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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud
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Doc# 1703918049 Fee \$204.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 02/08/2017 01:22 PM PG: 1 OF 84

The property identified as: **PIN:** 11-19-200-025-0000

Address:

Street: 1211-1229 Chicago Avenue

Street line 2:

City: Evanston

State: IL

ZIP Code: 60202

Lender: AXA EQUITABLE LIFE INSURANCE COMPANY

Borrower: CLPF - KSA GROCERY PORTFOLIO EVANSTON TJ, LLC

Loan / Mortgage Amount: \$99,117,000.00

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

Certificate number: A2895546-FC28-43ED-844E-405DF5CECF8E

Execution date: 1/17/2017

NA-807532-5

1 of 4

84

AF

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RECORDING RETURN TO:**

Frederick L. Klein
 DLA Piper LLP (US)
 500 Eighth Street, NW
 Washington, DC 20004
 Loan No.: 16-1053

This space reserved for Recorder's use only.

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

Cover Sheet

Date: February 2, 2017

Borrower: CLPF - KSA GROCERY PORTFOLIO
 EVANSTON TJ, LLC, a Delaware limited liability
 company

Borrower's State of Organization: Delaware

Borrower's Organizational ID Number: 6193763

Lender: **AXA EQUITABLE LIFE INSURANCE
 COMPANY**, a New York corporation

Note Amount: Up to \$99,117,000

Maturity Date: March 1, 2022, subject to extension to March 1,
 2023 and further extension to March 1, 2024

State: Illinois

ATTENTION: COUNTY CLERK - THIS MORTGAGE COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS MORTGAGE SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A MORTGAGE, BUT ALSO AS A FIXTURE FILING COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE MORTGAGOR (DEBTOR) AND MORTGAGEE (SECURED PARTY) ARE SET FORTH IN THIS MORTGAGE.

Mortgage Instrument

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EXECUTION VERSION

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage") is made this 2nd day of February, 2017, by and between CLPF - KSA GROCERY PORTFOLIO EVANSTON TJ, LLC, a Delaware limited liability company, having offices at c/o Clarion Partners, 230 Park Avenue, 12th Floor, New York, New York 10169, Attention: Chief Financial Officer ("Mortgagor"), TO AXA EQUITABLE LIFE INSURANCE COMPANY, a New York corporation, having offices at 1290 Avenue of the Americas, New York, New York 10104 ("Mortgagee").

WITNESSETH:

This Mortgage is made with reference to the following facts:

WHEREAS, this Mortgage is given to secure a loan (the "Loan") in the principal sum of up to NINETY-NINE MILLION ONE HUNDRED SEVENTEEN THOUSAND AND NO/100 DOLLARS (\$99,117,000.00) among Mortgagor and the other Borrowers (as herein defined) and Mortgagee and evidenced by that certain Note of even date herewith made by the Borrowers in favor of Mortgagee with a maturity date of March 1, 2022, subject to extension to March 1, 2023 and to March 1, 2024 (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Note"), which Loan is secured and cross-collateralized by each of the Parcels (as herein defined); and

WHEREAS, Mortgagor desires to secure the payment of the Indebtedness (as herein defined) and the performance of all of the obligations of Borrowers under the Note and the other Loan Documents (as herein defined); and

WHEREAS, the payment, fulfillment, and performance by Mortgagor of its obligations under this Mortgage and by Mortgagor and the other Borrowers under the other Loan Documents (as herein defined) are secured hereby, and each and every term and provision of the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Mortgage (the Note, this Mortgage, that certain Assignment of Leases and Rents of even date herewith made by Mortgagor in favor of Mortgagee (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Assignment of Leases"), and all other documents, whether now or hereafter delivered, evidencing or securing the Indebtedness or delivered in connection with the making of the Loan are hereinafter referred to, collectively, as the "Loan Documents"); and

WHEREAS, any capitalized term used but not defined herein (including without limitation in *Rider 1* hereof) shall have the meaning ascribed to such term in the other Loan Documents, as applicable.

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NOW THEREFORE, in consideration of the making of the Loan by Mortgagee and the covenants, agreements, representations and warranties set forth in this Mortgage and the other Loan Documents:

1. Granting Clauses.

1.01 Mortgage. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed, Mortgagor has executed and delivered the Note and the other Loan Documents (as such terms and all other terms used in this Mortgage are hereafter defined in this Mortgage or in *Rider 1* attached hereto and made a part hereof) and hereby irrevocably and absolutely grants, transfers, assigns, mortgages, bargains, sells and conveys to Mortgagee, its successors and assigns, all the following (collectively, the "Premises"):

- (a) all that certain lot, piece or parcel of land or lots, pieces or parcels of land, as the case may be (the "Land"), more particularly described in Exhibit A attached to this Mortgage and made a part hereof;
- (b) the Improvements;
- (c) the Equipment;
- (d) all and singular the tenements, hereditaments, easements, rights of way and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, claim and demand whatsoever of Mortgagor, of, in and to the same and of, in and to every part and parcel thereof;
- (e) all right, title and interest of Mortgagor, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the above described real estate to the center line thereof;
- (f) all Leases and all Rents;
- (g) all right, title and interest of Mortgagor in, to and under any and all Contracts;
- (h) all insurance policies maintained by or for the benefit of Mortgagor with respect to the Premises and/or the business of Mortgagor conducted in connection therewith, all premiums paid or due and payable thereunder and all proceeds paid or due and payable thereunder;
- (i) all sums held in escrow by Mortgagee pursuant to this Mortgage and/or any other Loan Document;

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(j) all proceeds, compensation, awards, damages and other payments (collectively, "proceeds") paid or due and payable by any governmental or quasi governmental authority or corporation on account of any Taking of all or any portion of the Premises, including interest thereon, and the right to receive the same;

(k) all contracts of sale for or assignment of the Premises or any part thereof or interest therein and all sums paid or due and payable thereunder, including, without limitation, any and all earnest moneys and/or other deposits made or due and payable thereunder;

(l) all claims and/or choses in action of any kind whatsoever arising in tort, by contract or otherwise which Mortgagor now has or may at any time hereafter acquire with respect to the Premises or any part thereof or interest therein or the business of the Mortgagor conducted in connection therewith together with the right to take any action or file any papers or process with any governmental or quasi-governmental authority or in any court of competent jurisdiction which action or filing may, in the opinion of Mortgagee, be necessary to preserve, protect or enforce such rights, claims and choses in action, including the right to file any proof of claim in any bankruptcy or insolvency proceeding under any Federal, state or other laws; and any rights, claims or awards accruing to or to be paid to Mortgagor in its capacity as lessor or lessee under any Lease; and

(m) all proceeds of the conversion, voluntary or involuntary, permitted or otherwise, of any of the foregoing into cash or liquidated claims.

TO HAVE AND TO HOLD for the purpose of securing the due, prompt and complete (1) payment when due, whether at stated maturity, by acceleration or otherwise, of all principal, interest and other sums due and payable under the Note; (2) payment of all other sums which may now or hereafter be due and owing to Mortgagee under the terms of this Mortgage or any other Loan Document, including, without limitation, interest thereon; (3) observance, performance, fulfillment and discharge of each and every obligation, covenant, condition, warranty, representation, agreement and liability of Borrowers under or pursuant to the provisions of the Note, this Mortgage and/or any other Loan Document, regardless of how characterized herein; (4) costs of enforcement and collection hereunder or under the Loan Documents; and (5) interest on all of the foregoing in accordance with the Loan Documents (collectively, the "Indebtedness").

1.02 Security Agreement. To further secure all Indebtedness and other obligations secured by this Mortgage, Mortgagor hereby grants to Mortgagee a security interest under the Uniform Commercial Code in and to any and all personal property constituting the Premises or any part thereof or interest therein, now owned or hereafter acquired, including, without limitation, the Equipment, the Contracts and any escrow or other deposits held by Mortgagee, and in and to any and all proceeds of the foregoing. This Mortgage shall constitute a "security agreement" under the Uniform Commercial Code, and Mortgagor and Mortgagee shall constitute the "debtor" and "secured party", respectively thereunder. To the extent any part or interest in the Premises may at any time be real property, personal property or other, Mortgagee shall have a lien thereon to the extent the same shall constitute real property and Mortgagee shall have a security interest therein to the extent the same shall constitute personal property. Mortgagee shall have any and all rights with respect to the personal property constituting the Premises or

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any part thereof or interest therein afforded a secured party under the Uniform Commercial Code. Such rights shall be in addition to, but not in limitation of, the rights afforded Mortgagee with respect to real property under this Mortgage, all of which may be exercised concurrently or alternatively at the option of Mortgagee without election or waiver of remedies. For purposes of this Section 1.02, the addresses of the “debtor” and the “secured party” shall be as set forth in the first paragraph of this Mortgage for Mortgagor and Mortgagee, respectively. To the extent any of the Improvements located at the Premises are not deemed real estate under the laws of the State of Illinois they shall be deemed personal property (“**Personal Property**”) and this Mortgage is and shall be deemed to be a “Security Agreement” for the purposes of creating hereby a security interest under the Uniform Commercial Code of the State of Illinois in Mortgagee as secured party in the Personal Property as hereinafter provided.

1.03 Fixture Filing. This Mortgage constitutes a fixture filing with respect to any equipment or goods which are or are to become fixtures.

2. Performance Covenants.

2.01 Payment of Indebtedness. Mortgagor shall pay all principal, interest and other sums payable under the Note to Mortgagee as and when due thereunder in accordance with the terms and conditions thereof without notice or grace.

2.02 Operation of Premises. Mortgagor will maintain the Premises in good condition and repair, ordinary wear and tear excepted. Mortgagor will not commit or suffer any waste of the Premises and will comply with, or cause to be complied with, all statutes, ordinances and requirements of all governmental authorities having jurisdiction over the Premises or any part thereof or interest therein. Subject to the provisions of Sections 2.13 and 2.14, Mortgagor will promptly repair, restore, replace or rebuild any part of the Premises damaged or destroyed by any casualty whatsoever or which may be affected by any Taking. Mortgagor will complete and pay for, within a reasonable time, any Improvement or any alteration or renovation of any Improvement now or at any time hereafter in the process of construction on the Premises. Mortgagor will not initiate, join in or affirmatively consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Premises or any part thereof.

2.03 Property Management. The Premises shall be managed at all times by a property manager reasonably acceptable to Mortgagee under the terms of a management agreement expressly subordinate to this Mortgage, and otherwise reasonably acceptable to Mortgagee. Mortgagor shall not retain any person as property manager or asset manager of the Premises without such subordination and Mortgagee’s prior written approval of the manager and the management agreement in each instance. At anytime following the occurrence and during the continuance of an Event of Default under this instrument, Mortgagee shall have the right to require that within thirty (30) days from the date of written notice from Mortgagee to Mortgagor, Mortgagor shall replace the property manager with a new manager and management agreement satisfactory to Mortgagee. Among other things, the Management Agreement (or a Subordination of Management Agreement signed by the Manager or replacement manager, as applicable, for the benefit of Mortgagee) shall provide that (a) the Manager shall not, directly or indirectly, be granted or otherwise obtain any lien or equity rights or interests in or to any part of the Premises,

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or any interest therein (including, without limitation, any purchase options, rights of first refusal, rights of first offer, or similar or related rights), (b) the rights of Manager under the Management Agreement are subject, subordinate and inferior in all respects to the rights of Mortgagee under this Mortgage and the other Loan Documents, (c) no fees or other compensation will be paid to or received by Manager until such time each month as all sums currently due and payable pursuant to this Mortgage or any other Loan Document shall have been paid in full (or funded in full, as applicable), including without limitation, all principal, interest, escrows, reserves, and other sums payable under the Note and this Mortgage; (d) any sums paid to Manager in contravention of the foregoing Subsection 2.03(c) will be deemed to be paid to and received by Manager in trust, for the benefit of Mortgagee, (e) upon a default by Mortgagor under the terms of this Mortgage, the Manager shall, upon the written request of Mortgagee (which can be made or not made by Mortgagee in its sole and absolute discretion), continue performance of its duties and obligations under the Management Agreement, on the same terms and conditions as originally approved by Mortgagee, provided only that Mortgagee agrees to pay the monthly fees and other charges payable under the Management Agreement from and after the date that Manager continues performance at Mortgagee's request (and advises Mortgagee in writing that it is doing so), and (f) following the occurrence of an Event of Default under this Mortgage or any of the other Loan Documents, Mortgagee or its advisors will have the unilateral right to terminate the Manager for any reason without liability for the payment of any "termination" or similar "buy-out" fees or arrangements set forth in the Management Agreement.

2.04 Alterations. Mortgagor shall not remove, demolish or materially alter or enlarge any Improvements or construct any additional Improvements, without the prior written consent of Mortgagee in each instance, which shall not be unreasonably withheld. Notwithstanding the foregoing, Mortgagee's prior written consent shall not be required for (a) completion of tenant improvement work required pursuant to existing Leases or Leases approved or deemed approved under Section 2.11, (b) non-structural alterations the cost of which is not reasonably anticipated to exceed four percent (4%) of the Allocated Loan Amount for the Premises provided such alterations will not adversely affect any structural component, the market value, or the existing architectural character of the Improvements or the Premises, or (c) routine maintenance, including roof replacement.

2.05 Payment of Property Taxes and Prior Liens. Subject to Section 2.07, Mortgagor will pay all Property Taxes and other prior charges and liens now or hereafter assessed or liened on or levied against the Premises or any part thereof or interest therein when and as the same become due and payable. In case Mortgagor shall default in the payment thereof when the same shall be due and payable, Mortgagee may, but shall not be obligated to, pay the same in whole or part, without notice or demand to Mortgagor. All sums so paid by Mortgagee in discharge of such Property Taxes and other charges and liens shall be due and payable by Mortgagor to Mortgagee on demand and shall earn interest from and after the date the same are paid by Mortgagee, whether or not demand for repayment is then made, at the interest rate applicable under the Note from and after maturity. All sums so advanced and all interest thereon shall be a lien on and security interest in the Premises and shall be secured by this Mortgage in addition to all other obligations of Mortgagor to Mortgagee secured hereby. Upon request of Mortgagee, Mortgagor will exhibit to Mortgagee receipts for the payment of Property Taxes and all other prior charges and liens before the date when the same shall become delinquent.

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2.06 Deposits for Property Taxes.

(a) Without limiting the obligations of Mortgagor to pay Property Taxes as and when the same are due and payable, Mortgagor shall pay to Mortgagee on the first day of each and every month hereafter ensuing an amount equal to one-twelfth (1/12) of all Property Taxes on or against the Premises to become payable during the ensuing twelve (12) months, as estimated from time to time by Mortgagee (but with the first such payment to be in such amount as shall, with the succeeding payments, be sufficient to pay the first installment of Property Taxes due and payable following the date hereof at least thirty (30) days before they become due and payable). All sums to be deposited with the Mortgagee pursuant to this Section shall be paid to Mortgagee in addition to principal, interest and any other payments required by the Note or this Mortgage. Mortgagee shall have no obligation to pay interest on any sums deposited in escrow with Mortgagee and may commingle them with other funds of Mortgagee.

(b) Mortgagor shall cause all bills, statements or other documents relating to Property Taxes to be sent, mailed or otherwise delivered directly to Mortgagee. Provided that Mortgagee receives such bills, statements and other documents in a timely manner and provided further that Mortgagor has deposited sufficient funds with Mortgagee pursuant to this Section at least thirty (30) days prior to the date the same are due and payable, Mortgagee shall pay Property Taxes out of the funds deposited with Mortgagee pursuant to this Section in accordance with such bills, statements and other documents prior to such time as the same shall become delinquent. Mortgagor shall be solely responsible for causing all bills, statements and other documents relating to Property Taxes to be delivered to Mortgagee and for depositing sufficient sums with Mortgagee to pay for the same. Mortgagee shall have no obligation to obtain any such bills, statements or other documents or advise Mortgagor whether or not Mortgagee has received the same or whether or not sufficient funds are available in escrow pursuant to this Section to pay Property Taxes or make demand for such funds.

(c) If funds deposited with Mortgagee pursuant to this Section are at any time insufficient to pay any installment of Property Taxes as the same becomes due and payable, then Mortgagor shall pay to Mortgagee promptly upon demand any amount necessary to make up the deficiency at least thirty (30) days before such installment shall be due. If at any time the funds deposited with Mortgagee exceed the amount deemed necessary by Mortgagee to pay such Property Taxes as may then or subsequently be due, such excess shall be credited to Mortgagor against the next monthly installment or installments of such funds to be deposited with Mortgagee on account of Property Taxes. Upon payment of all Indebtedness and performance of all obligations secured by this Mortgage, Mortgagee shall promptly refund to Mortgagor the unexpended balance of any funds then held by Mortgagee in escrow pursuant to this Section. Nothing herein shall cause Mortgagee to be deemed a trustee of such funds or be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section.

(d) All sums deposited with Mortgagee from time to time shall constitute additional collateral security for all Indebtedness and other obligations secured by this Mortgage. Following the occurrence of any Event of Default under this Mortgage, Mortgagee shall have the right, at its option, to apply all or any part of the funds then held by Mortgagee to any sums then

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due and payable to Mortgagee by acceleration or otherwise in such order as Mortgagee may elect instead of applying the same to the payment of Property Taxes as otherwise provided herein.

(e) Mortgagee may, in its sole discretion, designate a third party to receive, hold and apply the deposits for Property Taxes in accordance with Subsection 2.06(a) of this Mortgage. Mortgagor shall on demand pay the fees of such third party, which may be an affiliate or subsidiary of Mortgagee. At Mortgagee's option, the amount of such third party fees may be added to the amount estimated by Mortgagee or such third party to be paid into the account held pursuant to this Section and may be paid out of such deposits to such third party as and when such fees are due and payable before the application of such funds to the payment of Property Taxes.

(f) The provisions of this Section 2.06 shall be waived so long as (i) an Event of Default has not occurred hereunder (even if subsequently cured), (ii) Mortgagor does not fail to provide proof that such taxes and assessments have been paid no later than their due date, without the necessity of Mortgagee having to demand such proof, (iii) the Property generates a Debt Yield in excess of 6.0%, utilizing the provisions of *Rider 4* hereof for purposes of computing the same and (iv) there has been no transfer or change in control of the Mortgagor under Section 2.16 hereof notwithstanding any provisions permitting such transfer. If Mortgagor shall fail to meet any of the above conditions, Mortgagor shall commence making such deposits in accordance with the requirements of Subsection 2.06(a) above on the next debt service due date under the terms of the Note, following written demand from Mortgagee.

2.07 Contesting Property Taxes. Mortgagor shall have the right to contest or object to the amount or validity of any Property Taxes imposed against the Premises by appropriate legal proceedings, but no such contest shall be deemed or construed in any way to relieve, modify or extend Mortgagor's covenant to pay such Property Taxes unless (a) Mortgagor has given written notice to Mortgagee of Mortgagor's intent to so contest or object to the imposition of such Property Taxes not less than thirty (30) days prior to the date on which such Property Taxes are due and payable and (b) Mortgagor has demonstrated to Mortgagee's satisfaction in its sole and absolute discretion that (i) non-payment of the Property Taxes Mortgagor intends to contest or object to is permitted by operation of law and (ii) the conduct of legal proceedings to contest or object to such Property Taxes will conclusively operate to prevent the sale of the Premises or any part thereof or interest therein in payment of such Property Taxes prior to final determination of such proceedings. In no event shall Mortgagor's decision to contest the imposition of any Property Taxes affect Mortgagor's obligation to continue to make payments on account of Property Taxes into escrow with Mortgagee or its designee as elsewhere provided herein. Neither Mortgagee nor its designee shall pay any Property Taxes being contested out of such escrow as long as (w) Mortgagor promptly commences and thereafter continues to conduct such contest with due diligence and in good faith, (x) Mortgagor provides evidence of the same satisfactory to Mortgagee, in its sole and absolute discretion, from time to time within ten (10) days after written request therefor, (y) Mortgagor deposits into escrow with Mortgagee or its designee, in addition to all Property Taxes which would, absent such contest, be due and payable, such additional sums as Mortgagee or its designee shall determine from time to time in its sole and absolute discretion as sufficient to pay all interest, late payment fees, penalties and other charges which may be imposed for nonpayment of such Property Taxes as if the same were not being contested, and (z) Mortgagee is satisfied in its sole and absolute discretion that neither

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the Premises nor any part thereof is in danger of sale, foreclosure or forfeiture by reason of the nonpayment of such Property Taxes or any interest, late payment fees, penalties and other charges imposed in connection therewith.

2.08 Insurance Coverage. Mortgagor shall at all times provide, maintain and keep in force (or cause to be provided, maintained, and kept in force) the following policies of insurance:

(a) Property insurance against loss or damage to the Improvements by fire and all other risks of physical loss or damage with coverage known as "special cause of loss" in an amount not less than the full replacement cost of the Improvements (without deduction for depreciation), including, without limitation, sprinkler leakage, water/flood damage, demolition cost, cost of debris removal, increased cost of construction arising from operation or enforcement of building laws and ordinances, and such additional endorsements as Mortgagee may reasonably require, with not more than Twenty-Five Thousand Dollars (\$25,000.00) deductible (or such higher amount as may be approved by Mortgagee) from the loss payable for any casualty, and containing an "agreed amount endorsement" or other endorsement to eliminate application of the coinsurance clause. Mortgagor shall provide terrorism coverage either as a non-exclusion from the special cause of loss policy or as a stand-alone policy with coverage otherwise conforming to the above, except where inconsistent;

(b) If Mortgagee determines that the Premises is in an earthquake zone (defined by the Uniform Building Code as Zone 3 or 4 (or the Uniform Building Code equivalent should the Uniform Building Code no longer be in force and effect)), insurance against loss or damage to the Improvements from earthquake and/or earth movement, in such amounts and with such deductibles as are required by Mortgagee with a minimum limits equivalent to the greater of full replacement cost times the PML percentage or two times the annual rental income amount; provided, however, if Mortgagee determines that the probable maximum loss ("PML") based upon Scenario Expect Loss (as defined by ASTM, "SEL") for the Premises in the event of an earthquake (based upon a 475 year return-period loss level with a ten percent (10%) probability of exceedance in a fifty (50) year period) is less than fifteen percent (15%), Mortgagee will not require that Mortgagor carry earthquake insurance for the Premises, but if at any time Mortgagee thereafter determines that the PML is equal to or greater than fifteen percent (15%), Mortgagee may require that Mortgagor carry earthquake insurance for the Premises.

(c) To the extent that any Rents realized from the Premises constitute rental income (as such term is commonly understood in the insurance industry), insurance against loss of rental income caused by the perils required to be insured against in (a), (b) and (c) of this Section, on an actual loss sustained basis with no time limitation and extended period of indemnity of at least 12-months, excluding only non-continuing expenses.

