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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*1822519466\*

Doc# 1822519466 Fee \$124.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 08/13/2018 03:10 PM PG: 1 OF 44

The property identified as:

PIN: 17-04-303-001-0000

Address:

Street: 625 WEST DIVISION

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60610

Lender: THE UNION LABOR LIFE INSURANCE COMPANY, A MARYLAND CORPORATION

Borrower: 625 WEST DIVISION, LLC, AN OREGON LIMITED LIABILITY COMPANY

Loan / Mortgage Amount: \$52,000,000.00

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: 1349408E-F565-4806-9B8C-DF2B5D4F9591

Execution date: 8/9/2018

CCRO REVIEW

10K3 914671

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**THIS DOCUMENT PREPARED BY  
AND WHEN RECORDED RETURN TO:**

Coblentz Patch Duffy & Bass LLP  
One Montgomery Street, Suite 3000  
San Francisco, CA 94104  
Attention: Douglas C. Sands, Esq.

Date: August 9, 2018

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

From

625 WEST DIVISION, LLC,  
an Oregon limited liability company,  
as Borrower and Mortgagor

To

THE UNION LABOR LIFE INSURANCE COMPANY,  
a Maryland corporation, on behalf of one or more of its Separate Accounts,  
as Lender and Mortgagee

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This MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of the 9th day of August, 2018, by 625 WEST DIVISION, LLC, an Oregon limited liability company, and its successors and assigns ("Borrower"), having an address set forth in Section 7.3 below, to THE UNION LABOR LIFE INSURANCE COMPANY, a Maryland corporation, on behalf of one or more of its Separate Accounts, and its successors and assigns ("Mortgagee"), having an address set forth in Section 7.3 below, and any subsequent holder of the Secured Obligations hereinafter set forth, as Mortgagee, assignee, and Secured Party, as more fully hereinafter set forth. Each capitalized term used and not defined herein shall have the meaning given to such term in the Loan Agreement dated as of even date herewith by and between Borrower and Mortgagee (the "Loan Agreement").

## ARTICLE I SECURED OBLIGATIONS

1.1 Security. This Mortgage is executed and delivered by Borrower to secure the payment and performance of certain indebtedness, liabilities and obligations owing and to become owing to or in favor of Mortgagee as follows:

1.1.1 Full and punctual payment to Mortgagee of all indebtedness evidenced by and arising under that certain Promissory Note dated as of even date herewith, made by Borrower and payable to the order of Mortgagee (the "Note"), in the principal amount of FIFTY-TWO MILLION AND NO/100 DOLLARS (\$52,000,000.00), including all future disbursements and advances under the Note and the other Loan Documents (whether or not such advances may be legally characterized as "optional" or "obligatory"), all interest accruing thereon, and including any amendments, modifications, supplements, extensions or renewals thereof (including (i) modifications of the required principal and/or interest payment dates, deferring or accelerating said payment dates in whole or in part, and/or (ii) modifications, extensions, renewals or reborrowings at a different rate of interest or interest periods); and

1.1.2 Observance and performance by Borrower of each covenant and obligation on the part of Borrower to be observed or performed pursuant to this Mortgage, and under the Note, the Loan Agreement and the other Loan Documents, and any other documents, instruments, recordings or filings that may hereafter be entered into by and between Borrower and Mortgagee or may be executed and delivered by Borrower on behalf of Mortgagee in connection with the loan evidenced by the Note (the "Loan"); and

1.1.3 Any and all other amounts for which Borrower may become indebted under the terms of this Mortgage, the Note, the other Loan Documents, and any other documents, instruments, recordings or filings that may hereafter be entered into by and between Borrower and Mortgagee or may be executed and delivered by Borrower on behalf of Mortgagee in connection with the Loan; and

1.1.4 Any sum or sums constituting other indebtedness (whether now existing or hereafter arising) of Borrower to Mortgagee which indebtedness may be evidenced in various manners (including, but not limited to indebtedness under the Loan or another loan evidenced by a promissory note, loan agreement, deed of trust, mortgage, security agreement, open account,

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overdraft, surety, guaranty, and letter of credit), whether joint or several, direct or indirect, absolute or contingent, due or to become due, primary or secondary, however evidenced or acquired, it being contemplated that Borrower may hereafter become so indebted to Mortgagee; and

1.1.5 Payment of such further sums and/or performance of such further obligations as Borrower may undertake to pay and/or perform (whether as principal, surety or guarantor), for the benefit of Mortgagee and its successors or assigns, when said borrowing and/or obligation is evidenced by a writing or writings reciting that it or they are so secured; and

1.1.6 Any and all renewals, increases, rearrangements, amendments, modifications, supplements, restatements and extensions of any of the foregoing items of indebtedness and obligations.

1.2 Secured Obligations. Each and every item of indebtedness described and included in this Mortgage is intended to be fully secured by the liens, assignments, and security interests created under and by virtue of this Mortgage, and all such items so secured (now or hereafter existing) are hereinafter collectively called the "Secured Obligations."

## ARTICLE II GRANT OF MORTGAGE

2.1 Property. For consideration paid and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Borrower hereby GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, WARRANTS, MORTGAGES, PLEDGES AND ASSIGNS to Mortgagee and its successors and assigns forever, and Borrower hereby grants to Mortgagee and its successors and assigns a security interest in, all of Borrower's right, title and interest, whether now owned or hereafter acquired, in, to and under the following described real and personal property (collectively, the "Property"), to wit:

2.1.1 All Borrower's right, title and interest in and to all of the real property more particularly described in Exhibit A attached hereto and hereby made a part hereof (the "Land") located in the City of Chicago, County of Cook, State of Illinois (the "Jurisdiction");

2.1.2 All structures, improvements, buildings, tenements, and any additions and alterations thereto or replacements thereof, now or hereafter erected upon the Land (all of the foregoing being collectively referred to as the "Improvements"), and in addition, all of Borrower's right, title and interest in and to all goods, equipment, inventory, apparatus, furnishings, furniture, machinery, fixtures of every kind and nature whatsoever, wherever located and whether in the possession of Borrower, a warehouseman, bailee, or any other person (the "Personal Property"), and including, without limitation, such Personal Property now or hereafter located in and about said Improvements, or related to the Improvements or the Land (whether such items be leased, be owned absolutely, or subject to any title retaining or security instrument, or be otherwise used or possessed), including, but not limited to, all fixtures, fittings, appliances, apparatus, equipment, machinery, furnishings and articles of personal property now or hereafter



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attached or affixed to, placed upon or used in any way in connection with the use, enjoyment, operation or occupancy of the Improvements, including, but not limited to, all landscaping and gardening equipment, all heating and incinerating apparatus and equipment whatsoever, all boilers, engines, motors, generating equipment, piping and plumbing fixtures, ranges, cooking utensils and apparatus and mechanical kitchen equipment, refrigerators, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing and prevention apparatus, gas and electrical fixtures, elevators, escalators, partitions, lockers, cabinets, window covering and all hardware therefor, carpeting and other floor covering, lighting fixtures, lamps and furniture of any kind, window shades, blinds, screens, storm sash, awnings, furnishings of public spaces, halls and lobbies and shrubbery and plants, all of which property mentioned in this paragraph shall be deemed part of the Property and not severable wholly or in part without material injury to the freehold (the Land, the Improvements and the Personal Property being collectively referred to herein as the "Premises") and including, but not limited to, all documents covering any of the Personal Property, and all contract rights and general intangibles relating to any of the Personal Property. Notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and may be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods, as said term is used in the Uniform Commercial Code as enacted in the Jurisdiction (the "Uniform Commercial Code"), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, by Borrower, as debtor, in favor of Mortgagee, as a secured party, all in accordance with said Uniform Commercial Code, as more particularly set forth in Article III hereof;

2.1.3 All of the easements, rights, privileges, appurtenances, air rights and development rights, hereditaments, and franchises, now or hereafter belonging or in any wise appertaining to the Premises, and all of the estate, right, title, interest, claim or demand whatsoever, either in law or in equity, in possession or expectancy of Borrower therein, and in the streets and ways, open or proposed, adjacent thereto, and in and to all strips and gores, vaults, alleyways, sidewalks and passages used in connection with the Land;

2.1.4 All working capital and other similar accounts (including, but not limited to, reserves for the replacement of the Personal Property), and all inventory accounts, accounts receivable, accounts holding funds deposited with Borrower in conjunction with the lease (or purchase) of any unit, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit and insurance policies arising from or related to the Premises and any business conducted on the Premises by Borrower (collectively, the "Accounts"), including all replacements and substitutions for, or additions to, all products and proceeds of any of the foregoing;

2.1.5 All agreements, contracts, certificates, instruments and other documents, now or hereafter entered into, pertaining to the construction, ownership, leasing, operation or management of the Premises, any declaration of conditions, covenants and restrictions, any homeowner's association documentation, any application, report or filing with governmental authority, and any condominium declaration, any association bylaws, articles, and rules and regulations adopted in connection therewith, and any agreement of purchase and sale and related documents and deposits;

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2.1.6 All insurance policies and all proceeds of and unearned premiums accrued or to accrue under all insurance policies for the Premises obtained by Borrower, whether such insurance policies are carried by Borrower in accordance with Section 4.14 below or otherwise, including, but not limited to, the right to receive and apply the proceeds of any such insurance, judgments (including, with respect to a casualty thereto or condemnation of the Premises or any part thereof), or settlements made in lieu thereof, for damage to the Premises, all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, proceeds of insurance and condemnation awards, and all rights of Borrower to refunds of real estate taxes and assessments (collectively, the "Proceeds");

2.1.7 All trade names, trademarks and service marks now or hereafter used in connection with the Premises or any part thereof or any other part of the Premises, together with good will appurtenant thereto;

2.1.8 All leases, subleases, lettings, licenses and other occupancy agreements, and guarantees thereof, for the Premises or any part thereof, and, to the extent not included in the foregoing, all "Leases" under the Assignment of Leases (as defined in subsection 2.3.1 below) (collectively, "Leases" and, individually, a "Lease"), including any cash or other security deposited thereunder, advance rents and deposits or payments of a similar nature, and the rents, issues, profits, revenues, income, reimbursements, royalties, receipts and similar items in whatever form (including, but not limited to, cash, checks, money orders, credit card receipts or other instruments for the payment of money) paid or payable in connection with the Property, and, to the extent not included in the foregoing, all "Rents and Profits" under the Assignment of Leases (collectively the "Rents"), but subject to the priority of the Assignment of Leases;

2.1.9 All of the books, computer software, records and files of or relating to the Premises now or hereafter maintained by Borrower or for its account;

2.1.10 All awards and claims for damages made and to be made for the taking by eminent domain of the whole or any part of the Premises, including, but not limited to, any awards for change of grade streets, all of which awards Borrower hereby assigns to Mortgagee;

2.1.11 To the fullest extent assignable, all licenses, permits, and warranties, both real and personal, attributable or allocable to all or any portion of the Premises, the construction of the Improvements, the use of the Premises, the sale of the Premises or any portion thereof, or the conduct of business at the Premises;

2.1.12 All water, water rights and interests owned by Borrower or appurtenant to the Property whether riparian, overlying, appropriative, littoral, percolating, prescriptive, adjudicated, statutory or contractual;

2.1.13 All mineral, oil and gas rights and privileges and royalties pertaining to the Property; and

2.1.14 All products and proceeds of any of the foregoing, including all supporting obligations ancillary thereto or arising in connection therewith.



