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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1819034031

Doc# 1819034031 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 07/09/2018 11:12 AM PG: 1 OF 26

The property identified as: **PIN:** 11-18-317-010-0000

Address:

Street: 1450 Sherman Avenue, 1500 Sherman Avenue and 1508

Street line 2: Sherman Avenue

City: Evanston

State: IL

ZIP Code: 60201

Lender: The Northwestern Mutual Life Insurance Company

Borrower: Albion At Evanston, LLC, a Delaware limited liability company

Loan / Mortgage Amount: \$51,750,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7770 et seq. because it is commercial property.

Certificate number: 0D482745-7BA6-4BBB-937A-97A52DFAB6A6

Execution date: 6/29/2018

18007474NC SCROSS 1003

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Illinois

Loan No. 342509

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.
720 East Wisconsin Avenue - Rm N16WC
Milwaukee, WI 53202
Attn: Leah M. Hillmer

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This instrument was prepared by James L. McFarland, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Ave., Milwaukee, WI, 53202.

MORTGAGE and SECURITY AGREEMENT
CONSTRUCTION AND PERMANENT LOAN

THIS MORTGAGE and SECURITY AGREEMENT is made as of the 29th day of June, 2018 between ALBION AT EVANSTON, LLC, a Delaware limited liability company, whose mailing address is 188 W. Randolph, Suite 202, Chicago, Illinois, 60601, herein (whether one or more in number) called "Mortgagor", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, whose mailing address is 720 E. Wisconsin Avenue, Milwaukee, WI, 53202, herein called "Mortgagee":

WITNESSETH, That Mortgagor, in consideration of the indebtedness herein mentioned, does hereby grant convey, mortgage, and warrant unto Mortgagee forever, with power of sale and right of entry and possession, the following property (herein referred to as the "Property"):

- A. The land in the City of Evanston, County of Cook, State of Illinois, described in Exhibit "A" attached hereto and incorporated herein (the "Land");
- B. All easements, appurtenances, tenements, and hereditaments belonging to or benefiting the Land, including but not limited to all waters, water rights, water courses, all ways, trees, rights, liberties, and privileges;
- C. All improvements to the Land, including, but not limited to, all buildings, structures, and improvements now existing or hereafter erected on the



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Land (the "Improvements"); all fixtures and equipment of every description belonging to Mortgagor which are or may be placed or used upon the Land or attached to the Improvements, including, but not limited to, all engines, boilers, elevators, machinery, heating apparatus, electrical equipment, air-conditioning and ventilating equipment, water and gas fixtures, furniture, and easily removable equipment; all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto;

- D. Mortgagor's interest in all articles of personal property of every kind and nature whatsoever, including, but not limited to all carpeting, draperies, ranges, microwave ovens, refrigerators, dishwashers, easily removable equipment and fixtures, furniture, and dehumidification equipment now or hereafter located upon the Land or in or on the Improvements and now owned or leased or hereafter acquired or leased by Mortgagor; and
- E. All building and construction materials, fixtures, equipment, and tangible personal property of every kind and nature whatsoever delivered to and stored on the Property and intended to be incorporated into the Improvements thereon.

Mortgagor agrees not to sell, transfer, assign, or remove anything described in B, C, D, and E above now or hereafter located on the Land without prior written consent from Mortgagee unless (i) such action does not constitute a sale or removal of any buildings or structures or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value.

Without limiting the foregoing grants, Mortgagor hereby pledges to Mortgagee, and grants to Mortgagee a security interest in, all of Mortgagor's present and hereafter acquired right, title, and interest in and to the Property and any and all

- F. cash and other funds now or at any time hereafter deposited by or for Mortgagor on account of tax, special assessment, replacement, or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with Mortgagee or a third party, or otherwise deposited with, or in the possession of, Mortgagee pursuant to the Loan Documents; and
- G. surveys, soils reports, environmental reports, guaranties, warranties, architect's contracts, construction contracts, drawings and specifications, applications, permits, surety

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bonds, and other contracts relating to the acquisition, design, development, construction, and operation of the Property; and

- H. accounts, chattel paper, deposit accounts, instruments, equipment, inventory, documents, general intangibles, letter-of-credit rights, investment property and all other personal property of Mortgagor (including, without limitation, any and all rights in the property name "Albion at Evanston" and including, without limitation, all fees, charges, accounts, or other payments for parking in or on the Property, including all products and proceeds thereof); and
- I. present and future rights to condemnation awards, insurance proceeds, or other proceeds at any time payable to or received by Mortgagor on account of the Property or any of the foregoing personal property.

All personal property hereinabove described is hereinafter referred to as the "Personal Property".

If any of the Property is of a nature that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement and financing statement if permitted by applicable law and Mortgagor authorizes Mortgagee to file a financing statement describing such Property and, at Mortgagee's request, agrees to join with Mortgagee in the execution of any financing statements and to execute any other instruments that may be necessary or desirable, in Mortgagee's determination, for the perfection or renewal of such security interest under the Uniform Commercial Code.

TO HAVE AND TO HOLD the same unto Mortgagee for the purpose of securing:

(a) Payment to the order of Mortgagee of the indebtedness evidenced by that certain Promissory Note of even date herewith (and any restatement, extension, or renewal thereof and any amendment thereto) executed by Mortgagor for the principal sum of FIFTY-ONE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$51,750,000.00), with final maturity no later than August 1, 2028 and with interest as therein expressed (which Promissory Note, as such instrument may be amended, restated, renewed, and extended, is hereinafter referred to as the "Note"), it being recognized that the funds may not have been fully advanced as of the date hereof but may be advanced in the future in accordance with the terms of a written contract; and

(b) Payment of all sums that may become due Mortgagee under the provisions of, and the performance of each agreement of Mortgagor contained in, the Loan Documents.

