall have the power and authority to exercise all of the rights and remedies of Mortgagee and to act as agent of Mortgagee hereunder. With respect to such Servicer, Mortgagor shall be responsible for (a) payment on first (1<sup>st</sup>) day of each month during the term of the Loan of a servicing fee in the amount of one thousand and 00/100 dollars (\$1,000.00), (b) payment of the servicing costs identified on **Exhibit B** attached hereto for the items specified therein, and (c) to the extent not specified in Exhibit B, other customary servicing costs and expenses incurred by Mortgagee.

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

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**68. Intentionally Deleted.**

**69. Waiver of Homestead and Redemption.** Mortgagor hereby expressly waives any and all rights of redemption and reinstatement in connection with foreclosure of this Mortgage, it being the intent hereof that any and all such rights of redemption and reinstatement of the Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by the provisions of the Act (as defined in Section 70 below) or other applicable law or replacement statutes.

**70. Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Section 70 and the terms and conditions of this Mortgage, the terms and conditions of this Section 70 shall control and be binding.

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

(i) Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of a Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Mortgage, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.

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

(iii) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have

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

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

(v) Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.

(vi) As provided for in the Note, the interest rate payable in respect of the obligations secured by this Mortgage is (a) for the period commencing on the Effective Date and ending on the initial Maturity Date, an interest rate equal to eight and 75/100 percent (8.75%) per annum, and (b) if the term of the Loan is extended pursuant to Section 2.1(c) of the Note, then, for the entire extended term, an interest rate equal to nine and 75/100 percent (9.75%) per annum. Interest for any month or fractional part thereof shall be calculated on the basis of a 360-day year and the daily amount so determined shall be multiplied by the actual number of days for which interest is being paid.

(vii) The following notice is provided pursuant to paragraph (3) of 815 ILCS 180/10: Unless Mortgagor provides evidence of the insurance coverage required by the Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in Mortgagor's Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor may make or any claim that is made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing evidence that Mortgagor has obtained insurance as required by the parties' agreement. If Mortgagee purchases insurance for the Property, Mortgagor will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges that Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the obligations secured hereby. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on Mortgagor's own.

(viii) If certain conditions are satisfied, Mortgagee is obligated under the terms of the Loan Documents to make advances as provided therein, and Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be secured by the lien of this Mortgage, as provided in Section 15-1302(b)(1) of the Act. Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made as of the date hereof or at any time in the future, and whether such future

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

(ix) All advances, disbursements and expenditures made by Mortgagee in accordance with the terms of this Mortgage and the other Loan Documents, whether before and during a foreclosure of this Mortgage, and before and after judgment of foreclosure therein, and at any time prior to sale of the Property, and, where applicable, after sale of the Property, and during the pendency of any related proceedings, in addition to those otherwise authorized by the Act, shall have the benefit of all applicable provisions of the Act, including without limitation advances, disbursements and expenditures for the following purposes:

- (A) all advances by Mortgagee in accordance with the terms of the Mortgage or the other Loan Documents to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Property; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, as referred to in Section 15-1302(b)(5) of the Act;
- (B) payments by Mortgagee of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance, (ii) real estate taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof, (iii) other obligations authorized by the Mortgage, or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;
- (C) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;
- (D) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of the Mortgage or arising from the interest of Mortgagee hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the Property;



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

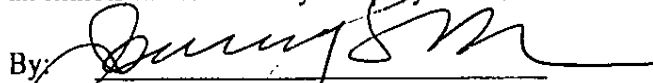
(x) Notwithstanding anything contained in the Mortgage to the contrary, the proceeds of any foreclosure sale of the Property shall be distributed and applied in accordance with Section 15-1512 of the Act in the following order of priority: first, on account of all reasonable costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in subsection (i) above; second, on account of all reasonable costs and expenses in connection with securing possession of the Property prior to such foreclosure sale, and the reasonable costs and expenses incurred by or on behalf of Mortgagee in connection with holding, maintaining and preparing the Property for sale, including all such items as are mentioned in subsection (i) above; third, in satisfaction of all claims in the order of priority adjudicated in the foreclosure judgment or order confirming sale; and fourth, any remainder in accordance with the order of court adjudicating the foreclosure proceeding.

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

**MORTGAGOR:**

**ZERO INVESTMENT & MANAGEMENT CORP.,**  
an Illinois ~~limited liability company~~ corporation

By: 

Name: Jacquie Shim/Bush

Title: President and Secretary

Property of Cook County Clerk's Office

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## ACKNOWLEDGMENT TO MORTGAGE

STATE OF ILLINOIS )  
 COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Jaemey Shim Bush, as President and Secretary of Zero Investment & Management Corp., an Illinois corporation, personally known to me or proved to me on the basis of satisfactory evidence to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act, and as a free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 29 day of DECEMBER, 2016.