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TO HAVE AND TO HOLD the Property unto Mortgagee and its substitutes, successors and assigns forever, and Borrower does hereby bind itself, its successors, assigns, executors and administrators to warrant and forever defend all and singular the Property unto Mortgagee, its substitutes, successors and assigns, against every person whomsoever lawfully claiming or to claim an interest in the same, or any part thereof, subject only to the Permitted Exceptions.

## 2.2 [Intentionally Omitted].

## 2.3 Assignment of Rents.

2.3.1 Transfer to Mortgagee. Borrower has executed, delivered and recorded an Assignment of Leases, Revenues, and Rents of even date herewith (the "Assignment of Leases") in favor of Mortgagee, pursuant to which Borrower has made a present transfer to Mortgagee of all of Borrower's interest in and to the Rents. The provisions of this Section 2.3 are subject to the terms, covenants and other provisions of the Assignment of Leases and if there is any conflict or inconsistency between the provisions of the Assignment of Leases and the provisions of this Section, the provisions of the Assignment of Leases shall govern and control.

2.3.2 Absolute Assignment. Subject to the provisions of the Assignment of Leases, Borrower hereby absolutely and irrevocably grants, transfers and assigns unto Mortgagee and its successors and assigns all of Borrower's right, title and interest, now owned or hereafter acquired, in and to all Rents and Leases. Borrower's purpose in making this assignment is to relinquish to Mortgagee its right to collect and enjoy the Rents. This is a present absolute and unconditional assignment and is part of the consideration for the indebtedness evidenced by the Note, and not as additional security therefor. This assignment shall, immediately upon execution, give Mortgagee the right to collect the Rents and enforce the Leases. However, Mortgagee hereby confers upon Borrower a license ("License") to collect and retain, subject to the provisions of the Assignment of Leases and the provisions of subsection 2.3.5 below, the Rents as they respectively become due and payable, and to enforce the Leases, so long as no Event of Default (as defined in Section 5.1), has occurred and is continuing. If an Event of Default has occurred and is continuing, Mortgagee shall have the right, which it may exercise in its sole discretion, without regard to the adequacy of Mortgagee's security under this Mortgage, to terminate this License without notice to or demand upon Borrower.

2.3.3 Collection and Application of Rents. Subject to the Assignment of Leases and to the License granted to Borrower under subsection 2.3.2 above, Mortgagee has the right, power and authority to collect any and all Rents. Borrower hereby appoints Mortgagee its attorney-in-fact to perform any and all of the following acts, if and at the times when Mortgagee in its sole discretion may so choose:

1. Demand, receive and enforce payment of any and all Rents; or
2. Give receipts, releases and satisfactions for any and all Rents; or
3. Sue either in the name of Borrower or in the name of Mortgagee for any and all Rents.

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Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property. In Mortgagee's sole discretion, it may choose to collect Rents either with or without taking possession of the Property. If an Event of Default occurs while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Mortgagee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity, including the right to exercise the power of sale granted hereunder.

**2.3.4 Mortgagee Not Responsible.** Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Land and Improvements, Mortgagee is not and shall not be deemed to be:

1. A "mortgagee in possession" for any purpose; or
2. Responsible for performing any of the obligations of the lessor under any lease; or
3. Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
4. Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

**2.3.5 Election by Mortgagee.** Upon the occurrence and during the continuance of an Event of Default, Mortgagee, at its option, may exercise its rights under the Assignment of Leases or exercise its rights under this Section or otherwise provided under applicable law. No election to proceed pursuant to the provisions of this Section 2.3, including, but not limited to, seeking and obtaining the appointment of a receiver to collect and apply the Rents in accordance with this Mortgage, shall waive or invalidate the rights of Mortgagee pursuant to the Assignment of Leases; rather, all actions of Mortgagee pursuant to this Section shall be subject to Mortgagee's rights pursuant to the Assignment of Leases.

## ARTICLE III SECURITY AGREEMENT AND FIXTURE FILING

**3.1 Grant of Security Interest.** Without limiting any of the other provisions of this Mortgage, to secure the payment, performance and observance of the Secured Obligations, Borrower, as debtor (referred to in this Article III as "Debtor," whether one or more), expressly GRANTS unto Mortgagee, as secured party (referred to in this Article III as "Secured Party," whether one or more), a continuing security interest in all the Property (including both those now and those hereafter existing) to the full extent that any portion of the Property may be subject to the Uniform Commercial Code. Neither the foregoing grant of a security interest nor the filing of any such financing statement shall be construed as derogating from the parties' stated

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intention that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Mortgage is and at all times shall be regarded for all purposes as part of the real property.

## 3.2 Covenants of Debtor. Debtor covenants and agrees with Secured Party that:

3.2.1 In addition to any other remedies granted in this Mortgage to Secured Party (including specifically, but not limited to, the right to proceed against the Property in accordance with the rights and remedies in respect of the Property which are real property pursuant to the Uniform Commercial Code), Secured Party may, should an Event of Default occur and be continuing, proceed under the Uniform Commercial Code as to all or any part of the personal property (tangible or intangible) and fixtures included in the Property (such portion of the Property being referred to in this Article III as the "Collateral"), and shall have and may exercise with respect to the Collateral all the rights, remedies, and powers of a secured party under the Uniform Commercial Code, including, but not limited to, the right and power to sell, at one or more public or private sales, or otherwise dispose of, lease, or utilize the Collateral and any part or parts thereof in any manner authorized or permitted under the Uniform Commercial Code after default by Debtor. Without limiting the foregoing, Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale and sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Debtor, whether on Land or elsewhere. Debtor further agrees to allow Secured Party to enter, use or occupy the Property, without charge, for the purpose of effecting any of Secured Party's remedies in respect of the Collateral. The net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all actual expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of any or all of the Collateral or in any way relating to the rights of Secured Party hereunder, including all attorneys' charges, disbursements and reasonable fees, shall be received by Secured Party and credited against the payment in whole or in part of the indebtedness secured hereby. To the extent permitted by applicable law, Debtor waives all claims, damages, and demands against Secured Party arising out of the repossession, retention or sale of the Collateral, except for claims, damages and demands due to the active gross negligence or willful misconduct of Secured Party in dealing with such Collateral. Borrower agrees that Secured Party need not give more than five (5) days' notice of the time and place of any public sale or of the time at which a private sale will take place and that such notice is reasonable notification of such matters. Secured Party may disclaim any warranties that might arise in connection with the sale, lease, license or other disposition of the Collateral and have no obligation to provide any warranties at such time. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. To the extent permitted by law, Debtor hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any law now existing or hereafter enacted.

3.2.2 Debtor hereby authorizes Secured Party to file financing and continuation statements with respect to the Collateral without the signature of Debtor whenever lawful, and Debtor irrevocably constitutes and appoints Secured Party, and each of the officers of Secured Party, as Debtor's agent and attorney-in-fact coupled with an interest for such purpose; and

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Debtor agrees to execute such financing and continuation statements as Secured Party may reasonably request.

3.2.3 Debtor hereby represents and warrants that no financing statement (other than financing statements showing Secured Party as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted by this Mortgage covering any of the Collateral or any proceeds thereof) is on file in any public office except pursuant hereto; and Debtor will at its own cost and expense, upon demand, furnish to Secured Party such further information and will execute and deliver to Secured Party such financing statements and other documents in form reasonably satisfactory to Secured Party and will do all such acts as Secured Party may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Secured Obligations, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Secured Party and no other party and to liens and encumbrances (if any) expressly permitted by this Mortgage or the other Loan Documents; and Debtor will pay the actual expense of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is reasonably deemed by Secured Party to be desirable.

3.2.4 To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all rents, royalties, issues and profits, and all inventory accounts, accounts receivable and other revenues of the Property.

3.2.5 Certain of the Collateral is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land and Improvements, and this Mortgage upon being filed for record in the real estate records of Cook County shall operate also as a financing statement and fixture filing upon such of the Collateral which is or may become fixtures.

3.2.6 Any copy of this Mortgage that is signed by Debtor or any carbon, photographic or other reproduction of this Mortgage may also serve as a financing statement under the Uniform Commercial Code by Debtor, whose address is set forth hereinabove, in favor of Secured Party, whose address is also set out hereinabove.

## 3.3 [Intentionally Omitted].

3.4 Fixture Filing. This Mortgage is a fixture filing under Section 9-502(c) of the Uniform Commercial Code covering all of the Collateral that is or is to become a fixture related to the Land. Debtor's name and type and jurisdiction of entity are set forth in the introductory paragraph hereof. Debtor's address is set forth in Section 7.3 below. Debtor's Organizational Number is 918469-99. Secured Party's name and mailing address are set forth in Section 7.3 below.

3.5 Notice of Change in Executive Office. Debtor will give Secured Party at least thirty (30) days prior written notice of any change in Debtor's chief executive office or of any new location of business or any new location for any of the Collateral. With respect to any new location (which in any event shall be within the continental United States), Debtor will execute



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such instruments, documents and notices and take such actions as Secured Party deems necessary to create, perfect and protect the security interests.