(d) To the extent that any Rents realized from the Premises constitute business income (as such term is commonly understood in the insurance industry), insurance against loss of business income caused by the perils required to be insured against in (a), (b), and (c) of this Section, on an actual loss sustained basis with no time limitation and extended period of indemnity of at least 12-months, excluding only non-continuing expenses;

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(e) Boiler and machinery insurance covering damage to pressure vessels, air tanks, boilers, machinery, pressure piping, electrical, heating, ventilation and air conditioning equipment, and elevator and escalator equipment, provided the Improvements contain equipment of such nature, in such amounts as are required by Mortgagee;

(f) Commercial general liability insurance (including coverage for elevators and escalators, if any, on the Premises and, if any construction of new or major renovation of existing Improvements occurs, completed operations coverage for two (2) years after construction or renovation of such Improvements has been completed), on an "occurrence" basis, against claims for bodily injury including death, property damage and "Personal Injury" occurring in, on or about the Premises and on the adjoining streets, sidewalks and passageways, to the extent caused by events occurring on the Premises, such insurance to name Mortgagee as an additional insured and to be in such amounts as are required by Mortgagee;

(g) Workers' Compensation insurance (including Employers' Liability) in accordance with the laws of the state in which the Land is situated for all employees of Mortgagor engaged on or with respect to the Premises;

(h) During the course of any construction, repair or renovation of the Improvements or any portion thereof,

(i) Workers Compensation insurance (including Employers' Liability) in accordance with the laws of the state in which the Land is situated on all employees of contractors, sub-contractors, consultants and vendors engaged on or with respect to the Premises;

(ii) Commercial general liability insurance naming Mortgagee as additional insured covering operations of all contractors and sub-contractors, including completed operations coverage for two (2) years after construction or renovation of such Improvements, with such other endorsements and in such amounts as Mortgagee may require; and

(iii) Builders' risk completed value insurance against "all risks of physical loss," including collapse, transit and, if required by Mortgagee, "soft costs" coverage, with deductibles not to exceed Twenty-Five Thousand Dollars (\$25,000.00), in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished, and containing the "permission to occupy before completion of work" endorsement;

(i) Such other insurance and any replacements or substitutions therefor or additions thereto as may at any time and from time to time be reasonably required by Mortgagee against other insurable hazards or casualties, including, but not limited to, war, nuclear reaction or radioactive contamination (if it is available at commercially reasonable rates) each in such amount as Mortgagee shall reasonably determine.

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(j) Throughout the term of the loan, Mortgagor shall have in effect terrorism insurance for the Premises with 100% replacement cost coverage, except that if the same cannot be obtained for 200% of Mortgagor's annual cost of the Property insurance at the time of renewal which calculation for this Section 2.08(j) only shall not include the embedded cost of terrorism insurance (the "**Maximum Premium Amount**"). to insure the Premises on an individual basis in accordance with the provisions of this Section 2.08. Mortgagor may obtain terrorism coverage in a lesser amount, provided Mortgagor pays the Maximum Premium Amount. Notwithstanding the foregoing, in the event Mortgagor cannot obtain terrorism coverage (including Fire-Following coverage) for the Maximum Premium Amount with coverage in an amount of at least 200% of the gross revenue from the Premises for the prior twelve (12) month period, and Mortgagor elects not to obtain the same, then Mortgagor shall notify Mortgagee, and Mortgagor shall keep in place such coverage as can be secured by payment of the Maximum Premium Amount.

(k) Pollution liability insurance coverage having such limits and such coverages as are acceptable to Mortgagee (the "**Environmental Policy**"). The initial term for Mortgagor's current Portfolio Environmental Policy may expire June 30, 2019, however, Mortgagor shall be required to maintain an Environmental Policy, which may be a Portfolio Environmental Policy (as defined below) through the term of the Loan plus a period beyond the term of the Loan of at least 12-months. Mortgagor shall furnish evidence of renewal of the required coverage of any Environmental Policy in accordance with Section 2.09(c). At a minimum, any such Environmental Policy shall provide coverage for Environmental Losses on the terms and conditions of the Portfolio Environmental Policy approved by Mortgagee, including to the extent covered thereby claims (subject to the policy terms and conditions) as a result of first and third-party bodily injury, property damage or clean-up costs caused by "pollution conditions" resulting from operations that are performed by or on behalf of Mortgagor including but not limited to Mortgagor's tenants, contractors, subcontractors, and agents at the Premises. The Environmental Policy may be a "blanket" policy covering other properties in addition to the Premises (a "**Portfolio Environmental Policy**") so long as the conditions of this Subsection 2.08(k) and Subsection 2.09(a) are satisfied with respect to such Portfolio Environmental Policy. Mortgagor shall monitor the outstanding claims made against the Portfolio Environmental Policy, and at any time the Portfolio Environmental Policy's limits of liability does not exceed the cumulative amount of claims against the Portfolio Environmental Policy by \$10,000,000, Mortgagor shall be required to (A) increase the limits of liability for such Portfolio Environmental Policy to an amount that exceeds claims made against the Portfolio Environmental Policy by \$10,000,000 or greater, or (B) obtain a stand-alone Environmental Policy for the Premises from an insurer and in form and substance satisfactory to Mortgagee with a limit determined by Mortgagee in its reasonable discretion and with coverage equivalent to the coverage provided by the previous Portfolio Environmental Policy approved by Mortgagee.

(l) Notwithstanding anything to the contrary contained herein, if, at any time Mortgagor is relying on an insurance policy maintained by a tenant at the Premises to satisfy any of the insurance requirements of this Mortgage and, (i) the insurance policies maintained by such tenant do not fully comply with the requirements set forth herein, as determined by Mortgagee in its sole discretion, or (ii) such tenant refuses to name Mortgagee as an additional insured, lender loss payee, or beneficiary, as the case may be, on the insurance policies maintained by tenant

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under its Lease, Mortgagor shall obtain and maintain such insurance policies or additional coverage required to satisfy the insurance requirements set forth in this Mortgage, regardless of whether such insurance is required of the tenant under its Lease.

2.09 Policies and Premiums.

(a) All policies of insurance shall be issued by companies satisfactory to Mortgagee which are authorized to do business in the state in which the Land is situated and shall have a Best's rating of not less than A-/XII. All policies of insurance shall be primary insurance and shall not be considered contributory insurance with any insurance policies of the Mortgagee or any other additional insureds specified by Mortgagee. All policies of insurance shall show Mortgagee as an additional insured and/or loss payee, where applicable, and the Mortgagee as mortgagee and shall have attached thereto a lender's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee. Mortgagor shall furnish Mortgagee with certificates of all policies of insurance. If Mortgagee consents to Mortgagor providing any of the required insurance through blanket policies carried by Mortgagor and covering more than one (1) location, then Mortgagor shall furnish Mortgagee with a copy of each such primary policy (redacted to eliminate property other than the Premises and the other Parcels) and/or a certificate of insurance for each such policy setting forth the coverage as to the Premises including the exclusive allocation of the insured amount to the Premises, the limits of liability as to the Premises, the name of the carrier, the policy number, the expiration date and such additional information as Mortgagee may require.

(b) Every policy of insurance required by this Mortgage shall contain the endorsement or agreement of the insurer thereunder to waive all rights of setoff, counterclaims or deductions against Mortgagor and to pay all losses payable in accordance with the terms of such policy notwithstanding any act, omission or negligence of Mortgagor which might otherwise result in forfeiture of such insurance.

(c) No later than twenty-four (24) hours prior to the expiration of each insurance policy, including the Environmental Policy, Mortgagor shall furnish Mortgagee with evidence of renewal of the required coverage through (i) a signed insurance binder, (ii) a certificate of insurance or (iii) a letter to Mortgagee from Mortgagor's insurance broker advising that (A) Mortgagor has authorized renewal of the applicable policy and (B) a certificate of insurance will be issued upon receipt of the policy number and other required information, in each case, evidencing that the applicable policy has been renewed and the coverage required hereunder remains in effect. Within sixty (60) days after the expiration date of each insurance policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of the premium and arrangements for the reissuance of a policy continuing insurance in force without interruption as required by this Mortgage. The expiration or lapse of any insurance policy required hereunder shall constitute an Event of Default, as provided in Subsection 3.01(c) hereof.

(d) All policies required hereunder shall contain a provision that such policies will not be canceled for non-payment of premium without at least ten (10) days prior written notice to

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Mortgagee, or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Mortgagee.

(e) If Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Mortgage, Mortgagee may, but shall not be obligated to, procure such insurance or single interest insurance for such risks covering Mortgagee's interest and pay the premiums for any such insurance. All sums advanced by Mortgagee to pay premiums on insurance policies which Mortgagor is required to maintain hereunder shall be due and payable by Mortgagor to Mortgagee on demand and shall earn interest from and after the date the same are paid by Mortgagee, whether or not demand for repayment is then made, at the interest rate applicable under the Note from and after maturity. All sums so advanced and all interest thereon shall be a lien on and security interest in the Premises and shall be secured by this Mortgage in addition to all other obligations of Mortgagor to Mortgagee secured hereby.

(f) In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Premises in lieu of foreclosure, all right, title and interest of Mortgagor in and to all policies of insurance required by this Mortgage shall inure to the benefit of and pass to Mortgagee or any other purchaser or purchasers of the Premises at the foreclosure sale.

2.10 Deposits for Insurance Premiums.

(a) Without limiting the obligations of Mortgagor to pay premiums on insurance policies which Mortgagor is required to maintain under this Mortgage as and when the same are due and payable, Mortgagor shall deposit with Mortgagee on the first day of each and every month an amount on account of each policy of insurance Mortgagor is required to maintain under this Mortgage equal to one-twelfth (1/12) of the premiums to become payable during the ensuing twelve (12) months in order to continue such insurance coverage in full force and effect, as estimated from time to time by Mortgagee (but with the first such payment to be in such amount as shall, with the succeeding payments, be sufficient to pay the next premium on account of such insurance policy due and payable thereafter at least thirty (30) days before they become due and payable). All sums to be deposited with the Mortgagee pursuant to this Section shall be paid to Mortgagee in addition to principal, interest and any other payments required by the Note or this Mortgage. Mortgagee shall have no obligation to pay interest on any sums deposited in escrow with Mortgagee and may commingle them with other funds of Mortgagee.

(b) Mortgagor shall cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Mortgagee. Provided Mortgagee receives such bills, statements or other documents in a timely manner and provided further that Mortgagor has deposited sufficient funds on account of premiums due and payable on any existing or replacement policy required by this Mortgage with Mortgagee pursuant to this Section at least thirty (30) days prior to the date the same shall be due and payable, Mortgagee shall pay the premiums for such policy out of the funds deposited with Mortgagee pursuant to this Section in accordance with such bills, statements and other documents prior to such time as the same shall become delinquent. Mortgagor shall be solely responsible for causing all bills, statements and other documents relating to insurance premiums to be delivered to Mortgagee and

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for depositing sufficient sums with Mortgagee to pay the same. Mortgagee shall have no obligation to obtain any such bills, statements or other documents or advise Mortgagor whether or not Mortgagee has received the same or whether or not sufficient funds are available to deposit pursuant to this Section to pay insurance premiums or make demand for such funds.

(c) If funds deposited with Mortgagee pursuant to this Section on account of any insurance policy are at any time insufficient to pay any premium thereon as the same becomes due and payable, then Mortgagor shall pay to Mortgagee promptly upon demand any amount necessary to make up the deficiency at least thirty (30) days before the date such premium shall be due and payable. If at any time the funds deposited with Mortgagee on account of any insurance policy exceed the amount deemed necessary by Mortgagee to pay such premiums on such policy as may then or subsequently be due, such excess shall be credited to Mortgagor against the next monthly installment or installments of funds to be deposited with Mortgagee on account of such premiums. Upon payment and performance in full of all Indebtedness and obligations secured by this Mortgage, Mortgagee shall promptly refund to Mortgagor the unexpended balance of any funds then held by Mortgagee in escrow pursuant to this Section. Nothing herein shall cause Mortgagee to be deemed a trustee of such funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section.

(d) All sums deposited with Mortgagee from time to time shall constitute additional collateral security for all Indebtedness and obligations secured by this Mortgage. Following the occurrence of any Event of Default under this Mortgage Mortgagee shall have the right to apply all or any part of the funds then held by Mortgagee to any sums then due and payable to Mortgagee, by acceleration or otherwise, in such order as Mortgagee may elect instead of applying the same to the payment of insurance premiums as otherwise provided herein.

(e) Mortgagee may, in its sole discretion, designate a third party to maintain the escrow for insurance premiums provided for herein on such terms and conditions as may be satisfactory to Mortgagee. Mortgagor shall on demand pay the fees of such third party, which may be an affiliate or subsidiary of Mortgagee. At Mortgagee's option, the amount of such third party fees shall be added to the amount estimated by Mortgagee or such third party to be paid into escrow pursuant to this Section and may be paid out of such escrow to such third party as and when such fees are due and payable before the application of such funds to the payment of insurance premiums.

(f) The provisions of this Section 2.10 shall be waived so long as (i) an Event of Default has not occurred hereunder (even if subsequently cured), (ii) Mortgagor does not fail to provide proof that such insurance premiums have been paid as required by Subsection 2.09(c), without the necessity of Mortgagee having to demand such proof, (iii) the Property generates a Debt Yield in excess of 6.0%, utilizing the provisions of **Rider 4** hereof for purposes of computing the same and (iv) there has been no transfer or change in control of the Mortgagor under Section 2.16 hereof, notwithstanding any provisions permitting such transfer. If Mortgagor shall fail to meet any of the above conditions, Mortgagor shall commence making such deposits in accordance with the requirements of Subsection 2.10(a) above on the next debt service due date under the terms of the Note, following written demand from Mortgagee.

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2.11 Leases.

(a) Mortgagor shall not enter into any Major Leases without Mortgagee's prior written consent in each instance, which consent shall not be unreasonably withheld. Furthermore, Mortgagor shall not have the right to enter into Leases other than Major Leases without Mortgagee's prior written consent, unless such Lease complies with the following conditions: (i) the tenant thereunder is an independent third party unaffiliated with Mortgagor; (ii) the Rents due and payable under any Lease demising more than 5,000 square feet are equal to or greater than 95% of the fair market rental of the space demised; (iii) the terms and conditions of the Lease were agreed to as result of bona fide arms-length negotiations, and are reasonable and usual in the area where the Premises are located, given the nature of the Premises and the size, proposed use and location of the space being demised; (iv) [intentionally omitted]; (v) the Lease is expressly by its terms subject and subordinate to this Mortgage and provides for the attornment of the tenant to Mortgagee or any other purchaser or purchasers upon foreclosure as provided below; (vi) the tenant under such Lease intends to use and occupy the space demised thereby in the conduct of its business and not for the purpose of releasing or subleasing, subject to customary rights of a retail operating tenant to "go dark", cease continuous operation, or sublease; (vii) such space is to be used solely for legal purposes consistent or compatible with the present and presently contemplated use of the Premises and such space; (viii) the Lease does not grant any option or right to acquire the Premises or any part thereof or interest therein; and (ix) no Event of Default has occurred and is continuing hereunder.

(b) Mortgagor shall pay, perform and discharge, as and when payment, performance and discharge are due, all obligations of Mortgagor as landlord under all Leases. Mortgagor shall give Mortgagee prompt notice of any default by Mortgagor claimed by any tenant under any Lease, together with a copy of any notice of default given by any such tenant to Mortgagor.

(c) Mortgagor shall enforce all covenants and agreements on the tenant's part to be performed or complied with under each of the Leases and on the guarantor's part to be performed or complied with under any guaranty given in connection with any Lease. Mortgagor shall not, without the prior written consent of Mortgagee in each instance, cancel, terminate or accept the surrender of any Major Lease or waive or release any obligation or liability of any tenant under any Major Lease or of any guarantor under any guaranty thereof.

(d) Mortgagor shall not, without Mortgagee's prior written consent in each instance, accept prepayment of rent (other than a security deposit) under any Lease for more than thirty (30) days in advance or permit any tenant to offset or credit sums due and payable by Mortgagor to such tenant against Rents. Mortgagor shall not create any lien or security interest which would be superior to the Leases or would, upon foreclosure, extinguish any of the Leases.

(e) Mortgagor shall, at Mortgagor's expense, appear in and defend any action or proceeding arising from or connected with any of the Leases or any obligation or liability of Mortgagor as landlord thereunder. Mortgagor shall diligently pursue all remedies, including, without limitation, claims for damages available at law or in equity against any tenant under a

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Major Lease or guarantor thereof and shall not settle or compromise any such claims without Mortgagee's prior written consent in each instance.

(f) Mortgagor shall, at any time and from time to time upon request by Mortgagee, execute, acknowledge and deliver to Mortgagee an assignment of the Leases, in form and substance satisfactory to Mortgagee, transferring and assigning Mortgagor's interest in the Leases to Mortgagee. Mortgagor shall furnish to Mortgagee copies of all Leases requested by Mortgagee within ten (10) days following Mortgagee's demand therefor.

(g) Mortgagor shall not, without Mortgagee's prior written consent in each instance, enter into any Lease after the date hereof unless such Lease shall expressly provide that, in the event of any foreclosure sale or sales hereunder, (i) such Lease shall continue in full force and effect and the tenant thereunder will, upon request, attorn to and acknowledge Mortgagee or any other foreclosure purchaser or purchasers, as the case may be, as the landlord(s) thereunder, and (ii) such Lease shall be subordinate to the lien of this Mortgage at the option of Mortgagee.

(h) Mortgagor shall not, without Mortgagee's prior written consent, which consent shall not be unreasonably withheld, (i) terminate any Major Lease, or (ii) terminate any other Lease unless the tenant thereunder is in default or Mortgagor enters into a new Lease with a substitute tenant for space equal to or greater in size than the space demised under the canceled Lease, for a term equal to or in excess of the canceled term and at a rent equal to or greater than the rent under the canceled Lease.

(i) No Lease shall afford any tenant the right or option to purchase any portion of the Premises, but if any Lease approved by Mortgagee contains a purchase right or purchase option in favor of the tenant, then any sums paid in connection with the exercise of such right or option shall be paid to Mortgagee, with prepayment charge, and applied in reduction of the sums hereby secured in such order as Mortgagee shall determine.

(j) Once Mortgagor has delivered to Mortgagee its request for any consent under Section 2.11(a) above, together with a complete copy of the relevant Lease documents (or a term sheet containing the material business terms of the proposed Lease documents and, if such term sheet is approved by Mortgagee, Mortgagee's consent rights to the relevant Lease documents shall apply only to matters not addressed in the approved term sheet) and any information reasonably required and requested by Mortgagee to evaluate the same (with such requests for additional supporting information to be made by Mortgagee within ten (10) Business Days of Mortgagee's receipt of the proposed Lease documents), which request shall contain the following language in all capital bold type: **"MORTGAGEE'S FAILURE TO RESPOND TO THIS FIRST REQUEST WITHIN TEN (10) BUSINESS DAYS SHALL TRIGGER A SECOND NOTICE WHICH SHALL REQUIRE A RESPONSE WITHIN FIVE (5) BUSINESS DAYS OR IT SHALL BE DEEMED TO BE ITS CONSENT TO SUCH REQUEST,"** if Mortgagee shall fail to respond to Mortgagor's request for such approval or consent within ten (10) Business Days of Mortgagee's receipt of the information set forth above, followed by Mortgagee's failure to respond within five (5) Business Days of a second request by Mortgagor, which second request for consent contains the following language in all capital bold type: **"MORTGAGEE'S FAILURE TO RESPOND TO THIS REQUEST WITHIN FIVE**

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(5) BUSINESS DAYS SHALL BE DEEMED TO BE ITS CONSENT TO SUCH REQUEST,” such failure shall be deemed to be Mortgagee’s approval of Mortgagor’s request for consent.

2.12 Environmental Compliance.

(a) In addition to and without limiting any other obligations of Mortgagor under this Mortgage and the other Loan Documents, Mortgagor shall comply with all Environmental Laws relating to the Premises and the conduct of Mortgagor’s business in connection therewith. Mortgagor shall immediately remove and dispose of any Hazardous Substance found on, in, under or affecting the Premises. All such removals and disposals shall be undertaken and performed in compliance with Environmental Laws. Mortgagor shall not release, or permit, allow or suffer any release or threat of release, of any Hazardous Substance on, in, under or affecting the Premises or from the Premises onto any properties adjacent to the Premises except for such de minimis releases typically associated with the use of portions of the Premises for driving and parking motor vehicles, and which, in Mortgagee’s sole and absolute opinion, are not likely to result in any liability under any Environmental Laws, and except for such amounts commonly and lawfully stored for use in the normal maintenance and operation of the Land and Improvements for their intended purpose and in compliance with Environmental Laws. Mortgagor shall not generate or permit, allow or suffer any Hazardous Substances to be generated on, in or under the Premises. Mortgagor shall not store or permit, allow or suffer Hazardous Substances to be stored on, in or under the Premises (except for (i) such amounts commonly and lawfully stored for use in the normal maintenance and operation of the Premises for its intended purpose and (ii) Hazardous Substances lawfully sold by tenants in the ordinary course of their business at the Premises, and in each case in compliance with Environmental Law). Mortgagor shall not permit, allow or suffer any lien under any Environmental Law to attach to or encumber the Premises or any part thereof or interest therein.

(b) Mortgagor shall indemnify Mortgagee, defend Mortgagee (with attorneys acceptable to Mortgagee) and hold Mortgagee harmless from and against any and all Environmental Losses.

(c) If Mortgagor shall fail to comply with any of the provisions of this Section or any provision of any other Loan Document relating to Hazardous Substances and/or Environmental Laws, Mortgagee shall have the right, but not the obligation, to enter upon the Premises and to expend funds to cure such failure by performing such remedial work as may be necessary to make the Premises conform to all Environmental Laws. Any amounts expended by Mortgagee as a result thereof shall be due and payable by Mortgagor to Mortgagee on demand and shall earn interest from and after the date the same are expended by Mortgagee, whether or not demand for repayment is then made, at the interest rate applicable under the Note from and after maturity. All such amounts and all interest thereon shall be a lien on and security interest in the Premises and shall be secured by this Mortgage in addition to all other obligations of Mortgagor to Mortgagee secured hereby. Any partial exercise by Mortgagee of Mortgagee’s remedies herein, including any partial undertaking by Mortgagee of remedial work, shall not obligate Mortgagee to continue to exercise such remedies or complete any remedial work commenced or take any further or additional actions or require Mortgagee to expend or incur any further sums in connection therewith. The exercise by Mortgagee of Mortgagee’s remedies

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herein shall not operate to place upon Mortgagee any responsibility for the operation, control, care, management or repair of the Premises, or make Mortgagee the “owner” or “operator” of the Premises or a “responsible party” within the meaning of Environmental Laws.