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"Loan Documents" means this instrument, the Note, that certain Loan Application dated April 12, 2018 from Mortgagor to Mortgagee and that certain acceptance letter issued by Mortgagee dated June 28, 2018 (together, the "Commitment"), that certain Absolute Assignment of Leases and Rents of even date herewith between Mortgagor and Mortgagee (the "Absolute Assignment"), that certain Certification of Borrower of even date herewith, that certain Funding Agreement of even date herewith, that certain Disbursement Agreement of even date herewith, that certain Guarantee of even date herewith (the "Guarantee"), that certain Guarantee of Recourse Obligations of even date herewith (the "GRO"), that certain Construction Cost Agreement of even date herewith, that certain Net Worth Maintenance Agreement of even date herewith, that certain Limited Liability Company Supplement dated contemporaneously herewith, any other supplements and authorizations required by Mortgagee, and any other agreement entered into or document executed by Mortgagor and delivered to Mortgagee in connection with the indebtedness evidenced by the Note, except for that certain Environmental Indemnity Agreement of even date herewith given by Village Green Consolidated LLC, a Delaware limited liability company, and CCE Funding LLC, a Delaware limited liability company, (the "Principals") to Mortgagee (the "Environmental Indemnity Agreement"), as any of the foregoing may be amended from time to time.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR COVENANTS AND AGREES:

Payment of Debt. Mortgagor agrees to pay the indebtedness hereby secured (the "Indebtedness") promptly and in full compliance with the terms of the Loan Documents.

Ownership. Mortgagor represents that it owns the Property and has good and lawful right to convey the same and that the Property is free and clear from any and all encumbrances whatsoever, except as appears in the title evidence accepted by Mortgagee. Mortgagor does hereby forever warrant and shall forever defend the title and possession thereof against the claims of any and all persons whomsoever.

Maintenance of Property and Compliance with Laws. Mortgagor agrees to keep the Improvements now or hereafter erected on the Land in good condition and repair, not to commit or suffer any waste; to comply with all laws, rules, and regulations affecting the Property; and to permit Mortgagee to enter at all reasonable times for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Mortgagee determines to be necessary in order to monitor Mortgagor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property.

Tenants Using Chlorinated Solvents. Mortgagor agrees not to lease any of the Property, without the prior written consent of Mortgagee, to (i) dry cleaning operations that perform dry cleaning on site with chlorinated solvents or (ii) any other tenants that use chlorinated solvents in the operation of their businesses.

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Business Restriction Representation and Warranty. Mortgagor represents and warrants that each of Mortgagor, all persons and entities owning (directly or indirectly) an ownership interest in Mortgagor, all guarantors of all or any portion of the Indebtedness, and all persons and entities executing any separate indemnity agreement in favor of Mortgagee in connection with the Indebtedness: (i) is not, and shall not become, a person or entity with whom Mortgagee is restricted from doing business under regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated Nationals and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) is not, and shall not become, a person or entity with whom Mortgagee is restricted from doing business under the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder; and (iii) is not knowingly engaged in, and shall not knowingly engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) or (ii) above.

Insurance. Mortgagor agrees to keep the Property insured for the protection of Mortgagee and Mortgagee's wholly owned subsidiaries and agents in such manner, in such amounts and in such companies as Mortgagee may from time to time approve provided that said insurance and said amounts are required by other institutional lenders for similar properties, and to keep the policies therefor, properly endorsed, on deposit with Mortgagee, or at Mortgagee's option, to keep evidence of insurance acceptable to Mortgagee evidencing all insurance coverages required hereunder on deposit with Mortgagee, which evidence shall reflect at least thirty (30) days notice of cancellation to Mortgagee and shall list Mortgagee as the certificate holder or as a similar additional interest with Mortgagee's correct mailing address and the loan number assigned to the loan (342509); if Mortgagor requests Mortgagee to accept a different form of evidence, Mortgagee shall not unreasonably withhold its consent, provided, a copy of a standard mortgagee endorsement in favor of Mortgagee stating that the insurer shall provide at least thirty (30) days notice of cancellation to Mortgagee accompanies such evidence. Mortgagor shall furnish Mortgagee with renewals of all applicable insurance evidence no later than the actual insurance expiration date.

If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt written notice thereof to Mortgagee. Following the occurrence of a casualty, Mortgagor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace, or rebuild the Improvements to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law. All insurance loss proceeds (less expenses of collection) shall, at Mortgagee's option, be applied on the Indebtedness, whether due or not, without the Prepayment Fee (as defined in the Note) or any other prepayment premium or penalty, or to the restoration of the Property, or be released to Mortgagor, but such application or release shall not cure or waive any default

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under any of the Loan Documents. If Mortgagee elects to apply the insurance loss proceeds on the Indebtedness, no prepayment fee shall be due thereon.

Notwithstanding the foregoing provision, Mortgagee agrees that if the insurance loss proceeds are less than the unpaid principal balance of the Note and if the casualty occurs prior to the last three (3) years of the term of the Note, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Property to its condition prior to the casualty, subject to satisfaction of the following conditions:

- (a) There is no existing Event of Default at the time of casualty.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds to Mortgagor as a result of any act, neglect, use, or occupancy of the Property by Mortgagor or any tenant of the Property.
- (c) Mortgagee shall be satisfied that all insurance loss proceeds so held, together with supplemental funds to be made available by Mortgagor, shall be sufficient to complete the restoration of the Property. Any remaining insurance loss proceeds may, at the option of Mortgagee, be applied on the Indebtedness, whether or not due, or be released to Mortgagor.
- (d) If required by Mortgagee, Mortgagee shall be furnished a satisfactory report addressed to Mortgagee from an environmental engineer or other qualified professional satisfactory to Mortgagee to the effect that no adverse environmental impact to the Property resulted from the casualty.
- (e) Mortgagee shall release casualty insurance proceeds as restoration of the Property progresses provided that Mortgagee is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no Non-Monetary Default with respect to which Mortgagee shall have given Mortgagor notice pursuant to the "**Notice of Default**" provision herein and no Monetary Default. If Mortgagee shall give Mortgagor notice of a Non-Monetary Default, Mortgagee shall have no further obligation to release insurance loss proceeds hereunder unless such default is cured within the cure period set forth in the "**Notice of Default**" provision herein or a Monetary Default shall occur. If the estimated cost of restoration exceeds \$500,000.00, (i) the drawings and specifications for the restoration shall be approved by Mortgagee in writing prior to commencement of the restoration, and (ii) Mortgagee shall receive an administration fee equal to 0.50% of the cost of restoration.
- (f) Prior to each release of funds, Mortgagor shall obtain for the benefit of Mortgagee an endorsement to Mortgagee's title insurance policy insuring

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Mortgagee's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Mortgagee.