## ARTICLE IV CERTAIN REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

Borrower hereby represents and warrants to and covenants with Mortgagee as follows:

4.1 Payment of Indebtedness. Borrower shall (a) punctually pay the Secured Obligations at the time and place and in the manner specified in the Note, this Mortgage, the Assignment of Leases, and all other Loan Documents, according to the true intent and meaning thereof, all in such coin or currency of the United States of America, which at the time of such payment shall be legal tender for the payment of public and private debts, and (b) timely, fully and faithfully perform, discharge, observe and comply with each and all of Borrower's obligations to be performed under this Mortgage, the Note, the Assignment of Leases, and all other Loan Documents. Borrower hereby represents and warrants that, as of the date hereof, there exist no offsets, counterclaims or defenses against the Secured Obligations.

4.2 Title and Interest. Borrower has and will at all times have (subject to the further provisions of this Mortgage and the other Loan Documents) and maintain a valid, unencumbered (other than the lien of this Mortgage and the Permitted Exceptions), good and marketable fee simple title to the Land and Improvements. In addition, Borrower has and will at all times have (subject to the further provisions of this Mortgage and the other Loan Documents) and maintain title to the other Property, subject to no lien, pledge, mortgage, mechanic's or materialman's lien, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, restrictive covenant, encumbrance or other restriction, limitation, charge or right of others of any kind whatsoever (collectively, "Liens"), other than the Permitted Exceptions. Borrower will fully comply with all the terms of the Permitted Exceptions and deliver to Mortgagee copies of all notices delivered or received in connection with the Permitted Exceptions. This Mortgage is and will at all times remain a valid and enforceable first lien on the Property, subject only to the Permitted Exceptions. Subject to the Permitted Exceptions, and subject to the further provisions of this Mortgage and other Loan Documents, Borrower hereby covenants and agrees that it will preserve such interest and title, and will forever warrant and defend the same to Mortgagee and its successors and assigns and will forever warrant and defend the validity and priority of the lien of this Mortgage against the claims of all persons and parties whomsoever.

### 4.3 Maintenance of Existence; Due Authorization; Etc.

4.3.1 Borrower is and shall remain a limited liability company, validly organized and in good standing under the laws of the State of Oregon, and is duly qualified to transact business and is in good standing in Illinois, and Borrower covenants that it will do all things necessary to preserve and keep in full force and effect its existence, rights and privileges as a limited liability company under the laws of such states. Borrower now has and shall continue to have the full right, power and authority to own, hold, operate, manage, develop, and maintain the Premises, to encumber Borrower's interest in the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Loan Documents.

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4.3.2 The execution, delivery and performance of this Mortgage, the Assignment of Leases and all other Loan Documents by Borrower, and performance by Borrower of its obligations hereunder and thereunder have been duly authorized by all necessary company action on the part of Borrower and its constituent entities and do not and will not violate any present or future law or any regulation, order, writ, injunction or decree of any court or governmental or quasi-governmental body, agency or other instrumentality (collectively, "Laws") applicable to Borrower or the Property, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or (except as created by this Mortgage) result in the creation or imposition of any lien of any nature whatsoever upon any of the assets of Borrower pursuant to the terms of any mortgage, deed of trust, indenture, agreement or instrument to which Borrower is a party or by which it or any of its properties is bound.

## 4.4 Compliance with Law and Insurance Requirements; Maintaining Permits; Etc.

4.4.1 Borrower, at its own sole cost and expense, shall promptly comply with all Laws, and all orders, rules and regulations (collectively, "Orders") of the National and Local Boards of Fire Underwriters or any other body or bodies exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Property or any part thereof, or to the use or manner of use of the Property or the owners, tenants or occupants thereof, whether or not any such Laws or Orders shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Property. Borrower shall also procure, pay for and maintain all permits, licenses, approvals and other authorizations, necessary for the operation of its business at the Premises and the lawful use and occupancy of the Premises, or any part thereof, in connection therewith. Borrower has complied and shall continue to comply with all requirements imposed in connection with all land use approvals concerning the Property, including but not limited to, the construction of all public and private on-site and off-site improvements and the imposition and payment of any and all fees and contributions imposed in connection therewith.

4.4.2 Borrower shall, at its own sole cost and expense, observe and comply in all material respects with the requirements of the policies of public liability, fire and all other insurance at any time in force with respect to the Property and Borrower shall, in the event of any violation or attempted violation of the provisions of this subsection or subsection 4.4.1 by any occupant of any portion of the Premises, take steps, promptly upon actual knowledge of such violation or attempted violation, to remedy or prevent the same, as the case may be.

4.4.3 Provided there is no Event of Default, Borrower shall have the right, after Notice (as defined in Section 7.3) to Mortgagee, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Borrower, the validity or application of any Laws, Orders or other matters of the nature referred to in subsection 4.4.1, subject to the following:

1. If by the terms of any such Law or Order, compliance therewith pending the prosecution of any such proceeding may legally be delayed without subjecting Borrower or Mortgagee to any liability (other than for the payment or accrual of interest), civil or criminal, for failure so to comply therewith, or if any lien, charge or civil liability would be incurred by reason of any such delay, the same would not subject the Property or any part thereof



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to imminent forfeiture, loss or suspension of operations and Borrower (a) furnishes Mortgagee security satisfactory to Mortgagee against any loss or injury by reason of such contest or delay, and (b) prosecutes the contest with due diligence, then Borrower may delay compliance therewith until the final determination of any such proceeding; and

2. Borrower covenants that Mortgagee shall not suffer or sustain any liabilities or expenses by reason of any act or thing done or omitted to be done by Borrower pursuant to this subsection 4.4.3 and that Borrower shall indemnify and hold harmless Mortgagee from any such liability or expense.

4.5 Taxes and other Charges; Deposits with Mortgagee. Subject to the provisions of Section 4.7 hereof, Borrower, from time to time when the same shall become due and payable and before any fine, penalty or additional interest may be added or imposed for late payments, will pay and discharge all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes), all general and special assessments, levies, permits, bonds, certificates of participation, inspection and license fees, all water and sewer rents and charges, and all other public charges, whether of a like or different nature, and any easement fees or charges, imposed upon or assessed against the Property or any part thereof or upon the revenues, rents, issues, income and profits of the Property or arising in respect of the occupancy, use, possession or sale thereof (collectively, "Impositions"). If any special assessment is payable in installments without payment of any penalty or premium, other than interest at a non-default rate prior to the due date of such installment, then Borrower may pay the same in installments. Borrower will deliver to Mortgagee receipts or other evidence reasonably satisfactory to Mortgagee of the payment of all Impositions, promptly after the due dates thereof. Borrower shall not claim or demand or be entitled to any credit or credits on account of the Secured Obligations for any part of the Impositions, and no deduction shall otherwise be made or claimed from the taxable value of this Mortgage or the Secured Obligations.

4.6 Discharge of Liens. Borrower shall pay, from time to time when the same shall become due, all claims and demands of mechanics, materialmen, laborers and others that, if unpaid, might result in or permit the creation of a Lien on the Property or any part thereof, or on the revenues, rents, royalties, issues, income and profits arising therefrom, and in general will do or cause to be done everything necessary so that the first lien of this Mortgage shall be fully preserved at the sole cost and expense of Borrower and without expense to Mortgagee. If any such Liens are filed, Borrower will cause the same to be permanently discharged of record by payment or otherwise, unless Borrower shall in good faith and at its own expense, be contesting such Lien or Liens or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon or the sale or forfeiture of the Property or any part thereof to satisfy the same; provided that during such contest Borrower shall provide an indemnity bond or other security reasonably satisfactory to Mortgagee to cover the amount of the contested item or items and the amount of the interest and penalties covering the period through which such proceedings may be expected to last, and in any event assuring the discharge of Borrower's obligations hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and if Borrower shall have posted a bond as security against payment of any such Lien, interest, penalties and other charges related thereto, Mortgagee shall be named as an additional obligee under the bond. Borrower will not directly or

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indirectly create, incur or suffer to exist any Lien on the Property or any part thereof (including, but not limited to, any Lien securing the repayment of a loan made to Borrower by any member(s), shareholder(s), officer(s), director(s) or trustee(s) of Borrower), whether or not junior to the lien of this Mortgage, other than the Permitted Exceptions, and such other documents as may be executed as further security for the Note or in favor of any of Mortgagee.

4.7 Contest of Impositions. Nothing in Section 4.5 shall require the payment or discharge of any Imposition so long as Borrower shall, in good faith and at its own expense, contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon or the sale or forfeiture of the Property or any part thereof to satisfy the same; provided that during such contest Borrower shall provide security reasonably satisfactory to Mortgagee to cover the amount of the contested item or items and the amount of the interest and penalties covering the period through which such proceedings may be expected to last, and in any event assuring the discharge of Borrower's obligation hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest; if Borrower shall have posted a bond as security against payment of any Imposition, interest, penalties and other charges related thereto, Mortgagee shall be named as an additional obligee under the bond.

4.8 Taxes. Borrower will pay all taxes incurred by Mortgagee by reason of Mortgagee's ownership of the Note, this Mortgage or any Loan Document, including, but not limited to, all real estate transfer and like taxes imposed in connection with a transfer of ownership of all or a portion of the Property pursuant to a foreclosure, a deed in lieu of foreclosure or otherwise. Notwithstanding the foregoing, Borrower shall not be required to pay any income or franchise taxes imposed on Mortgagee's net income.

4.9 Use of Property. Borrower will maintain, preserve and renew from time to time such rights of way, easements, grants, privileges, licenses and franchises as are necessary for the use and operation of the Property, and will not initiate, join in or consent to any mapping or subdivision of the Property or new private restrictive covenant (i.e., apart from any Permitted Exception), easement or other public or private restrictions to the use of the Property, without the prior written consent in each instance of Mortgagee, which may be withheld in its sole discretion. Borrower shall, however, comply in all material respects with all lawful and restrictive covenants which may at any time affect the Property and with zoning ordinances and other private or public restrictions as to the use thereof. Borrower will not cause or maintain any nuisance in, at or on the Property. Borrower will pay or cause to be paid all charges for all public and private utility services, all public or private rail and highway services (if any), all public or private communications services and all sprinkler systems and protective services at any time rendered to or in connection with the Property or any part thereof, will comply in all material respects or cause compliance with all contracts relating to any such services, and will do all other things required for the maintenance and continuance of all such services.