(d) Mortgagor shall provide Mortgagee with prompt written notice: (i) upon Mortgagor becoming aware of the presence of any Hazardous Substance on the Premises or any property adjacent thereto or of any release or threat of release of any Hazardous Substance on, in, under or affecting the Premises or emanating from the Premises, (ii) upon Mortgagor’s receipt of any notice from any federal, state, municipal or other governmental agency or authority in connection with any Hazardous Substance on, in, under or affecting the Premises or emanating from the Premises, (iii) upon Mortgagor obtaining knowledge of any incurrence of any expense by any governmental or quasi governmental authority in connection with the assessment, containment or removal of any Hazardous Substances located on, in, under or affecting the Premises or emanating from the Premises and (iv) upon receipt by Mortgagor from any adjoining property owner or other third-party claiming that Mortgagor or the Premises is in violation of Environmental Laws or that Hazardous Substances exist at or are being released from the Premises.

(e) Mortgagor shall comply in all respects with the recommendations set forth in Section 7.15 of that certain Phase I Environmental Site Assessment, prepared by CBRE, Inc., and identified thereon as CBRE Project No. PC61029786-107, with respect to the treatment and testing of building materials prior to any renovation or demolition at the Premises..

(f) Intentionally Omitted.

2.13 Casualty.

(a) If the Premises or any part thereof or interest therein is damaged or destroyed by any casualty having a cost to repair or restore exceeding \$50,000, Mortgagor shall give prompt notice thereof to Mortgagee.

(b) Mortgagee shall have the right to receive all proceeds of insurance for any casualty payable on account of any loss, damage or destruction affecting the Premises or any part thereof or interest therein that exceeds \$500,000 on a per occurrence basis, and Mortgagor hereby authorizes and directs each insurance company to pay all such insurance proceeds directly to Mortgagee. Mortgagor hereby absolutely, unconditionally and irrevocably assigns to Mortgagee all Mortgagor’s rights to such insurance proceeds, including, without limitation, the right to receive the same, and Mortgagor agrees to execute such further assignments confirming the foregoing as Mortgagee may from time to time require. So long as no Event of Default has occurred and is continuing, (i) Mortgagee shall have the right, but not the obligation, to participate in any action or proceeding in connection with any loss, damage or destruction and/or any settlement of the amount of insurance proceeds payable on account thereof that is for an amount that exceeds \$500,000 per occurrence, and (ii) there shall be no settlement, adjustment or compromise of any claim for loss, damage or destruction affecting the Premises or any part thereof or interest therein that is for an amount that exceeds \$500,000 per occurrence, under any policy of insurance without Mortgagee’s prior written consent. After the occurrence and during the continuance of any Event of Default Mortgagee shall have the right, but not the obligation,

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to commence, appear in and prosecute in its own name any action or proceeding in connection with any loss, damage or destruction and/or any insurance proceeds payable on account thereof and is hereby authorized and empowered by Mortgagor to settle, adjust or compromise all claims for loss, damage or destruction affecting the Premises or any part thereof or interest therein under all policies of insurance. Mortgagee shall not be responsible for any failure to collect any insurance proceeds, regardless of the cause of such failure.

(c) In the event the Premises or any part thereof or interest therein is damaged or destroyed by fire or other casualty, Mortgagee shall have the right, regardless of any impairment of security or lack thereof, to apply all or any part of the net insurance proceeds paid on account of such damage or destruction (i) to any Indebtedness secured hereby in such order as Mortgagee may determine or (ii) to the repair and restoration of the Premises. As used herein, "net insurance proceeds" shall mean the amount by which all insurance proceeds paid on account of any damage or destruction to the Premises or any part thereof or interest therein, exceed all costs and expenses, including, without limitation, the fees of attorneys, appraisers, engineers and other consultants and advisers, incurred by Mortgagee in connection with the collection of such proceeds, Mortgagee's decision to apply such proceeds to either the reduction of the Indebtedness and/or the repair and restoration of the Premises, and/or administering and monitoring the application of such proceeds to the repair and restoration of the Premises if Mortgagee elects to apply such proceeds or any part thereof to such purpose.

(d) Anything to the contrary in Subsection 2.13(c) notwithstanding, if thirty percent (30%) or more of the net rentable area of the Property is damaged or destroyed by fire or other casualty (as determined by an architect or engineer selected by Mortgagee, whose services shall be paid for by Mortgagor), Mortgagee's decision to apply all or any portion of the net insurance proceeds to repair and restoration instead of in reduction of the Indebtedness shall be made in Mortgagee's sole and absolute discretion and if less than thirty percent (30%) of the net rentable area of the Property is damaged or destroyed by fire or other casualty, then Mortgagee shall, upon Mortgagor's written request, permit Mortgagor to apply the net insurance proceeds paid on account of any casualty to the repair and restoration of the Parcel so damaged or destroyed subject to the terms and conditions set forth in Subsection 2.13(e), provided that the following conditions are met:

(i) No Event of Default exists hereunder and no event has occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default hereunder;

(ii) Such Parcel can, in Mortgagee's sole judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty causing the loss or damage within the earlier to occur of (A) eighteen (18) months after the receipt of insurance proceeds or (B) six (6) months prior to the stated maturity date of the Note;

(iii) All necessary governmental approvals can be obtained to allow the rebuilding and re-occupancy of such Parcel;

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(iv) There are sufficient funds available (through insurance proceeds and contributions by Mortgagor, the full amount of which shall at Mortgagee's option have been deposited with Mortgagee) for such restoration or repair, including without limitation, for any "upgrades" required by applicable law, for any costs and expenses of Mortgagee to be incurred in administering said restoration or repair and for payment of principal and interest to become due and payable under the Note during such restoration or repair;

(v) In Mortgagee's sole judgment, net operating income of the Property after completion of the restoration and repair (and accounting for any Leases which in Mortgagee's judgment are likely to be terminated by reason of the casualty), divided by the annual amount of debt service then payable under the Note, shall result in a quotient equal to or greater than two and a half (2.50);

(vi) In Mortgagee's sole judgment, the outstanding Indebtedness secured by the Security Instruments divided by the appraised value of the Property (determined on the assumption that restoration has been completed and all exercisable termination rights by reason of the casualty have been exercised by the tenants, such appraisal to be prepared by an appraiser selected by Mortgagee and paid for by Mortgagor) shall be equal to or less than fifty-five percent (55%); and

(vii) Intentionally omitted.

(viii) Mortgagor may satisfy the requirements of clauses (v) and (vi) above by prepaying a portion of the Loan, together with any applicable Prepayment Fee, in accordance with the requirements of the Note.

(e) If at Mortgagee's election or otherwise pursuant to the provisions hereof, the net insurance proceeds paid on account of any casualty are to be applied to the repair and restoration of the Premises, Mortgagor shall repair all damage and destruction and restore the Premises to a condition equal to or better than the condition of the Premises before the casualty. Mortgagee shall have the right, at Mortgagee's option, to hold all insurance proceeds for such casualty in excess of \$500,000 (which amount shall include any outstanding insurance proceeds made available by Mortgagee to any other Borrower for any ongoing repair or restoration at any other Parcel) pending completion of repairs and restoration and to disburse the same from time to time as work progresses subject to such disbursement procedures, terms and conditions as Mortgagee may establish. Such procedures, terms and conditions may include, without limitation, the following:

(i) Mortgagee's prior approval of all contractors, architects and engineers retained by Mortgagor for such work;

(ii) Mortgagee's prior approval of plans and specifications prepared by a licensed architect, of hard and soft cost budgets for such work and of all changes to the foregoing;

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(iii) Delivery to Mortgagee of evidence satisfactory to Mortgagee that all permits, licenses and approvals required for the work have been obtained and are in full force and effect;

(iv) Delivery to Mortgagee prior to each disbursement of insurance proceeds of such affidavits and certificates as to such matters as Mortgagee may request, including, without limitation, certificates of the approved architect or engineer that (A) all of the work completed has been done in compliance with the approved plans and specifications, if any, (B) such disbursement is justly required to reimburse such Mortgagor for payments by Mortgagor to, or are justly due to, contractors, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work, (C) the amount of such disbursement, when added to all sums previously disbursed by Mortgagee and all holdbacks, if any, does not exceed the cost of the work done to the date of such certificate, (D) the amount of insurance proceeds (and any additional equity contributed by Mortgagor) held by Mortgagee after such disbursement (without taking into account any holdbacks) will be sufficient on completion of the work to pay for the same in full;

(v) Delivery to Mortgagee prior to each disbursement of insurance proceeds of waivers or releases of lien for work completed and title searches confirming that there has not been filed with respect to the Premises any mechanics' or other lien or instrument for the retention of title in respect of any part of the work not discharged of record;

(vi) Retention of such holdbacks out of each disbursement for work performed as Mortgagee may deem advisable pending completion of the work;

(vii) Depositing with Mortgagee such sums in excess of undisbursed net insurance proceeds (exclusive of holdbacks) as Mortgagee may from time to time determine are required to complete the work;

(viii) Delivery of performance bonds and labor and material payment bonds issued by sureties acceptable to Mortgagee on such terms and in such amounts as Mortgagee shall determine;

(ix) Intentionally Omitted; and

(x) Delivery when the work has been completed of a copy of any certificate or certificates required by law to render occupancy of the Improvements legal.

(f) Mortgagor acknowledges and agrees that the rights granted Mortgagee in this Section in the event of any loss, damage or destruction of the Premises or any part thereof or interest therein constitute reasonable protections of Mortgagee's security therein and that Mortgagor's agreement to comply with such terms, conditions and procedures as Mortgagee may impose in return for its agreement to apply net insurance proceeds for repair and restoration constitutes consideration to Mortgagee for waiving its right hereunder to apply such proceeds to

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reduction of the Indebtedness secured hereby. Mortgagee shall have the right, but not the obligation, to apply any proceeds held by it to cure any default by Mortgagor under the Loan Documents. Mortgagee shall have no obligation to release any insurance proceeds, even after agreeing to apply the same to the repair and restoration of the Premises or after work thereon has commenced, following the occurrence of any Event of Default under this Mortgage, in which event Mortgagee shall have the right to apply the same to any Indebtedness secured hereby in such order as Mortgagee may determine. Excess insurance proceeds, if any, remaining after the completion of any repair and restoration being paid for out of net insurance proceeds (and after the payment by Mortgagor of the portion of the costs and expenses thereof equal to the amount of any deductible under Mortgagor's insurance policy) shall be applied to any Indebtedness secured hereby without a Prepayment Fee in such order as Mortgagee may determine.

(g) Nothing herein shall excuse Mortgagor from operating and maintaining the Premises following such casualty in accordance with the Section of this Mortgage entitled "Operation of Premises" or from promptly repairing all damage and restoring the Premises to a condition equal to or better than the condition of the Premises before the casualty, regardless of whether or not there are insurance proceeds available for such purposes or whether the amount of such insurance proceeds are sufficient therefor; provided that if Mortgagee does not permit insurance proceeds to be applied to the repair and restoration of the Premises, Mortgagor shall be permitted to obtain a release of the Premises upon satisfaction of the conditions set forth in Section 2.27 (except that such release shall not be subject to a Prepayment Fee and shall not count against the maximum of three (3) releases permitted by Subsection 2.27(c)). In such event, Mortgagor shall not be obligated to restore the Premises pending completion of the release except to the extent necessary to repair any conditions at the Premises that create imminent danger to life or safety, and Mortgagee shall disburse to Mortgagor (subject to the requirements of Section 2.13(d)) such portion of the casualty proceeds as Mortgagee reasonably determines to be necessary for such repair. Neither the application by Mortgagee of any such insurance proceeds to the Indebtedness secured hereby or the release of the same to Mortgagor for the repair and restoration of the Premises or otherwise shall cure or waive any default or Event of Default under this Mortgage or invalidate any act done pursuant to any notice of default given pursuant thereto.

(h) Notwithstanding any loss, damage or destruction of the Premises or any part thereof or interest therein or the application of any insurance proceeds realized thereby to the Indebtedness secured hereby, Mortgagor shall continue to pay the Note in accordance with the terms thereof and perform all the other obligations under this Mortgage until the entire Indebtedness secured hereby has been paid in full. No loss, damage or destruction shall be deemed to reduce any Indebtedness secured by this Mortgage or stay the accrual of interest thereon except to the extent insurance proceeds are actually received by Mortgagee and Mortgagee has given written notice to Mortgagor of the application of such proceeds to the reduction of the Indebtedness, which application shall be promptly made and which notice shall be promptly given.

(i) If, following the occurrence of any loss, damage or destruction to the Premises or any part thereof or interest therein but prior to the receipt by Mortgagee of any of the proceeds thereof, the Premises shall be sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive all insurance proceeds payable on account of such loss, damage or

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destruction and apply such proceeds to any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and to all costs and expenses, including attorneys' fees, incurred by Mortgagee in connection with the collection of such proceeds.

(j) Proceeds of insurance against loss of rental and/or business income shall be paid to Mortgagee to be applied each month first to accrued but unpaid interest as it becomes due and then to fund any required Property Tax or insurance deposit and the payment of any other amounts required by the Loan Documents. Thereafter, Mortgagee shall establish a reserve for any future payments Mortgagee reasonably determines should be paid from such proceeds and, provided no Event of Default hereunder or under any of the other Loan Documents shall have occurred and be continuing, Mortgagee shall remit the balance of such proceeds each month to Mortgagor.

2.14 Condemnation.

(a) Mortgagor shall give prompt written notice to Mortgagee of the occurrence of any Taking or of the receipt by Mortgagor of any notice or other information regarding any Taking or contemplated Taking.

(b) Mortgagee shall have the right to receive all proceeds payable on account of any Taking, and Mortgagor hereby authorizes and directs the government or quasi governmental authority doing such Taking to pay all proceeds payable on account thereof directly to Mortgagee. So long as no Event of Default has occurred and is continuing, (i) Mortgagee shall have the right, but not the obligation to participate in any action or proceeding in connection with any Taking and/or any settlement of the amount of proceeds payable on account thereof, and (ii) there shall be no settlement, adjustment or compromise in connection with any Taking affecting the Premises or any part thereof or interest therein without Mortgagee's prior written consent. After the occurrence and during the continuance of any Event of Default Mortgagee shall have the right, but not the obligation, to commence, appear in and prosecute in its own name any action or proceeding in connection with any Taking and to compromise or settle the same without Mortgagor's consent. Mortgagor hereby absolutely, unconditionally and irrevocably assigns to Mortgagee all Mortgagor's rights in respect of any Taking, including, without limitation, the right to receive all proceeds thereof and Mortgagor agrees to execute such further assignments confirming the foregoing as Mortgagee may from time to time require. Mortgagee shall not be responsible for any failure to collect any such proceeds, regardless of the cause of such failure.

(c) Mortgagee shall have the right, in its sole and absolute discretion, regardless of any impairment of security or lack thereof, to apply all or any part of the net condemnation proceeds of any Taking (i) to any Indebtedness secured hereby in such order as Mortgagee may determine or (ii) to the repair and restoration of the remaining portions of the Premises; provided, however, for any Taking in which (x) the condemnation proceeds are less than \$500,000, (y) after such Taking and restoration, the Premises will remain in compliance with applicable law, and (z) public access to the Premises is not materially affected, Mortgagee shall make such proceeds available to Mortgagor for repair and restoration of the Premises upon satisfaction of the terms and conditions set forth in Section 2.13(d). As used herein, "net

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condemnation proceeds” shall mean the amount by which all proceeds paid on account of any Taking exceed all costs and expenses, including, without limitation, the fees of attorneys, appraisers, engineers and other consultants and advisers, incurred by Mortgagee in connection with the collection of such proceeds, Mortgagee’s decision to apply such proceeds to either the reduction of the Indebtedness and/or the repair and restoration of the remaining portions of the Premises, and/or administering and monitoring the application of such proceeds to the repair and restoration of the remaining portions of the Premises if Mortgagee elects to apply such proceeds or any part thereof to such purpose.

(d) Subject to Section 2.14(c) above, Mortgagee’s decision to apply all or any portion of the net condemnation proceeds to repair and restoration instead of in reduction of the Indebtedness shall be made in Mortgagee’s sole and absolute discretion and shall be based on consideration of such factors as Mortgagee deems relevant including, without limitation, the criteria set forth in the Section of this Mortgage entitled “Casualty” with respect to the application of net insurance proceeds.

(e) If Mortgagee elects to apply the net condemnation proceeds paid on account of any Taking to the repair and restoration of the remaining portions of the Premises, Mortgagor shall, to the maximum extent possible with the use of net condemnation proceeds, repair all damage and restore the remaining portion of the Premises to a condition equal to or better than the condition of the entire Premises before the Taking. Mortgagee shall have the right, at Mortgagee’s option, to hold all net condemnation proceeds of any Taking pending completion of repairs and restoration and to disburse the same from time to time as work progresses subject to such disbursement procedures, terms and conditions as Mortgagee may establish. Such procedures, terms and conditions may include, without limitation, the requirements set forth in the Section of this Mortgage entitled “Casualty” with respect to the disbursement of net insurance proceeds for repair and restoration.

(f) Mortgagor acknowledges and agrees that the rights granted Mortgagee in this Section in the event of any Taking constitute reasonable protections of Mortgagee’s security in the Premises and that Mortgagor’s agreement to comply with such terms, conditions and procedures as Mortgagee may impose in return for its agreement to apply the net condemnation proceeds of any Taking for repair and restoration constitutes consideration to Mortgagee for waiving its right hereunder to apply such proceeds to reduction of the Indebtedness secured hereby. Mortgagee shall have the right, but not the obligation, to apply any net condemnation proceeds held by it to cure any default by Mortgagor under the Loan Documents. Mortgagee shall have no obligation to release any net condemnation proceeds, even after agreeing to apply the same to the repair and restoration of the Premises or after work thereon has commenced, following the occurrence of an Event of Default under this Mortgage, in which event Mortgagee shall have the right to apply the same to any Indebtedness secured hereby in such order as Mortgagee may determine. Excess net condemnation proceeds, if any, remaining after the completion of any repair and restoration being paid for out of net condemnation proceeds shall be applied to any Indebtedness secured hereby without a Prepayment Fee in such order as Mortgagee may determine.

(g) Nothing herein shall excuse the Mortgagor from operating and maintaining the Premises or any portion thereof remaining after such Taking in accordance with

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the Section of this Mortgage entitled "Operation of Premises" or from promptly repairing and restoring the Premises or the remaining portion thereof, to the maximum extent possible, to a condition equal to or better than the condition of the entire Premises before such Taking, regardless of whether or not there are proceeds available for such purposes or whether the amount of such proceeds are sufficient therefor; provided that if Mortgagee does not permit condemnation proceeds to be applied to the repair and restoration of the Premises, Mortgagor shall be permitted to obtain a release of the Premises upon satisfaction of the conditions set forth in Section 2.27 (except that such release shall not be subject to a Prepayment Fee and shall not count against the maximum of three (3) releases permitted by Subsection 2.27(c)). In such event, Mortgagor shall not be obligated to restore the premises pending completion of the release except to the extent necessary to repair any conditions at the Premises that create an imminent danger to life or safety, and Mortgagee shall disburse to Mortgagor (subject to the requirements of Section 2.13(d)) such portion of the net condemnation proceeds as Mortgagee reasonably determines to be necessary for such repair. Neither the application by Mortgagee of any such proceeds to the Indebtedness secured hereby nor the release of the same to Mortgagor for the repair and restoration of the Premises or otherwise shall cure or waive any default or Event of Default under this Mortgage or invalidate any act done pursuant to any notice of default given pursuant thereto.

(h) Notwithstanding the occurrence of any Taking or the application of any proceeds realized thereby to the Indebtedness secured hereby, Mortgagor shall continue to pay the Note in accordance with the terms thereof and perform all the other obligations under this Mortgage until the entire Indebtedness secured hereby has been paid in full. No Taking shall be deemed to reduce any Indebtedness secured by this Mortgage or stay the accrual of interest thereon except to the extent any proceeds thereof are actually received by Mortgagee and Mortgagee has given written notice to Mortgagor of the application of such proceeds to the reduction of the Indebtedness, which application shall be promptly made and which notice shall be promptly given.

(i) If, following the occurrence of any Taking but prior to the receipt by Mortgagee of any of the proceeds thereof, the Premises shall be sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive all proceeds payable on account of such Taking and apply such proceeds to any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and to all costs and expenses, including attorneys' fees incurred by Mortgagee in connection with the collection of such proceeds.

2.15 Records and Accounts. Mortgagor shall keep or cause to be kept full, true and complete records and books of account in accordance with generally accepted accounting principles. Mortgagor's fiscal year shall be the calendar year, and its accounts shall be kept on such basis. Mortgagor's accounts shall be kept current at all times, and all transactions of Mortgagor shall be promptly and accurately entered therein. All Mortgagor's records and books of account, originals of all documents with respect to its organization, all minute books and other records relating to its continued existence, originals of all Leases, Contracts, insurance policies and any and all other agreements relating to or affecting the Premises, all correspondence and other files relating thereto, originals of all licenses and permits, all plans and specifications with respect to the Premises, all environmental reports, financial analyses, engineering reports,

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appraisals and other studies undertaken by, for or at the direction of Mortgagor with respect to the Premises and all other documents and materials of any kind whatsoever relating to Mortgagor, the Premises and/or the business of Mortgagor conducted thereat normally and usually maintained by owners of similar properties shall be kept and maintained by Mortgagor at the Premises or at the principal office of Mortgagor.

2.16 Restrictions on Alienation and Further Encumbrances.

(a) Mortgagor warrants that Mortgagor has good title to the Premises and all parts thereof and interests therein and has full power and authority to encumber the same by this Mortgage. Mortgagor shall and will make, execute, acknowledge and deliver in due form all such further or other deeds or assurances as may at any time hereafter be reasonably desired or required to more fully and effectively convey the Premises as hereby granted or intended so to be, unto Mortgagee for the purposes set forth herein, and will warrant and defend the Premises and all parts thereof and interests therein unto all and every person or persons deriving any estate, right, title or interest therein under this Mortgage or the power of sale herein contained, against Mortgagor and all persons claiming through Mortgagor.

(b) Mortgagor shall not, without Mortgagee's prior written consent in each instance, voluntarily sell, assign, convey, transfer, grant, or otherwise dispose of the Premises or any part thereof or interest therein or permit, allow or suffer any involuntary sale, assignment, conveyance, transfer or other disposition of the Premises or any part thereof or interest therein to take place.

