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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

Doc#: 1803857092 Fee: \$128.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 02/07/2018 11:07 AM Pg: 1 of 41

The property identified as: **PIN: 08-16-200-103-0000**

Address:

Street: 95 W. Algonquin Road

Street line 2:

City: Arlington Heights

State: IL

ZIP Code: 60005

Lender: Voya Retirement Insurance and Annuity Company

Borrower: 95 WA Investor LLC

Loan / Mortgage Amount: \$10,000,000.00

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

Certificate number: 20085864-9F71-47E7-9B85-D22DF0713B4E

Execution date: 2/6/2018

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**PREPARED BY AND WHEN
RECORDED MAIL TO:**

Reed Smith LLP
Princeton Forrestal Village
136 Main Street - Suite 250
Princeton, New Jersey 08540
Attn: Christopher J. Maurer, Esq.

Voya Loan No. 29682

P.I.N.: 08-16-200-103-0000

Common Address:

95 W. Algonquin Road
Arlington Heights, Illinois 60005

MORTGAGE, ASSIGNMENT OF LEASES, SECURITY AGREEMENT AND FIXTURE FILING

NAME OF

MORTGAGOR: 95 WA Investor LLC, a Delaware limited liability company

NAME OF

MORTGAGEE: Voya Retirement Insurance and Annuity Company, a Connecticut corporation

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

THIS MORTGAGE, ASSIGNMENT OF LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted and/or supplemented, referred to as this "Mortgage") is made this 6th day of February, 2018, by **95 WA INVESTOR LLC**, a Delaware limited liability company having an address at c/o The Hearn Company, 875 North Michigan Avenue, Suite 4100, Chicago, Illinois 60611 (hereinafter referred to as the "Mortgagor"), to and for the benefit of **VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY**, a Connecticut corporation having an address c/o Voya Investment Management LLC, 5780 Powers Ferry Road, NW, Suite 300, Atlanta, Georgia 30327-4349 (hereinafter referred to as the "Mortgagee").

WITNESSETH:

WHEREAS, the Mortgagor is the owner of a fee simple estate and interest in that certain real property located at 95 West Algonquin Road, Arlington Heights, Illinois 60005, all as more fully described on Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Land"); and

WHEREAS, the Mortgagee has agreed to make available to the Mortgagor a commercial mortgage bridge loan in the original principal amount of \$10,000,000.00 (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Loan"); and

WHEREAS, the Loan is evidenced by that certain Promissory Note dated of even date herewith, executed by the Mortgagor, as maker, in favor of the Mortgagee, as payee, in the original principal amount of \$10,000,000.00 (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Note"); and

WHEREAS, capitalized terms used but not otherwise expressly defined herein shall have the same meanings when used herein as set forth in the Note; and

WHEREAS, the Mortgagee is desirous of securing the prompt payment of the Note together with interest, charges and prepayment fees, if any, thereon in accordance with the terms, conditions, and provisions of the Note, and any additional indebtedness accruing to the Mortgagee on account of any future payments, advances or expenditures made by the Mortgagee pursuant to the Note or this Mortgage and any additional sums with interest thereon which may be loaned to the Mortgagor by the Mortgagee or advanced under the "Loan Documents" (as such term is hereinafter defined) (hereinafter all such amounts shall sometimes be collectively referred to as the "Indebtedness").

NOW, THEREFORE, the Mortgagor, to secure the payment of the Indebtedness and the performance of the covenants and agreements herein contained to be performed by the Mortgagor, for good and valuable consideration in hand paid, the receipt and sufficiency whereof are hereby acknowledged, and intending to be legally bound, hereby agrees and covenants as follows:

1. **Granting Clauses.** The Mortgagor hereby irrevocably and absolutely does by these presents GRANT AND CONVEY, MORTGAGE AND WARRANT, SET OVER, TRANSFER, ASSIGN, BARGAIN AND SELL to the Mortgagee, its successors and assigns, with all powers of sale (if any) and all statutory rights under the laws of the State of Illinois, and grants to the Mortgagee a security interest in and to, all of the Mortgagor's present and hereafter acquired estate, rights, title, and interests, if

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any, in, to, and under the following (hereinafter collectively referred to as the "Mortgaged Premises"):

(a) The Land, together with all buildings, structures and improvements now or hereafter erected on the Land, together with all fixtures and items that are to become fixtures thereto (hereinafter collectively referred to as the "Improvements"); and

(b) All and singular the easements, rights-of-way, licenses, permits, rights of use or occupancy, privileges, tenements, appendages, hereditaments, and appurtenances and other rights and privileges attached or belonging to the Land or the Improvements or in any way appertaining thereto, whether now or in the future, and all of the rents, issues, income, and profits from the Land or the Improvements; and

(c) The land lying within any street, alley, avenue, roadway or right-of-way open or proposed or hereafter vacated in front of or adjoining the Land; and all rights, title and interests, if any, of the Mortgagor in and to any strips and gores adjoining the Land; and

(d) All machinery, apparatus, equipment, goods, systems, building materials, carpeting, furnishings, fixtures, fittings, furniture, and property of every kind and nature whatsoever, now or hereafter located in or upon or annexed to the Land or the Improvements, or any part thereof, or used or usable in connection with any construction on or any present or future operation of the Land or the Improvements, now owned or hereafter acquired by the Mortgagor, including, but without limiting the generality of the foregoing: all heating, lighting, refrigerating, ventilating, air-conditioning, air-cooling, electrical, fuel, garbage, sanitary drainage, dust removal, refuse or garbage, fire extinguishing, plumbing, cleaning, telephone, communications and power equipment, systems and apparatus; and all elevators, switchboards, motors, pumps, screens, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all cranes and craneways, oil storage, sprinkler/fire protection and water service equipment; and also including any of such property stored on the Land or the Improvements or in warehouses and intended to be used in connection with or incorporated into the Land or the Improvements or for the pursuit of any other activity in which the Mortgagor may be engaged on the Land or the Improvements, and including, without limitation, all tools, musical instruments and systems, audio or video equipment, cabinets, awnings, window shades, venetian blinds, drapes and drapery rods and brackets, screens, carpeting and other window and floor coverings, decorative fixtures, plants, cleaning apparatus, and cleaning equipment, refrigeration equipment, cables, computers and computer equipment, software, books, supplies, kitchen equipment, appliances, tractors, lawn mowers, ground sweepers and tools, swimming pools, whirlpools, recreational or play equipment together with all substitutions, accessions, repairs, additions, and replacements to any of the foregoing, it being understood and agreed that all such machinery, equipment, apparatus, goods, systems, fixtures, and property are a part of the Improvements and are declared to be a portion of the security for the Indebtedness (whether in single units or centrally controlled, and whether physically attached to said real estate or not); and

(e) Any and all awards, payments, and insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to the Land or the Improvements or other properties described above as a result of any of the following or otherwise: (i) the exercise of the right of eminent domain or action in lieu thereof; or (ii) the alteration of the grade of any street; or (iii) any fire, casualty, accident, damage or other injury to or decrease in the value of the Land or the Improvements or other properties described above, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by the Mortgagor or the Mortgagee, and of the reasonable counsel fees, costs and disbursements incurred by the Mortgagor or the Mortgagee in connection with the collection of such award or payment. The Mortgagor hereby covenants and agrees to execute and deliver, from time to time, such further instruments as may be requested by the Mortgagee to confirm such assignment to the Mortgagee of any such award, payment, or proceeds.

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The parties intend the definition of Mortgaged Premises to be broadly construed and in the case of doubt as to whether a particular item is to be included in the definition of Mortgaged Premises, the doubt should be resolved in favor of inclusion.

TO HAVE AND TO HOLD the Mortgaged Premises with all rights, privileges, and appurtenances thereunto belonging, and all income, rents, royalties, revenues, issues, profits, and proceeds therefrom, unto the Mortgagee, its successors and assigns, forever, for the uses and purposes herein expressed.

THIS MORTGAGE IS GIVEN TO SECURE: Payment of the Indebtedness and payment of such additional sums with interest thereon which may hereafter be loaned to the Mortgagor by the Mortgagee pursuant to the Note or this Mortgage or otherwise advanced under the Loan Documents, including, without limitation, advances made by the Mortgagee to protect the Mortgaged Premises or the lien of this Mortgage or to pay taxes, assessments, insurance premiums, and all other amounts that the Mortgagor has agreed to pay pursuant to the provisions hereof or that Mortgagee has incurred by reason of the occurrence of an "Event of Default" (as such term is hereinafter defined), including without limitation, advances made to enable completion of the Improvements or any restoration thereof, even though the aggregate amount outstanding at any time may exceed the original principal balance stated herein and in the Note; and the due, prompt and complete performance of each and every covenant, condition, and agreement contained in this Mortgage, the Note, and every other agreement, document, and instrument to which reference is expressly made in this Mortgage or which at any time evidences or secures the Indebtedness evidenced by the Note (hereinafter this Mortgage, the Note, and all such other agreements, documents and instruments (but specifically excluding the Environmental Indemnity), as any of them may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, shall be collectively referred to as the "Loan Documents"). The Mortgagor hereby warrants that (a) the Mortgagor has good and marketable title to the Mortgaged Premises, is lawfully seized and possessed of the Mortgaged Premises and every part thereof, and has the right to convey same and (b) the Mortgagor shall forever warrant and defend the title to the Mortgaged Premises unto the Mortgagee against the claims of all persons whomsoever, and (c) the Mortgaged Premises are unencumbered except as set forth on the Mortgagee's title insurance policy dated on or about even date herewith regarding the Mortgaged Premises. The maximum amount included within the Indebtedness secured hereby shall not exceed the amount of \$20,000,000.00.

2. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.** The Mortgagor shall: (a) promptly repair, restore or rebuild the Improvements now or hereafter on the Mortgaged Premises which may become damaged or be destroyed, such Improvements to be of at least equal value and substantially the same character as prior to such damage or destruction; (b) keep the Mortgaged Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien (except the lien of current general taxes duly levied and assessed but not yet due and payable); (c) immediately pay when due or within any applicable grace period any indebtedness which may be secured by a lien or charge on the Mortgaged Premises (no such lien, except for current general taxes duly levied and assessed but not yet payable, to be permitted hereunder), and upon request exhibit satisfactory evidence to the Mortgagee of the discharge of such lien; (d) complete within a reasonable time any Improvements now or at any time in process of erection upon the Land; (e) comply with all requirements of law (including, without limitation, pollution control and environmental protection laws and laws relating to the accommodation of persons with disabilities), ordinance or other governmental regulation in effect from time to time affecting the Mortgaged Premises and the use thereof, and covenants, easements and restrictions of record with respect to the Mortgaged Premises and the use thereof; (f) not make any material alterations in the Mortgaged Premises; (g) not suffer or permit any material change in the general nature of the use of the Mortgaged Premises, without the Mortgagee's prior

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express written consent; (h) not initiate or acquiesce in any zoning reclassification or variance with respect to the Mortgaged Premises without the Mortgagee's prior express written consent; and (i) pay each item of Indebtedness when due according to the terms hereof or of the Note.

Notwithstanding anything contained herein to the contrary, the Mortgagor shall not be required to pay or discharge any taxes, assessments, liens, or other charges or encumbrances of the nature referred to in this Paragraph 2 (Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.) above or in Paragraph 3 (Payment of Taxes) below so long as the Mortgagor shall in good faith contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection of the levy, lien, or imposition so contested and the sale of the Mortgaged Premises, or any part thereof, to satisfy any obligation arising therefrom, provided that the Mortgagor shall give such security as may be reasonably demanded by the Mortgagee to insure such payments and prevent any sale or forfeiture of the Mortgaged Premises by reason of such nonpayment, failure of performance, or contest by the Mortgagor. Any such contest shall be prosecuted with due diligence and the Mortgagor shall promptly, after final determination thereof, pay the amount of any levy, lien, or imposition so determined, together with all interest and penalties which may be payable in connection therewith. Notwithstanding the provisions of this paragraph to the contrary, the Mortgagor shall (and if the Mortgagor shall fail so to do, the Mortgagee may but shall not be required to) pay any such levy, lien, or imposition notwithstanding such contest if in the reasonable opinion of the Mortgagee, the Mortgaged Premises or any portion thereof shall be in jeopardy or in danger of being forfeited or foreclosed.

3. **Payment of Taxes.** Subject to the second Paragraph 2 above, the Mortgagor shall pay unless otherwise paid by the Mortgagee in accordance with Paragraph 4 below, at least thirty (30) days before any delinquency or any penalty or interest attaches, all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other charges against the Mortgaged Premises of any nature whatsoever when due, and shall, upon written request, furnish to the Mortgagee duplicate receipts therefor.