4.10 Maintenance of Property. Borrower shall maintain the Property, including all streets, sidewalks and curbs comprising same, in good repair and condition, and will continuously (other than during periods of repair after major casualty or substantial condemnation, with respect to the portions of the Property damaged or condemned) operate the Property in a first-class manner, and, at its sole cost and expense, will make or cause to be made,

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as and when the same shall become necessary, all structural and non-structural, exterior and interior, ordinary or extraordinary, foreseen and unforeseen repairs, renewals and replacements necessary to that end, and upon being apprised of any material defect in the repair or condition of the Property, will repair or cure or cause to be repaired or cured such defect, in each case at its own expense and with due diligence. All such repairs, renewals and replacements shall be at least substantially equal in quality to the original Improvements, reasonable wear and tear excepted.

**4.11 Maintenance of Personal Property.** Borrower shall cause the Improvements to be equipped with the Personal Property as, to the extent and in the manner that shall be necessary, appropriate or required for the operation of the Premises. No Personal Property covered hereunder shall be removed from the Premises except where appropriate replacements, free of superior Liens, are immediately made of a value at least equal to the value of the Personal Property being removed. The Personal Property so disposed of shall be promptly replaced by Personal Property of the same character and of at least equal usefulness, quality and value.

**4.12 Alterations.** Borrower shall not, without the prior written consent of Mortgagee, construct any new Improvements on the Premises other than those that are permitted by the following provisions of this Section. Borrower shall give Mortgagee Notice of, and a copy of any plans prepared for any alteration which is reasonably estimated to cost \$100,000 or more (the "Alteration Threshold") (inclusive of architectural and engineering fees) or is structural. So long as no Event of Default shall have occurred and be continuing hereunder, Borrower shall have the right at any time and from time to time to make or cause to be made reasonable alterations of and additions to the Property or any part thereof, provided that any alteration or addition (a) shall not change the general character of the Property, or reduce the fair market value thereof below its fair market value immediately before such alteration or addition, or otherwise materially alter the overall quality of the Property, (b) shall be effected with due diligence, in a good and workmanlike manner and with new, first-class materials and in compliance in all material respects with all requirements of applicable Laws, (c) shall (subject to Borrower's right to contest the same in accordance with the provisions of Section 4.7 hereof) be promptly and fully paid for, or caused to be paid for, by Borrower at its sole cost and expense, and (d) shall be made, in case the estimated cost of such alteration or addition exceeds the Alteration Threshold and/or if the alteration or addition is structural, (1) only after Mortgagee shall have consented in writing thereto prior to the commencement of such work and in all material respects in accordance with plans and specifications reasonably satisfactory to Mortgagee which consent shall not be unreasonably withheld and which consent shall be given within fifteen (15) Business Days of receipt of said plans and specifications and if no response is given by Mortgagee within said fifteen (15) Business Days, such silence shall be deemed approval by Mortgagee, (2) only after Borrower shall have furnished to Mortgagee a completion or performance bond, a letter of credit or cash deposit or other security reasonably satisfactory to Mortgagee as security for the completion of such work, and (3) if structural, only after submission of appropriate plans to Mortgagee and written approval thereof by Mortgagee (such approval not to be unreasonably withheld or delayed). For purposes of clause (d) of this Section 4.12, the Alteration Threshold limitation shall apply to any alteration or addition taken separately or, if such alteration or addition is made together with other alterations or additions that constitute a single construction plan or project (whether accomplished in successive stages or procedures), then taken in the aggregate as well. The cost of all such alterations and additions to

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the Property shall be paid in cash or its equivalent, so that the Property shall at all times be free of Liens for labor and materials supplied or claimed to have been supplied to the Property (subject to Borrower's rights of contest provided for in Section 4.7 hereof). All alterations of and additions to the Property shall immediately become and shall remain a part of the Property, and shall be subject to the lien of this Mortgage.

4.13 Waste. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property that will in any way materially increase the risk of any fire or other hazard arising out of the operation of the Property, or do or permit to be done thereon anything that may in any way impair the security of this Mortgage.

## 4.14 Insurance.

4.14.1 Borrower shall effect and continuously maintain, or cause to be continuously maintained, insurance for Borrower and the Property providing at least the following coverages:

1. Property Insurance. Borrower shall effect and continuously maintain, or cause to be continuously maintained, insurance with respect to the Improvements and the Personal Property insuring against any peril now or hereafter included within the classification "All Risk of Physical Loss" or "Causes of Loss – Special Form", including loss caused by certified acts of terrorism, on a replacement cost valuation basis in amounts not less than the 100% replacement cost value of the Improvements and at all times sufficient to prevent Borrower or Mortgagee from becoming a co-insurer within the terms of the applicable insurance policies and under applicable law, but in any event such insurance shall be maintained in an amount which, after application of deductible, shall be equal to the full insurable value of the Improvements and the Personal Property. The term "full insurable value" shall mean the actual replacement cost of the Improvements and the Personal Property (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by an insurer, licensed engineer, or a recognized, independent appraiser, acceptable to the Mortgagee and selected and paid by Borrower. The Special Perils policy shall not contain any co-insurance penalty or be endorsed to waive Co-Insurance through attachment of an agreed amount endorsement. The coverage required herein shall include compliance with laws and building codes that regulate reconstruction following a loss including Demolition & Increased Cost of Construction.

2. Flood Insurance; Sewer Back-Up Coverage. Borrower shall effect and continuously maintain, or cause to be continuously maintained, flood insurance in an amount satisfactory to Mortgagee, which at the Closing Date shall be at least \$25,000,000, and shall include coverage for sewer back-up. If at any time during the term of the Loan, any portion of the Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards, then Borrower shall carry flood insurance in form and amount sufficient to ensure Mortgagee's compliance with the Flood Insurance Laws. As used herein, "Flood Insurance Laws" shall mean, collectively, (i) the National Flood Insurance Act of 1968, (ii) the Flood Disaster Protection Act of 1973, (iii) the National Flood Insurance Reform Act of 1994, and (iv) the Flood Insurance Reform Act of 2004, each of (i) through (iv) as now or



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hereafter in effect or any successor statute thereto, and in each case, together with all regulatory provisions implementing or interpreting any of the foregoing.

3. Earthquake Insurance. Borrower shall effect and continuously maintain, or cause to be continuously maintained, earthquake coverage which shall contain a limit of at least \$25,000,000 as of the Closing Date with a deductible no greater than 5% of the total insurable values.

4. Boiler and Machinery Insurance. Borrower shall effect and continuously maintain, or cause to be continuously maintained, comprehensive form boiler and machinery insurance (without exclusion for explosion) covering all mechanical and electrical equipment, boilers or other pressure vessels, machinery, and equipment located in, on or about the Property arising from any breakdown, in such amounts as are acceptable to the Mortgagee and as are generally required by Mortgagee for properties comparable to the Property.

5. Business Income and Rent Loss Insurance. Borrower shall maintain business income and rent loss insurance on an "actual loss sustained" basis. Borrower shall maintain Business Income and Rent Loss Insurance equal to at least twelve (12) months of Borrower's actual or projected Gross Revenues, including percentage rent, escalations, and all other recurring sums payable by tenants under leases or otherwise derived from Borrower's operation of the Improvements. In addition, Business Income and Rent Loss Insurance shall be endorsed to include an extended period of indemnity of at least three hundred sixty five (365) days.

6. Insurance During Periods of Construction or Structural Renovation. In addition to the insurance required herein and if not provided by the insurance coverage required above, at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, Borrower shall effect and continuously maintain, or cause to be continuously maintained:

(i) the property and income insurance coverage required above shall be written on a so-called "Builder's Risk Completed 100% Value Form" covering loss of materials, furniture, fixtures and equipment, machinery, and supplies which become part of the completed project whether on-site, in transit, or stored off-site, or loss of any temporary structures, sidewalks, retaining walls, and underground property (A) on a non-reporting basis, (B) insuring against all risks or special form property, including loss of income coverage required above, (C) including permission to occupy the Property, (D) containing special coverage for soft costs and storage away from the Premises and in transit, and (E) with an agreed amount endorsement waiving co-insurance provisions;

(ii) Architects and Engineers professional liability for the construction covering errors and omissions in amounts satisfactory to the Mortgagee and in any case no less than \$3,000,000;

(iii) the general contractor or construction manager shall provide commercial general liability with a limit per occurrence in the aggregate, of not less than \$50,000,000 during periods of construction, automobile (including hired and non-owned

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automobiles), workers compensation and employers liability. This liability insurance shall contain no exclusion for EIFs, include coverage for products and completed operations, and shall include a claim reporting trail or be continuously renewed, for a period of time at least equal to the local statute of limitations. In addition, any contractor working on the Premises shall maintain worker's compensation coverage in accordance with the Laws of the State of Illinois and shall provide Employer's Liability coverage with a limit of not less than \$1,000,000. In addition, each contractor and subcontractor working on the Premises shall maintain automobile liability insurance for all owned and leased automobiles (if any), and include hired and non-owned automobiles. Borrower and Mortgagee and its successors and/or assigns shall each be named as an "additional insured" on forms satisfactory to Mortgagee on the liability insurance carried on behalf of Borrower by any contractor;

(iv) Contractor's Pollution Liability Insurance covering on-site incidents during the course of construction for the term of the applicable project, in a limit of no less than \$5,000,000, including coverage for mold. Such policy shall name Borrower and/or the contractor as a "Named Insured" and name as an additional insured Mortgagee and its participants, successors and/or assigns;