- (g) Mortgagor shall pay all out-of-pocket costs and expenses incurred by Mortgagee, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports, and inspections deemed necessary by Mortgagee.
- (h) All reciprocal easement and operating agreements benefiting the Property, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.
- (i) Mortgagee shall be satisfied that Projected Debt Service Coverage of at least 1.50 if the Indebtedness Increase (as hereinafter defined) has not been obtained by Mortgagor or 1.35 if the Indebtedness Increase has been obtained by Mortgagor will be produced from the leasing of space to tenants under Approved Leases (as hereinafter defined).

"Approved Leases" means leases to (i) existing tenants with a remaining term of at least three (3) months or (ii) approved new tenants with leases satisfactory to Mortgagee for terms of at least six (6) months to commence not later than thirty (30) days following completion of restoration.

"Projected Debt Service Coverage" means a number calculated by dividing Projected Operating Income Available for Debt Service for the first fiscal year following restoration of the Property by the debt service during the same fiscal year under all indebtedness secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) debt service due under all such indebtedness during the first fiscal year following completion of the restoration of the Property or (y) debt service that would be due and payable during such fiscal year if all such indebtedness were amortized over thirty (30) years (whether or not amortization is actually required) and if interest on such indebtedness were due as it accrues at the face rate shown on the notes therefor (whether or not interest payments based on such face rates are required).

"Projected Operating Income Available for Debt Service" means projected gross annual rent from the Approved Leases plus reimbursements from tenants for utilities for the first full fiscal year following completion of the restoration of the Property less:

- (A) The operating expenses of the Property for the last fiscal year preceding the casualty and
- (B) the following:

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- (i) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 92% of the gross leasable area in the Property;
- (ii) the amount, if any, by which the actual management fee is less than 2.25% of gross revenue during such fiscal period;
- (iii) the amount, if any, by which the actual real estate taxes are less than \$3,600.00 per unit per annum; and
- (iv) the amount, if any, by which total operating expenses (including, without limitation, utilities), excluding management fees, real estate taxes and replacement reserves, are less than \$5,725.00 per unit per annum.

All projections referenced above shall be calculated in a manner reasonably satisfactory to Mortgagee.

Condemnation. Mortgagor hereby assigns to Mortgagee (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property, and (ii) the proceeds from any sale or transfer in lieu thereof (collectively, "Condemnation Proceeds") in connection with condemnation proceedings or the exercise of any power of eminent domain or the threat thereof (hereinafter a "Taking"); and Mortgagor grants Mortgagee the right, at its option, to apply such Condemnation Proceeds (less expenses of collection) on the Indebtedness (including any prepayment fee), whether due or not, or to the restoration of the Property or to release all or any portion thereof to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents.

Taxes and Special Assessments. Mortgagor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Note, or the Indebtedness, or upon the interest of Mortgagee in the Property, this instrument, the Note, or the Indebtedness, and to procure and deliver to Mortgagee within thirty (30) days after Mortgagee shall have given a written request to Mortgagor the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Mortgagor shall not be required to pay any such taxes or special assessments if the amount, applicability, or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Mortgagee.

Personal Property. With respect to the Personal Property, Mortgagor hereby represents, warrants, and covenants as follows:

- (a) Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance, or adverse

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claim thereon of any kind whatsoever. Mortgagor shall notify Mortgagee of, and shall indemnify and defend Mortgagee and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.

(b) Except as otherwise provided above, Mortgagor shall not lease, sell, convey, or in any manner transfer the Personal Property without the prior consent of Mortgagee.

(c) Mortgagor is a limited liability company organized under the laws of the State of Delaware. Until the Indebtedness is paid in full, Mortgagor (i) shall not change its legal name without providing Mortgagee with thirty (30) days prior written notice; (ii) shall not change its state of organization; and (iii) shall preserve its existence and shall not, in one transaction or a series of transactions, merge into or consolidate with any other entity.

(d) At the request of Mortgagee, Mortgagor shall join Mortgagee in executing one or more financing statements and continuations and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Mortgagee, and Mortgagor shall pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable. Mortgagor shall also, at Mortgagor's expense, take any and all other action requested by Mortgagee to perfect Mortgagee's security interest under the Uniform Commercial Code with respect to the Personal Property, including, without limitation, exercising Mortgagor's best efforts to obtain any consents, agreements, or acknowledgments required of third parties to perfect Mortgagee's security interest in Personal Property consisting of deposit accounts, letter-of-credit rights, investment property, and electronic chattel paper.

Other Liens. Mortgagor agrees to keep the Property and any Personal Property free from all other liens either prior or subsequent to the lien created by this instrument (other than any installment sale contract covering personal property or equipment lease covering personal property with an aggregate value of less than \$500,000.00). The (i) creation of any other lien on any portion of the Property or on any Personal Property, whether or not prior to the lien created hereby, (ii) assignment or pledge by Mortgagor of its revocable license to collect, use, and enjoy rents and profits from the Property, or (iii) granting or permitting of a security interest in or other encumbrance on the direct or indirect ownership interests in Mortgagor shall constitute a default under the terms of this instrument; except that upon written notice to Mortgagee, Mortgagor may proceed to contest in good faith and by appropriate proceedings any mechanics liens, tax liens, or judgment liens with respect to the Property or any Personal Property described herein, provided Mortgagor obtains an appropriate title insurance indemnity or funds sufficient to satisfy the contested amount have been deposited in an escrow account satisfactory to Mortgagee.

Mortgagor shall have a one-time right to borrow up to an additional \$5,000,000 from Mortgagee (the "Indebtedness Increase"), priced at then market rates, within two (2)

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years after the later of the date on which Project Final Completion (as hereinafter defined) is achieved or the date on which Debt Service Coverage (as hereinafter defined) of at least 1.20 has been achieved for a period of three (3) consecutive months and after the release of the Guarantee, provided that there is no default under the Loan Documents, the loan to value ratio for the Property after the Indebtedness Increase has been advanced would be no more than sixty percent (60%) based on Mortgagor's then current valuation of the Property, the Debt Service Coverage which would be applicable to the Property after the Indebtedness Increase has been advanced is at least 1.35, and Mortgagee is still in the business of making mortgage loans similar to the proposed Indebtedness Increase.