4. **Tax Deposits.** The Mortgagor hereby covenants and agrees to deposit with such depository as the Mortgagee from time to time may in writing appoint, and in the absence of such appointment, then at the office of the Mortgagee, c/o Voya Investment Management LLC, 5780 Powers Ferry Road, NW, Suite 300, Atlanta, Georgia 30327-4349, Attention Mortgage Loan Servicing Department, commencing on the date of disbursement of the Loan and on the first day of each month following the month in which said disbursement occurred until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of the last total annual taxes and assessments (including, without limitation, *ad valorem* taxes) for the last ascertainable year (if the current year's taxes and assessments are not yet ascertainable) (general and special) on the Mortgaged Premises (unless said taxes are based upon assessments which exclude the Improvements or any part thereof now constructed or to be constructed, in which event the amount of such deposits shall be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Such deposits are to be held without any allowance of interest (unless applicable law requires otherwise) and are to be used for the payment of taxes and assessments (general and special) on the Mortgaged Premises next due and payable when they become due. Upon demand by such depository, the Mortgagor shall deliver and pay over to such depository from time to time such additional sums or such additional security as are necessary to make up any deficiency in the amount necessary to enable such depository to fully pay any of the items hereinabove mentioned as they become due and payable. If the funds so deposited exceed the amount required to pay such items hereinabove mentioned for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of the Mortgagee or such depository. The Mortgagor shall be responsible for ensuring the receipt by the Mortgagee, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all taxes and assessments to be paid from the funds on deposit with such

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depository, and so long as no Event of Default has occurred and is continuing and no circumstance exists, which with the giving of notice, or passage of time, or both, would constitute an Event of Default, the Mortgagee shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose. In making any payment from the funds on deposit with such depository, the Mortgagee shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof.

If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Mortgaged Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment, or imposition upon or for any other property not covered by the lien of this Mortgage, then the computation of any amount to be deposited under this Paragraph 4 shall be based upon the entire amount of such taxes or assessments, and the Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

5. **Mortgagee's Interest In and Use of Deposits.** Upon the occurrence of an Event of Default, the Mortgagee may, at its option and without being required to do so, apply any monies at the time on deposit pursuant to Paragraphs 4 and 7 hereof, on any of the Mortgagor's obligations herein or in the Note or any of the Loan Documents contained, in such order and manner as the Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to the Mortgagor. A security interest within the meaning of the Illinois Uniform Commercial Code, as in effect from time to time (hereinafter referred to as the "UCC") is hereby granted to the Mortgagee in and to any monies at any time on deposit pursuant to Paragraphs 4 and 7 hereof and such monies and all of the Mortgagor's rights, title, and interests therein are hereby assigned to the Mortgagee, all as additional security for the Indebtedness and shall, in the absence of the occurrence of an Event of Default, be applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor; provided, however, that neither the Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes and assessments and insurance premiums any amount so deposited. Neither the Mortgagee nor any depository hereunder shall be liable for any act or omission taken in good faith or pursuant to the instruction of any party but only for its gross negligence or willful misconduct. The Mortgagor hereby covenants and agrees to cooperate with the Mortgagee in executing a control agreement, reasonably acceptable to the Mortgagee, if necessary, with the depository chosen to manage the deposit account envisioned by Paragraphs 4 and 7 hereof for the purpose of perfecting the security interest in said account.

6. **Insurance.**

(a) Until the Indebtedness is fully and indefeasibly repaid in full, the Improvements and all fixtures, equipment, and property therein contained or installed shall be kept unceasingly insured against loss and damage by such hazards, casualties and contingencies in such amounts and for such periods as may from time to time be required by the Mortgagee. All insurance shall be written in policies, and by insurance companies, approved by the Mortgagee, which approval shall not be unreasonably withheld so long as an A.M. Best Key Rating Guide Class of at least A VII is maintained and the policy otherwise conforms to the terms hereof. No policy of insurance shall contain a co-insurance clause or other clause limiting the amount of coverage under any conditions. All policies of insurance and renewals thereof shall contain standard noncontributory mortgagee loss payable clauses to the Mortgagee and any participating lender and shall provide for at least thirty (30) days prior written notice of cancellation, termination, modification, or non-renewal to the Mortgagee, as well as a waiver of subrogation endorsement, all as required by the Mortgagee, in form and content acceptable to the Mortgagee. Originals of all policies (or certified copies thereof), together with original Acord 28 (as to the property

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insurance only) and Acord 25 (as to the liability insurance only) certificates of insurance with respect to such policies, shall be delivered to the Mortgagee, together with evidence that all premiums with respect thereto have been fully paid prior to the expiration of the existing policies until all sums hereby secured are fully paid. The Mortgagee and any participating lender shall be named as first mortgagee/lender loss payee, as to any property or casualty insurance policies, and as additional insured, as to any liability insurance policies. The Mortgagor covenants and agrees to pay promptly when due all premiums for said insurance throughout the term of the Loan. Upon request by the Mortgagee, the Mortgagor shall furnish the Mortgagee evidence of the replacement cost of the Improvements. In case of a sale pursuant to a foreclosure of this Mortgage or other transfer of title to the Mortgaged Premises and extinguishment of the Indebtedness, Mortgagee shall assign all rights to proceeds under all policies through the date of such sale or transfer, other than liability insurance policies, held by the Mortgagee in the purchaser or grantee. The Mortgagee shall not by reason of accepting, rejecting, approving or obtaining insurance incur any liability for payment of losses.

(b) Without in any way limiting the generality of the foregoing, the Mortgagor covenants and agrees to maintain or cause to be maintained insurance coverage on the Mortgaged Premises which shall include: (i) physical hazard insurance on an "all risks" basis with a Replacement Cost Endorsement, an Increased Cost of Construction Endorsement, and an Agreed Amount Endorsement, covering the perils of fire, flood (if in a flood hazard zone), earthquakes (if in an earthquake zone), equipment breakdown/boiler and machinery (to include major components of HVAC systems, if not already included in the above coverage, and such other equipment as the Mortgagee may require), windstorm, terrorism, and such other perils as the Mortgagee may require, and extended coverage in an amount at least equal to the amount of the Loan and not less than the full replacement cost of the Improvements and the personal property collateral ("Full replacement cost" shall mean the cost of replacing the Improvements and the personal property collateral without deduction for physical depreciation); (ii) commercial general liability insurance covering claims for bodily injury, death and property damage in an amount which the Mortgagee may reasonably require and sufficient to satisfy all "Lease" (as such term is defined in Paragraph 10 below) requirements; (iii) rental interruption insurance insuring against loss arising out of the perils insured against in the policy or policies referred to in clause (i) above, in an amount equal to not less than gross revenue from the Mortgaged Premises for twelve (12) months from the operation and rental of all Improvements now or hereafter forming part of the Mortgaged Premises, based upon one hundred percent (100%) occupancy of such Improvements, less any allocable charges and expenses which do not continue during the period of restoration and naming the Mortgagee in a standard mortgagee loss payable clause thereunder; (iv) flood insurance (if in a flood hazard zone); (v) earthquake insurance (if in an earthquake zone); (vi) terrorism insurance (if required by the Mortgagee); (vii) Ordinance & Law coverage, including "Coverage A" (Loss to the undamaged portion of the Mortgaged Premises), "Coverage B" (Demolition and Debris removal of the undamaged portion of the Mortgaged Premises), and "Coverage C" (increased cost of construction endorsement) in such amounts as the Mortgagee may require; and (viii) such other insurance that may be reasonably required from time to time by the Mortgagee.

(c) The Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder.

7. **Insurance Premium Deposits.** It is further covenanted and agreed that for the purpose of providing funds with which to pay the premiums as the same become due on the policies of insurance as herein covenanted to be furnished by the Mortgagor, the Mortgagor shall deposit with the Mortgagee or the depository referred to in Paragraph 4 hereof on the date of disbursement of the proceeds of the Loan and on the first day of each month following the month in which said disbursement occurred, an amount equal to the annual premiums that will next become due and payable on such policies less any amount then on deposit with the Mortgagee or such depository, divided by the number of months to

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elapse thirty (30) days prior to the date when such premiums become delinquent. No interest shall be allowed to the Mortgagor on account of any deposit or deposits made hereunder and said deposits need not be kept separate and apart from any other funds of the Mortgagee or such depository.

8. Adjustment of Losses with Insurer and Application of Proceeds of Insurance.

(a) In case of loss or damage by fire or other casualty, the Mortgagor shall immediately give the Mortgagee and the insurance companies that have insured against such risks written notice of such occurrence.

(b) In case of loss or damage by fire or other casualty, the Mortgagor shall, if no Event of Default then exists, have the sole and exclusive right to settle, compromise, or adjust any claim under, and receive, for the purpose of rebuilding and restoration, the proceeds arising from any and all losses payable under, insurance policies to the extent the amount thereof does not exceed One Hundred Thousand and 00/100 (\$100,000.00) Dollars (hereinafter referred to as the "Threshold Amount"), and all claims for losses in excess of said Threshold Amount shall be settled, compromised, or adjusted only with the mutual agreement of the Mortgagor and the Mortgagee and the proceeds paid as hereinafter provided. In the event insurance proceeds in excess of the Threshold Amount are payable or if an Event of Default exists, then, in either of such events, the Mortgagee is hereby authorized to collect and receive any such insurance proceeds. Insurance proceeds collected by the Mortgagee as aforesaid, after deducting therefrom any expenses incurred in the collection thereof, shall, if requested by the Mortgagor in writing within thirty (30) days after the proceeds of insurance covering such damage or destruction become available, be made available to the Mortgagor for the purpose of paying the cost of rebuilding or restoring of the Improvements if (i) the Mortgaged Premises, in the Mortgagee's sole and absolute discretion, is capable of being restored to that condition which existed immediately prior to the damage or loss, (ii) the insurance proceeds, together with all other funds which are provided by the Mortgagor, are sufficient to restore the Mortgaged Premises, (iii) the Mortgagee determines that income from the Mortgaged Premises shall not be materially affected following the completion of such restoration or rebuilding, and (iv) no Event of Default then exists, and no circumstance or condition exists that would constitute an Event of Default upon the giving of notice or the passage of time, or both. In the event that the Mortgagee makes said proceeds available to the Mortgagor to pay the cost of rebuilding or restoring of the Improvements, such proceeds shall be made available in the manner and under the conditions that the Mortgagee may reasonably require to assure proper application of such proceeds. In the event such insurance proceeds are made available by the Mortgagee, the Mortgagor shall pay all costs incurred by the Mortgagee in connection with the application of such insurance proceeds (including, but not limited to, any costs incurred by the Mortgagee and a title company or agent approved by the Mortgagee in overseeing the disbursement of such insurance proceeds). The Improvements shall be restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the projected cost of rebuilding, repairing or restoring of such Improvements exceeds the Threshold Amount, then insurance proceeds shall not be made available to the Mortgagor unless and until the Mortgagee has approved plans and specifications for the proposed rebuilding and restoration, which approval shall not be unreasonably withheld. If the proceeds are to be made available by the Mortgagee to the Mortgagor to pay the cost of said rebuilding or restoration, any surplus which may remain out of said insurance proceeds after payment of the costs of rebuilding or restoring the Mortgaged Premises shall, at the option of the Mortgagee, be applied on account of the Indebtedness or be paid to any party entitled thereto under such conditions as the Mortgagee may reasonably require. No interest shall be allowed to the Mortgagor on any proceeds of insurance held by the Mortgagee.

(c) In the event proceeds of insurance are not required to be made available to the Mortgagor for the purpose of paying the cost of the rebuilding or restoring of the Improvements, the Mortgagee, after deducting the costs of any collection, adjustment and compromise, shall apply such insurance proceeds in

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accordance with the terms of the Note upon the Indebtedness, provided that any amount so applied by the Mortgagee in reduction of the outstanding principal balance of the Note shall be credited to installments of principal in the inverse order of their maturity but no such application shall delay or postpone any installment payment of principal and interest under the Note.

9. **Stamp Tax.** If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note hereby secured and this Mortgage, the Mortgagor hereby covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor hereby further covenants and agrees to reimburse the Mortgagee for any sums which the Mortgagee reasonably expends by reason of the imposition of any tax on the issuance of the Note and this Mortgage.

10. **Lease Assignment; Observance of Lease Assignment.**

(a) To ensure the payment of the Indebtedness and the faithful performance of the terms and conditions contained herein, the Mortgagor, as landlord, hereby irrevocably and absolutely assigns to the Mortgagee all of the Mortgagor's rights, title, and interests in, to, and under: (i) all leases of the Mortgaged Premises or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Mortgaged Premises or any portion thereof, whether now existing or entered into after the date hereof (hereinafter individually referred to as a "Lease" and collectively referred to as the "Leases"); and (ii) all of the rents, revenue, income, issues, deposits, and profits of the Mortgaged Premises, including, without limitation, all amounts payable and all rights and benefits accruing to the Mortgagor under the Leases and all termination payments, including, without limitation, any termination fee in connection with the "Existing AT&T Lease" (as such term is defined in the Cash Management Agreement) (hereinafter collectively referred to as the "Rents"). The term "Leases" as used herein shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals, or modifications thereto. This is a present and absolute assignment, not an assignment for security purposes only, and the Mortgagee's rights in and to the Leases and the Rents is not contingent upon, and may be exercised without possession of the Mortgaged Premises.