(v) If Borrower's general contractor elects to use a subcontractor default insurance program (which Borrower agrees must be approved by Mortgagee prior to implementation with respect to the Property and/or Improvements that are the subject of this agreement) in place of, or in addition to, a payment and performance bonding program, Borrower shall cause the general contractor to provide to Mortgagee a complete copy of the subguard insurance policy, including Declarations pages, policy forms and endorsements. Such policy shall contain an endorsement adding this Property and its enrolled subcontractors, a Financial Interest endorsement transferring the benefits of the policy to Borrower and Mortgagee upon default (due to insolvency) of the general contractor, and, if policy limits apply to multiple projects, an endorsement providing property-specific excess limits in an amount acceptable to Mortgagee. In addition, if required by Mortgagee, Borrower shall cause the general contractor to provide a performance bond with a limit acceptable to Mortgagee and a deductible/co-pay buy-back insurance policy, letter of credit, or other form of guarantee from a financially responsible party such that subguard policy deductibles and/or co-pays will not become the responsibility of Borrower or Mortgagee in the event of a general contractor default (due to insolvency). Such subguard policy shall provide assignment of the policy or policy's benefits and obligations to Borrower and/or Mortgagee in the event of general contractor default (due to insolvency);

(vi) For any subcontractor not enrolled into the subcontractor default insurance noted herein in paragraph (v) above that has a contract value of more than \$250,000, and for any work self-performed by the general contractor that has a contract value of more than \$250,000, a performance bond & payment bond for 100% of the contract amount shall be obtained from the relevant contractor with a duplicate original of such bond given to Mortgagee. The bond shall be an AIA Document or its equivalent acceptable to Mortgagee with Mortgagee named as a Co-Obligee, Dual-Obligee, or Multiple-Obligee; and

(vii) If required by local authority, Rail-road protective liability in amounts as required by the local authority.



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7. Owner's Liability Insurance. Commercial general liability and umbrella liability insurance on the so-called "occurrence" form, including bodily injury, death and property damage liability, products and completed operations liability, hired and non-owned automobile liability insurance against any and all claims or accidents, including all legal liability to the extent insurable and imposed upon Borrower as the insured and Mortgagee as an additional insured and including coverage for defense and indemnity that may be imposed upon Mortgagee and all court costs and legal fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Property in such amounts as are generally required by institutional beneficiaries for properties comparable to the Property but in any event for a limit of at least \$50,000,000 per occurrence and in the annual aggregate, per location. If the aggregate is shared with other locations, then it shall be increased to \$75,000,000.

8. Workers' Compensation Insurance. Statutory workers' compensation insurance and employer's liability covering workers at the building with respect to operations or maintenance on or about the Property.

9. Other Insurance. In addition to the foregoing, such other insurance with respect to the Property against loss or damage of the kinds from time to time customarily insured against by and in such amounts of coverage as maintained by other completed residential projects in major U.S. cities and such other insurance as is required by Mortgagee for hazards and properties comparable to the Property. During periods of construction, Borrower may elect to provide commercial general liability insurance coverage for Borrower and contractors in a so called "wrap-up" liability including coverage for products and completed operations in the amount not less than \$75,000,000; provided that the general contractor shall also provide evidence of liability for off-site operations naming Borrower and Mortgagee as additional insured and automobile liability for on-site and off-site liability exposures. If any subcontractor is not enrolled in the "wrap-up", then they will be required to provide general liability, automobile liability and workers compensation in amounts acceptable to the general contractor, except that any crane subcontractor shall be required to provide excess liability limits of no less than \$25,000,000. All such insurance shall be issued in accordance with the requirements herein.

4.14.2 All insurance provided for herein shall be obtained under valid and enforceable policies, and any other policies of insurance carried by Borrower (collectively, the "Policies" or in the singular, the "Policy"), and shall be issued by either the insurers having (i) a claims paying ability rating by one or more credit rating agencies approved by Mortgagee (a "Rating Agency") of not less than one rating category below the highest rating at any time assigned to the Securities (defined below), but in no event a rating less than investment grade by such Rating Agency and (ii) a general policy rating of A or better and a financial class of X or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company Inc. is no longer available, a similar rating from a similar or successor service). All insurers providing insurance required by this Mortgage shall be authorized to issue insurance in the state in which the Property is located. Mortgagee and its successors and/or assigns shall be named as Mortgagee or Mortgagee loss payable on standard industry forms acceptable to the Mortgagee with regard to Property, Boiler & Machinery, Rent and Business Income, Flood, Earthquake and terrorism insurance and as additional insured forms acceptable to Mortgagee on all Liability insurance.

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4.14.3 The Policies shall also contain: (i) a standard "Mortgagee or Lender" endorsement or its equivalent relating, inter alia, to recovery by Mortgagee notwithstanding the negligent or willful acts or omission of Borrower; (ii) a waiver of subrogation endorsement as to Mortgagee; (iii) a deductible per loss of an amount not more than that which is customarily maintained by prudent owners of similar properties in the general vicinity of the Property, but in no event in excess of \$100,000 (except with respect to earthquake, windstorm and flood coverages). The Policies shall provide coverage for contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, together with an "Ordinance or Law Coverage" or "Enforcement" endorsement. All Policies shall (x) contain a provision that such Policies shall not be canceled without at least thirty (30) days' prior written notice to Mortgagee in each instance, except ten (10) days for non-payment of premium; and (y) include effective waivers by the insurer of all claims for applicable premiums ("Insurance Premiums") against Mortgagee, loss payees, additional insureds and named insureds (other than Borrower). Upon request by Mortgagee, Borrower shall provide full copies of all policies required hereunder. Mortgagee shall not be deemed to have any knowledge of their contents. All policies required herein shall contain no exclusion for certified acts of terrorism. Certificates of insurance, or other evidence of renewal acceptable to Mortgagee, with respect to all renewal and replacement Policies shall be delivered to Mortgagee not less than five (5) days prior to the expiration date of any of the Policies required to be maintained hereunder, provided that certificates of insurance shall be delivered to Mortgagee no later than five (5) days after the expiration date of any of such Policies which either bear notations evidencing payment of Insurance Premiums or are accompanied by other evidence of payment satisfactory to Mortgagee. Originals or certificates of such replacement Policies shall be delivered to Mortgagee promptly after Borrower's receipt thereof but in any case within sixty (60) days after the effective date thereof. If Borrower fails to maintain and deliver to Mortgagee the original Policies or certificates of insurance required by this Mortgage, upon ten (10) days' prior notice to Borrower, Mortgagee may procure such insurance at Borrower's sole cost and expense. Self-insurance shall not be permitted.

4.14.4 Borrower shall comply with all insurance requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by an insurance requirement, or would invalidate the insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to this Section.

4.14.5 In the event of a foreclosure of this Mortgage or other transfer of title to the Property in extinguishment in whole or in part of the Secured Obligations, all right, title and interest of Borrower in and to the Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in Mortgagee or the purchaser at such foreclosure or other transferee in the event of such other transfer of title.

4.14.6 Borrower shall not take out (1) separate insurance concurrent in form or contributing in the event of loss with that required in subsection 4.14.1 to be furnished by, or which may be reasonably required to be furnished by, Borrower, or (2) any umbrella or blanket liability or casualty policy unless, in each case, Mortgagee is included therein as an additional insured, with loss payable as provided in this Mortgage. Borrower shall immediately notify Mortgagee of the taking out of any such separate insurance or umbrella or blanket policy by it

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and shall cause the policies therefor to be delivered as required in subsection 4.14.1. Any blanket insurance policy shall provide substantially the same protection as would a separate policy insuring only the Property in compliance with the provisions of subsection 4.14.1.

4.14.7 All policies of insurance provided for or contemplated by subsection 4.14.1 shall name Borrower and Mortgagee and its successors and/or assigns, as the insured or additional insured, as their respective interests may appear, and in the case of property damage insurance, shall contain a "Mortgagee Loss Payable Clause" in a form acceptable to the Mortgagee, in favor of Mortgagee and its successors and/or assigns providing that the loss thereunder shall be payable to Mortgagee.

4.14.8 All policies of insurance provided for in subsection 4.14.1 hereof shall contain clauses or endorsements to the effect that:

1. No act or negligence of Borrower, or anyone acting for Borrower, or of any tenant under any Lease or other occupant or failure to comply with the provisions of any policy which might otherwise result in a forfeiture of such insurance or any part thereof shall in any way affect the validity or enforceability of such insurance insofar as Mortgagee is concerned;

2. Such policies shall not be cancelled without at least thirty (30) days' written notice to Mortgagee and any other party named therein as an insured thereunder, except ten (10) days for non-payment of premium; and

3. Mortgagee shall not be liable for any premiums thereon or subject to any assessments thereunder.

## 4.15 Damage or Destruction.

4.15.1 In the event of any damage to or destruction of the Premises, Borrower shall, promptly after obtaining knowledge of the occurrence thereof, give notice thereof to Mortgagee, and shall, regardless of the dollar amount of such damage, proceed with reasonable diligence, at Borrower's sole cost and expense, to repair and restore or cause to be repaired or restored the Premises or the portion thereof so damaged as nearly as practically possible to the condition the same were in immediately prior to such damage. If any Personal Property is damaged or lost as a result of such fire or other casualty, Borrower shall likewise, at its sole cost and expense, whether or not any insurance proceeds are available or adequate for such purpose, replace or cause to be replaced the Personal Property so damaged or lost. In the event that Borrower fails to advance any funds required for the completion of any such repairs or restoration, Mortgagee may, but shall not be obligated to, advance the required funds or any portion thereof, and Borrower shall, on demand, reimburse Mortgagee for all sums advanced and actual expenses incurred by Mortgagee in connection therewith, together with interest thereon at the Default Rate (as defined in the Note) from the date each such advance is made to the date of receipt by Mortgagee of reimbursement from Borrower, which amounts and interest shall become part of the Secured Obligations and be secured hereby. All repairs and restoration required to be made by Borrower hereunder shall be performed in material compliance with all Laws and Orders and shall be without any liability or actual expense of any kind to Mortgagee.