(c) Mortgagor shall not, without Mortgagee's prior written consent in each instance, permit, allow or suffer any person to voluntarily or involuntarily sell, assign, convey, transfer or otherwise dispose of or permit, allow or suffer any person to voluntarily or involuntarily purchase or otherwise acquire any legal or beneficial interest in Mortgagor, or any legal or beneficial interest in any other person, having directly or indirectly through one or more intermediate persons or otherwise, any legal or beneficial interest in Mortgagor, if as a result of such sale, assignment, conveyance, transfer or other disposition or as a result of such purchase or other acquisition, CLPF or KSA would either (i) cease to own directly or indirectly, individually or collectively, at least a 51% ownership interest in Mortgagor or (ii) cease to control, directly or indirectly, individually or collectively, the day-to-day decision making of the Mortgagor (the "Ownership and Control Requirement").

(d) Mortgagor shall not, without Mortgagee's prior written consent in each instance, voluntarily or involuntarily (i) sell, assign, convey, transfer, grant, mortgage, pledge or otherwise dispose of the Premises or any part thereof or interest therein as security for any Indebtedness or other obligations, (ii) grant any security interest therein, (iii) assign the whole or any part of the Leases or the rents, issues, profits, royalties, bonuses, income or other benefits derived from or produced by the Premises, (iv) otherwise lien, mortgage, collateralize, pledge or in any way hypothecate the Premises or any part thereof or interest therein, (v) permit or allow any mezzanine financing to occur, which includes financing pursuant to which ownership interests in Mortgagor, or in any entity holding a direct or indirect interest in Mortgagor, is pledged as security, or (vi) permit, allow or suffer any of the foregoing to take place. Notwithstanding the foregoing, the following shall not be prohibited: (A) pledges of ownership

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interests in CLPF, KSA or in any entity holding direct or indirect interests in CLPF or KSA and (B) provided the following requirements are satisfied, financing obtained by CLPF or KSA whereby interests in Clarion KSA Grocery Portfolio, LLC, CLPF – Grocery Portfolio GP, LLC, or CLPF – Grocery Portfolio, L.P. (and no other entities holding interests, directly or indirectly, in Borrowers), are pledged as security:

- (1) the terms of such financing shall require CLPF or KSA, as applicable, to (x) repay any such financing from the proceeds of all or substantially all of CLPF's or KSA's holdings generally, and not solely from the income attributable to the Property and (y) pledge all of CLPF's or KSA's ownership interests in all or substantially all of its other directly owned subsidiaries as security for such financing;
- (2) Mortgagor and CLPF or KSA, as applicable, shall deliver copies of any notices of any default under such financing to Mortgagee immediately upon receipt thereof;
- (3) under no circumstances shall Mortgagee be required to enter into an intercreditor agreement, recognition agreement, or any other agreement recognizing the rights and remedies of any lender providing such financing, nor shall Mortgagee be required to provide such lender with copies of any notices issued hereunder or under any of the other Loan Documents;
- (4) the Ownership and Control Requirement shall be satisfied at all times notwithstanding any exercise of remedies by a lender under any such financing, it being understood that, unless Mortgagee's consent is obtained prior to the exercise of such remedies, any transfer may result in an Event of Default hereunder; and
- (5) such financing shall be provided only by a bank, life insurance company, pension fund or other institutional lender.

The foregoing provisions of this clause 2.16(d)(B) shall not be deemed to waive, qualify or otherwise limit Mortgagor's obligation to comply (or cause the compliance with) the other covenants set forth in this Mortgage and the other Loan Documents (including, without limitation, those covenants relating to the Ownership and Control Requirement).

(e) Notwithstanding the foregoing, Mortgagor shall have the right, without first obtaining Mortgagee's consent, to remove and dispose of, free and clear of the lien and security interest of this Mortgage, such Equipment as may from time to time become worn out or obsolete or is no longer necessary for the operation of the Premises, provided that Mortgagor shall either (i) simultaneously with or prior to removing any such Equipment, replace such Equipment (other than Equipment that is of a type no longer being used at the Premises) with other equipment of a value at least equal to that of the replaced Equipment, free and clear of any title retention or security agreement or other encumbrance, and by such removal and replacement Mortgagor shall be deemed to have subjected such Equipment to the lien and security interest of this Mortgage, or (ii) promptly pay over to Mortgagee all net cash proceeds received from such disposition, which sums shall be applied by Mortgagee without a Prepayment Fee to any Indebtedness secured hereby in such order as Mortgagee may determine.

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(f) Notwithstanding the foregoing, the filing of one or more mechanics' liens against the Premises shall not be an Event of Default hereunder if, within thirty (30) days following any such filing, Mortgagor shall have either (i) filed a bond with respect to such lien(s) in such amounts and in such form and content so as to cause the said lien(s) to be removed as lien(s) against the Premises and delivered to Mortgagee such proof of the removal of such liens as shall be satisfactory to Mortgagee in its sole and absolute discretion or (ii) deposited an amount equal to one and one-half (1-1/2) times the claimed amount of lien with Mortgagee or its designee on such terms and conditions as shall be satisfactory to Mortgagee in its sole and absolute discretion, including, without limitation, the right to require that additional sums be deposited from time to time so that the amount deposited shall in Mortgagee's sole and absolute discretion be at all times not less than one and one half (1-1/2) times the aggregate of all sums claimed by the mechanics' lienors thereunder to be due and payable and the right to apply such deposited amounts to the payment and discharge of such lien if Mortgagee determines in its sole judgment that such lien is about to be foreclosed.

(g) Notwithstanding the foregoing, transfers of partnership interests, membership interests or corporate shares in Mortgagor or an entity directly or indirectly holding an interest in Mortgagor (i) among partners, members or shareholders of Mortgagor or such entity existing as of the date hereof, (ii) by the investors in CLPF or KSA, (iii) to immediate family members of such partners, members or shareholders for estate planning purposes, or (iv) by persons directly holding preferred shares of non-controlling, non-voting interests in CLPF – KSA Grocery Portfolio REIT, LLC to third parties solely for the purpose of maintaining CLPF – KSA Grocery Portfolio REIT, LLC's qualification as a "real estate investment trust" under Section 856 of the Internal Revenue Code of 1936, as amended, shall be permitted without Mortgagee's consent and without the necessity of paying any assumption or other fee, provided that in no event shall any such transfer result in the facts set forth in Subsection 2.16(c) to occur. For avoidance of doubt, transfers of direct and indirect ownership interests in CLPF and KSA shall be permitted, provided that the Ownership and Control Requirement is satisfied at all times. "**Immediate family members**" shall mean the spouse, children or grandchildren of each holder of an interest in Mortgagor, whether directly or indirectly, or a trust, charitable foundation or other entity created by or for the benefit of one or more such persons.

(h) Notwithstanding the foregoing, Mortgagee shall consent to a one time sale, conveyance or transfer of all of the Property in its entirety, including the Premises encumbered by this Mortgage (hereinafter, a "**Sale**"), provided that each of the following terms and conditions is satisfied:

(i) there is no uncured Event of Default hereunder or under any of the other Loan Documents;

(ii) Mortgagor gives Mortgagee written notice of the terms of such prospective Sale not less than thirty (30) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Mortgagee all such information concerning the proposed transferee of the Property (hereinafter, "**Buyer**") as is required to demonstrate the Buyer's compliance with the requirements enumerated below;

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(iii) Mortgagee is paid, concurrently with the closing of such Sale, a non-refundable assumption fee in an amount equal to all out-of-pocket costs and expenses of Mortgagee, including, without limitation, attorneys' fees, incurred by Mortgagee in connection with the Sale plus an amount equal to seventy-five hundredths percent (0.75%) of the then outstanding principal balance of the Note; all out-of-pocket expenses of Mortgagee in connection with granting or considering the assumption shall be the responsibility of Mortgagor whether or not such assumption is consummated;

(iv) The Buyer assumes and agrees to pay the Indebtedness secured hereby subject to the provisions of Section 3.09 hereof and, prior to or concurrently with the closing of such Sale, the Buyer executes, without any cost or expense to Mortgagee, such documents and agreements as Mortgagee shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions as Mortgagee may require;

(v) Mortgagor and the Buyer execute, without any cost or expense to Mortgagee, new financing statements or financing statement amendments and any additional documents requested by Mortgagee;

(vi) Mortgagee receives, without any cost or expense to Mortgagee, such endorsements to Mortgagee's title insurance policy, hazard insurance endorsements or certificates and other similar materials as Mortgagee may deem necessary at the time of the Sale, all in form and substance satisfactory to Mortgagee, including, without limitation, an endorsement or endorsements to Mortgagee's title insurance policy insuring the lien of this Mortgage, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above in Subsection 2.16(h)(iv) with no additional exceptions added to such policy and insuring that fee simple and/or good leasehold title, as applicable, to the Property is vested in the Buyer, other than such exceptions to which Mortgagee shall have theretofore consented;

(vii) Mortgagor executes and delivers to Mortgagee, without any cost or expense to Mortgagee, a release of Mortgagee, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Loan Documents through and including the date of the closing of the Sale, which agreement shall be in form and substance satisfactory to Mortgagee and shall be binding upon the Buyer.

(viii) Subject to the provisions of Section 3.09 hereof, such Sale is not construed so as to relieve Mortgagor of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale and Mortgagor executes, without any cost or expense to Mortgagee, such documents and agreements as Mortgagee shall require to evidence and effectuate the ratification of said personal liability;

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(ix) The Buyer, or those holding a Controlling Interest in Buyer, is a professionally managed public retirement system, private pension fund or pooled investment fund, life insurance company, publicly traded real estate investment trust, or similar institutional investor, which has (A) a minimum net worth based on assets other than the Property of not less than \$250,000,000 and (B) liquidity cash or cash equivalents of no less than \$8,000,000;

(x) The Buyer, or those holding a Controlling Interest in Buyer (or investment adviser, if the Buyer is an investment fund), has sufficient experience and industry reputation reasonably acceptable to Mortgagee, in owning and operating properties similar to the Property and at the time of the Sale, owns and/or manages at least 2,000,000 square feet of retail space;

(xi) Such Sale is not construed so as to relieve any current guarantor or indemnitor of its obligations under any guaranty or indemnity agreement executed in connection with the loan secured hereby and each such current guarantor and indemnitor executes, without any cost or expense to Mortgagee, such documents and agreements as Mortgagee shall reasonably require to evidence and effectuate the ratification of each such guaranty and indemnity agreement; *provided that* if a principal or principals of the Buyer meeting the financial criteria set forth in Subsection 2.16(h)(ix) above, assumes the obligations of the current guarantors or indemnitors under their guaranty or indemnity agreements and such principal(s) executes, without any cost or expense to Mortgagee, a new guaranty or indemnity agreement in form and substance satisfactory to Mortgagee, then Mortgagee shall release the current guarantors or indemnitors from all obligations arising under its guaranty or indemnity agreement from and after the closing of such Sale (provided, Mortgagee will accept an environmental insurance policy satisfactory to Mortgagee in lieu of a new environmental indemnity);

(xii) All costs and expenses of Mortgagee in connection with such Sale, including without limitation, reasonable attorneys' fees, title insurance expenses and appraisal fees shall be paid or caused to be paid by Mortgagor;

(xiii) The Debt Yield (as determined in accordance with *Rider 4* attached hereto) following the Sale shall be no less than 10.00% as determined by Mortgagee;

(xiv) At the time of the Sale, the outstanding principal balance of the Indebtedness secured hereby divided by the appraised value of the Property shall be equal to or less than 55% as determined by a MAI appraisal secured by Mortgagee at Mortgagor's cost and expense; and

(xv) Buyer nor any of its affiliates shall, within the ten (10) year period prior to the proposed Sale, have been an Adverse Party or shall have defaulted or failed to repay any loan from Mortgagee (which term for purposes of this subparagraph (xv) shall include any affiliate of Mortgagee) when due. As used herein, "**Adverse Party**" means a person who has sought collection from

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Mortgagee, or from whom Mortgagee has sought collection, of more than \$500,000.

Mortgagor shall be permitted to prepay a portion of the Loan, together with any applicable prepayment charge, to satisfy the requirements of clauses (xiii) or (xiv) above.

2.17 Reports to Mortgagee. In addition to all other deliveries which Mortgagor is required to make to Mortgagee elsewhere in this Mortgage and without limiting Mortgagor's obligations with respect thereto, Mortgagor shall deliver the following to Mortgagee, all of which shall be prepared at Mortgagor's sole cost and expense and shall be in such form and contain such detail as Mortgagee may at any time and from time to time require in its reasonable discretion:

(a) No later than May 1st of each calendar year, a current rent roll for the Premises, copies of all Leases entered into during the immediately preceding calendar year (including, without limitation, all amendments, modifications, terminations, extensions and/or renewals of preexisting Leases), and aggregate sales reports for each tenant (to the extent such tenants are required to provide such statements pursuant to the terms of the applicable Lease; *provided, that*, Mortgagor's failure to provide such statements shall not be a default hereunder if Mortgagor has made a written demand to the applicable tenant to produce such statements and such tenant has failed to produce the same), all certified as true, complete and correct by an Approved Signatory. The rent roll shall include, without limitation, the name of each tenant, the space demised by such tenant's lease, the expiration date of such tenant's Lease (taking into account all periods, if any, covered by extension or renewal options granted to such tenant which have been theretofore exercised).

(b) No later than May 1st of each calendar year, an annual report on the operations of Mortgagor, the Premises and any indemnitor or guarantor under the Loan Documents for the immediately preceding calendar year (the "Subject Year"). Such report shall include Mortgagor's and any indemnitor or guarantor's balance sheet dated as of December 31st of the Subject Year, a statement of income and expenses with respect to the Premises for the Subject Year dated as of December 31st of the Subject Year, and the other information shown on the reports of Mortgagor and any indemnitor or guarantor submitted to Mortgagee in connection with the closing of the Loan. The annual report of each indemnitor and guarantor shall be audited by an independent certified public accountant. The balance sheet and statement of income and expense provided by Mortgagor shall be certified as true, complete and correct in all material respects by an Approved Signatory of Mortgagor.

(c) No later than fifteen (15) days following Mortgagee's request therefor, a report on the operations of Mortgagor and the Premises for the most recently completed calendar quarter and the year to date. Such report shall include, without limitation, Mortgagor's balance sheet dated as of the last day of such quarter, and a statement of income and expense with respect to the Premises for such quarter and the year to date. Such report shall be certified as true, complete and correct in all material respects by an Approved Signatory. If Mortgagee's demand shall be given within sixty (60) days following the end of a calendar quarter, the most recently completed calendar quarter shall mean the calendar quarter immediately preceding such recently completed calendar quarter.

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(d) No later than fifteen (15) days following Mortgagee's request therefor, a current rent roll for the Premises; Mortgagor's operating and capital budgets for the current calendar year and, if such request is made after December 31st of any year, Mortgagor's operating and capital budgets for the next succeeding calendar year; in each case certified as true, complete and correct in all material respects by an Approved Signatory.

(e) No later than fifteen (15) days following Mortgagee's request therefor, a certificate of an Approved Signatory certifying that (i) Mortgagor's organizational chart attached as Exhibit G to the Closing Certification is true and correct (or specifying any changes thereto and providing an updated organizational chart) and (ii) the Ownership and Control Requirement is satisfied.

(f) No later than fifteen (15) days following Mortgagee's request therefor made no more than twice in any calendar year (unless an Event of Default is outstanding), copies of all Leases, Contracts, any other agreements relating to or affecting Mortgagor or the Premises, and any other information related to the foregoing that Mortgagee shall reasonably require, certified as true and complete by an Approved Signatory.

(g) No later than fifteen (15) days following Mortgagee's request therefor, a certificate of Mortgagor in form satisfactory to Mortgagee stating the amount of the then unpaid principal balance of the Note, the amount of any unpaid interest accrued thereon, the interest rate then being earned on the outstanding principal balance of the Note, the date to which the last installment of interest or principal and interest has been paid, whether or not, to the best of Mortgagor's knowledge, any Event of Default then exists or any event has occurred which, with the giving of notice or passage of time or both, would constitute an Event of Default and that no offsets, counterclaims or defenses exist with respect to Mortgagor's obligations thereunder.

(h) No later than ten (10) days after Mortgagor's receipt thereof, true and complete copies of (i) all notices (x) of monetary defaults and material non-monetary defaults given to Mortgagor by any tenant under a Major Lease, or (y) from any party to a Contract or other agreement alleging an amount in dispute in excess of \$50,000, in each case, with respect to or affecting Mortgagor or the Premises, (ii) all notices issued by any governmental or quasi governmental authority or corporation having jurisdiction over Mortgagor or the Premises of any violation of law at the Premises and (iii) all notices, correspondence, legal papers or other documents relating to any suits, proceedings or other actions claiming damages in excess of (A) \$50,000 if not covered by insurance and (B) \$250,000 if covered by insurance, that are threatened in writing, being commenced or pending against Mortgagor or the Premises before any court of law, administrative agency, arbitration panel or other adjudicating body.

2.18 Change in Indemnitor's Condition

(a) If any financial statement delivered pursuant to Subsection 2.17(b) establishes or Mortgagee at any time determines that (i) any indemnitor or guarantor's net worth based on assets other than the Property is less than seventy-five million dollars (\$75,000,000) for CLPF or seventy-five million dollars (\$75,000,000) for KSA or (ii) liquidity (cash or cash equivalents) is less than \$3,000,000 for CLPF or \$3,000,000 for KSA (and in the case of KSA, Mortgagee's determination of liquidity shall include KSA's uncalled capital, including reserve

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commitments, less any borrowings under any subscription line), then Mortgagor shall, within fifteen (15) business days after a written request made by Mortgagee, deliver to Mortgagee either (A) a new Environmental Indemnity Agreement, a new Limited Indemnity Agreement, a new Guaranty and a replacement for any other agreements providing for recourse liability delivered as a Loan Document, each executed by a person, which meets the net worth, liquidity, net income and contingent liability tests previously set forth in this sentence, and which is satisfactory to Mortgagee to replace the Environmental Indemnity Agreement, the Limited Indemnity Agreement, the Guaranty and any other agreements providing for recourse liability delivered as a Loan Document executed by the respective indemnitor or guarantor, (B) a letter of credit in the amount of \$10,000,000 drawn on a bank, in an amount, for a term and otherwise containing provisions satisfactory to Mortgagee, which shall secure the performance of the applicable indemnitor and/or guarantor under each instrument referred to in Subsection 2.18(a)(A) above or (C) the agreement of the remaining, non-defaulting indemnitor or guarantor to maintain net worth of at least \$150,000,000 and liquidity of at least \$6,000,000 and be liable for one hundred percent (100%) of the Guaranty and the Environmental Indemnity (if such Indemnitor is then a party to the Environmental Indemnity); provided, however, if such non-defaulting indemnitor or guarantor is KSA, KSA's uncalled capital and reserve commitments shall not be counted towards satisfying such liquidity requirement. The issuer bank shall have a P1 Moody's short-term rating or equivalent rating by another rating service acceptable to Mortgagee. In the event the rating for the issuer bank is downgraded below P1 or equivalent rating, then upon ten (10) days prior written demand, Mortgagor shall cause the letter of credit to be guaranteed or confirmed by a bank with a satisfactory rating or a substitute letter of credit acceptable to Mortgagee issued by a satisfactorily rated bank shall be delivered. Mortgagee shall receive a perfected first security interest in such letter of credit, which shall also be additional security for repayment of the Loan. If Mortgagor fails to do so (in respect of any indemnitor or guarantor that, in Mortgagee's determination, fails to satisfy the minimum net worth and liquidity tests set forth in subsections (i) and (ii) above) within such period of fifteen (15) business days, then Mortgagee shall have the right, by giving written notice to Mortgagor, to declare the entire unpaid balance of the principal sum of the Note and all accrued and unpaid interest thereon to be immediately due and payable, and the same shall become immediately due and payable.

(b) If any indemnitor or guarantor shall be an individual upon the death or disability of such individual, Mortgagor shall immediately notify Mortgagee of that fact and within fifteen (15) business days after a written request made by Mortgagee, Mortgagor shall comply with Subsection 2.18(a)(i) or (ii).

2.19 Mortgagee's Due Diligence.

(a) Mortgagee shall have the right, but not the obligation, until all Indebtedness secured hereby has been paid in full and all other obligations of Mortgagor to Mortgagee under the Loan Documents have been fully performed, to conduct such on-going due diligence with respect to Mortgagor, the Premises and the business of Mortgagor with respect thereto as Mortgagee may in its sole and absolute discretion determine is necessary or advisable to fully and properly monitor and ascertain the ability of Mortgagor to pay such Indebtedness

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and perform such other obligations, the condition of the Premises and Mortgagor's compliance with the terms and conditions of the Loan Documents.

(b) Without limiting the foregoing, Mortgagee and its officers, employees, representatives, consultants, accountants, advisers, contractors and other agents shall have the right, but not the obligation, at any time and from time to time, whether or not an Event of Default shall then exist, on reasonable advance notice during ordinary business hours to (i) enter upon the Premises and all portions thereof in order to conduct any and all inspections, tests, appraisals and other investigations, including, without limitation, physical inspections and environmental audits and tests, as Mortgagee may in its sole and absolute discretion deem necessary or advisable, (ii) inspect, copy (at Mortgagor's expense) and audit all Mortgagor's files, accounts, books and records, including, without limitation, the documents and materials described in the Section of this Mortgage entitled "Records and Accounts," at the Premises or Mortgagor's principal office, and (iii) conduct discussions with the property manager for the Premises and its employees, tenants under Leases, beneficiaries under other deeds of trust, mortgagees under other mortgages, parties under Contracts and other material agreements pertaining to or affecting Mortgagor, the Premises or the business of Mortgagor conducted with respect thereto and/or any governmental or quasi governmental authorities and corporations having jurisdiction over Mortgagor or the Premises or any part thereof or interest therein.

(c) Mortgagor shall cooperate with and assist Mortgagee in its efforts to acquire such information with respect to Mortgagor, the Premises and/or the business of Mortgagor conducted thereon as Mortgagee may require and shall promptly answer such inquiries with respect thereto as Mortgagee may at any time or from time to time make to Mortgagor.

(d) All costs and expenses, including, without limitation, attorneys' fees, incurred or expended by Mortgagee in conducting due diligence with respect to Mortgagor, the Premises and/or the business of Mortgagor with respect thereto following, or in contemplation of, the occurrence of an Event of Default, including, without limitation, physical inspections, appraisals and environmental audits and tests, shall be deemed to be incurred and/or expended in connection with the collection of the Indebtedness and Mortgagee shall be reimbursed by Mortgagor therefor as provided in the Section of this Mortgage entitled "Reimbursement of Expenses."