(b) Notwithstanding the foregoing Paragraph 10(a) to the contrary, the Mortgagee hereby confers upon the Mortgagor a revocable license (hereinafter referred to as the "License") to exercise the rights as landlord under the Leases and to collect and retain the Rents as they become due and payable, for so long as no Event of Default exists. Upon the occurrence of an Event of Default, the License shall be automatically revoked and the Mortgagee shall be entitled to collect and apply the Rents pursuant to Paragraph 17 of this Mortgage without any notice and without taking possession of the Mortgaged Premises. At such time, if at all, as such Event of Default is waived by the Mortgagee (if the Mortgagee, in its sole and absolute discretion, agrees in writing to waive said Event of Default) or if the Event of Default shall have been accepted in writing by the Mortgagee, the License shall be reinstated on the terms contained in this Paragraph 10. The Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by the Mortgagee in accordance with the terms of this Paragraph 10 for the payment to the Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. The Mortgagor hereby relieves the tenants from any liability to the Mortgagor by reason of relying upon and complying with any such notice or demand by the Mortgagee.

(c) All Leases, including, without limitation, all amendments, modifications, renewals, and extensions thereof, entered into after the date hereof shall be subject to the prior written approval of the Mortgagee as to form, content, and tenants and, without limiting the generality of the foregoing, the

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Mortgagor shall not enter into any Lease without the Mortgagee's prior express written consent. Any Lease approved by the Mortgagee shall require actual occupancy by the lessee thereunder. Any Lease existing as of the date hereof shall not be amended, modified, renewed, or extended without the prior written approval of the Mortgagee. Notwithstanding the foregoing to the contrary, the Mortgagor may, without the prior written approval of the Mortgagee but with subsequent prompt written notice to the Mortgagee: (i) amend any Lease to correct typographical errors or errors in legal descriptions or to confirm possession dates, rent commencement dates and the like; provided, however, that such right to amend shall not apply to any of the economic terms of any Lease, and (ii) enter into amendments that solely document the unilateral exercise by a tenant of a right (such as a renewal option) under its Lease (so long as the terms of such right are fully and expressly set forth in such Lease).

(d) The Mortgagor will not, without the Mortgagee's prior express written consent: (i) execute an assignment or pledge of any Rents and/or any Leases (other than the Assignment of Rents and Leases); or (ii) accept any prepayment of any installment of any Rents more than one (1) month before the due date of such installment, and in any event no more than one (1) month in advance of the then current month.

(e) The Mortgagor at its sole cost and expense shall: (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all Leases, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions, and agreements of the Leases on the part of the tenants to be kept and performed, but the Mortgagor shall not cancel, terminate, or accept surrender of any Lease without the prior express written consent of the Mortgagee; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties, or liabilities of landlord or of the tenants thereunder; (iv) upon written request of the Mortgagee, transfer and assign to the Mortgagee, any Lease or Leases heretofore or hereafter entered into, and make, execute and deliver to the Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) furnish the Mortgagee, within ten (10) days after a request by the Mortgagee so to do, a written statement containing the names of all tenants, terms of all Leases, including the spaces occupied and the rentals payable thereunder; and (vi) exercise within five (5) days of any demand therefor by the Mortgagee any right to request from the tenant under any Lease a certificate with respect to the status thereof.

(f) Nothing in this Mortgage or in any other documents relating to the Indebtedness secured hereby shall be construed to obligate the Mortgagee, expressly or by implication, to perform any of the covenants of the Mortgagor as landlord under any of the Leases assigned to the Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments the Mortgagor agrees to perform and pay.

(g) The Mortgagor will not permit any Lease or any part thereof to become subordinate to any lien other than the lien hereof and liens in favor of the Mortgagee.

(h) The Mortgagee shall have the option to declare this Mortgage in default because of a default of landlord in any Lease of the Mortgaged Premises unless such default is cured by the Mortgagor pursuant to the terms of the Lease and within any applicable cure period or unless such default would not permit the tenant to terminate the Lease. It is covenanted and agreed that an Event of Default under the Assignment of Rents and Leases shall constitute an Event of Default hereunder on account of which the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without notice to the Mortgagor.

(i) The Mortgagor shall not (i) conduct directly any on-site dry cleaning operations on any portion of the Mortgaged Premises, (ii) enter into any new Lease or amend any existing Lease that would

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permit any tenant to commence any on-site dry cleaning operations on any portion of the Mortgaged Premises that are not currently being conducted as of the date hereof, and (iii) shall not permit any tenant to conduct any on-site dry cleaning operations on any portion of the Mortgaged Premises that (1) are not currently permitted under or pursuant to the provisions of the tenant's existing Lease or (2) are in violation of any applicable law or governmental regulation. Any tenant which is currently operating an on-site dry cleaning operation on any portion of the Mortgaged Premises pursuant to a right contained in its existing Lease may continue to do so, but only to the extent permitted in such Lease and only so long as such operation is conducted in accordance with the requirements of applicable law and governmental regulation. Nothing in this Paragraph 10(i) shall be deemed to be a consent or approval by the Mortgagee of any environmental condition at the Mortgaged Premises that may have been caused by the operation of any on-site dry cleaning operation, or as a waiver by the Mortgagee of any of its rights under Paragraph 31 hereof or under the Environmental Indemnity.

(j) Without in any way limiting the requirement of the Mortgagee's prior express written approval hereunder, any sums received by the Mortgagor in consideration of any termination (or release or discharge of any tenant) of any Lease within the Mortgaged Premises shall be held by the Mortgagee and deposited into the "Reserve" (as such term is defined in the Reserve Agreement) and disbursed pursuant to and in accordance with the Reserve Agreement.

(k) In the event of the enforcement by the Mortgagee of the remedies provided for by law or by this Mortgage, the tenant under each Lease of the Mortgaged Premises shall, at the option of the Mortgagee, attorn to any person succeeding to the interest of the Mortgagor as a result of such enforcement and shall recognize such successor in interest as landlord under such Lease without change in the terms or other provisions thereof; provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one (1) month in advance or any amendment or modification to any Lease made without the prior express written consent of the Mortgagee or said successor in interest. Each tenant, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

11. **Effect of Extension of Time.** If the payment of the Indebtedness, or any part thereof, is extended or varied, or if any part of any security for the payment of the Indebtedness is released, or if any person or entity liable for the payment of the Indebtedness is released, or if the Mortgagee takes other or additional security for the payment of the Indebtedness, or if the Mortgagee waives or fails to exercise any right granted herein, or in the Note, or in any other instrument given to secure the payment hereof, then all persons now or at any time hereafter liable for the payment of the Indebtedness, or any part thereof, or interested in the Mortgaged Premises shall be held to assent to such extension, variation, release, waiver, failure to exercise or the taking of additional security, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation, release, waiver, failure to exercise, or the taking of additional security.

12. **Effect of Changes in Laws Regarding Taxation.** In the event of the enactment after the date hereof of any law of the state in which the Mortgaged Premises are located deducting from the value of the Mortgaged Premises for the purpose of taxing any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Mortgaged Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holders thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor if the Mortgagee pays such taxes and submits proof of payment to the Mortgagor; provided, however, that if, in the opinion of counsel for the Mortgagee: (a) it might be

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unlawful to require the Mortgagor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the Indebtedness to be and become due and payable sixty (60) days from the giving of such notice, without the applicable Prepayment Premium.

13. **Mortgagee's Performance of Defaulted Acts.** Upon the occurrence of an Event of Default, the Mortgagee may, but need not, and whether electing to declare the whole of the Indebtedness due and payable or not, and without waiver of any other remedy, make any payment or perform any act herein required of the Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Premises or contest any tax or assessment or cure any default of the Mortgagor as landlord in any Lease. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by the Mortgagee in regard to any tax referred to in Paragraphs 9 and 12 hereof or to protect the Mortgaged Premises or the lien hereof, shall be additional Indebtedness and shall become immediately due and payable without notice and with interest thereon at the Default Rate of interest set forth in the Note. Inaction of the Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Event of Default on the part of the Mortgagor.

14. **Mortgagee's Reliance on Tax Bills, Etc.** The Mortgagee, in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) relating to insurance premiums, may do so according to any bill or statement procured from the appropriate company without inquiry into the accuracy of such bill or statement; or (c) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

15. **Acceleration of Indebtedness in Event of Default.** It is expressly agreed by the Mortgagor that time is of the essence hereof and that the whole of the Indebtedness shall become immediately due and payable without notice to the Mortgagor at the option of the Mortgagee upon the occurrence of one or more of the following events (hereinbefore and hereinafter collectively referred to as "Events of Default" and individually referred to as an "Event of Default"), together with a Prepayment Premium in the amount, if any, required to be paid pursuant to the terms of the Note in the event of a prepayment:

(a) nonpayment of any monetary sum due hereunder within ten (10) days after the same shall become due; or

(b) default shall be made in the due observance or performance of the terms and conditions of Paragraph 6 hereof (Insurance) or Paragraph 30 hereof (Due on Sale or Further Encumbrance); or

(c) default shall be made in the due observance or performance of any of the other covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by the Mortgagor which does not relate to the nonpayment of any monetary sum, and such default is not cured within thirty (30) days following written notice thereof by the Mortgagee to the Mortgagor or within such longer period of time, not exceeding an additional thirty (30) days, as may be reasonably necessary to cure such non-compliance if the Mortgagor is diligently and with continuity of effort pursuing such cure and the failure is susceptible of cure within an additional period of thirty (30)

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days; or

(d) the entry of a decree or order for relief by a court having jurisdiction in respect of the Mortgagor, a general partner of the Mortgagor if the Mortgagor is a partnership, the beneficiary or beneficiaries of the Mortgagor if the Mortgagor is a trust, a managing member of the Mortgagor if the Mortgagor is a limited liability company, the Guarantor, or any other guarantor of all or any portion of the Indebtedness (whether now or in the future) (any of the foregoing parties being referred to herein as a "Key Party"), in any involuntary case under the federal bankruptcy laws now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for any Key Party or any substantial part of the property of any such Key Party, or for the winding up or liquidation of the affairs of any Key Party and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days; or

(e) the commencement by any Key Party of a voluntary case under federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or any other similar laws or the consent by any such Key Party to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of any Key Party, or of any substantial part of the property of any such person or entity, or the making by any such Key Party of an assignment for the benefit of creditors or the failure of any such Key Party generally to pay the debts of any such Key Party as such debts become due, or the taking of action by any such Key Party in furtherance of any of the foregoing, provided, however, that it shall not constitute an Event of Default under this subparagraph (e) if the Guarantor voluntarily files a petition in bankruptcy or commences a case or insolvency proceeding if (i) an "Acceptable Replacement Guarantor" (as such term is hereinafter defined) or another replacement guarantor acceptable to the Mortgagee in its sole and absolute discretion shall become liable by written assumption of all obligations and liabilities of the Guarantor pursuant to the terms, conditions, and provisions of the Guaranty and the Environmental Indemnity within thirty (30) days, and (ii) there is no substantive consolidation of the Mortgagor or the Mortgaged Premises into any such bankruptcy; or

(f) any warranty, representation, certification, financial statement, or other information furnished or to be furnished to the Mortgagee or any affiliate thereof by or on behalf of the Mortgagor, the Guarantor, or any other guarantor of all or any portion of the Indebtedness to induce the Mortgagee to loan the money evidenced by the Note proves to have been inaccurate or false in any material respect when made; or

(g) the occurrence of any breach, default, event of default or failure of performance (however denominated) under the Note, the Assignment of Rents and Leases, or any of the other Loan Documents, and the expiration of any applicable notice and/or cure period without the same having been cured, or

(h) the Mortgagor shall be in default of, or in violation of, beyond any applicable notice, cure, and/or grace period, any recorded conditions, covenants, or restrictions which benefit or burden the Mortgaged Premises; or

(i) the death of any individual guarantor of the Note, unless an Acceptable Replacement Guarantor or another replacement guarantor acceptable to the Mortgagee, in its sole and absolute discretion, shall become liable by written assumption of all obligations and liabilities of the deceased guarantor pursuant to the terms, conditions, and provisions of the Guaranty and the Environmental Indemnity within thirty (30) days of such death.

If, while any insurance proceeds or condemnation awards are being held by the Mortgagee to reimburse

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the Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Mortgaged Premises, the Mortgagee shall accelerate the Indebtedness, then and in such event, notwithstanding any term, condition, or provision hereof to the contrary, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the Indebtedness and any excess held by it over the amount of Indebtedness then due hereunder shall be returned to the Mortgagor or any other party entitled thereto without interest.