Indemnification, Duty to Defend and Costs, Fees and Expenses. In addition to any other indemnities contained in the Loan Documents, Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against any and all losses, liabilities, claims, demands, damages, costs, and expenses (including, but not limited to, costs of title evidence and endorsements to Mortgagee's title insurance policy with respect to the Property and reasonable attorney fees and other costs of defense) which may be imposed upon, incurred by or asserted against Mortgagee, whether or not any legal proceeding is commenced with regard thereto, in connection with: (i) the enforcement of any of Mortgagee's rights or powers under the Loan Documents; (ii) the interpretation of any of the terms and conditions of the Loan Documents, (iii) the protection of Mortgagee's interest in the Property; or (iv) any accident, injury to or death of persons, or loss of or damage to property occurring in, on or about the Property or on any sidewalk, curb, parking area, space, or street located adjacent thereto. If any claim or demand is made or asserted against Mortgagee by reason of any event as to which Mortgagor is obligated to indemnify or defend Mortgagee, then, upon demand by Mortgagee, Mortgagor, at Mortgagor's sole cost and expense, shall defend such claim, action, or proceeding in Mortgagee's name, if necessary, by such attorneys as Mortgagee shall approve. Notwithstanding the foregoing, Mortgagee may, in Mortgagee's sole discretion, engage its own attorneys to defend it or assist in its defense and Mortgagor shall pay the reasonable fees and disbursements of such attorneys.

Failure of Mortgagor to Act. If Mortgagor fails to make any payment or do any act as herein provided, Mortgagee may, without obligation to do so, after such failure becomes an Event of Default (except that such failure need not become an Event of Default and no prior notice of the exercise of Mortgagee's rights under this paragraph need be given to Mortgagor if the priority of Mortgagee's lien would be adversely affected by such failure before the failure became an Event of Default, if Mortgagee's lien would be extinguished by such failure before the failure became an Event of Default, if such failure would constitute an imminent threat to life, safety, or property before the failure became an Event of Default, or if such failure would otherwise impair Mortgagee's security before such failure became an Event of Default), without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof: (i) make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Mortgagee;

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(iii) pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of Mortgagee appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended and all losses, liabilities, claims, damages, costs, and expenses required to be reimbursed by Mortgagor to Mortgagee hereunder shall be payable by Mortgagor immediately upon demand with interest from date of expenditure or demand, as the case may be, at the Default Rate (as defined in the Note). All sums so expended or demanded by Mortgagee and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument. In no event shall the maximum amount secured hereby exceed two hundred percent (200%) of the principal amount of the Note.

In furtherance and not in limitation of the preceding paragraph, unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this instrument, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that is made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this instrument. If Mortgagee purchases insurance for the Property, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The costs of the insurance may be more than the cost of the insurance Mortgagor may be able to obtain on its own.

Event of Default. Any default by Mortgagor in making any required payment of the Indebtedness or any default in any provision, covenant, agreement, warranty, or certification contained in any of the Loan Documents shall, except as provided in the three (3) immediately succeeding paragraphs, constitute an "Event of Default".

Notice of Default. A default in any provision, covenant, agreement, or warranty contained in the Note or in any other Loan Document occurring prior to Breakeven shall not constitute an Event of Default unless Mortgagee shall have given a written notice of such default to Mortgagor and Mortgagor shall not have cured such default within ten (10) days after the date on which Mortgagee shall have given such notice of default to Mortgagor; it being understood that during the continuation of such default, Mortgagee shall not be obligated to make any additional advances of principal of the Note. Upon the failure of Mortgagor to cure any such default within such 10-day period, Mortgagee, in addition to all other rights and remedies provided it, may enter upon and take possession of the Property for the purpose of completing the construction of the improvements being financed by the Indebtedness.

A default in any payment required in the Note or any other Loan Document occurring on or after Breakeven, whether or not payable to Mortgagee, (a "Monetary

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Default") shall not constitute an Event of Default unless Mortgagee shall have given a written notice of such Monetary Default to Mortgagor and Mortgagor shall not have cured such Monetary Default by payment of all amounts in default (including payment of interest at the Default Rate, as defined in the Note, from the date of default to the date of cure on amounts owed to Mortgagee) within five (5) business days after the date on which Mortgagee shall have given such notice to Mortgagor.

Any other default under the Note or under any other Loan Document occurring on or after Breakeven (a "Non-Monetary Default") shall not constitute an Event of Default unless Mortgagee shall have given written notice of such Non-Monetary Default to Mortgagor and Mortgagor shall not have cured such Non-Monetary Default within thirty (30) days after the date on which Mortgagee shall have given such notice of default to Mortgagor (or, if the Non-Monetary Default is not curable within such 30-day period, Mortgagor shall not have (i) diligently undertaken and continued to pursue the curing of such Non-Monetary Default and (ii) cured such Non-Monetary Default within a period of ninety (90) days following delivery of notice).

In no event shall the notice and cure period provisions recited above constitute a grace period for the purposes of commencing interest at the Default Rate (as defined in the Note).

"Breakeven" means the date following Project Final Completion when, for each of three (3) consecutive months, Debt Service Coverage shall have equaled or exceeded 1.00 as demonstrated by evidence satisfactory to Mortgagee.

"Project Final Completion" means (i) the lien-free completion of all of the Improvements in accordance with the drawings and specifications approved by Mortgagee (including punchlist items and tenant finishes) as evidenced by affidavits of completion by all contractors working on the Improvements, final lien waivers by all parties working on, or supplying materials for, the Improvements, certificates of completion by such architects as may be required by Mortgagee, and a final endorsement to Mortgagee's policy of title insurance, and (ii) the receipt by Mortgagee of all certificates of occupancy necessary for occupancy of all of the Improvements, an as-built survey, and a final set of drawings showing actual changes made during construction.

"Debt Service Coverage" means a number calculated by dividing Net Operating Income Available for Debt Service for a fiscal period by the debt service during the same fiscal period under all indebtedness (including the Indebtedness) secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the actual debt service due under all indebtedness secured by any portion of the Property based upon an amortization schedule which is the shorter of the actual amortization schedule or thirty (30) years (whether or not amortization is actually required), and, if an accrual loan, as if interest and principal on such indebtedness were due monthly.