2.20 Mortgagee's Rights of Cure. In the event of any default in the observance, performance, fulfillment or discharge of any of Mortgagor's obligations, covenants, conditions, warranties, representations or agreements herein, Mortgagee shall have the right, but not the obligation, to cure such default. Any sums advanced by Mortgagee to pay the cost of curing any such default shall be due and payable by Mortgagor to Mortgagee on demand and shall earn interest from and after the date the same are paid by Mortgagee, whether or not demand for repayment is then made, at the interest rate applicable under the Note from and after maturity. All sums so advanced and all interest thereon shall be a lien on and security interest in the Premises and shall be secured by this Mortgage in addition to all other obligations of Mortgagor to Mortgagee secured hereby. If, at the time Mortgagee elects to cure such default, Mortgagee shall hold any insurance or condemnation proceeds, Property Tax or insurance escrows or other sums pursuant to this Mortgage or any other Loan Document, Mortgagee may, at its option and

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without notice to Mortgagor, apply such funds, in such order as it deems appropriate, to the payment of all costs of such cure, notwithstanding anything to the contrary elsewhere contained in the Loan Documents, in lieu of advancing its own funds for such purpose. If Mortgagee has advanced its own funds to cure such default, Mortgagee shall have the right, at any time that any such advances remain unpaid, without notice to Mortgagor, to apply any proceeds, escrows or other sums then held by Mortgagee pursuant to this Mortgage or any other Loan Document, notwithstanding anything to the contrary elsewhere contained in the Loan Documents, to the payment of such advances and all outstanding and unpaid interest, if any, thereon. Upon demand by Mortgagee, Mortgagor shall immediately replenish the amount of any proceeds, escrows or other sums so applied by Mortgagee so that Mortgagee shall thereafter hold the same amount of proceeds, escrows and other sums which Mortgagee would have held but for the exercise of the rights granted Mortgagee in this Section.

2.21 Further Advances. Until this Mortgage is released of record, Mortgagee may, but shall not be obligated to, make such additional advances and readvances to the Mortgagor from time to time and said advances and readvances shall become part of the Indebtedness secured hereby to the fullest extent permitted by law.

2.22 Reimbursement of Expenses. Any and all costs and expenses incurred or expended by Mortgagee, including, without limitation, attorneys' fees, whether in connection with any action or proceeding or not, to sustain the lien of this Mortgage or its priority, or to protect or enforce any of its rights and remedies hereunder, or to recover any Indebtedness hereby secured, or for any title examination or title insurance policy relating to the title to the Premises, or in connection with any bankruptcy proceeding involving Mortgagor, the Premises, Mortgagee's interest therein or any indemnitor or guarantor, shall be due and payable by Mortgagor to Mortgagee on demand and shall earn interest from and after the date the same are paid by Mortgagee, whether or not demand for repayment is then made, at the interest rate applicable under the Note from and after maturity. All sums so advanced and all interest thereon shall be a lien on and security interest in the Premises and shall be secured by this Mortgage in addition to all other obligations of Mortgagor to Mortgagee secured hereby.

2.23 ERISA.

(a) Mortgagor covenants and warrants:

(i) That it will not use the assets of an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as now or hereafter amended ("ERISA"), which is subject to Title I of ERISA or any "plan" which is subject to Section 4975 of the Internal Revenue Code (each such employee benefit plan and plan being referred to herein as a "Benefit Plan") in the exercise of any of its obligations or rights specified herein or in the note or in any other instrument which may be held by the Mortgagee as additional security for the Note or in any of the Loan Documents or in the performance of any transaction contemplated hereunder or under the Note or under any of the other Loan Documents and

(ii) That the Premises do not, and without the written consent of Mortgagee will not, constitute an asset of a Benefit Plan; and

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(iii) That it will not sell, convey or transfer the Premises to a person or entity which could not satisfy the undertakings set forth in Subsections 2.23(a) (1) and (2) above, regardless of whether any of the above described conditions arises by operation of law or otherwise.

(b) If Mortgagor fails to comply with the provisions of Subsection 2.23(a) above, Mortgagee shall be entitled at its election,

(i) To accelerate the maturity of the Indebtedness and all other amounts secured hereby and/or

(ii) To seek any other remedies it may have at law or in equity.

(c) Notwithstanding any other provision of this Mortgage, in the event that Mortgagor shall at any time sell, convey or transfer or attempt to sell, convey or transfer the Premises in violation of the provisions of this Mortgage, then Mortgagee shall, in addition to all rights and remedies it may have at law or in equity or under this Mortgage, be entitled to a decree or order restraining and enjoining such sale, conveyance or transfer and Mortgagor shall not plead in defense thereof that there would be an adequate remedy at law, it being hereby expressly acknowledged and agreed that damages at law would be an inadequate remedy for breach or threatened breach of the provisions of Subsection 2.23(a)(iii) above.

(d) The term "Mortgagor" as used in this Article shall include such Mortgagor, its successors or assigns, and any person or entity to whom the Premises are sold, conveyed or transferred whether by operation of law or otherwise.

2.24 Certain OFAC Warrants and Covenants To Mortgagor's knowledge, after having made reasonable inquiry, none of Mortgagor, its general and limited partners, each indemnitor or guarantor under the Loan Documents, the property manager of the Premises or each commercial tenant at the Premises is (or will be) a person with whom Mortgagee is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury of the United States of America (including, those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such persons. In addition, Mortgagor hereby agrees to provide Mortgagee with any additional information that the Mortgagee deems necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities; provided that Mortgagor shall not be required to disclose the identities of individual investors in CLPF or KSA owning indirect non-Controlling Interests of less than ten (10%) percent in Mortgagor.

2.25 Single Purpose Entity. Mortgagor shall remain an entity which (a) exists solely for the purpose of owning and operating the Premises, (b) conducts business only in its own name, (c) does not engage in any business other than the ownership, management and operation of the Premises, (d) does not hold, directly or indirectly, any ownership interest (legal or equitable) in any entity or any real or personal property other than the interest which it owns in the Premises, (e) does not have any assets other than those related to its interest in the Premises

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and does not have any debt other than as permitted by this Mortgage and does not guarantee or otherwise obligate itself with respect to the debts of any other person or entity, except for the obligations of the other Borrowers under the Loan Documents, (f) has its own separate books, records, accounts, financial statements (with no commingling of funds or assets) and tax returns (unless permitted to file a consolidated tax return with another person), (g) holds itself out as being an entity separate and apart from any other entity, and (h) observes limited liability company/partnership/corporate formalities, as the case may be, independent of any other entity.

2.26 Intentionally Omitted.

2.27 Release of Parcel(s). Mortgagor and the other Borrowers may request that one or more of the Parcels (in whole but not in part) be released as security (collectively, "**Released Parcels**") for the Loan subject to the following conditions:

(a) there shall be no monetary default or uncured material non-monetary default under any of the Loan Documents, including all the Security Instruments, unless, in Mortgagee's reasonable judgment, the release of such Parcel would cure such default;

(b) in no event shall more than three (3) of the Parcels of the initial collateral securing the Loan at closing be released as collateral for the Loan;

(c) Borrowers shall make a principal paydown (the "**Required Paydown**") of the Loan equal to 105% of the Allocated Loan Amount for each Released Parcel as such principal balance has been reduced by amortization (including the 5% excess portion of any prior Required Paydown), if any;

(d) the Net Operating Income generated by the Parcels remaining as collateral shall result in a Debt Yield equal to or greater than 10.00% as calculated by Mortgagee (after the debt service payments have been adjusted to reflect the Required Paydown);

(e) the loan-to-value generated by the Parcels remaining as collateral, utilizing a current appraisal satisfactory to Mortgagee, and the Loan amount as adjusted for the Required Paydown shall be equal to or less than 55%;

(f) any remaining collateral at the site of the Released Parcel shall not be adversely impacted, as determined by Mortgagee in its reasonable discretion, by such release;

(g) the documentation evidencing the release, and if required by Mortgagee, a survey showing the legal description of each Released Parcel and that of any remaining collateral at the site of the Released Parcel, shall be satisfactory to Mortgagee in its reasonable discretion;

(h) intentionally omitted;

(i) Mortgagor and the other Borrowers shall execute and deliver to Mortgagee such other certificates, documents or instruments as Mortgagee may reasonably require in connection with the Released Parcel and Required Paydown; and

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(j) Mortgagor and the other Borrowers shall pay all costs associated with the transaction, including but not limited to Mortgagee's reasonable legal fees and a processing fee of \$10,000 per requested release as well as a prepayment charge calculated on the amount of the Required Paydown.

Mortgagor and the other Borrowers may make a principal paydown, together with any required prepayment charge, to satisfy conditions (d) and (e) of this Section 2.27.

2.28 Substitution of Parcel(s). Subject to the following conditions, Mortgagor and the other Borrowers may substitute entire Parcels, which serve as collateral for the Loan:

(a) there shall be no uncured monetary default or uncured material non-monetary default under any of the Loan Documents, including all the Security Instruments;

(b) the substituted collateral must be of equal or better quality real estate (including property type and functionality, market, location, and tenancy) as determined by Mortgagee in its sole discretion and must meet the same closing conditions as are applicable for the initial closing of the Loan (including receipt of a Phase I environmental report satisfactory to Mortgagee as well as any further studies as recommended by Mortgagee's consultant);

(c) the Net Operating Income generated by the Property, including Net Operating Income of the substituted collateral and excluding Net Operating Income of the Released Parcel, shall result in a Debt Yield equal to or greater than 10.00% as calculated by Mortgagee;

(d) the loan-to-value ratio of the security comprising the Property, including the substituted collateral, as determined utilizing a current appraisal satisfactory to Mortgagee shall be no greater than 55%;

(e) Mortgagor and the other Borrowers shall substitute no more than three (3) Parcels of the initial collateral comprising the Property at closing during the term of the Loan;

(f) the entity holding title to the substituted collateral shall for all purposes be deemed a Borrower under the Loan Documents and shall execute and deliver any documentation reasonably required by Mortgagee to evidence the same, including executing and delivering to Mortgagee (i) an amendment to the Note joining such entity as a "Maker" thereunder, (ii) a mortgage or deed of trust, as applicable, encumbering the substituted collateral, in substantially the same form as the applicable Security Instrument, (iii) such other documents as Mortgagee may reasonably require for the purpose of granting Mortgagee a first priority, perfected lien on and security interest in such substituted collateral and all related rents, personal property, reserves and escrows on the same terms and conditions as the liens and security interests granted to Mortgagee with respect to the Parcel being substituted and removed as collateral under the Loan; and (iv) such other modifications and amendments to the Loan Documents as may be necessary due to such substitution;

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(g) Mortgagor and the other Borrowers shall execute and deliver to Mortgagee such other certificates, documents or instruments as Mortgagee may reasonably require in connection with the substitution of the applicable Parcel; and

(h) Mortgagor and the other Borrowers shall pay all reasonable costs associated with documenting and closing any and all substitution transactions, including but not limited to third party reports, Mortgagee's reasonable legal fees and a Mortgagee processing fee of \$30,000 per requested substitution.

Mortgagor and the other Borrowers may make a principal paydown, together with any required prepayment charge, to satisfy conditions (c) and (d) of this Section 2.28.

2.29 Interest Rate Cap Agreement.

(a) If Mortgagor extends the Loan term as provided in the Note, at or prior to each Extension Period, Mortgagor shall obtain and shall thereafter maintain in effect, the Interest Rate Cap Agreement, which shall (i) be for an initial term not to expire prior to the then-applicable Maturity Date (as extended by such Extension Period), (ii) have an initial notional amount equal to the then outstanding principal balance of the Loan, and (iii) have a strike rate equal to the Strike Rate. The Counterparty shall be obligated under the Interest Rate Cap Agreement to make monthly payments equal to the excess of one (1) month LIBOR over the Strike Rate, calculated on the notional amount. The Interest Rate Cap Agreement shall provide for interest periods and calculations consistent with the payment terms of the Note, and shall be documented based on the ISDA Master Agreement (Multicurrency - Cross Border) as published and copyrighted in 1992 by the International Swaps and Derivatives Association, Inc., and the ISDA Credit Support Annex (Bilateral Form - ISDA Agreements Subject to New York Law Only version) as published and copyrighted in 1994 by the International Swaps and Derivatives Association, Inc., subject to the ISDA 2000 definitions. The Interest Rate Cap Agreement shall contain terms and conditions reasonably acceptable to Mortgagee and must have been approved by Mortgagee's counsel.

(b) Mortgagor shall execute an Assignment of Interest Rate Cap Agreement in the form attached hereto as *Rider 5*, pursuant to which Mortgagor shall collaterally assign to Mortgagee all of its right, title and interest under the Interest Rate Cap Agreement (and any related guarantee, if any) (i) to any and all payments, and (ii) to any and all collateral posted by the Counterparty pursuant to the Interest Rate Cap Agreement. Mortgagor shall deliver to Mortgagee an executed counterpart of such Interest Rate Cap Agreement and notify the Counterparty of such collateral assignment (either in the Interest Rate Cap Agreement or by separate instrument). The Counterparty shall agree in writing to make all payments it is required to make under the Interest Rate Cap Agreement directly to such account as specified by Mortgagee. At such time as the Loan is repaid in full, all of Mortgagee's right, title and interest in the Interest Rate Cap Agreement shall terminate and Mortgagee shall promptly execute and deliver, at Mortgagor's sole cost and expense, such documents as may be required to evidence Mortgagee's release of Mortgagee's security interest in the Interest Rate Cap Agreement and to notify the Counterparty of such release.

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(c) Mortgagor shall comply in all material respects with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. Mortgagor shall take all actions reasonably requested by Mortgagee to enforce Mortgagor's rights, if any, under the Interest Rate Cap Agreement in the event of a default by the Counterparty under the Interest Rate Cap Agreement and shall not waive, amend or otherwise modify any of its rights thereunder in any material way without Mortgagee's prior consent (not to be unreasonably delayed or withheld).

(d) If S&P or Moody's downgrades, withdraws or qualifies the rating of the Counterparty below the Required Ratings and the Counterparty fails to comply with the requirements of Section 2.29(f) hereof, Mortgagor shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement with an Acceptable Counterparty no later than fifteen (15) Business Days following the Counterparty's failure to comply with the requirements of Section 2.29(f) hereof.

(e) In the event that Mortgagor fails to purchase and deliver to Mortgagee the Interest Rate Cap Agreement or any Replacement Interest Cap Agreement as and when required hereunder, Mortgagee may purchase such Interest Rate Cap Agreement and the cost actually incurred by Mortgagee in purchasing such Interest Rate Cap Agreement shall be paid by Mortgagor to Mortgagee with interest thereon at the Default Interest Rate from the date such cost was demanded by Mortgagee until such cost is paid by Mortgagor to Mortgagee.

(f) Each Interest Rate Cap Agreement shall expressly provide that in the event of any downgrade, withdrawal or qualification of the rating of the Counterparty (or its credit support provider, if applicable) below the Required Ratings, the Counterparty shall, either (i) post collateral pursuant to the terms of the Interest Rate Cap Agreement, (ii) transfer the Interest Rate Cap Agreement to a replacement Acceptable Counterparty, or (iii) procure a guarantee from an entity whose credit ratings are at least equal to the Required Ratings, within thirty (30) calendar days following such downgrade, withdrawal or qualification.

(g) In connection with an Interest Rate Cap Agreement, Mortgagor shall obtain and deliver to Mortgagee within a reasonable time period following the execution thereof an opinion of counsel from counsel for the Counterparty, subject to the standard assumptions, exclusions and qualifications (upon which Mortgagee and its successors and assigns may rely), which shall provide, in relevant part, that:

(1) the Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under, the Interest Rate Cap Agreement;

(2) the execution and delivery of the Interest Rate Cap Agreement by the Counterparty, and any other agreement which the Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property;

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(3) all consents, authorizations and approvals required for the execution and delivery by the Counterparty of the Interest Rate Cap Agreement, and any other agreement which the Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance; and

(h) the Interest Rate Cap Agreement, and any other agreement which the Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by the Counterparty and constitutes the legal, valid and binding obligation of the Counterparty, enforceable against the Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

3. Events of Default and Remedies.

3.01 Events of Default. Each of the following events shall constitute an "**Event of Default**" hereunder:

(a) the failure of Mortgagor to pay (i) any scheduled installment of principal and/or interest due and payable under the Note or any other scheduled payment due and payable by Mortgagor to Mortgagee or to any other person under any of the Loan Documents, including, without limitation, escrow deposits provided for herein, within ten (10) days following the date when the same shall be due and payable thereunder or (ii) any other payment due pursuant to the Loan Documents within ten (10) days following written demand by Mortgagee therefor; or

(b) Intentionally omitted; or

(c) the failure of Mortgagor to (i) keep in force any insurance policy required hereunder, (ii) comply with the requirements of Subsection 2.09(c) hereof or (iii) within ten (10) days of notice from Mortgagee, to deliver such policy or evidence of its renewal to Mortgagee; or

(d) the failure of Mortgagor to deliver any notice, report, assignment, certificate, instrument or other document (including a substitute guaranty, indemnity or other recourse agreement) which Mortgagor is required to deliver to Mortgagee within fifteen (15) days (or such longer period as is provided for in the specific paragraph or section) following written demand by Mortgagee therefor; or

(e) the taking of any action by Mortgagor contrary to the provisions of the Section of this Mortgage entitled "Restrictions on Alienation and Further Encumbrances" above or the taking of any action by another person which Mortgagor is not to permit, allow or suffer to occur thereunder; or

(f) the failure of any warranty or representation made in this Mortgage or in any other Loan Document or in any notice, report, assignment, certificate or other document

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given by Mortgagor or any Approved Signatory to Mortgagee on the date hereof or at any time hereafter to be true and correct in any respect as of the date made and such failure would reasonably be expected to have a Material Adverse Effect; or

(g) the failure of Mortgagor to perform and observe any covenant, obligation, agreement or undertaking under the Note or this Mortgage not otherwise referred to above (1) within thirty (30) days following written notice thereof from Mortgagee or (2) if such failure cannot with due diligence be cured within thirty (30) days, such longer period, not to exceed sixty (60) days in all from and after the giving of such written notice, as may be necessary to cure the same with due diligence, provided Mortgagor commences within such thirty (30) days and proceeds diligently to cure the same; or

(h) the failure of Mortgagor or any guarantor or indemnitor to perform and observe any covenant, obligation, agreement or undertaking under any Loan Document other than the Note and this Mortgage following either (i) such notice and/or grace period, if any, as may be provided therein for curing such failure or (ii) if no notice and/or grace period is specified within such Loan Document, the notice and grace periods set forth in clause (g) immediately above; or

(i) (i) Mortgagor or any other Party in Interest becomes insolvent, makes a transfer in fraud of, or an assignment for the benefit of, creditors, or admits in writing in any court proceeding, its inability to pay debts as they become due; or (ii) a receiver, custodian, liquidator or trustee is appointed for all or substantially all of the assets of any Party in Interest or for the Premises in any proceeding brought by any Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against any Party in Interest or the Premises and such appointment is not promptly contested or is not stayed, dismissed or discharged within ninety (90) days after such appointment or (iii) any Party in Interest files a petition under the United States Bankruptcy Code, as amended, or under any similar Federal or state law or statute; or (iv) a petition against any Party in Interest is filed commencing an involuntary case under any present or future Federal or state bankruptcy or similar law and such petition is not stayed, dismissed or discharged within ninety (90) days after the filing thereof; or (v) any composition, rearrangement, liquidation, extension, reorganization or other relief of debtors now or hereafter existing is requested by any Party in Interest; or

(j) if the Premises shall be taken, attached or sequestered on execution or other process of law in any action against Mortgagor, excluding (i) any Taking by eminent domain provided Mortgagor is complying with the provisions of Section 2.14 and (ii) any attachment if the same is stayed, dismissed or discharged within sixty (60) days of the filing thereof; or

(k) if any claim of priority (except a claim based upon a Permitted Encumbrance) to this Mortgage or any other document or instrument securing the obligations secured hereby by title, lien or otherwise shall be consented to by Mortgagor or shall be upheld in a decision by any court of competent jurisdiction; or

(l) if Mortgagor fails to maintain the required Interest Rate Cap Agreement;
or

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(m) if Mortgagor fails to cure any default by Mortgagor under any Major Lease within the shorter of sixty (60) days following the giving of notice of default by the lessee thereunder or the applicable grace period set forth therein.

Notwithstanding anything to the contrary provided herein, (i) if any Event of Default results from the failure of any guarantor or indemnitor to comply with its obligations under the Loan Documents, Mortgagor may cure such Event of Default by satisfying the requirements set forth in Section 2.18 within fifteen (15) business days after the occurrence of such Event of Default, and (ii) if an Event of Default has occurred based on facts or circumstances specific to one Parcel (and no other Parcels) and, in Mortgagee's reasonable judgment, such Event of Default may be cured by Mortgagor's release of such Parcel in accordance with the terms and provisions of Section 2.27, Mortgagor may cure such Event of Default by effecting such release within fifteen (15) business days after the occurrence of such Event of Default.

3.02 Right to Accelerate. Upon the occurrence of an Event of Default, the entire unpaid balance of the principal of the Note, all accrued and unpaid interest thereon and all other sums of any kind whatsoever secured by this Mortgage and/or any other Loan Documents shall, at the option of Mortgagee, become immediately due and payable in its entirety without notice, presentment, protest or demand (each and all of which are hereby waived).

3.03 Appointment of Receiver. Mortgagee, in any action to foreclose this Mortgage, or during the continuance of any Event of Default, shall be at liberty to apply for the appointment of a receiver of the rents and profits of the Premises without notice, and shall be entitled to the appointment of such receiver as a matter of right, without consideration of the value of the Premises as security for the amounts due Mortgagee or the solvency of any person or entity liable for the payment of such amounts.

3.04 Right of Entry. Mortgagee may enter upon the Premises, and exclude Mortgagor and its agents and servants wholly therefrom, without liability for trespass, damages or otherwise, and take possession of all books, records and accounts relating thereto and all other items constituting the Premises, and Mortgagor agrees to surrender possession of the Premises including such books, records and accounts to Mortgagee on demand after the happening of any Event of Default; and having and holding the same may use, operate, manage, preserve, control and otherwise deal therewith and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers, without interference from Mortgagor; and upon each such entry and from time to time thereafter may, at the expense of Mortgagor and the Premises, without interference by Mortgagor and as Mortgagee may deem advisable, (a) insure or reinsure the Premises, (b) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon and (c) in every such case in connection with the foregoing have the right to exercise all rights and powers of Mortgagor with respect to the Premises, either in Mortgagor's name or otherwise. For the purpose of carrying out the provisions of this Section 3.04, Mortgagor hereby constitutes and appoints Mortgagee the true and lawful attorney-in-fact of Mortgagor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Mortgagor's name and stead, to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does by these presents ratify and confirm any and all actions of said attorney-in-fact in and with respect to the Premises.

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3.05 UCC. Upon the occurrence of any Event of Default hereunder, Mortgagee shall have the right to take all actions permitted under the Uniform Commercial Code.