For the purposes of this Mortgage, (i) "Acceptable Replacement Guarantor" shall mean one or more "Qualified Transferees" (as such term is hereinafter defined) reasonably acceptable to the Mortgagee each of which Qualified Transferees (A) complies with the minimum Net Worth covenant set forth in Section 2.2(vi) of the Guaranty, (B) complies with the minimum Liquidity covenant set forth in Section 2.2(vii) of the Guaranty, (C) complies with the Mortgagee's customary know-your-customer requirements, and (D) owns a direct or indirect interest in the Mortgagor, and (ii) "Qualified Transferee" shall mean a transferee for whom, prior to a particular transfer, the Mortgagee shall have received evidence that the proposed transferee (A) has never been convicted of a felony, (B) is not a "Blocked Person" or "Embargoed Person" (as such terms are defined in the OFAC Agreement), (C) has never been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding, and (D) has no material outstanding judgments or litigation or regulatory actions continuing or threatened against such proposed transferee or its interests.

16. Acceleration of Indebtedness; Remedies.

(a) Primary Remedies. If an Event of Default shall occur, the Mortgagee may declare the Indebtedness to be and the same shall be, immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived and without regard to the value of the Mortgaged Premises held as security for the Indebtedness or the solvency of any person liable for the payment of such Indebtedness; and/or exercise any other right, power or remedy available to it at law or in equity, hereunder or under any other Loan Document without demand, protest or notice of any kind, all of which are hereby expressly waived, except such as is expressly required hereby or by such other Loan Document. Without limiting the generality of the foregoing, the Mortgagee may:

(i) enter and take possession of the Mortgaged Premises or any part thereof, exclude the Mortgagor and all persons claiming under the Mortgagor wholly or partly therefrom, and operate, use, manage and control the same, or cause the same to be operated by a person selected by the Mortgagee, either in the name of the Mortgagor or otherwise, and upon such entry, from time to time, at the expense of the Mortgagor and of the Mortgaged Premises, make all such repairs, replacements, alterations, additions or improvements thereto as the Mortgagee may deem proper, and to lease the Mortgaged Premises or any part thereof at such rental and to such persons as it may deem proper and collect and receive the rents, revenues, issues, profits, royalties, income and benefits thereof including, without limitation, those past due and those thereafter accruing, with the right of the Mortgagee to terminate, cancel or otherwise enforce any Lease or sublease for any default that would entitle the Mortgagor to terminate, cancel or enforce same and apply the same to the payment of all expenses which the Mortgagee may be authorized to incur under the provisions of this Mortgage and applicable laws, the remainder to be applied to the payment, performance and discharge of the Indebtedness in such order as the Mortgagee may determine until the same have been paid in full;

(ii) institute an action for the foreclosure of this Mortgage and the sale of the Mortgaged Premises pursuant to the judgment or decree of a court of competent jurisdiction;

(iii) sell the Mortgaged Premises to the highest bidder or bidders at public auction at a

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sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner as may be required by law, or in the absence of any such requirement, as the Mortgagee may deem appropriate, and from time to time adjourn such sale by announcement at the time and place specified for such sale or for such adjourned sale or sales without further notice except such as may be required by law;

(iv) take all action to protect and enforce the rights of the Mortgagee under this Mortgage by suit for specific performance of any covenant herein contained, or in aid of the execution of any power herein granted or for the enforcement of any other rights;

(v) exercise any or all of the rights and remedies available to a secured party under the UCC, including the right to (A) enter the Mortgaged Premises and take possession of any personal property without demand or notice and without prior judicial hearing or legal proceedings, which the Mortgagor hereby expressly waives, (B) require the Mortgagor to assemble any personal property, or any portion thereof, and make it available to the Mortgagee at a place or places designated by the Mortgagee and reasonably convenient to both parties and (C) sell all or any portion of the personal property at public or private sale, without prior notice to the Mortgagor except as otherwise required by law (and if notice is required by law, after ten days' prior written notice), at such place or places and at such time or times and in such manner and upon such terms, whether for cash or on credit, as the Mortgagee in its sole discretion may determine. As to any property subject to Article 9 of the UCC included in the Mortgaged Premises, the Mortgagee may proceed under the UCC or proceed as to both real and personal property in accordance with the provisions of this Mortgage and the rights and remedies that the Mortgagee may have at law or in equity, in respect of real property, and treat both the real and personal property included in the Mortgaged Premises as one parcel or package of security. The Mortgagor shall have the burden of proving that any such sale pursuant to the UCC was conducted in a commercially unreasonable manner;

(vi) terminate any management agreements, contracts, or agents/managers responsible, for the property management of the Mortgaged Premises, if in the sole discretion of the Mortgagee such property management is unsatisfactory in any respect;

(vii) foreclose this Mortgage, at the Mortgagee's option, by judicial or non-judicial foreclosure, as applicable law permits, for the entire unpaid amount of the Indebtedness, or only as to the sum past due, with interest and costs without injury to this Mortgage or the displacement or impairment of the remainder of the lien thereof, and at such foreclosure sale the Mortgaged Premises shall be sold subject to all remaining items of the Indebtedness and the Mortgagee may again foreclose, in the same manner, as often as there may be any sum past due. In case of sale in any action or proceeding to foreclose this Mortgage, the Mortgagee shall have the right to sell the Mortgaged Premises covered hereby in parts or as an entirety. It is intended hereby to give to the Mortgagee the widest possible discretion permitted by law with respect to all aspects of any such sale or sales; and/or

(viii) if an Event of Default occurs due to the nonpayment of the Indebtedness, or any part thereof, as an alternative to the right of foreclosure for the full Indebtedness after acceleration thereof, the Mortgagee shall have the right to institute proceedings, either judicial or non-judicial, if available under applicable law, at the Mortgagee's option, for partial foreclosure with respect to the portion of said Indebtedness so in default, as if under a full foreclosure, and without declaring the entire Indebtedness due (such proceedings being hereinafter referred to as "Partial Foreclosure"), and provided that if a foreclosure sale is made because of an Event of Default in the payment of a part of the Indebtedness, such sale may be made subject to the continuing lien of

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this Mortgage for the unmatured part of the Indebtedness; and it is agreed that such sale pursuant to a Partial Foreclosure, if so made, shall not in any manner affect the unmatured part of the Indebtedness, but as to such unmatured part, this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this paragraph. Notwithstanding any Partial Foreclosure to the contrary, the Mortgagee may elect, at any time prior to sale pursuant to such Partial Foreclosure, to discontinue such Partial Foreclosure and to accelerate the Indebtedness by reason of any Event of Default upon which such Partial Foreclosure was predicated or by reason of any other further Event of Default, and proceed with full foreclosure proceedings. It is further agreed that several foreclosures may be made pursuant to Partial Foreclosure without exhausting the right of full or Partial Foreclosure sale for any unmatured part of the Indebtedness, it being the purpose to provide for a Partial Foreclosure sale of the Indebtedness hereby secured without exhausting the power to foreclose and to sell the Mortgaged Premises pursuant to any such Partial Foreclosure for any other part of the Indebtedness, whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

(b) Receiver. If an Event of Default shall occur, the Mortgagee, shall be entitled as a matter of right to the appointment of a receiver of the Mortgaged Premises and the rents, revenues, issues, profits, royalties, income and benefits thereof, without notice or demand, and without regard to the adequacy of the security for the Indebtedness, the value of the Mortgaged Premises or the solvency of the Mortgagor, either before or after any sale, and, the Mortgagee may be appointed as such receiver. Such receiver shall have, without limitation, the power: (i) to collect the rents, issues and profits of the Mortgaged Premises during the pendency of any foreclosure proceedings whether by judicial or non-judicial foreclosure, and, in case of a sale and a deficiency, for such time when the Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, to the maximum time and extent permitted by law; (ii) to extend or modify any then existing Leases and to make new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to Leases to extend or renew terms to expire, beyond the Maturity Date of the Note and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Mortgaged Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the secured obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such case for the protection, possession, control, management, and operation of the Mortgaged Premises during the whole of said period, including the powers designated in Section 735 ILCS 5/15-1704. The court from time to time may authorize the receiver to apply the net income in the receiver's hands in payment in whole or in part of: (A) the Indebtedness and all obligations hereunder, or by any decree foreclosing this Mortgage, or in accordance with applicable non-judicial foreclosure provisions, any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree; and (B) if this is a leasehold mortgage, all rents due or which may become due under the underlying lease.

(c) Sales by Parcels. In any sale made under or by virtue of this Mortgage or pursuant to any judgment or decree of court, the Mortgaged Premises may be sold in one or more parts or parcels or as an entirety and in such order as the Mortgagee may elect, without regard to the right of the Mortgagor, or any person claiming under it, to the marshaling of assets. To the full extent permitted by law, the Mortgagor waives the marshaling of assets.

(d) Effect of Sale. The purchaser at any sale made under or by virtue of this Mortgage or pursuant to any judgment or decree of court shall take title to the Mortgaged Premises or the part thereof

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so sold free and discharged of the estate of the Mortgagor therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including the Mortgagee, may purchase at any such sale. The Mortgagee is hereby irrevocably appointed the attorney-in-fact of the Mortgagor in its name and stead to make all appropriate transfers and deliveries of the Mortgaged Premises or any portions thereof so sold and, for this purpose, the Mortgagee may execute all appropriate instruments of transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, promptly upon the Mortgagee's written request, the Mortgagor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for the purpose, and as may be designated, in such request. Any sale or sales made under or by virtue of this Mortgage, to the extent not prohibited by law, shall operate to divest all the estate, rights, title, interests, property, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in, to and under the Mortgaged Premises, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor, its successors and assigns, and against any and all persons claiming or who may claim the same, or any part thereof, by, through or under the Mortgagor, or its successors or assigns. The powers and agency herein granted are coupled with an interest and are irrevocable.

(e) Eviction of Mortgagor After Sale. If the Mortgagor fails or refuses to surrender possession of the Mortgaged Premises after any sale thereof, the Mortgagor shall be deemed a tenant at sufferance, subject to eviction by means of forcible entry and detainer proceedings, provided, that this remedy is not exclusive or in derogation of any other right or remedy available to the Mortgagee or any purchaser of the Mortgaged Premises under any provision of this Mortgage or pursuant to any judgment or decree of court.

(f) Insurance Policies. In the event of a foreclosure sale pursuant to this Mortgage or other transfer of title or assignment of the Mortgaged Premises in extinguishment, in whole or in part, of the Indebtedness, all rights, title and interests of the Mortgagor in and to all policies of insurance required under the provisions of this Mortgage shall inure to the benefit of and pass to the successor in interest of the Mortgagor or the purchaser or grantee of the Mortgaged Premises or any part thereof so transferred.

(g) Foreclosure; Expense of Litigation. When the Indebtedness hereby secured, or any part thereof shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' fees, appraiser's fees, actual costs of environmental reviews or audits, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as the Mortgagee may deem reasonably necessary either to prosecute such action or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of the Mortgaged Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorneys employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Mortgaged Premises, including appellate, probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceedings or threatened suit or proceeding shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate of interest as set forth in the Note and shall be secured by this Mortgage.

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17. **Application of Proceeds.** The proceeds of any sale made either under the power of sale hereby given or under a judgment, order or decree made in any action to foreclose or to enforce this Mortgage, shall be applied:

(a) first to the payment of (i) all costs and expenses of such sale, including reasonable attorneys' fees and costs, environmental site assessors' fees and costs, appraisers' fees and costs of procuring title searches, title insurance policies and similar items and (ii) all charges, expenses and advances incurred or made by the Mortgagee in order to protect the lien or estate created by this Mortgage or the security afforded hereby including any expenses of entering, taking possession of and operating the Mortgaged Premises and any mortgage recording taxes;

(b) then to the payment of any other Indebtedness in such order as the Mortgagee may determine until the same have been paid in full; and

(c) any balance thereof shall be paid to the Mortgagor, or to whosoever shall be legally entitled thereto, or as a court of competent jurisdiction may direct.

18. **Rights and Remedies Cumulative.** Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

19. **Mortgagee's Right of Inspection.** The Mortgagee shall, upon reasonable notice to the Mortgagor, have the right to inspect the Mortgaged Premises at all reasonable times and access thereto shall be permitted for that purpose.

20. **Condemnation.** The Mortgagee may, at its option, in its own name (a) appear or proceed in any condemnation proceeding, and (b) make any compromise or settlement thereof, provided that so long as the Mortgagor promptly prosecutes any compromise or settlement thereof, the Mortgagor shall control any compromise or settlement proceeding with the result thereof being subject to the Mortgagee's approval. The Mortgagor shall give the Mortgagee immediate written notice of the initiation of any condemnation proceeding, and a copy of every pleading, notice and other items served in any condemnation proceeding. The Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or any claim for damages for the Mortgaged Premises taken or damaged under the power of eminent domain or by condemnation. The Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness, whether due or not, or make said proceeds available for restoration or rebuilding of the Mortgaged Premises. In the event that the Mortgagee elects, in the Mortgagee's sole and absolute discretion, to make said proceeds available to reimburse the Mortgagor for the cost of the rebuilding or restoration of the Improvements, such proceeds shall be made available in the manner and under the conditions that the Mortgagee may require. In any event, the Improvements shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by the Mortgagee prior to commencement of any building or restoration. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall, at the option of the Mortgagee, be applied on account of the Indebtedness or be paid to

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any party entitled thereto. No interest shall be allowed to the Mortgagor on the proceeds of any award held by the Mortgagee.