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"Net Operating Income Available for Debt Service" means net income (prior to giving effect to any capital gains or losses and any extraordinary items) from the Property (including, without limitation, reimbursements from tenants for utilities), determined in accordance with generally accepted accounting principles, for a fiscal period, plus (to the extent deducted in determining net income from the Property):

- A) interest on indebtedness secured by any portion of the Property for such fiscal period;
- B) depreciation, if any, of fixed assets at or constituting the Property for such fiscal period;
- C) amortization of costs incurred in connection with any indebtedness secured by any portion of the Property and leasing commissions which have been prepaid;

less:

- D) an amount (positive or negative) to offset any rent averaging adjustment resulting from adherence to FASB-13;
- E) the amortization of free rent and any other tenant concessions and promotional items not deducted in the calculation of net income above;
- F) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 92% of the gross leasable area in the Property;
- G) the amount, if any, by which the actual management fee is less than 2.25% of gross revenue during such fiscal period;
- H) the amount, if any, by which the actual real estate taxes are less than \$3,600 per unit per annum; and
- I) the amount, if any, by which total operating expenses (including, without limitation, utilities), excluding management fees, real estate taxes, and replacement reserves, are less than \$5,725 per unit per annum.

All adjustments to net income referenced above shall be calculated in a manner reasonably satisfactory to Mortgagee.

Appointment of Receiver. Upon commencement of any proceeding to enforce any right under this instrument, including foreclosure thereof, Mortgagee (without limitation or restriction by any present or future law, without regard to the solvency or insolvency at that

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time of any party liable for the payment of the Indebtedness, without regard to the then value of the Property, whether or not there exists a threat of imminent harm, waste, or loss to the Property and or whether the same shall then be occupied by the owner of the equity of redemption as a homestead) shall have the absolute right to the appointment of a receiver of the Property and of the revenues, rents, profits, and other income therefrom, and said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses of such receivership and of operation, maintenance, and repair of said Property, to apply the balance to the payment of any of the Indebtedness then due.

Foreclosure. Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Mortgagee, become immediately due and payable for all purposes without any notice or demand, except as required by law (ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Mortgagee may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Mortgagee may, to the extent permitted by applicable law, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may complete construction of the Improvements and manage, rent, or lease the Property or any portion thereof upon such terms as Mortgagee may deem expedient, and collect, receive, and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Mortgagee is hereby further authorized and empowered, to the extent permitted by applicable law, as agent or attorney in fact, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Mortgagee may think best), and all the right, title, and interest of Mortgagor therein, by advertisement or in any manner provided by applicable law (MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE, TO THE EXTENT PERMITTED BY APPLICABLE LAW), and to issue, execute, and deliver a deed of conveyance, all as then may be provided by applicable law; and Mortgagee, to the extent permitted by applicable law, shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and attorneys' fees as herein provided, apply such proceeds to the Indebtedness, including all sums advanced or expended by Mortgagee or the legal holder of the Indebtedness, with interest from date of advance or expenditure at the Default Rate (as defined in the Note), rendering the excess, if any, as provided by law; such sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against Mortgagor, the heirs, successors, and assigns of Mortgagor, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through, or under Mortgagor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

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Waiver of Redemption. Mortgagor releases and waives all rights to retain possession of the Property after any default in payment or breach of any of the obligations, covenants, undertakings, or agreements herein or in the Note and after the expiration of any applicable cure period; Mortgagor hereby releases and waives any and all rights of redemption from sale under any order or decree of foreclosure of this instrument on its own behalf and, if Mortgagor is a trust, on behalf of the Beneficiary of Mortgagor, and each and every person, except decree and judgment creditors of the Mortgagor, including any and all persons acquiring any interest in or title to the Property or any beneficial interest in Mortgagor. Mortgagor shall not, and will not, apply for or avail itself of any appraisal, valuation, stay, extension, or exemption law, or so-called "Moratorium Laws", now existing or hereinafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the Property, and any estates comprising the Property, marshalled upon any foreclosure of the lien hereon and agree that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. If Mortgagor is a trust, no provision of this paragraph or of this Mortgage shall prevent the Beneficiary of Mortgagor from bidding at any foreclosure sale of the Property.

Prohibition on Transfer/One-Time Transfer. The present ownership and management of the Property is a material consideration to Mortgagee in making the loan secured by this instrument, and Mortgagor shall not (i) convey title to all or any part of the Property, (ii) enter into any contract to convey (land contract/installment sales contract/contract for deed) title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey"), or (iii) cause or permit a Change in the Proportionate Ownership (as hereinafter defined) of Mortgagor. Any such conveyance, entering into a Contract to Convey, or Change in the Proportionate Ownership of Mortgagor shall constitute a default under the terms of this instrument.

"Change in the Proportionate Ownership" means, with respect to an entity, a change in, or the existence of a lien on, the direct or indirect ownership interests of such entity.

Notwithstanding the foregoing, changes in the direct and indirect ownership interests of Sammons Enterprises, Inc., a Delaware corporation, ("Sammons") shall be permitted without Mortgagee's consent and shall not be deemed to be a Change in the Proportionate Ownership of Mortgagor.

Notwithstanding the foregoing, without the consent of Mortgagee and without it being deemed a Change in the Proportionate Ownership of Mortgagor, direct or indirect ownership interests of Mortgagor may be transferred to Affiliates (as hereinafter defined) of Mortgagor, and up to forty-nine percent (49%) of the direct or indirect ownership interests of Mortgagor may be transferred to third parties provided that:

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- (a) Sammons or an Affiliate of Sammons continues to own, directly or indirectly, more than fifty percent (50%) of the ownership interests of Mortgagor and continues to control (as hereinafter defined) Mortgagor,
- (b) the transferees and all persons and entities owning (directly or indirectly) more than a ten percent (10%) ownership interest in the transferees are not (and have never been) (i) subject to any bankruptcy, reorganization, or insolvency proceedings, or convicted under any criminal charges constituting a felony or a misdemeanor involving fraud or theft, or (ii) a litigant, plaintiff, or defendant in any suit brought against or by Mortgagee, and
- (c) the representation and warranty in the provision hereof entitled "**Business Restriction Representation and Warranty**" shall remain true and correct after the transfers.