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4.15.2 If by reason of any damage or destruction, any insurance proceeds are paid under any insurance policy maintained pursuant to subsection 4.14.1 hereof or otherwise (other than business interruption insurance proceeds or, as the case may be, rental loss insurance proceeds, which shall be paid as provided hereinabove), such proceeds shall be paid as follows:

1. If the aggregate insurance proceeds received by reason of any single instance of damage or destruction shall not exceed \$250,000, such insurance proceeds shall be paid over to Borrower, and Borrower shall hold the same as a trust fund, to be used first for the payment of the entire cost of repairing and restoring the Premises and/or the Personal Property and the balance thereof shall be paid to the Mortgagee in payment of the Secured Obligations, whether or not then matured, in such order and priority as Mortgagee shall determine in its sole discretion; provided, however, that, if any Event of Default shall exist hereunder at the time such insurance proceeds are so to be paid over to Borrower or if Mortgagee shall have accelerated the Secured Obligations, such insurance proceeds shall be paid over to Mortgagee and not to Borrower, for application pursuant to clause (2) below.

2. If the aggregate insurance proceeds received by reason of any single instance of damage or destruction shall exceed \$250,000, such insurance proceeds shall be paid over to Mortgagee. Provided that (A) the cost of the repair and restoration of the Premises shall not exceed fifty percent (50%) of the insurable value of the Premises prior to such damage or destruction, as determined by Mortgagee in its sole discretion, (B) in the sole discretion of Mortgagee, the Premises can be restored to be an economically viable unit with a use which is consistent with the use of the Premises prior to such damage or destruction, and (C) in the sole discretion of Mortgagee, the repair and restoration can be completed in a time frame which will insure Borrower's ability to fully and timely perform its obligations under the Loan Documents, Mortgagee shall apply such insurance proceeds to the repair and restoration of the Property by disbursing the same to Borrower on a periodic basis, but no more frequently than monthly, and with such retainage as Mortgagee shall deem appropriate, as the repair and restoration work progresses, upon receipt by Mortgagee of such guaranties of completion (from Borrower and/or other third parties acceptable to Mortgagee), surety bonds, requisitions, architect's certificates and title updates as Mortgagee shall in its good faith discretion require, including, but not limited to, requiring Borrower, inter alia, to provide to Mortgagee for its approval appropriate plans and specifications and budgets, and to show that there are at all times sufficient funds (in addition to the available insurance proceeds, as the case may be) available for the completion of the repair and restoration in question and to pay all amounts due under this Mortgage and the Note, during such repair and restoration). If any excess proceeds shall remain after the repair and restoration work has been completed and paid for in full out of such insurance proceeds, such excess proceeds shall be retained by Mortgagee and applied in reduction of the Secured Obligations, whether or not then matured, in such order and priority as Mortgagee shall determine in its sole discretion. Interest, if any, earned on any such insurance proceeds while held by Mortgagee shall be added to the amount of such insurance proceeds. If, while any such insurance proceeds are held by Mortgagee, an Event of Default shall have occurred and be continuing, or Mortgagee shall have accelerated any of the Secured Obligations, Mortgagee shall have no duty to make advances to Borrower as provided for in this clause (2). If the conditions described in (A), (B) and (C) above are not satisfied, then Mortgagee may elect to declare all sums secured hereby immediately due and payable, and/or apply any such insurance proceeds to the payment of the Secured Obligations, whether or not then matured, in such order and priority as Mortgagee shall



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determine in its sole discretion; provided, however, that proceeds in excess of the Secured Obligations shall be paid to Borrower.

4.15.3 Notwithstanding anything to the contrary contained herein, application of any insurance proceeds by Mortgagee to the Secured Obligations or the repair or restoration of the Property as provided in this Section 4.15 shall not reduce or excuse in any manner whatsoever Borrower's obligations diligently to repair and restore or cause to be repaired and restored the damaged portion of the Premises, as required under subsection 4.15.1 hereof.

4.15.4 No destruction of or damage to the Property, or any part thereof, by fire or other casualty, whatsoever, whether such damage or destruction be partial or total or otherwise, shall relieve Borrower from its obligation and liability to pay in full as and when due the Secured Obligations, or from timely, fully and faithfully performing all its other obligations hereunder and under the Loan Documents. No application of insurance proceeds to the reduction of the Secured Obligations shall have the effect of releasing the lien of this Mortgage from all or any portion of the Property until and unless all of the Secured Obligations have been paid in full.

4.15.5 Business interruption insurance proceeds and rental loss insurance proceeds of Borrower shall be deposited into an account at a bank or other financial institution approved by Mortgagee. Provided no Event of Default shall have occurred and be continuing, such proceeds shall be applied to the payment of interest and principal due and payable under the Note and other sums that become due and payable under the Loan Documents as and when due, and then to operating expenses for the Project approved by Mortgagee and in such manner and upon such conditions as Mortgagee shall determine. Borrower hereby grants to Mortgagee a security interest in all rights of Borrower in and to such account and all sums on deposit therein as additional security for the Secured Obligations. Upon the occurrence and during the continuation of an Event of Default, Mortgagee shall have the rights and remedies with respect to such account specified in this Loan Agreement and in any other Loan Document. Borrower shall cause the bank or financial institution at which such account is held to execute and deliver to Mortgagee a control agreement with respect to such account, Borrower shall pay all fees and costs with respect thereto and Borrower shall not close such account without obtaining the prior consent of Mortgagee. Mortgagee shall not be liable for any loss of interest on or any penalty or charge assessed against the funds in, payable on, or credited to such account as a result of the exercise by Mortgagee of any of its rights, remedies or obligations hereunder or under any other Loan Document. Any interest earned on the balance of such account shall be deposited into such account and be applied with the balance of such account in accordance with this Section 4.15.5. Mortgagee shall have sole control over such account. Any business interruption insurance or rental loss insurance proceeds remaining after completion of the repair and restoration of the Project shall, at Mortgagee's election, be distributed to Borrower or applied as a mandatory prepayment of the Loan.

## 4.16 Condemnation: Knowledge of Proceedings.

4.16.1 Borrower, promptly upon obtaining knowledge of the institution or pending institution of any proceedings for the condemnation of the Property or any portion thereof, shall notify Mortgagee thereof, and Mortgagee may participate in any such proceedings and be represented by counsel of its selection. Borrower shall not make any agreement in lieu of

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condemnation of the Property or any portion thereof without the prior written consent of Mortgagee in each instance, which consent shall not be unreasonably withheld or delayed in the case of the taking of any insubstantial portion of the Property. In the event of the condemnation of the Property or any portion thereof, any awards for condemnation or payments in lieu thereof are hereby assigned and shall be paid to Mortgagee.

4.16.2 In the event that Mortgagee shall determine in its good faith judgment after an event of condemnation that the taking of the Property was so extensive as to make continued operation thereof not commercially viable, all of the Secured Obligations shall become immediately due and payable, and any awards for condemnation or payments in lieu thereof shall be paid over to Mortgagee and applied in reduction of the Secured Obligations in such order as Mortgagee may determine in its discretion, and any excess shall be paid to Borrower. Otherwise, whether or not any condemnation proceeds are available therefor, Borrower shall proceed with reasonable diligence, at Borrower's sole cost and expense, to repair and restore or cause to be repaired or restored the Property into an architectural and commercially viable premises similar (to the greatest extent possible) to the previously existing structure, with such additional improvements as Borrower may elect to add. In the case of a condemnation that is not so extensive as to make continued operation of the Property not commercially viable, Mortgagee shall hold the condemnation proceeds and apply such proceeds to the repair and restoration of the Property by disbursing the same to Borrower on a periodic basis and with such retainage as Mortgagee shall reasonably deem appropriate, but no more frequently than monthly, as the repair and restoration work progresses, and upon receipt by Mortgagee of such guaranties of completion, surety bonds, requisitions, architect's certificates and title updates as Mortgagee shall in its good faith discretion require (including, but not limited to, requiring Borrower to show that there are at all times sufficient funds (in addition to the available insurance proceeds, as the case may be) available for the repair and restoration in question, it being understood that proceeds of any business interruption or rental loss insurance shall be made available pursuant to Section 4.15.5 above). Provided that Mortgagee shall not have elected to cause the acceleration of the Secured Obligations pursuant to the first sentence of this subsection, in the event that Borrower fails to make any payment in respect of any such repairs and restorations, Mortgagee may, but shall not be obligated to, advance funds required for the completion of such repairs or restoration, and Borrower shall, on demand, reimburse Mortgagee for all sums advanced and expenses actually incurred by Mortgagee in connection therewith (including but not limited to, the charges, disbursements and reasonable fees of counsel), together with interest thereon at the Default Rate from the date each such advance is made or expense paid by Mortgagee until the date on which repayment thereof is received by Mortgagee, which amounts and the interest thereon shall become part of the Secured Obligations and be secured hereby. In the event that there are surplus proceeds of any award for condemnation or payments in lieu thereof, all such surplus proceeds shall be paid over to and/or retained by Mortgagee and shall be applied in reduction of the Secured Obligations in such order and priority as Mortgagee may determine in its discretion.

4.16.3 Notwithstanding any taking by public or quasi-public authority through eminent domain or otherwise, Borrower agrees to continue to pay all amounts due in respect of the Secured Obligations, which shall not be reduced until any award or payment therefor shall have been actually received by Mortgagee for application to the discharge of the Secured Obligations. No application of the proceeds of any award for condemnation or payments in lieu



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thereof to the reduction of the Secured Obligations shall have the effect of releasing the lien of this Mortgage from the portion, if any, of the Property not taken until and unless the principal sum secured hereby, the interest thereon and the remainder of the Secured Obligations have been paid in full.

4.16.4 In the event of any temporary taking of the Property or any portion thereof in condemnation or by eminent domain, Borrower shall continue to pay all principal, interest and other sums and charges secured hereby when due and payable under the Note and the other Loan Documents and, so long as no Event of Default has occurred, receive the proceeds of any award for a temporary taking; provided, however, that if any award payable to Borrower on account of such taking is made in a lump sum or is payable other than in equal monthly installments, then the award shall be paid over to Mortgagee who shall hold the same and applied to the payment of each monthly installment of interest and principal due under the Note and all of the other Secured Obligations as and when the same become due and payable; and provided, further, that the excess (if any) of such award received by Mortgagee over such monthly installment of interest and other Secured Obligations falling due for the entire period with respect to which such award was paid shall, monthly, be paid to or on behalf of Borrower for use solely in paying, with respect to the Premises, real estate and personal property taxes, insurance premiums, labor charges, repairs, utilities, accounting and legal expenses and other operating expenses; and provided further, that any unapplied portion of such award held by Mortgagee when such taking ceases or expires, or after all of the Secured Obligations shall have been paid in full (whichever first occurs), plus any interest accrued thereon, shall be repaid to Borrower. If while the proceeds of any such award are held by Mortgagee an Event of Default shall have occurred and be continuing, or Mortgagee shall have accelerated the Secured Obligations, Mortgagee may apply such proceeds in reduction of the Secured Obligations in such order and priority as Mortgagee shall in its discretion determine.