3.06 All Legal and Equitable Remedies. Mortgagee shall have the right from time to time to enforce any legal or equitable remedy against Mortgagor including specific performance of any of the provisions contained in any of the Loan Documents and to sue for any sums whether interest, damages for failure to pay principal or any installment thereof, taxes, installments of principal, or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not the principal sum secured or any other sums secured by the Note and Mortgage shall be due and without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor including an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

3.07 Foreclosure and Sale. Upon acceleration pursuant to Section 3.02 or failure by Mortgagor to pay all amounts due under the Note on its maturity date, Mortgagee shall have the right to collect all Indebtedness then due and payable by proceeding against, all real and personal property constituting the Premises or any part thereof or interest therein, by foreclosure, public or private sale or otherwise, as may be more particularly provided in **Rider 2** attached hereto or made a part hereof or as may be otherwise permitted by the laws of the state in which the Premises is situated. Mortgagor hereby waives any right it may have to require the marshaling of its assets. Mortgagee shall have the right to foreclose and/or sell the Premises in its entirety or any part thereof or interest therein as Mortgagee in its sole and absolute discretion shall determine, in one or more sales in such order and priority as Mortgagee may in its sole and absolute discretion deem necessary or advisable. All sums realized from any such foreclosure or sale, less all costs and expenses of such sale, shall be applied to the payment of any Indebtedness then due and payable hereunder in such order as Mortgagee shall determine in its sole and absolute discretion. If, following any such sale, any Indebtedness secured hereby, whether or not then due and payable, shall remain unpaid or unsatisfied in any respect, the Loan Documents and all obligations of Mortgagor thereunder shall continue in full force and effect, subject to the provisions of the Section of this Mortgage entitled "Limited Right of Recourse," until such unpaid and unsatisfied Indebtedness is fully paid and satisfied as therein provided.

3.08 Rights Distinct and Cumulative. The rights of Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others; and no act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.

3.09 Limited Right of Recourse. Notwithstanding anything contained herein or in the other Loan Documents, in any action or proceeding brought on the Note, this Mortgage or the other Loan Documents, no personal liability shall be claimed or asserted against Mortgagor or against any of its general partners, limited partners, members, shareholders or officers; provided, however, that nothing in the provisions of this Section shall be deemed to limit or impair the enforcement against the Premises or any other property which may from time to time be given as security for the performance of Mortgagor's obligations hereunder or under the other Loan Documents of the rights, remedies and recourse of Mortgagee under any of such provisions of

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the Loan Documents with respect to the Premises or such other property, nor the enforcement of or liability of Mortgagor or any other party under any guaranty, indemnity, certification, undertaking or other Loan Document unless and except as recourse against Mortgagor or any other party is limited therein by the express provisions thereof or by reference hereto; and provided further that nothing contained herein shall limit or impair in any manner the rights, remedies or recourse of Mortgagee against Mortgagor in respect of, and Mortgagor shall be personally liable for, any actual damage, loss, claim, expense or liability (including, without limitation, attorneys' fees) arising from, under or out of any of the following:

(a) the commission of fraud or any material misrepresentation (including a materially incorrect certification) made by Mortgagee or its affiliates in connection with the application for or closing of the Loan;

(b) misappropriation or misapplication of funds associated with the Premises by Mortgagee or its affiliates, or failure to apply funds in accordance with the provisions of the Loan Documents, including but not limited to (i) lease security deposits and prepaid rents, (ii) casualty insurance proceeds and condemnation awards, (iii) judgments, settlements or bankruptcy claims for unpaid rent or lease termination and (iv) gross revenues from the Premises not applied to payment of the expenses of the Premises, real estate taxes, debt service and other expenditures required by the Loan Documents, which for this purpose shall be allocable to such revenues on an accrual basis (but without any obligation to reinvest in the Premises funds distributed to Mortgagee or its partners, members or shareholders in compliance with the terms of the Loan Documents);

(c) loss in connection with the Premises not reimbursed by insurance resulting from (i) failure to have in effect insurance policies required by Mortgagee pursuant to the Loan Documents, or (ii) the successful assertion of any defense or offset by an insurer under any required policy to the extent caused by any act or omission of Mortgagor or its affiliates other than a failure of the policy by its terms to cover the loss;

(d) material physical waste in connection with the Premises while gross revenues from the Premises are currently available (after payment of the expenses of the Premises, real estate taxes, debt service and other expenditures required by the Loan Documents) to avoid such waste;

(e) removal from the Premises without equivalent replacement of any personal property owned or leased by Mortgagor or its affiliates in violation of any of the Loan Documents;

(f) forfeiture of the Premises or any part thereof or interest therein under any applicable law;

(g) leases, easements, restrictive covenants, licenses, occupancy agreements and similar minor transfers of interests in the Premises that are not permitted by the Loan Documents but do not have a material adverse affect on Mortgagor, the Premises or the Loan;

(h) the failure to maintain the required Interest Rate Cap Agreement; and

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(i) the failure of any Borrower to comply with its obligations under the Post-Closing Agreement.

3.10 Reservation of Rights. No failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions hereof shall be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor. Neither Mortgagor, the other Borrowers, nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the Indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Premises and Mortgagee extending the time of payment or modifying the terms of the Note or Mortgage without first having obtained the consent of Mortgagor or such other person, and in the latter event, Mortgagor and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Premises, Mortgagee may release the obligation of anyone at any time liable for any of the Indebtedness secured by this Mortgage or any part of the security held for the Indebtedness and may extend the time of payment or otherwise modify the terms of the Note and/or Mortgage without, as to the security or the remainder thereof, in anywise impairing or affecting the lien or the security title of this Mortgage or the priority of such lien or security title, as security for the payment of the Indebtedness as it may be so extended or modified, over any subordinate lien; that the holder of any subordinate lien or security title shall have no right to terminate any lease affecting the Premises whether or not such lease be subordinate to this Mortgage; and that Mortgagee may resort for the payment of the Indebtedness secured hereby to any other security therefor held by Mortgagee in such order and manner as the Mortgagee may elect.

4. GENERAL PROVISIONS.

4.01 Notices.

(a) All Notices shall be in writing, shall be addressed to the intended recipient at the address of such party set forth on **Rider 3** attached hereto and hereby made a part hereof and shall be either delivered to such party by express air courier service, delivery charges prepaid and receipt acknowledged in writing, or mailed to such party by certified mail, return receipt requested, postage prepaid. Either party hereto may at any time and from time to time by Notice given as herein provided change the address to which future Notices to such party are to be given.

(b) Any party hereto giving a Notice to the other pursuant to this Section shall simultaneously give a true and complete copy of such Notice to each of the persons designated

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by the intended recipient thereof on **Rider 3** attached hereto to receive such copies. Each such copy shall be addressed to the intended recipient at the address of such person set forth on **Rider 3** and shall be given by express air courier service or certified mail in the same manner provided above for the giving of Notices. Either party hereto may at any time and from time to time by Notice given as herein provided change the identity or address of the persons designated to receive such copies or designate additional persons to receive such copies. In no event, however, shall Mortgagee be obligated to give copies of any Notice to Mortgagor to more than two persons at any time.

(c) No Notice given by any party hereto shall be of any force or effect unless such Notice is given in accordance with all of the provisions of this Section.

(d) All Notices shall be deemed to have been given and received (1) if delivered to an express air courier service, one business day after delivery of such Notice to such service or (2) if deposited in the United States mail by certified mail, three (3) days after mailing; provided, however, that, when any Notice must be given under any provision of a Loan Document on or before a certain date or within a certain period or number of days, such Notice shall be deemed to have been given, solely for such purpose, on the date the same was delivered to such air courier or deposited in the United States mails.

4.02 Binding Obligations; Joint and Several. The provisions and covenants of this Mortgage shall run with the land, shall be binding upon Mortgagor, its successors and assigns, and shall inure to the benefit of Mortgagee, its successors and assigns. Mortgagor acknowledges and agrees that (a) all its obligations and undertakings hereunder are and shall be joint and several with the obligations and undertakings of the other Borrowers under the other Loan Documents, and (b) if any liens securing such joint and several liability, would, but for the application of this sentence, be unenforceable under applicable law, such joint and several liability and each such lien shall be valid and enforceable to the maximum extent that would not cause such joint and several liability or such lien to be unenforceable under applicable law, and such joint and several liability and such lien shall be deemed to have been automatically amended accordingly at all relevant times.

4.03 Brundage Clause. In the event of the passage after the date of this Mortgage of any law of, or applicable to, the state or municipality in which the Land is situated, deducting from the value of real and/or personal property for the purposes of taxation any lien thereon or security interest therein or changing in any way the laws for the taxation of mortgages, deeds of trust or security interests or debts secured by mortgage, Mortgage or security interest for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on the Note, this Mortgage or any other Loan Document or on any Indebtedness or other obligation evidenced or secured thereby, Mortgagee shall have the right, by giving written notice to Mortgagor, to declare the entire unpaid principal balance of the Note and all accrued and unpaid interest thereon to be due and payable in full on a date specified in such notice which shall in no event be less than sixty (60) days following the giving of such notice; provided, however, that such election shall be ineffective if Mortgagor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder and if Mortgagor, prior to such specified date, does pay such tax and agrees to pay any such tax when

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thereafter levied or assessed against the Premises, and such agreement shall constitute a modification of this Mortgage.

4.04 Crediting Payments. Any payment made in accordance with the terms of this Mortgage by any person at any time liable for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage, or by any subsequent owner of the Premises, or by any other person whose interest in the Premises might be prejudiced in the event of a failure to make such payment, or by any stockholder, officer or director of a corporation, partner of a partnership or member of a limited liability company which at any time may be liable for such payment or may own or have such an interest in the Premises, shall be deemed as between Mortgagee and all persons who at any time may be liable as aforesaid or may own the Premises, to have been made on behalf of all such persons.

4.05 Mortgagee's Discretion.

(a) Mortgagor expressly agrees and confirms that, unless expressly provided to the contrary in any particular instance, any and all rights of Mortgagee to give or withhold any consent, approval or other authorization requested by Mortgagor with respect to the Note, this Mortgage or any other Loan Document, to make any election or exercise any option granted therein, to make any decision or determination with respect thereto, to modify or amend any of the Loan Documents or waive any obligation of Mortgagor thereunder or grant any extension of time for performance of the same or to take or omit to take any other action of any kind whatsoever, Mortgagee shall, to the maximum extent permitted by law, have the right, and Mortgagor expressly acknowledges Mortgagee's right, in each instance, to take such action or to omit to take such action in its sole and absolute discretion, whether or not the applicable provision of the Loan Document in question expressly so provides.

(b) Whenever Mortgagor shall, by Notice or otherwise, request that Mortgagee give any consent, approval or other authorization with respect to the Note, this Mortgage or any other Loan Document, make any election or exercise any option granted therein, make any decision or determination with respect thereto, modify or amend any of the Loan Documents or waive any obligation of Mortgagor thereunder or grant any extension of time for performance of the same or take or omit to take any other action of any kind whatsoever, Mortgagor shall pay such reasonable servicing fees as Mortgagee shall establish at any time and from time to time for performing such services for its borrowers and all third-party costs and expenses including, without limitation, attorneys' fees, incurred by Mortgagee in reviewing and/or processing Mortgagor's request, whether or not Mortgagee shall grant such request. All such servicing fees and costs and expenses shall be due and payable by Mortgagor to Mortgagee on demand and shall earn interest from and after the date the same are paid by Mortgagee, whether or not demand for repayment is then made, at the interest rate applicable under the Note from and after maturity. All sums so advanced and all interest thereon shall be a lien on and security interest in the Premises and shall be secured by this Mortgage in addition to all other obligations of Mortgagor to Mortgagee secured hereby.

(c) Whenever pursuant to the terms of this Mortgage or any other Loan Document, or as required by applicable law, (i) Mortgagee's consent or approval or satisfaction as to a matter is not to be unreasonably withheld (which shall be deemed to include not to be

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unreasonably conditioned and/or delayed, as the case may be) or (ii) Mortgagee is obligated to exercise its reasonable discretion with respect to a matter, and such consent or approval or satisfaction is denied, or Mortgagor objects to the reasonableness of Mortgagee's withholding of its consent or exercise of Mortgagee's discretion, then such denial or such exercise of discretion by Mortgagee, as the case may be, shall be deemed reasonable except to the extent Mortgagor establishes otherwise by clear and convincing evidence and, if Mortgagor contests such denial or such exercise of discretion by Mortgagee and a court of competent jurisdiction finally determines that under such standard the approval, consent or satisfaction should have been granted with respect to such matter, or the exercise of discretion by Mortgagee was unreasonable under the applicable circumstances, then the consent, approval or satisfaction shall be deemed granted or the matter as to which Mortgagee's discretion is found to have been exercised unreasonably shall be resolved by such court, and the granting of such consent, approval or satisfaction, or the resolution of such court, as the case may be, shall be Mortgagor's sole and exclusive remedy. Without limitation of the foregoing, in such case Mortgagor shall not have any right to or make any claim for damages of any nature and Mortgagor hereby expressly waives such right and claim.

4.06 Interpretive Provisions. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgage" shall mean this Mortgage, Security Agreement and Fixture Filing and any supplement or supplements hereto; the word "Mortgagor" shall mean Mortgagor and/or any subsequent owner or owners of the Premises; the word "Mortgagee" shall mean Mortgagee or any subsequent holder or holders of this Mortgage; the word "person" shall mean "an individual, corporation, joint venture, trust, partnership, limited liability company or unincorporated association"; pronouns of any gender shall include the other genders; and either the singular or plural shall include the other. Whether or not specifically stated in any provision of this Mortgage, reference therein to (a) any law, statute, ordinance, code, rule, regulation or the like shall mean and include any and all modifications, amendments and replacements thereof, (b) the phrase "including" shall mean "including, without limitation" and (c) any right of Mortgagee shall mean, unless expressly provided therein to the contrary, such right without any corresponding obligation.

4.07 Amendments. This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

4.08 Sales and Participations. Mortgagee shall have the right in connection with any actual or proposed sale of the Note or any participation therein to deliver to such actual or prospective purchaser or participant any and all information which Mortgagee may have with respect to the Loan Documents, the Mortgagor, the Premises and/or the business of Mortgagor with respect thereto, including, without limitation, the Loan Documents, all information obtained by Mortgagee pursuant to the Section of this Mortgage entitled "Mortgagee's Due Diligence" or otherwise and all reports, statements, notices and other material delivered to Mortgagee pursuant to the Section of this Mortgage entitled "Reports to Mortgagee" or otherwise; provided that such recipient agrees that the use of all such information shall be subject to Mortgagee's customary confidentiality and/or nondisclosure requirements for such prospective purchasers or participants. Whenever under any provision of this Mortgage Mortgagor is required to deliver any report, statement, notice or other material to Mortgagee following demand, including,

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without limitation, quarterly reports on operations, copies of Leases, Contracts and other agreements and estoppel certificates, Mortgagor shall, if Mortgagee so requests, deliver the same, certified as herein provided, to such actual or prospective purchaser or participant as Mortgagee shall designate. If requested by Mortgagee, at no expense to Mortgagor (other than to a de minimis extent), Mortgagor will execute such documentation as Mortgagee reasonably requests (including, without limitation, separate notes for each lender) so long as such documentation does not increase the financial obligations of Mortgagor under the Loan Documents, increase in any material respect the non-financial obligations of Mortgagor under the Loan Documents, require Mortgagor to modify its organizational structure to facilitate any mezzanine loan structure, or require Mortgagor to deal with more than one lender (or one administrative agent on behalf of all the lenders) in connection with the administration of the Loan after any such sale or participation.

4.09 Partial Reduction of Indebtedness. If at any time or from time to time Mortgagee shall receive net proceeds from the sale of Equipment, net insurance proceeds, net condemnation proceeds or any other sums Mortgagee intended to be applied to reduction of the Indebtedness secured hereby (other than installments of principal and/or interest paid in accordance with the terms and conditions of the Note which shall be applied as provided therein) such shall be applied in partial reduction of the Indebtedness secured hereby in such order as Mortgagee shall determine. Any sums applied by Mortgagee to the reduction of the principal of the Note shall be deemed to be applied to the last installments due on such principal and shall not reduce the amount of any scheduled installments of principal and/or interest on the Note which shall continue to be due and payable in the amounts provided for in the Note on the dates therein provided until the entire Indebtedness secured hereby is fully paid and satisfied.

4.10 Separability. If all or any portion of any provision of this Mortgage or any other Loan Document shall be held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

4.11 Cross-Default; Cross-Collateralization. Mortgagor acknowledges that Mortgagee has made the Loan to Mortgagor and the other Borrowers upon the security of the Borrowers' collective interest in the Property and in reliance upon the aggregate of the Property taken together being of greater value as collateral security than the sum of the Parcels taken separately. Notwithstanding anything to the contrary contained herein, each of Mortgagor and the other Borrowers agree that the Loan Documents are and will be cross-collateralized and cross-defaulted with each other so that (a) an Event of Default under any of the Security Instruments shall constitute an Event of Default under each of the other Security Instruments which secure the Note; (b) an Event of Default under the Note or this Mortgage shall constitute an Event of Default under each Security Instrument; and (c) each Security Instrument shall constitute security for the Note as if a single blanket lien were placed on all of the Parcels as security for the Note.

4.12 Successors and Assigns. The provisions hereof shall be binding upon Mortgagor and its representatives, successors and permitted assigns, including successors in interest of

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Mortgagor in and to all or any part of the Premises, and shall inure to the benefit of Mortgagee, its participants and their respective successors, legal representatives, substitutes and assigns.

4.13 Counterparts. This Mortgage may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

4.14 Indemnification. Mortgagor will, to the fullest extent permitted by law, protect, indemnify and save harmless Mortgagee, its participants and/or their respective officers, directors, shareholders, agents and employees from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Mortgagee or any such other persons or entities or against the Premises or against any of Mortgagee's or any such other person's or entity's interest therein by reason of the occurrence or existence of any of the following: (a) ownership by Mortgagor of any interest in the Premises or receipt of any rent or other sum therefrom, (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Premises or any part thereof or the adjoining sidewalks, curbs, vaults, and vault space, if any, and streets and ways, (c) any design, construction, operation, use, misuse or condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, and streets and ways, including, without limitation, claims or penalties arising from violation of any governmental law or regulation, as well as any claim based on any patent or latent defect, whether or not discoverable by Mortgagee, any such claim as to which insurance is inadequate, and any claim in respect of any adverse environmental impact or effect, (d) any performance of or failure to perform any labor or services or the furnishing of or failure to furnish any materials or other property in respect of the Premises or any part thereof and (e) any negligence or tortious act or omission on the part of Mortgagor, any managing agent for Mortgagor or any of their respective agents, contractors, servants, employees, lessees, sublessees, licensees, guests or invitees. Nothing contained in this Section 4.14 shall be construed as obligating Mortgagor to indemnify Mortgagee in respect of any act of Mortgagee, its participants or their respective officers, directors, shareholders, agents or employees which constitutes gross negligence or willful misconduct.

4.15 Brokerage. Mortgagor, and by its acceptance hereof, Mortgagee each represents and warrant for itself that it has not dealt with any broker or finder in connection with the loan evidenced by the Note other than HFF (Holliday Fenoglio Fowler, L.P.) as Mortgagor's broker. Mortgagor will pay such broker a commission pursuant to a separate agreement. Mortgagor hereby indemnifies and holds harmless Mortgagee, its successors and assigns, against any and all liability, loss, cost and expense in connection with any and all claims asserted by any broker or finder alleging to have dealt with Mortgagor in bringing about the loan evidenced by the Note or any other transaction contemplated hereby, including, without limitation, all attorneys' fees and other expenses incurred by Mortgagee in ascertaining the existence or nature of or resisting any claims made by such brokers or finders. The provisions of this Section 4.15 shall not be construed for the benefit of any third party.

4.16 After-Acquired Property. All property of every kind which is hereafter acquired by Mortgagor which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by Mortgagor, and without any

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further mortgage, conveyance, assignment or transfer, become subject to the lien of this Mortgage. The foregoing is not intended to and does not include any real or personal property now owned or hereafter acquired by Mortgagor which is located at locations other than as described in Exhibit A hereto, other than any such property which is intended for incorporation into or use at or in connection with the Premises but has not yet been delivered to the Premises or Mortgagor.

4.17 Relationship of Mortgagor and Mortgagee. Mortgagor and Mortgagee shall in no event be construed to have any relationship whatsoever (including the relationship of partner and joint venturer) other than, and solely, the relationship of a mortgagor and a mortgagee.

4.18 Bankruptcy Related Provisions.

(a) Waiver of Automatic Stay. Mortgagee is making the loan evidenced by the Note and secured by this Mortgage in reliance on Mortgagor's express assurances that it will not attempt to delay or frustrate the exercise of any rights or remedies granted Mortgagee hereunder upon the occurrence of an Event of Default hereunder. In the event Mortgagor or any Party in Interest acting on Mortgagor's behalf directly or indirectly files a petition under the United States Bankruptcy Code or under any similar Federal or state law or statute, Mortgagor admits and agrees that such petition shall have been filed, in bad faith and in abrogation of Mortgagor's express assurances to Mortgagee hereunder to the contrary, to frustrate or delay the foreclosure and/or sale of the Premises or any part thereof or interest therein and the exercise of the other rights and remedies available to Mortgagee under this Mortgage, the other Loan Documents and/or at law or in equity, and should be deemed to have been so filed in the United States Bankruptcy Court or other court in which such filing was made and that Mortgagee shall have, in addition to any and all other rights and remedies available to Mortgagee under this Mortgage, the other Loan Documents and/or at law or in equity, the right (and Mortgagor will interpose no objection thereto and hereby waives its rights with respect thereto) to request and receive from the Bankruptcy Court or by such other court immediate relief from the automatic stay imposed under Section 362 of the United States Bankruptcy Code or by similar provision of any other Federal or state law or statute, any stay or other restriction on the rights and remedies of Mortgagee under any of the court's equitable powers, a termination of the exclusive period provided by Section 1121 of the United States Bankruptcy Code or by any similar provision of any other Federal or state law or statute, and a dismissal of the bankruptcy case or proceeding. Nothing in this Mortgage shall be deemed in any way to limit or restrict any rights of Mortgagee to seek in the United States Bankruptcy Court or any other court of competent jurisdiction, any relief Mortgagee may deem appropriate in the event that a voluntary or involuntary petition under any title of the United States Bankruptcy Code or any other Federal or state law or statute is filed by or against Mortgagor.

(b) Without limiting the generality of any provision of this Mortgage, if a proceeding under the United States Bankruptcy Code, as amended, is commenced by or against Mortgagor, then, pursuant to Section 552(b)(2) of said Bankruptcy Code, the security interest granted by this Mortgage shall automatically extend to all Rents, acquired by Mortgagor after the commencement of the case and such Rents shall constitute cash collateral under Section 363(a) of said Bankruptcy Code.