Kristen Leato  
 Print Name: KRISTEN LEATO  
 Notary Public  
 Commission Expiration: 12/2/18

(Seal)



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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

LOTS 3, 8 AND 9 IN THE RESUBDIVISION OF MARKETPLACE OF ROLLING MEADOWS, BEING A RESUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THAT PLAT THEREOF RECORDED SEPTEMBER 27, 1999 AS DOCUMENT NUMBER 99910798, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AND RIGHTS TO THE USE OF COMMON AREAS FOR THE PURPOSES FOR WHICH THEY ARE PROVIDED AND INTENDED, INCLUDING, BUT NOT LIMITED TO (A) INGRESS, EGRESS, ACCESS, LOADING AND UNLOADING, PARKING AND VEHICULAR AND PEDESTRIAN TRAFFIC, INCLUDING COMMERCIAL VEHICULAR TRAFFIC SUCH AS DELIVERY TRUCKS, UPON OR ACROSS, AS APPLICABLE, THE PARKING AREAS, ENTRANCES, EXITS, DRIVEWAYS, WALKS OR SERVICE DRIVES LOCATED WITHIN THE COMMON AREAS; (B) INSTALLATION, OPERATION, MAINTENANCE AND USE OF SANITARY SEWERS STORM DRAINS, DETENTION BASINS, WHETHER UNDERGROUND OR AT GRADE, WATER, ELECTRIC AND GAS LINES, TELEPHONE LINES, VAULTS, CONDUITS AND TRANSFORMERS AND OTHER UTILITY LINES AND RELATED FACILITIES (WHICH SHALL BE LOCATED UNDERGROUND WHENEVER FEASIBLE); AND (C) USE OF LANDSCAPING, DIRECTION SIGNS AND OTHER AREAS INTENDED FOR COMMON USE, OVER THE LAND AS DESCRIBED IN SAID INSTRUMENT, AS SET FORTH IN THE DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS DATED JUNE, 1999 AND RECORDED JUNE 23, 1999 AS DOCUMENT NO. 99606491 MADE BY REPUBLIC BANK OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JULY 22, 1997 AND KNOWN AS TRUST NUMBER 1391 AND AS CREATED BY THE DEED FROM REPUBLIC BANK OF CHICAGO AS TRUSTEE UNDER TRUST NUMBER 1391 TO FIRST AMERICAN BANK DATED JULY 10, 2000 AND RECORDED JULY 27, 2000 AS DOCUMENT 00568872.

#### PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INGRESS AND EGRESS FOR VEHICULAR TRAFFIC OVER AND ACROSS THE PORTION OF THE FRONTAGE ROAD RUNNING EAST AND WEST ON THE NORTHERLY PORTION OF THE OUTLOT AS DEPICTED BY CROSS-HATCHING ON THE DRAWING AS SET FORTH IN THE DECLARATION OF RESTRICTIONS AND EASEMENTS DATED JULY 10, 2000 AND RECORDED JULY 27, 2000 AS DOCUMENT NO. 00568872 MADE BY REPUBLIC BANK OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED

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JULY 22, 1997 AND KNOWN AS TRUST NUMBER 1391.

**PARCEL 4:**

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INGRESS AND EGRESS FOR VEHICULAR TRAFFIC OVER AND ACROSS THE ACCESS AND DRIVEWAY PORTIONS OF THE COMMON AREA OF THE CENTER INCLUDING THE PORTIONS OF THE OUTLOT SET FORTH IN THE OPERATION AND EASEMENT AGREEMENT DATED JULY 21, 2000 AND RECORDED JULY 27, 2000 AS DOCUMENT NO. 00568875, THE PORTION OF THE FRONTAGE ROAD RUNNING EAST AND WEST ON THE NORTHERLY PORTION OF THE OUTLOT AS SET FORTH IN THE OPERATION AND EASEMENT AGREEMENT DATED JULY 21, 2000 AND RECORDED JULY 27, 2000 AS DOCUMENT NO. 00568875 MADE BY REPUBLIC BANK OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JULY 22, 1997 AND KNOWN AS TRUST NUMBER 1391 AND SOUTHWIND FINANCIAL, LTD. AN ILLINOIS CORPORATION.

**PARCEL 5:**

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DECLARATION RECORDED JULY 7, 1976 AS DOCUMENT NUMBER 23549143 MADE BY J.C. PENNEY PROPERTIES, INC., A DELAWARE CORPORATION TO USE, MAINTAIN, REPAIR, REPLACE AND RELOCATE UTILITIES.

Permanent Index Numbers:

08-09-302-025-0000

08-09-302-030-0000

08-09-302-031-0000

Address:

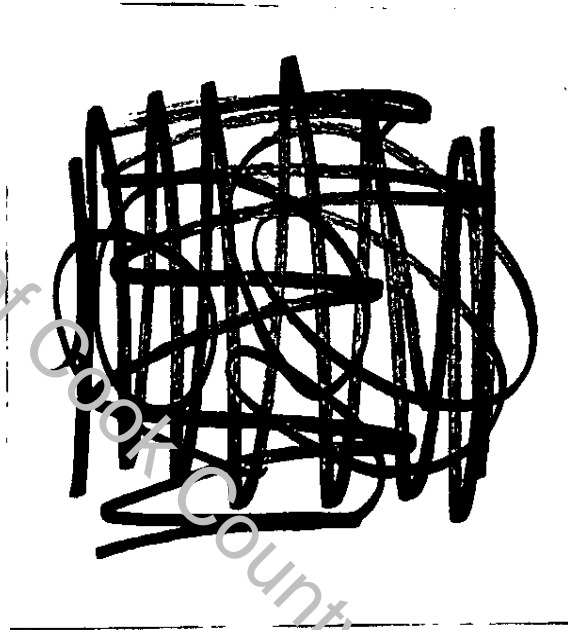
1454 W. Golf Road and 1647, 1669 Algonquin Road, Rolling Meadows, IL 60005

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## EXHIBIT B

### CERTAIN SERVICING COSTS

[See attached]



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