4.17 General Right of Entry. Borrower agrees that it will permit Mortgagee from time to time upon reasonable advance notice (not less than one (1) Business Day) and during regular business hours (or upon occurrence of any emergency situation or during the existence of an Event of Default, without advance notice and at any time) to enter upon and inspect the Property to determine its compliance with the requirements of this Mortgage and the other Loan Documents and to ascertain its condition.

4.18 Separate Tax Lot. Borrower represents and warrants that Borrower's interest in the Land is assessed for real estate tax purposes as a wholly independent tax lot, separate from any adjoining land or improvements not constituting a part of such lot.

4.19 Limitations on Transfer. In accordance with Section 17.2 of the Loan Agreement, Transfers are prohibited except as expressly permitted in the Loan Agreement.

4.20 Management. In accordance with Section 15.1(p) of the Loan Agreement, Borrower shall at all times either operate and manage the Property or retain a professional management company approved by Mortgagee to operate and manage the Property.

4.21 [Intentionally Omitted].

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## 4.22 Recording, Filing and Perfection of Security Interests: Fees.

4.22.1 Borrower, promptly upon the execution and delivery of the Loan Agreement, the Note, this Mortgage, and the Assignment of Leases and thereafter from time to time, will cause this Mortgage, the Assignment of Leases and any other Loan Document creating a lien or evidencing the lien of this Mortgage upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and to protect the lien hereof upon, and the interest of Mortgagee in, the Property.

4.22.2 Borrower will pay all filing, registration and recording fees, and all expenses incident to the execution and acknowledgment of the Mortgage and any other Loan Document (including any security instrument with respect to the Personal Property and Proceeds) and any instrument of further assurance, and all federal, state, county and municipal mortgage recording taxes, stamp taxes and other taxes, duties, imports, assessments and charges arising out of or in connection with the execution and delivery of the Loan Documents, any amendment, modification or restatement hereof, any supplemental security instrument with respect to the Personal Property and Proceeds or any instrument of further assurance.

4.23 Further Acts and Assurances. Borrower will, at its sole cost and expense, and without actual expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall from time to time reasonably require for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or filing, registering or recording this Mortgage, and, on demand, will execute and deliver, and hereby authorizes Mortgagee to execute and file in Borrower's name, to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien of this Mortgage or the lien intended hereby upon the Property.

4.24 Changes in Taxation. In the event of the enactment after this date of any law of the State in which the Property is located or any political subdivision thereof deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the Laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the Secured Obligations, then Borrower, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Borrower 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 Mortgagee may elect, by notice in writing given to Borrower, to declare all of the Secured Obligations to be and become due and payable ninety (90) days from the giving of such notice.

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## ARTICLE V EVENTS OF DEFAULT

5.1 Events of Default. It shall be an event of default ("Event of Default") if one or more of the following shall occur:

5.1.1 The occurrence of an Event of Default under and as defined in the Loan Agreement.

5.1.2 Borrower shall suffer or permit any Transfer to occur, either voluntarily or involuntarily, in violation of Section 4.19 hereof, or if any Improvement or article of material Personal Property (other than Personal Property which is replaced in the ordinary course of Borrower's business) is intentionally removed or demolished by Borrower other than in accordance with the provisions of the Loan Agreement and Sections 4.10 through 4.12 hereof. The provisions of this subsection 5.1.2 shall apply to each and every such Transfer, removal and demolition, whether or not Mortgagee has waived by its action or inaction its rights with respect to any previous Transfer, removal or demolition.

5.1.3 Borrower shall fail to continuously maintain the Policies as required by Section 4.14 above.

5.1.4 Any representation or warranty made or deemed made by Borrower under this Mortgage, the Note, the Assignment of Leases, any other Loan Document or any other document or certificate provided in connection with any Loan Document or the Secured Obligations shall be untrue or incorrect in any material respect at the time made or delivered.

5.1.5 (i) Borrower defaults (after notice and the expiration of all applicable cure periods) under any obligation set forth in any Permitted Exception, or (ii) if any event shall occur, fail to occur or condition exist, that would constitute an "Event of Default" under any Permitted Exception, upon the giving of notice, the passage of time, or both, and Borrower shall fail to cure such unmatured "Event of Default" upon notice from Mortgagee to Borrower and the passage of the cure period (if any) applicable to such "Event of Default".

## ARTICLE VI REMEDIES; POWER OF SALE

6.1 Rights Upon Default. Upon the occurrence of any Event of Default hereunder, Mortgagee shall have each and every of the following rights and remedies, all of which rights and remedies shall be cumulative and not exclusive and in addition to any and all other rights and/or remedies granted to Mortgagee under this Mortgage, the Note, or any of the other Loan Documents:

6.1.1 Mortgagee shall have the right forthwith, at its election, to accelerate the indebtedness secured hereby and commence proceedings to foreclose this Mortgage and/or exercise any and all rights and remedies available to it at law or in equity.

6.1.2 Mortgagee shall have the right forthwith, at its election, and without further notice or demand (except as otherwise specifically provided in the Note, this Mortgage or

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the other security instruments) and without the commencement of any action to foreclose this Mortgage or exercise any power of sale Mortgagee may have under this Mortgage, to enter immediately upon and take possession of the Property, or any part thereof, without further consent or assignment by Borrower, and to do, execute and perform any act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Property and the leasing, management, or operation thereof as fully as Borrower might do, including, without limitation, the right to institute summary proceedings against any lessee who shall fail to comply with the provisions of the applicable lease, with the right to lease the Property, or any part thereof, and to collect and receive all of the Rents, issues and profits, and all other amounts past due or to become due to Borrower by reason of its ownership of the Property and to apply the same, after the payment of all necessary charges and expenses in connection with the operation of the Property (including, without limitation, any managing agent's commission, at the option of Mortgagee), on account of the Secured Obligations. If Borrower or any other person claiming by, through or under it, (other than any lessee whose tenancy Mortgagee has agreed not to disturb or whose tenancy Mortgagee, in its sole and uncontrolled discretion, is willing not to disturb) are occupying all or any part of the Property, it is hereby agreed that Borrower and such other persons shall either immediately surrender possession of the Property to Mortgagee and vacate the premises so occupied or pay a reasonable rental for the use thereof, monthly in advance, to Mortgagee.

6.1.3 Mortgagee shall have the right to seek the immediate appointment by any court of competent jurisdiction of a receiver for the Property and the business of Borrower in connection therewith and of the Rents and profits arising therefrom, which receiver shall be entitled to immediate possession of the entire Property, whether or not occupied by Borrower. Mortgagee shall be entitled to the appointment of such a receiver as a matter of right without consideration of the value of the Property or other security for the Secured Obligations or the solvency of any person or corporation liable for the payment thereof. If Borrower is then in possession of the Property or any part thereof, Borrower shall immediately, upon the appointment of such receiver, vacate the Property or such part thereof, as the case may be, or pay a reasonable rental for the use thereof during such receivership, the amount of such rental to be agreed upon between said receiver and Borrower or to be fixed by the court in which said receiver shall have been appointed; and the relationship between said receiver and Borrower shall be that of landlord and tenant.

## 6.2 Mortgagee's Right to Release and Negotiate.

Without affecting the liability of Borrower or any other Person (except any person expressly released in writing), and without affecting any lien or other security not expressly released in writing, Mortgagee, at any time and from time to time, either before or after maturity of the Note, irrespective of whether any Event of Default then exists and without notice or consent, may do any one or more of the following:

6.2.1 release any person liable for payment of or performance of any or all of the Secured Obligations;

6.2.2 make any agreement extending the time, or otherwise altering the terms of payment of the Secured Obligations or any part thereof, or modifying or waiving any of the

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Secured Obligations, or subordinating, modifying or otherwise dealing with the lien or liens securing payment of the Secured Obligations;

6.2.3 exercise or refrain from exercising or waive any right Mortgagee may have;

6.2.4 accept additional security of any kind;

6.2.5 release or otherwise deal with any property, real or personal, securing the Secured Obligations or any part thereof, including all or any part of the Property; and

6.2.6 (in the event of any conveyance of Borrower's interest in the Property to parties not appearing in this instrument), deal with such successor or successors in interest with reference to this Mortgage and the Secured Obligations secured hereby, either by way of forbearance on the part of Mortgagee or extension of the time of payment of the Note or any other sum forming part of the Secured Obligations, or otherwise, without in any way modifying or affecting the conveyance under this Mortgage or the original liability of Borrower for the Secured Obligations, either in whole or in part. Nothing in this subsection, however, shall be deemed a consent by Mortgagee to the conveyance by Borrower of any interest in the Property.

6.3 Borrower to Surrender Possession. In the event of any sale of the Property under the provisions hereof, Borrower shall forthwith surrender possession thereof to the purchaser. Upon failure to do so, Borrower shall thereupon be a tenant at sufferance of such purchaser, and upon its failure to surrender possession of the Property upon demand, such purchaser, his heirs, legal representatives, successors or assigns, shall be entitled to institute and maintain an appropriate action for possession of the Property.

6.4 Uniform Commercial Code. Upon the occurrence of any Event of Default, Mortgagee shall have and may exercise all of the rights and remedies of a secured party under the Uniform Commercial Code then in effect in the state in which the Premises is located. Without limiting the generality of the foregoing:

6.4.1 Mortgagee, at its option, pursuant to the applicable provisions of Article 9 of the Uniform Commercial Code, may proceed as to both the real and personal property covered by this Mortgage in accordance with its rights and remedies in respect of said real property, in which event (i) the other provisions of the Uniform Commercial Code shall not apply to disposition of the Collateral, and (ii) the sale of the Collateral in conjunction with and as one parcel with said real estate shall be deemed to be a commercially reasonable manner of sale; or

6.4.2 Mortgagee, at its option, may proceed as to the Collateral separately from said real property, in which event the requirement of reasonable notice shall be met by mailing notice of the sale, postage prepaid, to Borrower or any other person entitled thereto at least ten (10) days before the time of the sale or other disposition of any of the Collateral.