As used herein, "Affiliate" shall mean, with respect to an entity, an entity or individual which owns more than fifty percent (50%) of the direct or indirect ownership interests of said entity and controls said entity, an entity for which said entity owns more than fifty percent (50%) of the direct or indirect ownership interests and which is controlled by said entity, or an entity for which the same entity or individual owns more than fifty percent (50%) of the direct or indirect ownership interests of both of said entities and controls both entities.

As used herein, "controls" (including, with correlative meanings, the terms "control" and "controlled by") means, with respect to a person or entity, the possession by another person or entity, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity whether through the ownership of voting securities, by contract, or otherwise.

Notwithstanding the above, provided there is then no default in the terms and conditions of any Loan Document, after the later of the date on which Project Final Completion is achieved or the date on which Debt Service Coverage of at least 1.20 has been achieved for a period of three (3) consecutive months, and upon prior written request from Mortgagor, Mortgagee shall not withhold its consent to a one-time transfer of all but not less than all of the Property to a single entity or individual, provided:

- (i) the Property shall have achieved Debt Service Coverage of at least 1.50 if the Indebtedness Increase has not been obtained by Mortgagor or 1.35 if the Indebtedness Increase has been obtained by Mortgagor for the last full fiscal year and there are no junior liens on the Property other than the Indebtedness Increase, if any;

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- (ii) the transferee or an owner of the transferee (the "Creditworthy Party") has a net worth, determined in accordance with generally accepted accounting principles, of at least \$150 million with cash and cash equivalents of at least \$7.5 million after funding the equity needed to close the purchase and a minimum overall real estate portfolio debt service coverage ratio of 1.20 for the prior twelve (12) month period. In the event that transferee shall satisfy the financial requirements set forth in this subsection (ii), all references to Creditworthy Party in subsections (iii) through (vi) hereafter shall be deemed deleted;
- (iii) the transferee or the Creditworthy Party is experienced in the ownership and management of at least 200 high-rise apartment units provided that the property manager for the transferee has been reasonably approved by Mortgagee;
- (iv) the transferee, the Creditworthy Party, and all persons and entities owning (directly or indirectly) more than ten percent (10%) ownership interest in the transferee or the Creditworthy Party are not (and have never been) (a) subject to any bankruptcy, reorganization, or insolvency proceedings, or convicted under any criminal charges constituting a felony or a misdemeanor involving fraud or theft, or (b) a litigant, plaintiff, or defendant in any suit brought against or by Mortgagee;
- (v) pursuant to written documentation prepared by and satisfactory to Mortgagee, the transferee assumes and the Creditworthy Party guarantees all of the obligations and liabilities of Mortgagor under the Loan Documents, whether arising prior to or after the date of the transfer of the Property, and Mortgagee receives a satisfactory enforceability opinion with respect thereto from counsel approved by Mortgagee;
- (vi) the Creditworthy Party executes Mortgagee's then current form of Guarantee of Recourse Obligations, the Creditworthy Party and the transferee execute Mortgagee's then current form of Environmental Indemnity Agreement, and Mortgagee receives a satisfactory enforceability opinion with respect to the foregoing from counsel approved by Mortgagee;
- (vii) an environmental report on the Property which meets Mortgagee's then current requirements and is updated to no earlier than ninety (90) days prior to the date of transfer is provided to Mortgagee at least thirty (30) days prior to the date of transfer and the results of the report are satisfactory to Mortgagee at the time of transfer;
- (viii) Mortgagor and Principals (as hereinafter defined) (a) shall remain liable under the Environmental Indemnity Agreement dated of even date herewith

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except for acts or occurrences after the date of transfer of the Property and (b) shall, except as provided in (a) above, be released from all obligations and liabilities under the Loan Documents;

- (ix) Mortgagee receives an endorsement to its policy of title insurance, satisfactory to Mortgagee insuring Mortgagee's lien on the Property as a first and valid lien subject only to liens and encumbrances theretofore approved by Mortgagee;
- (x) pursuant to written documentation prepared by and satisfactory to Mortgagee, the transferee (a) acknowledges that, in furtherance and not in limitation of clause (v) above, it shall be bound by the representation and warranty contained in the provision hereof entitled "**Business Restriction Representation and Warranty**", and (b) certifies that such representation and warranty is true and correct as of the date of transfer and shall remain true and correct at all times during the term of the Note; and
- (xi) the outstanding balance of the Indebtedness if there is no Indebtedness Increase at the time of the transfer is not more than 55% of the gross purchase price of the Property or the outstanding balance of the Indebtedness plus the outstanding balance of the Indebtedness Increase if there has been an Indebtedness Increase at the time of the transfer is not more than 62% of the gross purchase price of the Property.

If Mortgagor shall make a one-time transfer pursuant to the above conditions, Mortgagee shall be paid a fee equal to one percent (1%) of the then outstanding balance of the Note at the time of transfer. The fee shall be paid on or before the closing date of such one-time transfer. At the time of such transfer, no modification of the interest rate or repayment terms of the Note will be required.

No subsequent transfers of the Property shall be allowed and no Change in the Proportionate Ownership of transferee shall be allowed without Mortgagee's prior written consent. Notwithstanding the foregoing, Mortgagor and Mortgagee agree that the underlying ownership structure of a particular transferee may cause Mortgagee to determine that the definition of Change in the Proportionate Ownership of such transferee does not adequately address Mortgagee's underlying ownership concerns for such transferee, and accordingly, Mortgagee reserves the right to amend the definition of Change in the Proportionate Ownership as it applies to a particular transferee.