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(c) During the continuance of any default or Event of Default, Mortgagee shall have the right to file, in its own name or on behalf of Mortgagor, any proof of claim in any bankruptcy or insolvency proceeding in which the debtor is a lessee under a Lease or a guarantor thereof.

4.19 Multiple Security and Other Loan Documents. Mortgagor acknowledges that Mortgagee is extending credit based upon the aggregate values of the real and personal property included in the Property and that the Parcels are located in different states and localities. Accordingly, Mortgagor agrees that from and after any Event of Default, Mortgagee shall be allowed, to the greatest extent permitted by applicable law, to pursue and realize upon all of the remedies available to Mortgagee under any of the Loan Documents, at law, in equity or otherwise, simultaneously or consecutively, in Mortgagee's sole and absolute discretion, including, without limitation, commencement of one or more actions in one or more jurisdictions for repayment of all or portions of the Indebtedness, for the separate or simultaneous sale or foreclosure of real and/or personal property or portions thereof, for the obtaining of judgments, for the seeking of injunctive relief and for maximum access to and realization from the Parcels or portions thereof in such manner as Mortgagee may deem in its interest, and Mortgagor hereby waives any requirement that any deficiency judgment proceeding be initiated or completed with respect to any Parcel included in the Property as a condition to commencing any enforcement proceedings against any party or any other portion of any other Parcel. In addition to any other consents, waivers and agreements set forth in any of the Loan Documents, and without limiting the foregoing, Mortgagor agrees that, to the maximum extent permitted by applicable law, Mortgagee may foreclose on and/or sell all properties located in the same state in any one or more counties where any of the properties in that state are located, that any personal property located on real property encumbered by the Loan Documents may be foreclosed upon in the manner provided for, simultaneously with and as a part of the proceeding for foreclosure of the real property, and that Mortgagor hereby waives the benefits of any "one-action rule" of any state which may be applicable to it or to any of the Parcels and waives marshaling of assets for itself and all other parties claiming by, through or under it. Mortgagor agrees that the actions, sales, proceedings and foreclosures described above may be commenced in any order determined by Mortgagee in its sole discretion.

4.20 Suretyship Waivers. Mortgagor understands that this Mortgage secures not only Mortgagor's obligations under the Loan Documents but also the obligations of the other Borrowers under the Loan Documents and that Mortgagee would not have made the Loan but for the agreement of Mortgagor and each other Borrower to be jointly and severally liable for each and every obligation of the "Mortgagor." Mortgagor agrees that it has received sufficient consideration for its agreement to be bound by and to the extent of the terms hereof. In particular, Mortgagor is of the view that the financial accommodations offered to each of Mortgagor and the other Borrowers under the Note will enhance the aggregate borrowing powers of Mortgagor and the other Borrowers, and that Mortgagor will receive substantial direct and/or indirect benefits by reason of the making of the Loan and other financial accommodations provided in the Application. To the extent that, notwithstanding the above and the express intent of the parties, Mortgagor is deemed to be a surety or guarantor of any other Borrower, then Mortgagor hereby waives any and all suretyship defenses or defenses in the nature thereof.

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5. GOVERNING LAW, WAIVER OF JURY TRIAL AND CERTAIN DAMAGES

5.01(a) THIS MORTGAGE WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY MORTGAGOR AND ACCEPTED BY MORTGAGEE IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS MORTGAGE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE, COMMONWEALTH OR DISTRICT, AS APPLICABLE, IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, COMMONWEALTH OR DISTRICT, AS APPLICABLE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF THIS MORTGAGE AND ALL OF THE OBLIGATIONS ARISING HEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS MORTGAGE, AND THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) MORTGAGOR, AND MORTGAGEE BY ITS ACCEPTANCE HEREOF, EACH ACKNOWLEDGE AND AGREE THAT IN CONNECTION WITH ANY LITIGATION, ACTION, CLAIM, SUIT OR PROCEEDING, AT LAW OR IN EQUITY, ARISING OUT OF, PERTAINING TO OR IN ANY WAY ASSOCIATED WITH THE NOTE, THIS MORTGAGE, THE OTHER LOAN DOCUMENTS, THE RELATIONSHIP OF THE PARTIES HERETO AS MORTGAGEE AND MORTGAGOR, THE PREMISES OR THE ACTIONS OF THE PARTIES HERETO IN CONNECTION WITH ANY OF THE FOREGOING, (i) THE PARTIES WAIVE ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY TRIAL BY JURY AND THE RIGHT TO CLAIM OR RECEIVE CONSEQUENTIAL (THAT IS, SPECIAL OR INDIRECT) PUNITIVE DAMAGES, (ii) MORTGAGOR WAIVES ANY RIGHT TO MONETARY DAMAGES RELATING TO ANY CLAIMS GOVERNED BY SECTION 4.05(c) OF THIS MORTGAGE, OR ANY SIMILAR PROVISION CONTAINED IN ANY OTHER LOAN DOCUMENT, AND (iii) THE PARTIES AGREE SUCH ACTIONS WILL BE LITIGATED IN THE STATE OR FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK AND CONSENT AND SUBMIT TO THE JURISDICTION OF SUCH COURTS, AGREE TO INSTITUTE ANY SUCH LITIGATION IN SUCH COURTS, CONSENT TO SERVICE OF PROCESS BY MAIL AND WAIVE ANY RIGHT EACH MAY

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HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT IN SUCH COURTS ARISING OUT OF THE MATTERS DESCRIBED ABOVE.

5.02 INCORPORATION OF STATE LAWS. Certain provisions/sections of this Mortgage and certain additional provisions/sections that are required by laws of the jurisdiction in which the Premises is located may be amended, described and/or otherwise set forth in more detail on **Rider 2** attached hereto, which Rider is incorporated into and made a part of this Mortgage. In the event of any conflict between such State law provisions and any provision herein, the State law provision shall control.

6. FIXTURE FILING.

6.01 Fixture Filing. From the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Section 9-502(c) of the Illinois Uniform Commercial Code (as amended from time to time) with respect to the Premises and the goods described herein, which goods are or are to become fixtures related to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth below. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or the counties where the Premises is located. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

CLPF - KSA GROCERY PORTFOLIO EVANSTON TJ, LLC
 c/o Clarion Partners
 230 Park Avenue, 12th Floor
 New York, NY 10169
 Attention: Chief Financial Officer

(b) Name and Address of Secured Party:

AXA Equitable Life Insurance Company
 1290 Avenue of the Americas, 16th Floor
 New York, NY 10104
 Attention: Real Estate Legal Department

- (c) This document covers goods which are or are to become fixtures.
- (d) The name of the record owner is CLPF - KSA GROCERY PORTFOLIO EVANSTON TJ, LLC.
- (e) Debtor's state of formation is Delaware.
- (f) Debtor's organizational identification number is 6193763.

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RIDER 1

DEFINITION OF CERTAIN TERMS

Each of the following terms when appearing in the Mortgage to which this Rider 1 is attached shall have the meaning given such term below.

“Acceptable Counterparty” means any Counterparty to the Interest Rate Cap Agreement or any Replacement Interest Rate Cap Agreement that has and shall maintain, until the expiration of the applicable agreement, credit ratings at least equal to the Required Ratings.

“Affiliate” shall mean any person controlled by, controlling or under common control with any other person.

“Allocated Loan Amount” shall have the meaning set forth in the Note.

“Approved Signatory” shall mean any individual who is (1) Mortgagor, (2) a member, partner or venturer of Mortgagor if Mortgagor is a limited liability company, general partnership or joint venture, as the case may be, (3) a general partner of Mortgagor if Mortgagor is a limited partnership, (4) a trustee if Mortgagor is a trust, (5) the president, chief executive officer or chief financial officer of (i) Mortgagor if Mortgagor is a corporation, (ii) a corporate partner, venturer or member of Mortgagor if Mortgagor is a general partnership, joint venture or a limited liability company, (iii) a corporate general partner if Mortgagor is a limited partnership or (iv) a corporate trustee if Mortgagor is a trust, or (6) specifically authorized by Mortgagee in writing as an Approved Signatory.

“Borrowers” shall mean, collectively, each of the entities set forth on *Schedule I* attached to the Note, each a Delaware limited liability company, and each such entity shall be referred to individually as a **“Borrower”**.

“Business Day” shall mean Monday through Friday, except recognized federal holidays and other holidays on which the majority of banks in the recipient’s location are closed.

“Closing Certification” shall mean that certain Closing Certification, dated as of the date hereof, made by Mortgagor and the other Borrowers to Mortgagee.

“CLPF” shall mean Clarion Lion Properties Fund Holdings, L.P., a Delaware limited partnership.

“Contracts” shall mean any and all contracts, agreements and other undertakings of any kind whatsoever, written or oral, for the delivery of services and/or the acquisition of supplies or materials in connection with the ownership, management, operation, maintenance, leasing, construction and/or improvement of the Premises

“Controlling Interest” shall mean the legal or beneficial ownership, use, enjoyment or benefit of, directly or indirectly through one or more intermediate persons and acquired through one or more transactions:

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(1) in the case of a corporation which is the sole owner of the Premises or a tenant in common with a fifty (50%) percent or greater interest in the Premises: (i) fifty (50%) percent or more of the issued and outstanding shares of any class of stock of such corporation, (ii) fifty (50%) percent or more of the aggregate of all issued and outstanding shares of all classes of stock of such corporation or (iii) the right to receive fifty (50%) percent or more of any dividends or other distributions made by such corporation at any time or from time to time;

(2) in the case of a limited partnership or a limited liability company which is the sole owner of the Premises or a tenant in common with a fifty (50%) percent or greater interest in the Premises: (i) any general partner or manager interest therein, (ii) fifty (50%) percent or more of any interest in a general partner or manager therein, (iii) fifty (50%) percent or more of the partner or member interests of all the partners or members therein or (iv) the right to receive fifty (50%) percent or more of any profits, gains, losses, cash flow or distributions of such partnership or limited liability company at any time or from time to time;

(3) in the case of a general partnership or joint venture which is the sole owner of the Premises or a tenant in common with a fifty (50%) percent or greater interest in the Premises: (i) fifty (50%) percent or more of any interests of all the partners or venturers therein or (ii) the right to receive fifty (50%) percent or more of any profits, gains, losses, cash flow or distributions of such partnership or joint venture at any time or from time to time; or

(4) in the case of a trust or other entity which is the sole owner of the Premises or a tenant in common with a fifty (50%) percent or greater interest in the Premises: (i) fifty (50%) percent or more of the interests of all persons owning, using, enjoying or benefiting from such entity or (ii) the right to receive fifty (50%) percent or more of the profits, gains, losses, cash flow or distributions of such entity at any time or from time to time.

(5) in the case of an individual who is the sole owner of the Premises or a tenant in common with a fifty (50%) or greater interest in the Premises: (i) fifty percent (50%) or more of the interests of all persons having a beneficial or other interest in the Premises or (ii) the right to receive fifty percent (50%) or more of the profits, gains, losses, cash flow or distributions resulting from such interest in the Premises at any time or from time to time.

“Counterparty” shall mean any person which is the issuer of the Interest Rate Cap Agreement or any Replacement Interest Rate Cap Agreement.

“Environmental Laws” collectively shall mean and include all present and future laws and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits, and other requirements or guidelines of governmental authorities applicable to the Premises and relating to the environment and environmental conditions or to any Hazardous Substance or Hazardous Substance Activity (including, without limitation, the Comprehensive Environmental Response Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601-2692, the Safe Drinking Water Act, 42 U.S.C. § 300f-300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001, et seq.,

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and any so-called "Super Fund" or "Super Lien" law, environmental laws administered by the Environmental Protection Agency, any similar state and local laws and regulations, all amendments to each of the foregoing and all regulations, orders, decisions, and decrees now or hereafter promulgated thereunder).

"Environmental Losses" means Losses suffered or incurred by Mortgagee, arising out of or as a result of: (1) the occurrence, prior to a Foreclosure Transfer, of any Hazardous Substance Activity; (2) any violation, prior to a Foreclosure Transfer, of any applicable Environmental Laws, Federal, state or local, relating to the Premises or to the ownership, use, occupancy, or operation thereof; (3) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity occurring or allegedly occurring prior to a Foreclosure Transfer; or (4) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against Mortgagee regardless of when such claim, demand, or cause of action or other proceeding is brought or asserted which directly or indirectly relates to, arises from or is based on any of the foregoing or any allegation of the foregoing.

"Equipment" shall mean all machinery, apparatus, equipment, fittings, fixtures, and articles of personal property of every kind and nature whatsoever, other than consumable goods, now or hereafter located in or upon the Land or any part thereof and used or usable in connection with any present or future operation thereof including, without limitation, all heating, lighting, laundry, incinerating and power equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, and communications apparatus, air cooling and air conditioning apparatus, elevators, escalators, shades, awnings, screens, storm doors and windows, stoves, wall beds, refrigerators, attached cabinets, partitions, ducts, and compressors; but not including any personal property of tenants under the Leases.

"Foreclosure Transfer" means the transfer of title to all or any part of the Premises (1) at a foreclosure sale under this Mortgage pursuant to judicial decree or the power of sale contained in this Mortgage, (2) by deed in lieu of such foreclosure, or (3) under the jurisdiction of a bankruptcy court.

"Hazardous Substance" means, at any time, (1) asbestos and any asbestos containing material, (2) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Laws or any applicable laws or regulations as a "hazardous substance", "hazardous material", "hazardous waste", "infectious waste", "toxic substance", "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or "EP toxicity", (3) any petroleum and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources or (4) petroleum products, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter and medical waste.

"Hazardous Substance Activity" means any actual use, packaging, labeling, treatment, leaching, spill, cleanup, storage, holding, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous

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Substance from, under, into or on the Premises or surrounding property (but only concerning surrounding property to the extent of seepage, release, discharge, migration, disposal or other actions from the Premises to the surrounding property or from the surrounding property to the Premises).

“Improvements” shall mean all buildings, structures and other improvements now or hereafter existing, erected or placed on or under the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof; all fixtures of every kind and nature whatsoever now or hereafter owned by Mortgagor and used or procured for use in connection with Premises.

“Indemnitors” shall mean CLPF and KSA, collectively.

“Interest Rate Cap Agreement” shall mean an Interest Rate Cap Agreement (together with the confirmation and schedules relating thereto), between an Acceptable Counterparty and Mortgagor. After delivery of a Replacement Interest Rate Cap Agreement to Lender, the term “Interest Rate Cap Agreement” shall be deemed to mean such Replacement Interest Rate Cap Agreement.

“KSA” shall mean Clarion KSA Investments, LP, a Delaware limited partnership.

“Lease” or **“Leases”** shall mean all leases, license agreements, and other occupancy or use agreements (whether oral or written), now or hereafter existing, under which the Mortgagor is the landlord or equivalent which cover or relate to all or any part of the Premises, together with all options therefor and guarantees thereof, if any, and any and all amendments, modifications, extensions and/or renewals of the foregoing.

“Loan Documents” shall mean the Note, this Mortgage, the other Security Instruments, any Assignment of Leases and Rents and any and all other documents or instruments now or hereafter given by or on behalf of Mortgagor to or for the benefit of Mortgagee evidencing, securing or in any way relating to the Indebtedness evidenced by the Note or the security given therefor.

“Losses” means any and all losses, liabilities, damages, demands, claims, actions, judgments, causes of action, assessments, penalties, costs and expenses incurred by Mortgagee, including, without limitation, all amounts contributed for investigation, monitoring, remediation, response action, removal, restoration and permit acquisition and the fees and disbursements of outside legal counsel, environmental experts, and accountants and the charges of in-house legal counsel and accountants.

“Major Lease” shall have the meaning given such term in the Assignment of Leases and Rents being executed and delivered by Mortgagor to Mortgagee simultaneously herewith and being recorded immediately following this Mortgage.

“Material Adverse Effect” means any set of circumstances or events which (a) has or could be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Mortgage or any other Loan Document; (b) is or could be expected to be material and adverse to the business, properties, assets, financial condition, results of operations

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or prospects of the Mortgagor, any Borrower, any guarantor or indemnitor, or the Property; provided, however, that an adverse change in the financial condition of a guarantor or indemnitor shall not constitute a Material Adverse Effect so long as such guarantor or indemnitor remains in compliance with the net worth and liquidity requirements set forth in Section 2.18(a)(i) and (ii) and no Event of Default has occurred and is continuing hereunder; (c) could be expected to impair materially the ability of Mortgagor or Borrowers to duly and punctually pay or perform any of their respective obligations under any of the Loan Documents to which either of them is a party; or (d) impairs materially or could be expected to impair materially any rights of, or benefits available to, Mortgagee under this Mortgage or any other Loan Document, including, without limitation, the ability of Mortgagee to exercise any of its rights, or enforce any of its remedies, pursuant to this Mortgage or any other Loan Document, at law or in equity.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Note” shall mean that certain Note of even date herewith made by Borrowers in favor of Mortgagee in the amount set forth on the cover page of this Mortgage and all replacements, substitutions, modifications, renewals and extensions thereof.

“Notice” shall mean any notice, request, demand, consent, or other communication by any party to this Mortgage or other Loan Document to any other party thereto.

“Parcel(s)” shall have the meaning set forth in the Note.

“Party in Interest” shall mean Borrowers, Mortgagor, any legal owner of the Property or any part thereof, or any individual or entity personally liable for all or any portion of the Indebtedness secured by the Security Instruments or for any of the other obligations, covenants, conditions, warranties, representations and agreements to be observed, performed, fulfilled and/or discharged thereunder or under any other Loan Document, including, without limitation, any guarantor or indemnitor of all or any portion of such Indebtedness or obligations, covenants and agreements.

“Phase I Environmental Reports” shall mean those certain Phase I Environmental Reports, prepared by CBRE, Inc., for each of the Parcels.

“Post-Closing Agreement” shall mean that certain Post-Closing Agreement of even date herewith made by Borrowers in favor of Mortgagee and all replacements, substitutions, modifications, renewals and extensions thereof.

“Property” shall have the meaning set forth in the Note.

“Property Taxes” shall mean all real estate taxes, personal property taxes, betterments, assessments (general and special), imposts, levies, water, utility and sewage charges, all other taxes and public charges, imposed upon or assessed against Mortgagor or the Premises or upon the revenues, rents, issues, income and profits of use or possession thereof, any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents, any of which might, if unpaid, result in a lien on the Premises, regardless to whom paid or assessed, any assessment, license fee, license tax, business license fee or tax, commercial rental tax, levy,

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charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or Federal government, or any school, architectural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Premises.

“Rents” shall mean rents, royalties, issues, profits, revenues, income and other benefits of the Premises arising at any time (including, without limitation, after the filing of any petition under any present or future Federal or state bankruptcy or similar law) from the use or enjoyment thereof, including, without limitation, cash, letters of credit or securities deposited thereunder to secure performance by the tenants of their obligations thereunder, whether said cash, letters of credit or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due, additional, percentage, participation and other rentals, fees and deposits, and any and all sums paid or due and payable in connection with the modification or termination of any of the Leases.

“Replacement Interest Rate Cap Agreement” means an interest rate cap agreement from an Acceptable Counterparty with terms substantially identical to the Interest Rate Cap Agreement, except as specifically set forth herein.

“Required Ratings” shall mean (a) a long-term unsecured and unsubordinated debt rating or counterparty rating of “A” or better from S&P, and (b) a long-term unsecured and unsubordinated debt rating or counterparty rating of “A2” or better from Moody’s.

“S&P” shall mean Standard & Poor’s Ratings Services, a division of McGraw-Hill Inc.

“Security Instruments” shall mean this Mortgage and those certain first priority fee and/or leasehold Mortgages, Assignments of Leases and Rents and Security Agreements and Deeds of Trust, Assignments of Leases and Rents and Security Agreements, each dated as of the date hereof, executed and delivered by each Borrower as security for the Loan and encumbering the Parcels, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Strike Rate” shall mean a rate no greater than the rate that would cause the Debt Service Coverage Ratio to be in excess of 1.20:1.00 based on interest only payments, utilizing the provisions of *Rider 4* hereof for purposes of computing the same, with respect to each Interest Rate Cap Agreement.

“Taking” shall mean the taking of the Premises or any part thereof or interest therein by reason of any public improvement or condemnation proceeding or by the exercise of the power of eminent domain or any other activity by the governmental or quasi governmental authority or corporation of any kind on or off the Premises, including, without limitation, change of the grade of any street, resulting in damage or injury to the Premises or any part thereof or interest therein, including, without limitation, reduction in the value thereof.

“Uniform Commercial Code” shall mean the Uniform Commercial Code as enacted into law in the state in which the Land is situated.

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RIDER 2

APPLICABLE STATE LAWS PROVISIONS

The following provisions are incorporated by reference into this Mortgage. If any conflict or inconsistency exists between this Rider and the remainder of the attached Mortgage, this Rider shall govern.

(a) **Protective Advances**. Without limitation on anything contained in this Mortgage, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure of this Mortgage, and before and after a judgment of foreclosure, and at any time prior to sale of the Premises, and, where applicable, after sale of the Premises and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 *et seq.* (the "**Act**"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, "**Protective Advances**"):

(i) all advances by Mortgagee in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the Premises; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(ii) payments by Mortgagee of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Premises; (B) when due installments of 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 Premises or any part hereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any prior liens;

(iv) reasonable attorneys' fees and other expenses incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 15-1504(d)(2) and 15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act;

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(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Premises 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; (C) 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 existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises as imposed by subsection (c)(1) of Section 15-1704 of the Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises 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 Premises; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member if in any way affecting the Premises; (G) costs incurred by Mortgagee for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Premises.

All Protective Advances shall be so much additional Indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Interest Rate (as defined in the Note). This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Indebtedness secured by this Mortgage at any time; (B) the amount of the Indebtedness found due and owing to Mortgagee in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional Indebtedness becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose); (C) if right of redemption is deemed not to be waived by this Mortgage, computation of any amounts required to redeem, pursuant to Subsections (d)(2) and (e) of Section 15-1603 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (E) application of income in the hands of any receiver or Mortgagee in possession, and (F) computation of any deficiency judgment pursuant to subsections (b) (2) and (e) of Sections 15-1508 and 15-1511 of the Act.

(b) **Waiver of Right of Redemption and Reinstatement.** Any waiver by Mortgagor of its rights of redemption and reinstatement in this Mortgage, include the waiver of such rights as provided under Sections 15-1601 and 15-1602 of the Act.