21. **Release Upon Payment and Discharge of Mortgagor's Obligations.** The Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all Indebtedness including any applicable Prepayment Premium.

22. **Giving of Notice.** (a) All notices, demands, requests, and other communications desired or required to be given hereunder, including, without limitation, notices to the Mortgagee from a person claiming priority of a lien or encumbrance over the lien of this Mortgage for any future advances made under the Note (hereinafter collectively referred to as "Notices", and individually referred to as a "Notice"), shall be in writing and shall be given by: (i) hand delivery to the address for Notices; (ii) delivery by overnight courier service to the address for Notices; or (iii) sending the same by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the address for Notices.

(b) All Notices shall be deemed given and effective upon the earlier to occur of: (i) the hand delivery of such Notice to the address for Notices; (ii) one (1) Business Day after the deposit of such Notice with an overnight courier service by the time deadline for next day delivery addressed to the address for Notices; or (iii) three (3) Business Days after depositing the Notice in the United States mail as set forth in clause (a)(iii) above. All Notices shall be addressed to the following addresses:

Mortgagor: 95 WA Lvestor LLC
c/o The Hearm Company
875 North Michigan Avenue
Suite 4100
Chicago, Illinois 60611
Attention: Stephen G. Hearm
and Blake Hillemeys

With a copy to: Greenberg Traurig, LLP
77 West Walker Drive
Suite 3100
Chicago, Illinois 60601
Attention: Michael T. Fishman, Esq.

Mortgagee: Voya Retirement Insurance and Annuity Company
c/o Voya Investment Management LLC
5780 Powers Ferry Road, NW, Suite 300
Atlanta, Georgia 30327-4349
Attention: Mortgage Loan Servicing Department

and

Voya Investment Management LLC
5780 Powers Ferry Road, NW, Suite 300
Atlanta, Georgia 30327-4349
Attention: Real Estate Law Department

With a copy to: Reed Smith LLP
136 Main Street, Suite 250
Princeton, New Jersey 08540

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Attention: Christopher J. Maurer, Esq.

or to such other persons or at such other place as any party hereto may by Notice designate as a place for service of Notice; provided that the "copy to" Notice to be given as set forth above is a courtesy copy only; and a Notice given to such person is not sufficient to effect giving a Notice to the principal party, nor does a failure to give such a courtesy copy of a Notice constitute a failure to give Notice to the principal party.

23. **Waiver of Defense.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law or in equity upon the Note.

24. **Waiver of Statutory Rights.** The Mortgagor shall not apply for or avail itself of any homestead, appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but to the extent lawfully allowed hereby waives the benefit of such laws. The Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Mortgaged Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. To the extent permitted by law, the Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of the Mortgagor, the trust estate and all persons beneficially interested therein and each and every person, acquiring any interest in or title to the Mortgaged Premises subsequent to the date of this Mortgage.

25. **Furnishing of Financial Statements to Mortgagee.**

(a) The Mortgagor hereby covenants and agrees that it will keep and maintain books and records of account, or cause books and records of account to be kept and maintained in which full, true and correct entries shall be made of all dealings and transactions relative to the Mortgaged Premises, which books and records of account shall, at reasonable times during business hours and on reasonable prior notice, be open to inspection by the Mortgagee's accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with modified income tax basis accounting principles, consistently applied.

(b) The Mortgagor hereby covenants and agrees to furnish, or cause to be furnished, to the Mortgagee, annually, within ninety (90) days following the end of each fiscal year of the Mortgagor during the term of the Loan, unaudited annual financial reports prepared in accordance with modified income tax basis accounting principles, consistently applied, including balance sheets, income statements, and cash flow statements covering the operation of the Mortgaged Premises and the Mortgagor for the previous fiscal year, and a current rent roll of the Mortgaged Premises, all certified to the Mortgagee by the individual managing member or chief financial officer of the Mortgagor as being correct, complete and accurate as of the date of such reports.

(c) In addition to the annual financial statements required under subparagraph (b) above, the Mortgagor hereby covenants and agrees to furnish, or cause to be furnished, to the Mortgagee, quarterly, within thirty (30) days after the last day of each fiscal quarter of the Mortgagor, unaudited quarterly financial reports prepared in accordance with modified income tax basis accounting principles, consistently applied, including balance sheets, income statements, and cash flow statements covering the operation of the Mortgaged Premises and the Mortgagor for the previous fiscal quarter and a current rent roll of the Mortgaged Premises, all certified to the Mortgagee by the individual managing member or chief financial officer of the Mortgagor as being correct, complete and accurate as of the date of such

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reports.

(d) Intentionally Omitted.

(e) The Mortgagee shall have the right at any time and from time to time to request such additional financial information as the Mortgagee determines is necessary or appropriate, including, without limitation, updated rent rolls for the Mortgaged Premises for purposes of monitoring current leasing.

(f) If the Mortgagor omits to deliver as required any report or statement required by this Paragraph 25, and said omission is not cured by the Mortgagor within thirty (30) days after written notice of such omission has been given by the Mortgagee to the Mortgagor, the Mortgagee may elect, in addition to exercising any remedy for an Event of Default as provided for in this Mortgage, to make an audit of all books and records of the Mortgagor including its bank accounts which in any way pertain to the Mortgaged Premises and to prepare the statement or statements which the Mortgagor failed to procure and deliver. Such statement or statements shall be prepared by an independent certified public accountant to be selected by the Mortgagee. The Mortgagor shall pay all costs and expenses of the audit and other services, which expenses shall be secured by this Mortgage as additional Indebtedness and shall be immediately due and payable with interest thereon at the Default Rate and shall be secured by this Mortgage.

(g) The Mortgagor hereby represents and warrants to the Mortgagee that, as of the date hereof, the financial condition of the Mortgagor, its principals, and the Guarantor have not materially deteriorated from the financial condition indicated in the current financial statements and other financial information provided to the Mortgagee or any of its affiliates at the time of Loan application, and, as of the date hereof, no action is pending or threatened under any bankruptcy or insolvency laws, and there is no other litigation pending with respect to the Mortgagor, its principals, and the Guarantor that might materially or adversely affect the security for the Loan in the Mortgagee's determination.

26. **Filing and Recording Fees.** The Mortgagor shall pay all filing, registration, or recording fees and all reasonable expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes and other taxes (including, without limitation, mortgage recording taxes), duties, imposts, assessments, and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage.

27. **Business Purpose.** The Mortgagor hereby represents, covenants, and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of the Mortgagor.

28. **Exculpatory.** The liability of the Mortgagor personally to pay the Note or any interest that may accrue thereon, or any Indebtedness or obligation accruing or arising hereunder is limited to the extent set forth in the Note.

29. **Security Agreement.** The Mortgagor and the Mortgagee hereby agree that this Mortgage shall constitute a security agreement within the meaning of the UCC with respect to all sums on deposit with the Mortgagee with respect to insurance proceeds or condemnation proceeds (hereinafter collectively referred to as the "Deposits") and with respect to any personal property included in the definition herein of the word "Mortgaged Premises", which property may not be deemed to form a part of the real estate described in Exhibit "A" attached hereto and made a part hereof, and all replacements of such property, substitutions, and additions thereto and the proceeds thereof, all such property being sometimes hereinafter collectively referred to as the "Collateral", and that a security interest in and to the

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Collateral and the Deposits is hereby granted to the Mortgagee and the Deposits and all of the Mortgagor's rights, title, and interests therein are hereby assigned to the Mortgagee, all to secure payment of the Indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof. Upon the occurrence of an Event of Default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding with respect to the Collateral in accordance with its rights and remedies with respect to the real property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, ten (10) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by the Mortgagee. The Mortgagor hereby agrees that, without the prior express written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Mortgaged Premises any of the Collateral except that so long as the Mortgagor is not in default hereunder the Mortgagor shall be permitted to sell or otherwise dispose of the Collateral, when obsolete, worn out, inadequate, unserviceable, or unnecessary for use in the operation of the Mortgaged Premises, upon replacing the same or substituting for the same other Collateral at least equal in value to the initial value to that disposed of and in such a manner so that said Collateral shall be subject to the security interest created hereby, and so that the security interest of the Mortgagee shall be first in priority, it being expressly understood and agreed that all replacements of the Collateral and any additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee an inventory of the Collateral in reasonable detail. The Mortgagor hereby covenants and represents that all Collateral, and all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, now are and will be free and clear of liens (other than the lien of taxes not yet due or payable), encumbrances or security interests of others. The Mortgagor shall, upon demand, authorize, execute, and deliver to the Mortgagee such financing statements and other documents in form satisfactory to the Mortgagee, and will do all such acts and things as the Mortgagee may at anytime, or from time to time, reasonably request or as may be necessary or appropriate to establish and maintain a first perfected security interest in the Deposits and Collateral, subject to no liens (other than the lien of taxes not yet due or payable), encumbrances, or security interests of others.

This Mortgage also constitutes a financing statement for the purpose of the UCC and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of the County in which the Land is located. The Mortgagor hereby authorizes the Mortgagee to file all financing statements evidencing the security interest granted to the Mortgagee in the Collateral with all appropriate filing jurisdictions. For such purpose information concerning the debtor and the secured party is set forth below:

Name of debtor: 95 WA Investor LLC, a Delaware limited liability company

Debtor's Mailing Address: c/o The Hearn Company
875 North Michigan Avenue
Suite 4100
Chicago, Illinois 60611

The Mortgagor is an organization, being a limited liability company organized under the laws of the State of Delaware.

Address of Mortgaged Premises: 95 West Algonquin Road, Arlington Heights, Illinois 60005

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Name of Secured Party: Voya Retirement Insurance and Annuity Company

Address of Secured
Party:

c/o Voya Investment Management LLC
5780 Powers Ferry Road, NW, Suite 300
Atlanta, Georgia 30327-4349
Attention: Real Estate Law Department

This financing statement covers the Collateral. Some of the items or types of property comprising the Collateral are or are to become fixtures on the real property described in this Mortgage. The Mortgagor is the record owner of its real property described herein upon which the foregoing fixtures and other items and types of property are located.

30. **Due on Sale or Further Encumbrance.** (a) Subject to the terms, conditions, and provisions of Paragraph 30(b) below, if, without the Mortgagee's prior express written consent: (i) the Mortgaged Premises or any part thereof or any direct or indirect interest in the Mortgaged Premises or any part thereof or in the Mortgagor is sold, transferred, or otherwise conveyed; (ii) title to the Mortgaged Premises or any part thereof or any interest in the Mortgaged Premises or any part thereof or in the Mortgagor is divested; (iii) the Mortgaged Premises or any part thereof or any interest in the Mortgaged Premises or any part thereof or in the Mortgagor is further encumbered or pledged; (iv) any Lease which gives the tenant any option to purchase the Mortgaged Premises or any part thereof is entered into without the Mortgagee's prior express written approval; or (v) without limiting the generality of clause (i) above, the ownership of shares of the Mortgagor, if a corporation, or of any corporate general partner of the Mortgagor, if a partnership, or the general partner interests in any partnership which is a general partner of the Mortgagor, or any membership interest in the Mortgagor which is a limited liability company, or any beneficial or fiduciary interest in the Mortgagor which is a trust or trustee is sold or conveyed (hereinafter each of the foregoing shall be referred to as a "Transfer" and collectively the foregoing shall be referred to as the "Transfers"), the Mortgagee, in its sole and absolute discretion, shall be entitled to accelerate the Indebtedness and declare the then unpaid principal balance and all accrued interest and other sums due and payable under the Note to be immediately due and payable and exercise all rights and remedies available to the Mortgagee under the Loan Documents. The Mortgagor understands that the present ownership of the Mortgaged Premises and the Improvements is a material inducement to the Mortgagee in making the Loan available to the Mortgagor. Any consent by the Mortgagee to a change in ownership or to a change in the composition of the Mortgagor may be conditioned upon payment of a transfer fee equal to one percent (1.0%) of the then outstanding Indebtedness for processing such request for consent, upon an increase in the rate of interest on the unpaid balance of the Indebtedness to a then-current market rate, and/or other terms and conditions as the Mortgagee may impose in its sole discretion.