Financial Statements. Mortgagor agrees to furnish to Mortgagee:

- (A) Following occupancy of the Property by the first tenant, the following financial statements for the Property within 120 days after the close of each year of the Mortgagor (the "Property Financial Statements Due Date"):

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- (i) an unaudited statement of operations for such fiscal year with a detailed line item break-down of all sources of income and expenses, including capital expenses broken down between, leasing commissions, tenant improvements, capital maintenance, common area renovation, and expansion; and
 - (ii) a current rent roll identifying location, leased area, lease begin and end dates, current contract rent, rent increases and increase dates, percentage rent, expense reimbursements, and any other recovery items; and
 - (iii) an operating budget for the current fiscal year; and
- (B) the following financial statements that Mortgagee may, in Mortgagee's sole discretion, require from time to time within twenty (20) days after receipt of a written request from Mortgagee (the "Requested Financial Statements Due Date")
- (i) an unaudited balance sheet for the Property as of the last day of Mortgagor's most recently closed fiscal year; and
 - (ii) an unaudited balance sheet for Mortgagor as of the last day of Mortgagor's most recently closed fiscal year; and
 - (iii) an unaudited balance sheet for each Principal as of the last day of each such Principal's most recently closed fiscal year; and
 - (iv) an unaudited statement of cash flows for the Property as of the last day of Mortgagor's most recently closed fiscal year; and
 - (v) an unaudited statement of cash flows for the Mortgagor as of the last day of Mortgagor's most recently closed fiscal year; and
 - (vi) an unaudited statement of cash flows for each Principal as of the last day of each such Principal's most recently closed fiscal year; and

Furthermore, Mortgagor shall furnish to Mortgagee within twenty (20) days after receipt of a written request from Mortgagee (the "Additional Requested Financial Statements Due Date") such reasonable financial and management information in the possession of, or accessible to, Mortgagor which Mortgagee determines to be useful in Mortgagee's monitoring of the value and condition of the Property, Mortgagor, or the Principals.

The Property Financial Statements Due Date, the Requested Financial Statements Due Date, and the Additional Requested Financial Statements Due Date are each sometimes hereinafter referred to as a "Financial Statements Due Date".

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Notwithstanding the foregoing, in no event shall a Financial Statements Due Date for a particular financial statement be prior to the 120th day following the close of the fiscal year covered by such financial statement.

If audited, the financial statements identified in sections (A)(i), (A)(ii) and (B)(i) through (B)(vi), above, shall each be prepared in accordance with generally accepted accounting principles by a certified public accountant satisfactory to Mortgagee. All unaudited statements shall contain a certification by a senior officer of Mortgagor stating that they have been prepared in accordance with generally accepted accounting principles and that they are true and correct. The expense of preparing all of the financial statements required in (A) and (B) above, shall be borne by Mortgagor.

Mortgagor acknowledges that Mortgagee requires the financial statements and information required herein to record accurately the value of the Property for financial and regulatory reporting.

In addition to all other remedies available to Mortgagee hereunder, at law and in equity, if any financial statement, additional information, or proof of payment of property taxes and assessments is not furnished to Mortgagee as required in this provision entitled "**Financial Statements**" and in the provision hereof entitled "**Taxes and Special Assessments**" within thirty (30) days after Mortgagee shall have given written notice to Mortgagor that it has not been received as required,

(x) interest on the unpaid principal balance of the Indebtedness shall, as of the applicable Financial Statements Due Date or the date such additional information or proof of payment of property taxes and assessments was due, accrue and become payable at a rate equal to the sum of the Interest Rate (as defined in the Note) plus one percent (1%) per annum (the "Increased Rate"); and

(y) Mortgagee may elect to obtain an independent appraisal and audit of the Property at Mortgagor's expense, and Mortgagor agrees that it will, upon request, promptly make Mortgagor's books and records regarding the Property available to Mortgagee and the person(s) performing the appraisal and audit (which obligation Mortgagor agrees can be specifically enforced by Mortgagee).

Prior to the Initial Amortization Date (as defined in the Note), the amount of the payments due under the Note during the time in which the Increased Rate is in effect shall be increased to reflect the Increased Rate. On and after the Initial Amortization Date, the amount of the payments due under the Note during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Increased Rate during the then remaining portion of a period of 30 years commencing with the 1st day of the month prior to the Initial Amortization Date (the "Amortization Period Commencement Date"). Interest shall continue to accrue and be

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due and payable monthly at the Increased Rate until the financial statements, additional information, and proof of payment of property taxes and assessments shall be furnished to Mortgagee as required. Commencing on the date on which the financial statements, additional information, and proof of payment of property taxes and assessments are received by Mortgagee, interest on the unpaid principal balance shall again accrue at the Interest Rate. Prior to the Initial Amortization Date, the payments due under the Note shall be reduced to reflect the Interest Rate. On and after the Initial Amortization Date, the payments due during the remainder of the term of the Note shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Interest Rate during the then remaining portion of a period of 30 years commencing with the Amortization Period Commencement Date. Notwithstanding the foregoing, Mortgagee shall have the right to conduct an independent audit at its own expense at any time.

Usury Law Compliance. The indebtedness constitutes a loan secured by a mortgage on real estate under Chapter 815, Act 205, Section 4(1)(1) of Illinois Compiled Statutes, 1993, as the same may subsequently be amended.

Property Management. The management company for the Property shall be reasonably satisfactory to Mortgagee. Any change in the management company without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned, or delayed, shall constitute a default under this instrument.

Construction Mortgage. This is a Construction Mortgage or a refinancing of a Construction Mortgage, as that term is defined in Section 9-313(1)(c) of Chapter 810, Act 5, Illinois Compiled Statutes 1993.

Deposits by Mortgagor. To assure the timely payment of real estate taxes and special assessments (including personal property taxes, if appropriate) upon the occurrence of an Event of Default, but not prior, Mortgagee shall thenceforth have the option to require that Mortgagor remit a payment equal to the amount of real estate taxes and special assessments for the prior calendar year divided by twelve (12) (the "Monthly Payment Amount") multiplied by two (2) and thereafter monthly payments in the amount of the Monthly Payment Amount. Such amounts shall be held by Mortgagee for application to such taxes and assessments or, at the option of Mortgagee after an Event of Default has occurred, for application to the outstanding amounts due under the Indebtedness. If at any time the funds so held by Mortgagee shall be insufficient to pay any of said real estate taxes and special assessments, Mortgagor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. Mortgagee may deduct from any amounts so held, any fees, costs, or expenses incurred in connection with holding such amounts and/or paying amounts to taxing authorities or other parties, including, without limitation any fees, costs, or expenses associated with paying amounts via e-check or electronically.