(c) **Business Loan Recital/Statutory Exemption.**

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(i) Mortgagor acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (l) of Section 4(1) of the Illinois Interest Act (815 ILCS 205/0.01, et seq.) thereof; (B) the Indebtedness secured hereby has been incurred by Mortgagor solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said subparagraph (l) of Section 4(1); (C) the Indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said subsection (l) of Section 4(1); and (D) the secured Indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et seq.* and has been entered into solely for business purposes of Mortgagor and Mortgagor's investment or profit, as contemplated by said section.

(ii) Without limiting the generality of anything contained herein, Mortgagor acknowledges and agrees that the transaction of which this Mortgage is part is a transaction which does not include either agricultural real estate (as defined in 15-1201 of the Act) or residential real estate (as defined in 15-1219 of the Act).

(d) **Maximum Principal Amount.** This Mortgage shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. This Mortgage also secures any and all future obligations and Indebtedness arising under or in connection with this Mortgage, which future obligations and Indebtedness shall have the same priority as if all such future obligations and Indebtedness were made on the date of execution hereof. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage shall secure (in addition to any Loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Mortgagee in connection with the Indebtedness to be secured hereby and which are to be reimbursed by Mortgagor under the terms of this Mortgage; provided, however, that in no event shall the total amount of Loan proceeds disbursed plus such additional amounts exceed \$198,234,000.

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

(f) **Illinois Mortgage Foreclosure Act.** It is the express intention of Mortgagee and Mortgagor that the rights, remedies, powers and authorities conferred upon Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provisions in this Mortgage are deemed inconsistent with any provision in 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 any rights or remedies which are more limited than the rights that would otherwise be vested in Mortgagee under the

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Act in the absence of such provisions, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(g) **Collateral Protection Act.** Pursuant to the requirements of the Illinois Collateral Protection Act, 815 ILCS 180/1 et seq., Mortgagor is hereby notified as follows:

Unless the Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or any of the other Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Premises or any other collateral for the Indebtedness. This insurance may, but need not protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises or any other collateral for the Indebtedness. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage, the Loan Agreement or any of the other Loan Documents. If Mortgagee purchases insurance for the Premises or any other collateral for the Indebtedness, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The cost of the insurance may be added to the Indebtedness and future obligations secured hereunder. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

(h) **Sealed Instrument.** Mortgagor intends for this Mortgage to be executed and delivered by Mortgagor, and accepted by Mortgagee, as a sealed instrument.

(i) **Maturity Date.** The Indebtedness shall be due and payable in full on or before March 1, 2022, subject to extension to March 1, 2023 and further extension to March 1, 2024.

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RIDER 3

SPECIAL NOTICE PROVISIONS

1. Notices to Mortgagor are to be addressed as follows:

CLPF - KSA GROCERY PORTFOLIO EVANSTON TJ, LLC
 c/o Clarion Partners
 230 Park Avenue, 12th Floor
 New York, New York 10169
 Attn: Chief Financial Officer

2. Copies of Notices to Mortgagor are to be given to the following persons:

Clarion Partners
 1440 New York Avenue, NW, Suite 200
 Washington, D.C. 20005
 Attn: Robert D. Greer

and

King & Spalding LLP
 1185 Avenue of the Americas
 New York, New York 10036
 Attn: John D. Wilson

3. Notices to Mortgagee are to be addressed as follows:

AXA Equitable Life Insurance Company
 1290 Avenue of the Americas, 16th Floor
 New York, New York 10104
 Attention: Real Estate Legal Department
 (Loan No. 160001053)

4. Copies of Notices to Mortgagee are to be given to the following persons:

Quadrant Real Estate Advisors LLC
 12735 Morris Road, Suite 100
 Alpharetta, GA 30004
 Attention: Quadrant-Asset Management
 (Loan No. 160001053)

and

AXA Equitable Life Insurance Company
 c/o Berkadia Commercial Mortgage LLC

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323 Norristown Road -- Suite 300
Ambler, PA 19002
Attn: EVP Client Relations
AXA Equitable Loan Number: 160001053

and

**COOK COUNTY
RECORDER OF DEEDS**

DLA Piper LLP (US)
500 Eighth Street, NW
Washington, DC 20004
Attn: Frederick L. Klein, Esq.

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

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RIDER 4

DEBT YIELD AND DEBT SERVICE COVERAGE RATIO

- (1) Determine the "**Gross Potential Rental Revenue**", which is the sum of (x) current annualized contract rent (based on the most current rent roll) for leases with term commenced and free from default and with remaining lease term of at least 6 months (excluding any unexercised renewal options), with tenants in occupancy, conducting business, paying rent and unaffected by any material adverse change in their financial condition, plus (y) market rents (which shall be determined by Mortgagee in its reasonable discretion) for all vacant space (including any currently leased space which is otherwise excluded from the calculation pursuant to the previous clause), plus (z) expense recoveries (income received from tenants, neighboring property owners under reciprocal covenant agreements, or other parties contractually obligated for operating expenses) projected for the immediately succeeding twelve (12) months. With respect to the Parcel identified as Parcel 5 on *Schedule I* of the Note, the annualized contract rent set forth in clause (x) above for such Parcel shall include additional minimum rent paid for the previous 12-month period under the lease.
- (2) Determine the "**Minimum Vacancy/Credit Loss**" which is equal to the greater of (i) the product of five percent (5%) multiplied by the Gross Potential Rental Revenue or (ii) the actual current vacancy percentage in the Property multiplied by the Gross Potential Rental Revenue. Mortgagee may in its reasonable discretion use a vacancy allowance as described in (i) above of less than 5% when applying the vacancy allowance against rental income from grocery store tenants.
- (3) Determine the "**Other Income**" which is equal to any actual other income including parking income received during the immediately preceding twelve (12) months excluding percentage rent, any lease termination fees or other extraordinary receipts.
- (4) Determine the "**Gross Operating Income**" by subtracting from the Gross Potential Rental Revenue the Minimum Vacancy/Credit Loss and adding Other Income.
- (5) Determine the "**Net Operating Income**" by subtracting from the Gross Operating Income the Actual Operating Expenses for the immediately preceding twelve (12) months. Actual Operating Expenses shall mean all operating expenses actually incurred in connection with the operation of the Property and shall include, but shall not be limited to (A) projected real estate taxes for the immediately succeeding twelve (12) months, (B) the cost of insurance in the actual amount necessary to satisfy the insurance coverage requirements of the Loan Documents, (C) for each Parcel, management fees in an amount equal to the greater of (i) the actual management fee to be charged by the property manager or (ii) 1.25% of the Gross Operating Income, and (D) for the Premises identified on *Schedule I* of the Note as Parcel 1, the contractual ground rent for the immediately succeeding twelve (12) months.
- (6) Determine the "**Debt Yield**" by dividing the Net Operating Income by the unpaid balance of the Loan.
- (7) Determine the "**Debt Service Coverage Ratio**" by dividing the Net Operating Income by the annual debt service under the Loan.

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RIDER 5

FORM OF ASSIGNMENT OF INTEREST RATE CAP AGREEMENT AND SECURITY AGREEMENT

THIS ASSIGNMENT OF INTEREST RATE CAP AGREEMENT AND SECURITY AGREEMENT (this "**Assignment**") is made as of the ___ day of [___], 20___, by each of the entities set forth on *Schedule I* attached hereto, each having offices at c/o [_____] (collectively, the "**Borrower**"), AXA EQUITABLE LIFE INSURANCE COMPANY, a New York corporation, having offices at 1290 Avenue of the Americas, New York, New York 10104 ("**Lender**") and [COUNTERPARTY] ("**Cap Seller**").

RECITALS:

Lender has advanced a loan to Borrower in the principal sum of up to NINETY-NINE MILLION ONE HUNDRED SEVENTEEN THOUSAND AND NO/100 DOLLARS (\$99,117,000.00) (the "**Loan**") evidenced by that certain Note dated [___], 2017 made by Borrower in favor of Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Note**") and secured by those certain real estate mortgages, deed of trusts, or other security instruments dated [___], 2017 (collectively, the "**Security Instrument**"), which encumber certain real property interests owned by Borrower. Capitalized terms used herein and not defined herein shall have the respective meanings ascribed thereto in the Security Instrument.

Lender requires that Borrower assign to Lender, as additional security for the payment of the Loan and the observance and performance by Borrower of the terms, covenants and conditions of the Note, the Security Instrument and the other Loan Documents on the part of Borrower to be observed and performed, all of Borrower's right, title and interest in and to all payments to be made to Borrower pursuant to that certain [Rate Cap Agreement] between Cap Seller and Borrower, a confirmation of which, dated [___], 2016, is attached hereto as Exhibit B (as the same may be modified and increased from time to time, the "**Cap Agreement**").

AGREEMENT:

For good and valuable consideration the parties hereto agree as follows:

1. Assignment of the Cap Agreement.

(a) Until such time as this Assignment is terminated pursuant to the terms contained herein, as additional collateral security for the Loan and the observance and performance by Borrower of the terms, covenants and conditions of the Note, the Security Instrument and the other Loan Documents on the part of Borrower to be observed or performed, Borrower hereby transfers, sets over and assigns to Lender all of Borrower's right, title and interest in and to all payments to be made to Borrower from the Cap Seller pursuant to the Cap Agreement ("**Cap Agreement Payments**"). Cap Seller hereby consents to the assignment contained in this Section 1 and agrees that it will make any Cap Agreement Payments directly to Lender's account in accordance with the notice form of Exhibit A attached hereto until such time as this Assignment is terminated or otherwise cancelled, at which time Cap Seller will be

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instructed to make all Cap Agreement Payments to Borrower. Upon the occurrence and during the continuance of an Event of Default under the Loan Documents, Lender shall apply such Cap Agreement Payments to the payment of all or any portion of the Indebtedness, in any order as Lender elects in its sole discretion. Provided there is no Event of Default then continuing under the Loan Documents, Lender will apply Cap Agreement Payments only to the payment of monthly interest payments due under the Note.

(b) Cap Seller shall be entitled to conclusively rely (without any independent investigation) on any notice or instructions from Lender, or Lender's successors and/or assigns, in respect of the Cap Agreement (including, without limitation, with respect to the Cap Agreement Payments). In consideration of the foregoing agreement by Cap Seller, Borrower agrees that Cap Seller shall be held harmless and shall be fully indemnified by Borrower from and against any and all claims, other than those arising out of the gross negligence, fraud or willful misconduct of Cap Seller or Lender, or Lender's successors and/or assigns, and from and against any actual damages, penalties, judgments, liabilities, actual losses or out-of-pocket expenses (including, without limitation, reasonable attorneys' fees and disbursements) reasonably incurred by Cap Seller as a result of the assertion of any claim, by any person, arising out of, or otherwise related to, any actions taken or omitted to be taken by Cap Seller in reliance upon any such instructions or notices provided by Lender, or Lender's successors and/or assigns.

2. Borrower's Covenants. Borrower hereby covenants with Lender that at any time prior to the repayment of the Indebtedness: (a) Borrower shall fulfill and perform each and every material term, covenant and provision of the Cap Agreement to be fulfilled or performed by Borrower thereunder, if any, (b) Borrower shall, in the manner provided for in this Assignment, give prompt notice to Lender of any notice received by Borrower under the Cap Agreement, together with a complete copy of any such notice, and (c) Borrower shall not terminate or amend any of the terms or provisions of the Cap Agreement, except as may be expressly permitted pursuant to the terms of the Cap Agreement and the Security Instrument, without the prior written consent of Lender, which consent may be withheld by Lender in Lender's sole discretion; provided, that if Borrower is replacing the Cap Agreement with a Replacement Interest Rate Cap Agreement that satisfies the requirements of the Security Instrument, then Lender's consent shall not be required.

3. Governing Law. This Assignment shall be deemed to be governed, construed, applied and enforced in accordance with the laws of the State of New York and the applicable laws of the United States of America.

4. Notices. All notices or other written communications hereunder shall be deemed to have been properly given and become effective as provided in Section 4.01 of the Security Instrument. Notices to the Cap Seller shall be sent as follows:

[CAP SELLER]

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5. No Oral Change. This Assignment, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender (except for a termination upon repayment of the Indebtedness in full in accordance with Section 19 hereof), but only by an agreement in writing signed by Borrower and Lender and acknowledged by Cap Seller.

6. Liability. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and permitted assigns forever.

7. Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

8. Headings, etc. The headings and captions of various paragraphs of this Assignment 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.

9. Duplicate Originals; Counterparts. This Assignment may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

10. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

11. Secondary Market. Lender may sell, transfer and deliver the Note and assign the Security Instrument, this Assignment and the other Loan Documents in the secondary mortgage market whether or not in connection with such sale, Lender may retain or assign responsibility for servicing the Loan, including the Note, the Security Instrument, this Assignment and the other Loan Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

12. Miscellaneous.

(a) Wherever pursuant to this Assignment (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole discretion of Lender exercised in good faith and shall be final and conclusive.

(b) Wherever pursuant to this Assignment it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable

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legal fees of outside counsel and disbursements actually incurred by Lender, in connection with retained firms.

(c) Nothing herein is intended, and nothing herein shall be construed, to impose upon Lender any liability or obligation of Borrower under the Cap Agreement.

(d) The limitation on liability set forth in Section 3.09 of the Security Instrument are hereby incorporated by reference into this Assignment, *mutatis mutandis*, to the same extent and with the same force as if fully set forth herein. In the event of any conflict or inconsistency between the provisions of Section 3.09 of the Security Instrument, on the one hand, and the provisions of this Assignment on the other, the provisions of Section 3.09 of the Security Instrument shall govern and control.

12. Right to Cure Defaults. In addition to, and in no way limiting other remedies available to Lender under this Assignment, the Note, the Security Instrument, or the other Loan Documents, if Borrower shall default in the performance or observance of any material term, covenant or condition of the Cap Agreement on the part of Borrower to be performed or observed, then, without limiting the generality of the other provisions of this Assignment or the Security Instrument, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Cap Agreement on the part of Borrower to be performed or observed or to be promptly performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under the Cap Agreement shall be kept unimpaired and free from default. If Lender shall make any such payment or perform any such act or take action in accordance with the preceding sentence, Lender will notify Borrower of the making of any such payment, the performance of any such act, or the taking of any such action and Borrower shall, within ten (10) Business Days after request by Lender, reimburse Lender for same. Any such payment made or sums expended by Lender on behalf of Borrower shall be added to the Indebtedness. To the extent practicable, Lender shall provide Borrower with prior notice of any above-mentioned payment or action, or if not, as soon thereafter as reasonably practicable.

14. Remedies Cumulative. None of the rights and remedies herein conferred upon or reserved to Lender under this Assignment are intended to be exclusive of any other rights, and each and every right shall be cumulative and concurrent, and may be enforced separately, successively or together, and may be exercised from time to time as often as may be deemed necessary by Lender. In addition, Lender may exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code.

15. Further Assurances. Borrower shall, at its sole expense, give, execute, deliver, file and/or record any financing statement, continuation statement, notice, instrument, document, agreement or other papers that may be reasonably necessary or desirable to create, preserve, perfect or validate the security interest granted pursuant hereto or to enable Lender to exercise and enforce its rights hereunder with respect to such security interest.

16. Security Agreement. This Assignment is a "security agreement" within the meaning of the Uniform Commercial Code.

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17. Cap Seller Notification Letter. Borrower represents, warrants and covenants that concurrently with the execution of this Assignment, Borrower shall send a notice, in the form of Exhibit A attached hereto, to Cap Seller.

18. Borrower Representations and Warranties.

(a) Borrower represents and warrants to Lender that (i) a true and correct copy of the Cap Agreement has been delivered by Borrower to Lender and the Cap Agreement has not been amended or modified in any respect, (ii) Borrower has all necessary right, power and authority to enter into the Cap Agreement and perform its obligations thereunder, (iii) Borrower is in material compliance (which means Borrower is not in violation of or default under the Cap Agreement) with all of the terms and conditions of the Cap Agreement and has performed all of its obligations thereunder, (iv) Borrower has all necessary right, power and authority to make the assignment and grant the security interest herein provided for, and (v) Borrower's interest in the Cap Agreement and Cap Agreement Payments is free and clear of any liens or claims in favor of any other person, firm or corporation, other than in favor of Lender.

(b) Borrower represents and warrants to Lender that (i) it will not without Lender's prior written consent, request or direct the Cap Seller to pay any Cap Agreement Payments to an account other than in accordance with notice in the form of Exhibit A sent by Borrower to Cap Seller concurrently with the execution of this Agreement and (ii) it will not assign, transfer or grant any lien on the Cap Agreement or Cap Agreement Payments.

19. Termination Upon Repayment. Upon the payment in full of the Indebtedness, this Assignment shall terminate automatically without any further action by any party hereto. Following any such termination, Lender shall, if requested in writing by Borrower, deliver (i) such evidence of such termination as Borrower may reasonably request and (ii) written notice to Cap Seller.

20. Reliance. Borrower and Lender agree that Cap Seller shall be entitled to conclusively rely (without any independent investigation) on any notice or instructions from Borrower in respect of the Cap Agreement; provided, however, no notice or instructions regarding any termination or amendment of any terms or provisions of the Cap Agreement shall be effective without Lender's prior written consent, and no notice or instruction regarding any amendment or modification of the payment instruction delivered by Borrower to Cap Seller pursuant to Section 17 above, shall be effective unless executed by Lender.

[NO FURTHER TEXT ON THIS PAGE]

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IN WITNESS WHEREOF the undersigned have executed this Assignment as of the date first written above.

BORROWER:

**COOK COUNTY
RECORDER OF DEEDS**

By: _____
Name:
Title:

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

[signature page for Assignment of Interest Rate Cap]

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LENDER:

**AXA EQUITABLE LIFE INSURANCE
COMPANY, a New York Corporation**

By: _____
Name:
Title:

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

[signature page for Assignment of Interest Rate Cap]

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CAP SELLER:

**COOK COUNTY
RECORDER OF DEEDS**

By: _____
Name:
Title:

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

Property of Cook County Clerk's Office

[signature page for Assignment of Interest Rate Cap]

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EXHIBIT A OF ASSIGNMENT OF INTEREST RATE CAP AGREEMENT AND SECURITY AGREEMENT

[CAP SELLER]

[_____]

[_____]

[_____]

Re: **Rate Cap Agreement** in the notional amount of \$[_____] dated as of [●], 20[] (as the same may be modified and increased from time to time, the "**Cap Agreement**") between [●], as cap seller ("**Cap Seller**") and each of the entities set forth on *Schedule I* attached hereto, each having offices at [_____], (collectively, the "**Borrower**").

Gentlemen:

On [●], 20[], AXA EQUITABLE LIFE INSURANCE COMPANY, a New York corporation (together with its successors and assigns, "**Lender**"), having an office address at 1290 Avenue of the Americas, New York, New York 10104 funded a first mortgage loan (the "**Loan**") to Borrower, as borrower, evidenced by that certain Note dated as of [_____] 2016 in the amount of the Loan and secured by those certain real estate mortgages, deed of trusts, or other security instruments dated as of [_____] 2016, which encumber certain real properties owned by the Borrower. This letter shall constitute notice to Cap Seller that (a) Borrower has granted a security interest in the Cap Agreement in favor of Lender, to secure certain of Borrower's obligations under the Loan and (b) Borrower has agreed not to terminate or amend any of the terms or provisions of the Cap Agreement, except as may be expressly permitted pursuant to the terms of the Cap Agreement, without the prior written consent of Lender.

Borrower hereby authorizes and directs Cap Seller as of the date hereof to make all payments due Borrower under the Cap Agreement by wire transfer to the following account:

[●]

The instructions set forth herein are not subject to modification or amendment except by written notice executed by Lender.

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SCHEDULE I OF INTEREST RATE CAP AGREEMENT AND SECURITY AGREEMENT

BORROWERS

<u>Parcel</u>	<u>Borrowers</u>	<u>Addresses</u>
1.	CLPF - KSA GROCERY PORTFOLIO CHICAGO AVENUE, LLC, a Delaware limited liability company	2021 W. Chicago Ave., Chicago, IL 60622
2.	CLPF - KSA GROCERY PORTFOLIO N. SHERIDAN ROAD, LLC, a Delaware limited liability company	5201 N. Sheridan Road, Chicago, IL 60640
3.	CLPF - KSA GROCERY PORTFOLIO PARK RIDGE, LLC, a Delaware limited liability company	1900 S. Cumberland Ave., Park Ridge, IL 60068
4.	CLPF - KSA GROCERY PORTFOLIO N. BROADWAY AVENUE, LLC, a Delaware limited liability company	6009 N. Broadway St., Chicago, IL 60660
5.	CLPF - KSA GROCERY PORTFOLIO EVANSTON WF, LLC, a Delaware limited liability company	1111 Chicago Ave., Evanston, IL 60202
6.	CLPF - KSA GROCERY PORTFOLIO TAMPA, LLC, a Delaware limited liability company	3808 W. Swann Ave., Tampa, FL 33609
7.	CLPF - KSA GROCERY PORTFOLIO EVANSTON TJ, LLC, a Delaware limited liability company	1211 Chicago Ave., Evanston, IL 60202
8.	CLPF - KSA GROCERY PORTFOLIO LIBERTYVILLE, LLC, a Delaware limited liability company	1600 S. Milwaukee Ave., Libertyville, IL 60048
9.	CLPF - KSA GROCERY PORTFOLIO WOODBURY, LLC, a Delaware limited liability company	8960 Hudson Road, Woodbury, MN 55125
10.	CLPF-KSA GROCERY PORTFOLIO GREENWOOD VILLAGE, LLC, a Delaware limited liability company	8523-8575 E. Arapahoe Road, Greenwood Village, CO 80122

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EXHIBIT A

LEGAL DESCRIPTION

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

Parcel 1:

The North 1/2 of Lot 15 and all of Lots 16, 17 and 18 in Block 76 in the Village of Evanston in the North 1/2 of the North 1/2 of Section 19, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

Exclusive license in favor of Parcel 1 as evidenced by the Memorandum of License Agreement recorded December 12, 2012 as document 1234733064 for parking, ingress and egress over and upon Lot 19 in aforesaid subdivision; and Assignment and Assumption of License Agreements recorded October 4, 2013 as document 1327716112 and Assignment and Assumption of License Agreements recorded November 15, 2016 as document number 1632016092.

Parcel 3:

Exclusive license in favor of Parcel 1 as evidenced by the Memorandum of License Agreement recorded December 12, 2012 as document 1234733063 for parking, ingress and egress over and upon Lot 20 in aforesaid subdivision; and Assignment and Assumption of License Agreements recorded October 4, 2013 as document 1327716112 and Assignment and Assumption of License Agreements recorded November 15, 2016 as document number 1632016092.

1211-1229 Chicago Avenue
Evanston, IL 60202

PIN(S): 11-19-200-025-0000
11-19-200-026-0000
11-19-200-006-0000
11-19-200-036-0000