(b) Notwithstanding the terms, conditions, and provisions of the foregoing Paragraph 30(a) to the contrary, the Mortgagee shall permit the following Transfers (but not pledges) without the Mortgagee's prior consent and without the payment of the one percent (1.0%) transfer fee or any change in the terms, conditions, or provisions of the Loan; provided that (i) no Event of Default shall exist at the time of such proposed Transfer, (ii) the Mortgagee is promptly notified of any such proposed Transfer and provided with such documentation evidencing such Transfer and the identity of the applicable transferee as may be reasonably requested by the Mortgagee, (iii) assumption documents, if deemed necessary by the Mortgagee, in a form that is acceptable to the Mortgagee, are executed by the transferee and delivered to the Mortgagee, and (iv) the Mortgagor reimburses the Mortgagee for all fees and expenses, including reasonable attorneys' fees and costs, associated with the Mortgagee's review and documentation of such Transfer:

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- (1) a Lease entered into in accordance with the terms, conditions and provisions of the Loan Documents; and
- (2) any Permitted Encumbrances; and
- (3) any transfer of shares of common stock or other securities that are traded on any nationally or internationally recognized stock exchange of any entity that is a publicly traded entity that owns any direct or indirect interest in the Mortgagor; and
- (4) subject to the satisfaction of the conditions set forth in clauses (A), (B), (C) and (D) below, any sale, grant, assignment or similar conveyance of a direct or indirect ownership interest in the Mortgagor, that (w) is undertaken primarily for estate planning purposes; (x) involves only the "immediate family members" (as such term is hereinafter defined) of the transferor; (y) is between or among existing owners (as of the date hereof) of ownership interests in the Mortgagor (other than the Guarantor); or (z) is a transfer by existing owners (as of the date hereof) of ownership interests in the Mortgagor (other than the Guarantor) to new owners of corresponding ownership interests in the Mortgagor, in each case:
 - (A) if such Transfer would cause the transferee, together with its affiliates, to acquire or increase its direct or indirect interest in the Mortgagor to an amount which equals or exceeds twenty percent (20%); (i) the Mortgagor shall provide to the Mortgagee twenty (20) days' prior written notice thereof; and (ii) such transferee and all other Persons which shall then become an owner of twenty percent (20%) of more of a direct or indirect interest in the Mortgagor shall be a Qualified Transferee; and
 - (B) such Transfer shall not otherwise result in a change of "Control" (as such term is hereinafter defined) of the Mortgagor; and
 - (C) at all times there exists a minimum of fifty-one percent (51%) direct or indirect ownership and Control of the Mortgaged Premises and the Mortgagor by parties owning interests therein as of the date hereof; and
 - (D) at all times the Guarantor shall maintain at least a seventy percent (70%) direct or indirect ownership interest in the Mortgagor.

For the purposes of this Paragraph 30:

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of the business and affairs of a Person, whether through the ownership of fifty-one percent (51%) or more of the beneficial interests or voting securities in such Person or entity, by contract or otherwise. The terms "Controlled" and "Controlling" shall have correlative meanings.

"immediate family members" shall mean the spouse, children, grandchildren, siblings, and the children's siblings of each existing holder of an interest in the Mortgagor as of the date hereof, or

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a trust for the benefit of one of more of any such Persons.

“Permitted Encumbrances” shall mean: (a) the lien of this Mortgage and the security interests created by the other Loan Documents; (b) all liens, encumbrances and other matters disclosed in the Mortgagee’s final title insurance policy issued in connection with the Loan; (c) the liens, if any, for taxes imposed by any governmental authority which are not yet delinquent or are being contested in accordance with the terms, conditions and provisions of the Loan Documents; (d) such other title and survey exceptions as the Mortgagee has approved or may approve in writing in the Mortgagee’s reasonable discretion; (e) any workers’, mechanics’ or other similar liens on the Mortgaged Premises which are being contested pursuant to the terms, conditions, and provisions of Paragraph 2 of this Mortgage; (f) Leases existing as of the date of this Mortgage and hereafter entered into pursuant to and in accordance with the terms, conditions and provisions of this Mortgage, any memorandum thereof and any subordination, nondisturbance and/or attornment agreements in connection therewith which have been executed by the Mortgagor and the Mortgagee and any recorded assignment or mortgage of any such Lease permitted pursuant to the terms and provisions of such Lease; (g) easements and other instruments relating to the use or development of the Mortgaged Premises, entered into in the ordinary course of business for traffic circulation, ingress, egress, parking, access or for other similar purposes approved in writing by the Mortgagee (without limiting the following subsection (h) with respect to utility easements), such approval not to be unreasonably withheld, conditioned or delayed; (h) utility easements reasonably necessary for the operation of the Mortgaged Premises and entered into in the ordinary course of business, including, without limitation, telephone service, cable television, water supply, storm and sanitary sewer facilities, natural gas and electric facilities, including cabling for telephonic and data communication; and (i) easements, rights-of-way, restrictions or other similar encumbrances permitted pursuant to the express terms and provisions of the Loan Documents.

Notwithstanding any of the foregoing terms, conditions and provisions of this Paragraph 30 to the contrary, no transfer shall be permitted under this Paragraph 30 if such transfer would result in a breach of the representations, warranties, and covenants contained in Paragraph 15 of the Note.

31. **Environmental Matters; Notice; Indemnity.** The Mortgagor hereby covenants and agrees as follows:

- (a) For purposes of this Mortgage, the following definitions shall apply:
- (i) The terms “Environmental Law” and “Environmental Laws” mean and include any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Mortgaged Premises, including, without limitation, each of the following (and their respective successor provisions): the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601 *et seq.* (hereinafter referred to as the “CERCLA”); the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. sections 6901 *et seq.* (hereinafter referred to as the “RCRA”); the Federal Hazardous Materials Transportation Act, as amended, 49 U.S.C. sections 5101 *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. sections 2601 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. sections 7401 *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251 *et seq.*; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency and of all other federal, state, county and municipal agencies, boards,

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commissions and other governmental bodies and officers having jurisdiction over the Mortgaged Premises or the use or operation of the Mortgaged Premises.

- (ii) The terms "Hazardous Substance" and "Hazardous Substances" mean and include: (1) those substances included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "pollutants", "toxic substances" or "solid waste" in any Environmental Law; (2) those substances listed in the U.S. Department of Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto); (3) those other substances, materials and wastes which are or become, regulated under any applicable Environmental Laws; and (4) any material, waste, or substance which is any of the following: (A) asbestos; (B) polychlorinated biphenyl; (C) designated or listed as a "hazardous substance" pursuant to section 311 or section 307 of the Clean Water Act (33 U.S.C. sections 1251 *et seq.*); (D) explosive; (E) radioactive; (F) a petroleum product, by-product, or fraction thereof; (G) infectious waste; or (H) mold or mycotoxins.
- (iii) The term "Enforcement or Remedial Action" means and includes any action taken by any Person in an attempt or asserted attempt to enforce, to achieve compliance with, or to collect or impose assessments, penalties, fines, or other sanctions provided by, any Environmental Law.
- (iv) The term "Environmental Liability" means and includes any claim, demand, obligation, cause of action, accusation, allegation, order, violation, damage (including consequential damage), injury, judgment, assessment, penalty, fine, cost of Enforcement or Remedial Action, or any other cost or expense whatsoever, including actual, reasonable attorneys' fees and disbursements, resulting from or arising out of the violation or alleged violation of any Environmental Law, any Enforcement or Remedial Action, or any alleged exposure of any person or property to any Hazardous Substance.
- (v) The term "Permitted Commercial Substances" shall mean commercially sold products which are otherwise included within the definition of the term "Hazardous Substance", but (A) which are used or disposed of by the Mortgagor or used or sold by tenants of the Mortgaged Premises in the ordinary course of their respective businesses, (B) the presence of which is not prohibited by applicable Environmental Law, and (C) the use, sale, and disposal of which are in all respects in accordance with applicable Environmental Law.

(b) The Mortgagor, its successors and assigns, after reasonable inquiry, hereby covenants, represents, and warrants, as applicable, that, except for Permitted Commercial Substances:

- (i) no Hazardous Substances have been or shall be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape or migrate, or have been threatened or shall threaten to be injected, emptied, poured, leached, or spilled on or from the Mortgaged Premises;
- (ii) no asbestos or asbestos-containing materials have been or will be installed, used, incorporated into, placed on, or disposed of on the Mortgaged Premises;

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- (iii) no polychlorinated biphenyls (“PCBs”) are or will be located on or in the Mortgaged Premises in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device;
 - (iv) no underground storage tanks are or will be located on the Mortgaged Premises, or were located on the Mortgaged Premises and subsequently removed or filled;
 - (v) no investigation, administrative order, consent order and agreement, litigation, settlement, lien, or encumbrance with respect to Hazardous Substances is proposed, threatened, anticipated, or in existence with respect to the Mortgaged Premises;
 - (vi) the Mortgaged Premises and the Mortgagor’s operations at the Mortgaged Premises are in compliance with all applicable Environmental Laws, including, without limitation, any state and local statutes, laws, and regulations. No notice has been served on the Mortgagor, or any subsidiary of the Mortgagor, from any entity, government body, or individual claiming any violation of any Environmental Law or requiring compliance with any Environmental Law, or demanding payment or contribution for any environmental damage or injury to natural resources. Copies of any such notices received after the date hereof shall be forwarded to the Mortgagee within three (3) days of their receipt;
 - (vii) the Mortgagor has no knowledge of the release or threat of release of any Hazardous Substances from any property adjoining or in the immediate vicinity of the Mortgaged Premises;
 - (viii) no portion of the Mortgaged Premises is a wetland or other water of the United States subject to jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. §1344) or any comparable state statute or local ordinance or regulation defining or protecting wetlands or other special aquatic areas;
 - (ix) there are no concentrations of radon or other radioactive gases or materials in any buildings or structures on the Mortgaged Premises that exceed background ambient air levels; and
 - (x) to the best of the Mortgagor’s knowledge, there have been no complaints of illness or sickness alleged to result from conditions inside any buildings or structures on the Mortgaged Premises.
- (c) The Mortgagor shall give prompt written notice to the Mortgagee of:
- (i) any proceeding, known investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance on, under or about the Mortgaged Premises or the migration thereof to or from adjoining property;
 - (ii) all claims made or threatened by any individual or entity against the Mortgagor or the Mortgaged Premises relating to any loss or injury allegedly resulting from any Hazardous Substance;
 - (iii) the discovery by the Mortgagor of any occurrence or condition on any real

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property adjoining or in the vicinity of the Mortgaged Premises which might cause the Mortgaged Premises or any part thereof to be subject to any restriction on the ownership, occupancy, transferability or use of the Mortgaged Premises under any Environmental Law; and

- (iv) the incurring of any expense by any governmental agency or authority in connection with the assessment, containment or removal of any Hazardous Substances located upon or under or emanating from the Mortgaged Premises or any land immediately adjacent to the Mortgaged Premises, and the Mortgagor shall timely and diligently comply with all of its obligations under any Environmental Law with regard to such release, complaint, or expense.

(d) The Mortgagee shall have the right and privilege to: (i) join in and participate in, as a party if it so elects, any one or more legal proceedings or actions initiated with respect to the compliance of the Mortgaged Premises with Environmental Laws; and (ii) have all costs and expenses thereof (including, without limitation, the Mortgagee's reasonable attorneys' fees and costs) paid by the Mortgagor.

(e) The Mortgagor and its successors and assigns hereby covenant and agree to protect, defend, indemnify, and hold harmless the Mortgagee, its directors, officers, employees, agents, contractors, sub-contractors, licensees, invitees, participants, successors and assigns (hereinafter individually referred to as an "Indemnified Party" and collectively referred to as the "Indemnified Parties") from and against any Environmental Liability and any and all claims, demands, judgments, settlements, damages, actions, causes of action, injuries, administrative orders, consent agreements and orders, liabilities, losses, penalties, and costs, including, but not limited to, any cleanup costs, remediation costs, response costs, and all expenses of any kind whatsoever (together with all attorneys' fees, costs, and expenses), including, without limitation, claims arising out of loss of life, injury to persons, property, or business or damage to natural resources in connection with the activities of the Mortgagor, its predecessors-in-interest, third parties who have trespassed on the Mortgaged Premises, or parties in a contractual relationship with the Mortgagor, or any of them, whether or not occasioned wholly or in part by any condition, accident, or event caused by any act or omission of any of the Indemnified Parties, which:

- (i) arise out of the actual, alleged, or threatened migration, spill, leaching, pouring, emptying, injecting, discharge, dispersal, release, storage, treatment, generation, disposal or escape of any Hazardous Substances onto or from the Mortgaged Premises; or
- (ii) actually or allegedly arise out of the use, specification, or inclusion of any product, material or process containing Hazardous Substances, the failure to detect the existence or proportion of Hazardous Substances in the soil, air, surface water or ground water, or the performance of or the failure to perform the abatement of any Hazardous Substances source or the replacement or removal of any soil, water, surface water, or ground water containing any Hazardous Substances; or
- (iii) arise out of the breach of any covenant, warranty, or representation contained herein or in any statement or other information given by or on behalf of the Mortgagor to any Indemnified Party relating to environmental matters, including, without limitation, those set forth in Paragraph 31(b) above; or

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- (iv) arise out of any Enforcement or Remedial Action or any judicial or administrative action brought pursuant to any Environmental Law.