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Notices. Any notices, demands, requests, and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally, sent by certified mail with postage prepaid, or sent by reputable courier service with charges prepaid. Any notice or demand sent to Mortgagor by certified mail or reputable courier service shall be addressed to Mortgagor at 188 W. Randolph, Suite 202, Chicago, Illinois, 60601, Attention: Jason Koehn, or such other address in the United States of America as Mortgagor shall designate in a notice to Mortgagee given in the manner described herein. Any notice sent to Mortgagee by certified mail or reputable courier service shall be addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI, 53202, or at such other addresses as Mortgagee shall designate in a notice given in the manner described herein. Any notice given to Mortgagee shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused, or which is incapable of being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

Modification of Terms. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of any obligation contained herein and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of the Note, without notice or consent: (i) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying, or otherwise dealing with the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Mortgagee may have; (iv) accept additional security of any kind; (v) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Property.

Exercise of Options. Whenever, by the terms of this instrument, of the Note, or any of the other Loan Documents, Mortgagee is given any option, such option may be exercised when the right accrues or at any time thereafter, and no acceptance by Mortgagee of payment of Indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

Nature and Succession of Agreements. Each of the provisions, covenants, and agreements contained herein shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, and assigns of the parties hereto, respectively, and the term "Mortgagee" shall include the owner and holder of the Note.

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Legal Enforceability. No provision of this instrument, the Note, or any other Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall govern and Mortgagor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

Limitation of Liability. Notwithstanding any provision contained herein to the contrary, the personal liability of Mortgagor and all other persons except the parties to the Guarantee and the GRO shall be limited as provided in the Note.

Miscellaneous. Time is of the essence in each of the Loan Documents. The remedies of Mortgagee as provided herein or in any other Loan Document or at law or in equity shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall occur; and neither the failure to exercise any such right or remedy nor any acceptance by Mortgagee of payment of Indebtedness in default shall in any event be construed as a waiver or release of any right or remedy. Neither this instrument nor any other Loan Document may be modified or terminated orally but only by agreement or discharge in writing and signed by Mortgagor and Mortgagee. If any of the provisions of any Loan Document or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of such Loan Document and each of the other Loan Documents, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of each of the Loan Documents shall be valid and enforceable to the fullest extent permitted by law.

Waiver of Jury Trial. Each of Mortgagor and Mortgagee hereby waives any right to trial by jury with respect to any action or proceeding (a) brought by Mortgagor, Mortgagee, or any other person relating to (i) the obligations secured hereby and/or any understandings or prior dealings between the parties hereto or (ii) the Loan Documents or the Environmental Indemnity Agreement, or (b) to which Mortgagee and Mortgagor are parties.

Captions. The captions contained herein are for convenience and reference only and in no way define, limit, or describe the scope or intent of, or in any way affect, this instrument.

Governing Law. This instrument, the interpretation hereof, and the rights, obligations, duties, and liabilities hereunder shall be governed and controlled by the laws of the state in which the Property is located.

(Signature of Mortgagor on following page.)

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IN WITNESS WHEREOF, this instrument has been executed by the Mortgagor as of the day and year first above written.

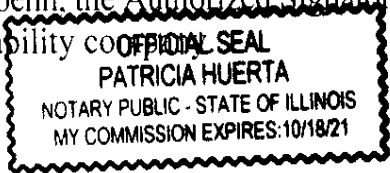
Mortgagor:

ALBION AT EVANSTON, LLC, a Delaware limited liability company

By: *[Signature]*
Name: Jason Koehn
Its: Authorized Signatory

STATE OF)
)ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this July 3, 2018, by Jason Koehn, the Authorized Signatory of ALBION AT EVANSTON, LLC, a Delaware limited liability company



Patricia Huerta
Patricia Huerta Notary Public

My commission expires:

Property of Cook County Clerk's Office

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EXHIBIT "A" Legal Description

Parcel 1:

Lot 3 in O. Huse's and others Resubdivision of Block 52 in Original Village (now City) of Evanston in Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois

Parcel 2:

Lot 4 in O. Huse and other Subdivision of Block 52 in Evanston except from said Lot that part thereof conveyed to the Chicago, Milwaukee and St. Paul Railway company by Warranty Deed dated November 12, 1908 and recorded November 16, 1908 as Document Number 4289805, in Section 18, Township 41 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

Parcel 3:

That part of Lots 5 and 6 in O. Huse and others Subdivision of Block 52 in Original Village of Evanston in the Southwest 1/4 of Section 18, Township 41 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois, which lies East of a line drawn from a point in the North line of said Lot 5, 18 feet East of the Northwest corner thereof to a point in the South line of said Lot 6, 37 feet East of the Southwest corner thereof and North of a line drawn from a point on the East line of said Lot 6, 0.18 of a foot South of the North East corner thereof to a point on the West line of said Lot 6, 0.58 of a foot South of the Northwest corner thereof

Parcel 4:

That part of the North 40 feet of the South 178 feet of Block 52 in Evanston lying Easterly of the Easterly line of premises conveyed to the Chicago, Evanston and Lake Superior Railway Company (now Chicago, Milwaukee and St. Paul Railway Company) by deed recorded April 27, 1886 as Document Number 711139 in Book 1753 page 383, in the South West 1/4 of Section 18, Township 41 North, Range 14, East of the Third Principal Meridian (except the East 31 Rods, in Cook County, Illinois

Parcel 5:

That part of Lot 6, in O. Huse and others Subdivision of Block 52 in the Original Village of Evanston, which lies East of a line drawn from a point in the North line of Lot 5 adjoining to the North, and 18 feet East of the North West corner of said Lot 5, to a point in the South line of Lot 6, 37 feet East of the Southwest corner (except that part of Lot 6 lying North of a line drawn from a point in the East line of said Lot 6, .18 feet South of the Northeast corner thereof to a point on the West line of said Lot 6, .56 feet South of the North West corner thereof) in Cook County, Illinois

Parcel 6:

Lot 1 in the Plat of Consolidation recorded September 19, 1988 as Document Number 88426763 of Lots 8, 9, and 10 (except the Westerly 40.0 feet thereof) in Block 52 in Evanston, in Section 18, Township 41 North, Range 14 East of the Third Principal Meridian in the City of Evanston, Cook County, Illinois

Common address: 1450 Sherman Avenue, 1500 Sherman Avenue and 1508 Sherman Avenue, Evanston, Illinois

Property Index Numbers: 11-18-317-010-0000; 11-18-317-011-0000; 11-18-317-012-0000; 11-18-317-013-0000; 11-18-317-014-0000; 11-18-317-021-0000; 11-18-317-022-0000 and 11-18-317-023-0000