The Mortgagor, its successors and assigns, shall bear, pay, and discharge when and as the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise against any of the Indemnified Parties described in this subparagraph (e), shall hold the Indemnified Parties harmless for those judgments or claims, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all Persons, political subdivisions or government agencies arising out of any of the occurrences set forth in this subparagraph (e).

The Mortgagor's indemnification obligations set forth above in this subparagraph (e) shall survive any termination or expiration of the documents evidencing or securing the Loan and/or the repayment of the indebtedness evidenced by the Note, including, without limitation, any foreclosure of this Mortgage or deed-in-lieu of foreclosure, it being understood and agreed that the indemnity given herein is independent of the Indebtedness and the Loan Documents. Notwithstanding the foregoing to the contrary, the Mortgagor's indemnifications and representations contained herein shall not extend to Hazardous Substances (a) which first originate on the Mortgaged Premises subsequent to the Mortgagee's succession to title to the Mortgagor's interests in and to the Mortgaged Premises by virtue of a foreclosure or the acceptance of a deed in lieu of foreclosure, or (b) to the extent such are present on, released to or from, or disposed or transported from the Mortgaged Premises in violation of any Environmental Law as a result of the gross negligence or willful misconduct of the Mortgagee to the extent that any such gross negligence or willful misconduct is determined by the final judgment of a court of competent jurisdiction, not subject to further appeal, in proceedings to which the Mortgagee is a proper party.

(f) If any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (hereinafter referred to as the "Remedial Work") is reasonably desirable (in the case of an operation and maintenance program or similar monitoring or preventative programs) or necessary, in each case as determined by an independent environmental consultant selected by the Mortgagee, under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental person, board, commission or agency, because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, groundwater, or surface water at, on, about, under or within the Mortgaged Premises or any portion thereof, the Mortgagor shall within thirty (30) days after written demand by the Mortgagee for the performance (or within such shorter time as may be required under applicable law, regulation, ordinance, order or agreement), commence and thereafter diligently prosecute to completion all such Remedial Work to the extent required by law. All Remedial Work shall be performed by contractors approved in advance by the Mortgagee and under the supervision of a consulting engineer approved in advance by the Mortgagee. All costs and expenses of such Remedial Work (including, without limitation, the reasonable fees and expenses of the Mortgagee's counsel) incurred in connection with monitoring or review of the Remedial Work shall be paid by the Mortgagor. If the Mortgagor shall fail or neglect to timely commence or cause to be commenced, or shall fail to diligently prosecute to completion, such Remedial Work, the Mortgagee may (but shall not be required to) cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith (including, without limitation, the reasonable fees and expenses of the Mortgagee's counsel), shall be paid by the Mortgagor to the Mortgagee forthwith after demand and shall be a part of the Indebtedness. Without limiting the generality of the foregoing, if any investigation, site monitoring, containment, cleanup, removal, restoration or other Remedial Work of any kind or nature is required under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental person, board, commission or agency, because of or in connection with the current or future presence, suspected presence, release or suspected release of

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a Hazardous Substance into the air, soil, groundwater, or surface water at, on, about, under or within the Mortgaged Premises or any portion thereof in violation of any Environmental Law, the Mortgagor shall prosecute to completion all such Remedial Work to the extent required by law, in the time frames and as required by said law, regulation, ordinance, order, judgment, person, board, commission, or agency.

32. **Captions.** The captions or headings preceding the text of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction or effect.

33. **No Waiver; Modifications in Writing.** No failure or delay on the part of the Mortgagee in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to any party at law or in equity or otherwise. No amendment, modification, supplement, termination or waiver of or to any provision of this Mortgage, nor consent to any departure therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the party to be charged with the enforcement thereof. Any amendment, modification or supplement of or to any provision of this Mortgage, any waiver of any provision of this Mortgage, and any consent to any departure from the terms of any provision of this Mortgage, shall be effective only in the specific instance and for the specific purpose for which made or given.

34. **Relationship.** The Mortgagee is only a lender under the Loan Documents, and nothing contained in this Mortgage or the other Loan Documents and no action taken by the parties pursuant hereto shall be deemed to constitute the Mortgagee and any other of the parties to the Loan Documents a partnership, an association, a joint venture or other entity, nor constitute the Mortgagee as a fiduciary for any of the parties.

35. **Governing Law.** This Mortgage shall be governed by, and construed in accordance with, the laws of the State of Illinois, without regard to conflicts of law principles of Illinois State law.

36. **Time of Essence.** Time is of the essence in the performance by the parties of this Mortgage.

37. **Construction.** The Mortgagor has been represented by its own counsel in this transaction, and this Mortgage shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

38. **Gender; Number; Terms.** Words and phrases herein shall be construed as in the singular or plural number and as masculine, feminine or neuter gender, according to the context. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Mortgage and not to any particular section, paragraph or provision. The term "Person" and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

39. **Integration.** This Mortgage, together with the other Loan Documents, constitute the entire agreement between the parties hereto pertaining to the subject matters hereof and thereof and supersede all negotiations, preliminary agreements and all prior or contemporaneous discussions and understandings of the parties hereto in connection with the subject matters hereof and thereof.

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40. **General Indemnification.** (a) The Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the "General Indemnitees" (as such term is hereinafter defined) from and against any and all Losses imposed upon or incurred by or asserted against any of the General Indemnitees and directly or indirectly arising out of or in any way relating to any one or more of the following: (i) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (ii) any use, nonuse or condition in, on or about the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Premises or any part thereof; (iv) any failure of the Mortgaged Premises to be in compliance with any applicable laws; (v) any and all claims, demands or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (vi) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Mortgage. Any amounts payable to the Mortgagee by reason of the application of this Paragraph 40 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by the Mortgagee until paid in full. The term "Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including, but not limited to, attorneys' fees and other costs of defense). The terms "General Indemnitor" and "General Indemnitees" shall mean (1) the Mortgagee, (2) any prior or future owner or holder of all or any portion of the Note, (3) any servicer or prior servicer of the Loan, (4) any participant or any prior participant in any portion of the Loan, (5) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any participant or other third party, (6) any receiver or other fiduciary appointed in a foreclosure or other collection proceeding, (7) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, licensees, invitees, affiliates, or subsidiaries of any and all of the foregoing, and (8) the heirs, legal representatives, successors, and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the General Indemnitees' assets and business), in all cases whether during the term of the Loan or as part of or following a foreclosure of the Loan. Notwithstanding anything to the contrary contained herein, the foregoing indemnity shall not include any losses incurred by the Mortgagee to the extent that such losses arose as a result of the Mortgagee's gross negligence or willful misconduct to the extent that any such gross negligence or willful misconduct is determined by the final judgment of a court of competent jurisdiction, not subject to further appeal, in proceedings to which the Mortgagee is a proper party.

(b) Upon written request by any General Indemnitee, the Mortgagor shall defend such General Indemnitee (if requested by any General Indemnitee, in the name of the General Indemnitee) by attorneys and other professionals approved by the General Indemnitees. Notwithstanding the foregoing to the contrary, any General Indemnitees may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of the General Indemnitees, their attorneys shall control the resolution of any claim or proceeding. Upon demand, the Mortgagor shall pay or, in the sole discretion of the General Indemnitees, reimburse, the General Indemnitees for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

(c) The Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the General Indemnitees from and against any and all Losses imposed upon or incurred by or asserted against any General Indemnitees and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Mortgage, the Note, or any of the other Loan

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Documents.

41. Miscellaneous.

(a) This Mortgage and all provisions hereof shall extend to and be binding upon the Mortgagor and its successors and assigns, any subsequent owner or owners of the Mortgaged Premises and all persons claiming under or through the Mortgagor (but this clause shall not be construed as constituting the consent by the Mortgagee to the transfer of any interest in the Mortgaged Premises), and the word "Mortgagor" when used herein shall include any such person and all persons liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee", when used herein, shall include the successors and assigns of the Mortgagee, and the holder or holders, from time to time, of the Note secured hereby. In addition, in the event the Mortgagor is a land trust or similar entity, the term "Mortgagor" as used herein shall include the beneficiary or beneficiaries of such land trust or similar entity.

(b) In the event one or more of the provisions contained in this Mortgage or the Note secured hereby, or in any other security documents given to secure the payment of the Note secured hereby, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

(c) The Mortgagor will, from time to time, upon ten (10) Business Days prior written request from the Mortgagee, make, execute, acknowledge and deliver to the Mortgagee such supplemental mortgages, certificates and other documents, including, without limitation, UCC financing statements, as may be necessary for better assuring and confirming to the Mortgagee the Mortgaged Premises, or for more particularly identifying and describing the Mortgaged Premises, or to preserve or protect the priority of this lien, and generally do and perform such other acts and things and execute and deliver such other instruments and documents as may reasonably be deemed necessary or advisable by the Mortgagee to carry out the intentions of this Mortgage.

(d) The Mortgagor shall not by act or omission permit any building or other improvement on any premises not subject to the lien of this Mortgage to rely on the Mortgaged Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and the Mortgagor hereby assigns to the Mortgagee any and all rights to give consent for all or any portion of the Mortgaged Premises or any interest therein to be so used. Similarly, no building or other improvement on the Mortgaged Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. The Mortgagor shall not by act or omission impair the integrity of the Mortgaged Premises as a single zoning lot separate and apart from all other premises. Any act or omission by the Mortgagor which would result in a violation of any of the provisions of this Paragraph 41(d) shall be void.

(e) The Mortgagor will, from time to time, upon ten (10) Business Days prior written request by the Mortgagee, execute, acknowledge and deliver to the Mortgagee, a certificate stating that this Mortgage is unmodified and in full force and effect (or, if there have been modifications, that this Mortgage is in full force and effect as modified and setting forth such modifications) and stating the principal amount secured hereby and the interest accrued to date on such principal amount. The estoppel certificate from the Mortgagor shall also state, to the best knowledge of the Mortgagor whether any offsets or defenses to the Indebtedness exist and if so shall identify them.

(f) The Note secured hereby includes provisions for the assessment of a Late Charge, as

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defined therein. Said Late Charge shall be secured hereby as Indebtedness, as that term is used herein.

(g) The Mortgagee shall have the right and option to exercise power of sale or to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure. The failure to join any tenant or tenants as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof, or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(h) At the option of the Mortgagee, this Mortgage shall become, subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any one or more, or to all, Leases upon the execution by the Mortgagee and recording or registration thereof, at any time hereafter, in the Office of the Recorder in and for the county wherein the Mortgaged Premises are situated, or such other office as determined by the Mortgagee, of a unilateral declaration to that effect.

(i) In the event that maturity of the Indebtedness is accelerated by the Mortgagee because of the occurrence of an Event of Default hereunder and a tender of payment is made by or on behalf of the Mortgagor in the amount necessary to satisfy the Indebtedness at any time prior to judicial confirmation or other conclusion if confirmation is not required, of a foreclosure sale or sale under a power of sale, then such tender shall constitute a prepayment under the Note and shall, to the extent specified in the Note, require payment of the Prepayment Premium provided for in the Note.

(j) All agreements between the Mortgagor and the Mortgagee (including, without limitation, those contained in this Mortgage and the Note) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Mortgagee exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or the Note or any other documents securing the Indebtedness at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever the Mortgagee shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the principal Indebtedness (whether or not then due and payable) and not to the payment of interest.

(k) The Mortgagor hereby covenants and agrees that it shall constitute an Event of Default hereunder if the proceeds of the Loan will be used, or were used, as the case may be, for the purpose (whether immediate, incidental or ultimate) of purchasing or "carrying" any "margin stock" as such terms are defined in Regulation U of the Board of Governors of the Federal Reserve System (12 CFR Part 221) or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose.

(l) The Mortgagor hereby covenants and agrees that it shall maintain a property management agreement satisfactory to the Mortgagee with a professional manager acceptable to the Mortgagee (the Mortgagee hereby approves of The Hearn Company, an Illinois corporation, as an approved property manager) in force at all times during the term of the Loan with respect to the Mortgaged Premises. In the event of any change of management or termination or modification of any property management agreement without the Mortgagee's prior express written approval and except as expressly permitted in this Paragraph 41(l), the Mortgagee may, at its sole option, declare the Loan immediately due and

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payable. The Mortgagor shall use its best efforts to include a "no lien" provision in any property management agreement hereafter entered into by the Mortgagor or its beneficiary with a property manager for the Mortgaged Premises, whereby the property manager waives and releases any and all mechanics' lien rights that such manager, or anyone claiming through or under such manager, may have. Such property management agreement containing such "no lien" provision or a short form thereof shall, at the Mortgagee's request, be recorded in the office of the Clerk of the County wherein the Mortgaged Premises is situated, or such other office as reasonably requested by the Mortgagee.

(m) The Mortgagor hereby certifies to the Mortgagee as follows: (i) except as has been previously disclosed to the Mortgagee in writing, there is no personal property located at the Mortgaged Premises which is owned by the Mortgagor; (ii) except as has been previously disclosed to the Mortgagee in writing, there are no vendor contracts for the Mortgaged Premises that are not terminable upon the giving of not more than thirty (30) days notice; (iii) except as has been previously disclosed to the Mortgagee in writing, there are no management agreements or franchise agreements currently in effect with respect to the Mortgaged Premises; and (iv) there are no licenses currently required with respect to the ownership or operation of the Mortgaged Premises.

42. **Future Advance Mortgage.** This Mortgage secures, and the Indebtedness includes, to the extent permitted by law, all advances made by Mortgagee with respect to the Mortgaged Premises for the payment of impositions, maintenance charges, insurance premiums or costs incurred for the protection of the Mortgaged Premises or the lien of this Mortgage.

43. **WAIVER OF JURY TRIAL.** THE MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, THE MORTGAGEE, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS MORTGAGE, OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS, WHETHER ORAL OR WRITTEN, OR ACTION OF ANY PARTY HERETO. NO PARTY SHALL SEEK TO CONSOLIDATE BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY THE MORTGAGOR OR THE MORTGAGEE EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY THE MORTGAGOR AND THE MORTGAGEE.

THE MORTGAGOR HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS MORTGAGE AT THE TIME OF EXECUTION HEREOF.

44. **Local Law Provisions.** Notwithstanding any term, condition, or provision of this Mortgage to the contrary, the following provisions of this Paragraph 44 shall govern, control, and prevail in any conflict between any of said provisions and the other provisions of this Mortgage:

(a) **Mortgage Foreclosure Law.**

- (i) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.) (hereinafter referred to as the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or

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render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

- (ii) If any provision of this Mortgage shall grant to the Mortgagee any rights or remedies upon the occurrence and during the continuation of an Event of Default of Mortgagor which are more limited than the rights that would otherwise be vested in the Mortgagee under the Act in the absence of said provision, the Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.
- (iii) Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of the Mortgagee, or to confer authority upon to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagor shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale.
- (iv) In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Mortgaged Premises, or for the appointment of a receiver, the Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Mortgaged Premises or at its request to have a receiver appointed, and such receiver, or the Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, subject to Paragraph 16 hereof, all rights, powers, immunities, and duties and provisions set forth in Sections 15-1701 and 15-1703 of the Act.
- (v) The Mortgagor and the Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto, which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, the Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) Expenses. Without limiting the generality of the foregoing, all expenses incurred by the Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Indebtedness.

(c) Commercial Transaction. The Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law, including, without limitation, all rights under Sections 15-1602 and 15-1603 of the Act.

(d) Business Loan. The proceeds of the Indebtedness referred to herein shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire

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principal obligation secured by this Mortgage constitutes (i) a "business loan" as that term is defined in, and for all purposes of, the Illinois Interest Act, 815 ILCS 205/4(1) (c); (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l); and (iii) 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 for Mortgagor's investment or profit, as contemplated by said section.

(e) Mortgage Waivers.

- (i) The Mortgagor agrees, to the fullest extent that Mortgagor may lawfully so agree, that the Mortgagor will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Premises or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but the Mortgagor, for the Mortgagor and all who may claim through or under the Mortgagor, so far as the Mortgagor or those claiming through or under the Mortgagor now or hereafter lawfully may, hereby waives the benefit of all such laws. The Mortgagor, to the extent the Mortgagor may lawfully do so, hereby waives any and all right to have the Mortgaged Premises marshaled upon any foreclosure of this Mortgage, or sold in inverse order of alienation, and agrees that the Mortgagee or any court having jurisdiction to foreclose this Mortgage may sell the Mortgaged Premises as an entirety. If any law now or hereafter in force referred to in this paragraph of which the Mortgagor or the Mortgagor's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this Paragraph 44(e)(i).
- (ii) In the event of the commencement of judicial proceedings to foreclose this Mortgage, the Mortgagor, on behalf of the Mortgagor, its successors and/or assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Mortgaged Premises subsequent to the date of this Mortgage, except as may be prohibited by local law: (1) expressly waives any and all rights of appraisal, valuation, stay, extension and reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage; and, (2) agrees that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Mortgaged Premises, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.
- (iii) Notwithstanding anything to the contrary in this Paragraph 44, or any other provision of this Mortgage, the Mortgagor does not waive any compulsory defense, any defense based on payment in full of the Indebtedness and/or fulfillment of any obligations then due. Furthermore, the Mortgagor does not waive any claim which would constitute a defense, set off, counterclaim or cross-claim of any nature whatsoever against the Mortgagee in any separate action or proceeding.

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(f) Maturity Date. The Indebtedness shall be due and payable as more fully set forth and described in the Note.

(g) Certain Insurance Disclosures. Pursuant to the Illinois Financial Institution Insurance Sales Law (215 ILCS 5/1400 et seq.) and the Illinois Collateral Protection Act (815 ILCS 180/1 et seq.), the Mortgagee hereby notifies the Mortgagor as follows:

You may obtain insurance required in connection with your loan or extension of credit from any insurance agent, broker, or firm that sells such insurance, provided the insurance requirements in connection with your loan are otherwise complied with. Your choice of insurance provider will not affect our credit decision or your credit terms.

Unless you provide us with evidence of the insurance coverage required by your agreements with us, we may purchase insurance at your expense to protect our interest in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreements. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

(h) Credit Agreements Act. The Mortgagor and the Mortgagee hereby expressly agree that for purposes of this Mortgage: (i) this Mortgage shall be a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1 et seq. (hereinafter referred to as the "Credit Act"); (ii) the Credit Act applies to this transaction; and (iii) any action on or in any way related to this Mortgage shall be governed by the Credit Act.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW]**

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IN WITNESS WHEREOF, the Mortgagor has executed this instrument the day and year first above written, intending to be legally bound.

WITNESS:

95 WA INVESTOR LLC, a Delaware limited liability company

Al
Name: Lindsay Cusano

By: Blake Hillemeier
Blake Hillemeier
Authorized Representative

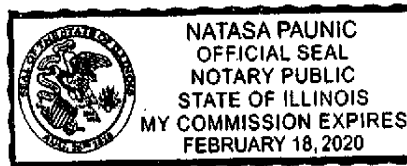
ACKNOWLEDGEMENT

STATE OF ILLINOIS :
COUNTY OF COOK : ss.

BE IT REMEMBERED, that on this 2nd day of February, 2018, before me the subscriber, an officer duly authorized to take acknowledgments for use in the State of Illinois, personally appeared Blake Hillemeier who I am satisfied is the person who executed the within instrument as the Authorized Representative of 95 WA INVESTOR LLC, a Delaware limited liability, the Mortgagor named therein, and I having first made known to him the contents thereof, he did thereupon acknowledge that said instrument made by said Mortgagor is his voluntary act and deed and delivered by him as said Authorized Representative of said Mortgagor and is the voluntary act and deed of said Mortgagor, made by virtue of authority from said Mortgagor's Limited Liability Company Agreement for the uses and purposes therein expressed.

Natasa Paunic
Notary Public

My Commission Expires:



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EXHIBIT "A"

ATTACHED TO AND MADE A PART OF THAT CERTAIN MORTGAGE, ASSIGNMENT OF LEASES, SECURITY AGREEMENT AND FIXTURE FILING BY 95 WA INVESTOR LLC, AS MORTGAGOR, IN FAVOR OF VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY, AS MORTGAGEE, DATED FEBRUARY 6, 2018

Legal Description of the Land

P.I.N.: 08-16-200-103-0000

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

PARCEL 1:

LOT 3

(EXCEPTING THEREFROM THAT PART OF LOT 3 DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 3; THENCE SOUTHEASTERLY ALONG A 2541.29 FOOT RADIUS CURVE, BEING ALSO THE NORTHERLY LINE OF SAID LOT 3, THE CENTER OF CIRCLE OF SAID CURVE BEARS ON AN ASSUMED BEARING OF NORTH 47 DEGREES 58 MINUTES 18 SECONDS EAST FROM SAID POINT, CENTRAL ANGLE 2 DEGREES 12 MINUTES 20 SECONDS, 97.82 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTHEASTERLY ALONG SAID CURVE CONCAVE TO THE NORTHEAST RADIUS 2541.29 FEET, CENTRAL ANGLE 11 DEGREES 26 MINUTES 54 SECONDS, 507.78 FEET TO A POINT OF REVERSE CURVATURE; THENCE SOUTHERLY ALONG A 30.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST, CENTRAL ANGLE 55 DEGREES 04 MINUTES 09 SECONDS, 28.83 FEET TO A POINT ON A 2551.07 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS NORTH 35 DEGREES 00 MINUTE 05 SECONDS EAST FROM SAID POINT; THENCE NORTHWESTERLY ALONG SAID CURVE, RADIUS 2551.07 FEET, CENTRAL ANGLE 8 DEGREES 26 MINUTES 03 SECONDS, 375.52 FEET TO A POINT ON A 2546.12 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS NORTH 42 DEGREES 14 MINUTES 05 SECONDS EAST FROM SAID POINT; THENCE NORTHWESTERLY ALONG SAID CURVE, RADIUS 2546.12 FEET, CENTRAL ANGLE 2 DEGREES 18 MINUTES 00 SECOND, 102.21 FEET; THENCE NORTH 40 DEGREES 00 MINUTE 33 SECONDS WEST 56.36 FEET TO THE POINT OF BEGINNING)

IN ARLINGTON PLACE SUBDIVISION, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE RECIPROCAL EASEMENT AGREEMENT BY AND BETWEEN URBS-SCHMITT AND KEPPEL INCORPORATED, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JULY 3, 1979 AND KNOWN AS TRUST NUMBER 47058 AND OTHERS, DATED AUGUST 2, 1979 AND RECORDED OCTOBER 1, 1979 AS DOCUMENT 25171074 AND FILED OCTOBER 1, 1979 AS DOCUMENT LR. 3121973 AND AS

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AMENDED BY INSTRUMENT RECORDED JUNE 4, 1981 AS DOCUMENT 25893428 AND FILED AS DOCUMENT LR. 3218008 FOR INGRESS AND EGRESS IN PART OF ARLINGTON PLACE SUBDIVISION AND TEULACH'S SUBDIVISION AS DELINEATED IN SAID AGREEMENT, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY AMENDED AND RESTATED EASEMENT AND OPERATING AGREEMENT AND GRANT OF EASEMENTS BY AND AMONG AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT NUMBER 45170, AND AS TRUSTEE UNDER TRUST AGREEMENT NUMBER 52304, SAID AGREEMENT BEING DATED FEBRUARY 1, 1983 AND RECORDED MARCH 7, 1983 AS DOCUMENT 26527048 AND FILED MARCH 7, 1983 AS DOCUMENT LR. 3296792, OVER, UPON AND ACROSS LOT 1 FOR THE PURPOSE OF USING AND GAINING ACCESS TO A SURFACE WATER DETENTION/RETENTION POND LOCATED IMMEDIATELY EAST OF THE WESTERNMOST LINE OF LOT 1 IN ARLINGTON PLACE SUBDIVISION AFORESAID, AS SHOWN ON DRAWING ATTACHED AS EXHIBIT "A" TO EASEMENT AND OPERATING AGREEMENT DATED DECEMBER 1, 1979 AND RECORDED JANUARY 4, 1980 AS DOCUMENT 25306989 AND FILED JANUARY 4, 1980 AS DOCUMENT LR. 3139276 AND ALSO OVER, UPON AND ACROSS LOT 2 IN ARLINGTON PLACE SUBDIVISION AFORESAID FOR THE PURPOSE OF GAINING ACCESS TO SAID POND LOCATED ON SAID LOT 1 AS SHOWN ON DRAWING ATTACHED AS EXHIBIT "A" TO THE AFORESAID AMENDED AND RESTATED EASEMENT AND OPERATING AGREEMENT AND GRANT OF EASEMENTS IDENTIFIED ABOVE, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT OF EASEMENT DATED FEBRUARY 1, 1983 AND RECORDED MARCH 7, 1983 AS DOCUMENT 26527049 AND FILED MARCH 7, 1983 AS DOCUMENT LR. 3296793 BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT NUMBER 47058, AND AS TRUSTEE UNDER TRUST AGREEMENT NUMBER 52304, OVER, UPON AND ACROSS THAT PART OF LOT 2 IN ARLINGTON PLACE SUBDIVISION AFORESAID AS DEPICTED ON EXHIBIT "A", FOR CONSTRUCTING, RUNNING, MAINTAINING AND REPAIRING SANITARY SEWER LINES AND PIPES, IN COOK COUNTY, ILLINOIS.

Common Address:

95 W. Algonquin Road
Arlington Heights, Illinois 60005