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## ARTICLE VII MISCELLANEOUS

7.1 Enforceability. In the event that any provision of this Mortgage, the Note or any other Loan Document or the application thereof to Borrower or any circumstance in any jurisdiction governing this Mortgage, the Note or such Loan Document shall, to any extent, be invalid or unenforceable under any Law, such provision shall be deemed inoperative only to the extent that it may conflict therewith and shall be deemed modified to conform to such Law, and the remainder of this Mortgage, the Note or such Loan Document and the application of such invalid or unenforceable provision to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable shall not be affected thereby nor shall the same affect the validity or enforceability of any other provision of this Mortgage, the Note or such Loan Document.

7.2 Maximum Rate of Interest. Notwithstanding any contrary provision of this Mortgage, in no event shall the aggregate of the interest payable hereunder or under the Note or any other Loan Document, or penalties or premiums for late payments, loan servicing fees, application fees, commitment fees, "points" or any other amounts, fees or charges that would under any applicable Law be deemed "interest" ever exceed the maximum amount of interest that under any applicable Law could be lawfully charged on the principal balance of the Note from time to time outstanding. In this connection, it is expressly stipulated and agreed that it is the intention of Mortgagee and Borrower in the execution and delivery of the Note, this Mortgage, the Assignment of Leases, and any other Loan Document contractually to limit the maximum amounts charged to, contracted for with, or received from Borrower in connection with the Secured Obligations which would be deemed "interest" under any applicable Law to the maximum non-usurious amount of interest which would be permitted under such Law. In furtherance thereof, it is stipulated and agreed that none of the terms of this Mortgage, the Note, the Assignment of Leases, or any other Loan Document shall ever be construed to create a contract to pay for the use, forbearance or detention of money interest at a rate in excess of the maximum non-usurious interest rate permitted to be charged to, contracted for with, or received from Borrower by Mortgagee under any applicable Law; neither Borrower nor any Guarantor, endorser or other parties now or hereafter becoming liable for the payment of the Secured Obligations shall ever be liable for interest in excess of the maximum non-usurious interest that under any applicable Law could be charged, contracted for or received from Borrower by Mortgagee; and the provisions of this Section shall be deemed to govern the maximum rate and amount of interest which may be paid under the Note, the Assignment of Leases and any other Loan Document, and shall control over all other provisions of this Mortgage, the Note, the Assignment of Leases or any other Loan Document which might be in apparent conflict herewith. Specifically and without limiting the generality of the foregoing, it is expressly provided:

7.2.1 If and when any installment of the interest calculated under the Note becomes due and the aggregate amount thereof, when added to the aggregate amount of any other amounts that constitute interest on the indebtedness evidenced thereby and that have been heretofore paid on said indebtedness, would be in excess of the maximum non-usurious amount of interest permitted by any applicable Law, in light of all discounts, payments or prepayments theretofore made on said indebtedness and presuming the Secured Obligations will be paid at



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their stated maturity date, then the aggregate amount of such interest installment shall be automatically reduced to the maximum sum, if any, which could lawfully be paid as interest on the principal balance of the Note on such date under such circumstances;

7.2.2 In the event of a permitted voluntary prepayment of the Secured Obligations or payment prior to the stated maturity date thereof resulting from acceleration, if the aggregate amounts of interest calculated thereon, plus the amount of any interest accruing after maturity, and plus any other amounts which constitute interest on said indebtedness would, in the aggregate, if paid on such indebtedness (if calculated in accordance with provisions other than this Section) exceed the maximum non-usurious amount of interest which, under any applicable Law, could lawfully be charged on the unpaid principal balance of such indebtedness (less any discounts) from time to time remaining unpaid from the date hereof to the date of such payment thereof, then in such event the amount of such excess shall not be payable or due (if not previously paid) or (if and to the extent paid) shall be credited toward the payment of principal on such indebtedness so as to reduce the amount of the final payment of principal due thereon;

7.2.3 If under any circumstances the aggregate amounts paid on the Note, the Mortgage, the Assignment of Leases and any other Loan Document prior to and incident to final payment thereof include any amounts that under any applicable Law would be deemed interest and which would exceed the maximum non-usurious amount of interest which, under any applicable Law, could lawfully have been collected on such indebtedness, Borrower and Mortgagee stipulate that Mortgagee or the person or entity receiving such excess payment shall promptly refund the amount of such excess (to the extent only of the excess of such interest payments above the maximum non-usurious amount which could lawfully have been collected and retained under any applicable Law) upon discovery of such error by the person or entity receiving such payment or Notice thereof from the person or entity making such payment; and

7.2.4 All amounts paid or agreed to be paid in connection with the Secured Obligations, which would under any applicable Law be deemed "interest" shall, to the extent permitted by such Law, be amortized, prorated, allocated and spread throughout the full term of the Note.

7.3 Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder (collectively, "Notices") shall be in writing overnight courier or by certified or registered mail, return receipt requested. Notices shall be deemed delivered and received: (a) if delivery is made before 5:00 p.m. recipient's local time on a Business Day, or if tendered for delivery between 9:00 a.m. and 5:00 p.m. recipient's local time on a Business Day and refused, then on the date of such actual or attempted delivery, as evidenced by postal or courier receipt or (b) on the next Business Day following the date of actual delivery. Notices shall be given to the following addresses:

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If to Borrower: 625 West Division, LLC  
c/o Gerding Edlen  
1477 NW Everett Street  
Portland, OR 97209  
Attn: Roger Krage

with copies to: 625 West Division, LLC  
c/o Gerding Edlen  
1477 NW Everett Street  
Portland, OR 97209  
Attn: Brent Gaulke

and: Dunn Carney Allen Higgins & Tongue  
851 SW Sixth Avenue, Suite 1500  
Portland, OR 97204  
Attn: Gilbert E. Parker

If to Mortgagee: The Union Labor Life Insurance Company  
Real Estate Investment Group  
5403 Colesville Road  
Thirteenth Floor  
Silver Spring, MD 20910  
Attn: Herbert A. Kolben, Senior Vice President

with copies to: The Union Labor Life Insurance Company  
1625 Eye Street, N.W.  
Washington, D.C. 20006  
Attn: General Counsel

Any party hereto may change the addresses for Notices set forth above by giving at least ten (10) days' prior Notice of such change in writing to the other party as aforesaid and otherwise in accordance with these provisions.

**7.4 No Release.** Borrower agrees that no other security, now existing or hereafter taken, for the Secured Obligations shall be impaired or affected in any manner by the execution hereof; no security subsequently taken by any holder of the Secured Obligations shall impair or affect in any manner the security given by this Mortgage; all security for the payment of the Secured Obligations shall be taken, considered, and held as cumulative; and the taking of additional security shall at no time release or impair any security by endorsement or otherwise previously given. Borrower further agrees that any part of the security herein described may be released without in any way altering, varying, or diminishing the force, effect, or lien of this Mortgage, or of any renewal or extension of said lien, and that this Mortgage shall continue as a first lien, assignment, and security interest on all the Property not expressly released until all Secured Obligations are fully discharged and paid.

**7.5 Attorneys' Fees and Costs of Mortgagee.** Borrower agrees to pay, within ten (10) Business Days of demand of Mortgagee, all actual expenses incurred by Mortgagee, including,

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but not limited to, attorneys' charges, disbursements and reasonable fees, in connection with the enforcement by Mortgagee of any of the Loan Agreement, the Note, this Mortgage, the Assignment of Leases or any of the other Loan Documents.

**7.6 Brokerage.** Borrower hereby indemnifies and holds harmless Mortgagee against all liability, cost and expense, including, but not limited to, attorneys' charges, disbursements and reasonable fees, incurred in connection with any claims that may be asserted by any broker or finder or similar agent alleging to have dealt with Borrower in any of the transactions contemplated hereby.

**7.7 Indemnification.** Borrower will protect, indemnify and save harmless Mortgagee from and against any and all liabilities, obligations, claims, damages, penalties, assessments, fines, causes of action and actual expenses (including, but not limited to, attorneys' disbursements, charges and reasonable fees) imposed upon or incurred by or asserted against Mortgagee or the Property or any interest of Mortgagee therein, by reason of the execution of this Mortgage, the Note or any other Loan Document, or the consummation of the transactions contemplated hereby or thereby, or the occurrence or existence during or prior to the term of this Mortgage of any of the following: (a) ownership by Borrower of any interest in the Property or receipt of any rent or other sum therefrom; (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, and streets and ways; (c) any design, construction, operation, use, nonuse or condition of the Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, and streets and ways, including, without limitation, claims or penalties arising from violation of any requirement of law or insurance requirements as well as any claim based on any patent or latent defect, whether or not discoverable by Borrower, and any claim as to which the insurance is inadequate, and any claim in respect of any adverse environmental impact or effect; (d) any negligence or tortious act or omission on the part of Borrower or any of its agents, contractors, servants, employees, sublessees, licensees, guests or invitees; (e) any failure by Borrower to perform its obligations under this Mortgage, the Note, the Assignment of Leases or any other Loan Document; or (f) any, claims arising from the alleged or actual breach of Borrower's obligations under Section 7.6 hereof, whether such claim proves true or false; provided, however, that no Indemnified Party shall be entitled to be indemnified against its own fraud, gross negligence or willful misconduct. Borrower further agrees that its obligations under this Section shall include, but are not limited to, liability for damages resulting from the personal injury or death of an employee of Borrower, regardless of whether Borrower has paid the employee under the worker's compensation Laws of the Jurisdiction, or other similar federal or state legislation for the protection of employees. Borrower agrees that its obligations under this Section shall include indemnifying Mortgagee for all attorney's charges, disbursements and fees, and all other actual expenses incurred by Mortgagee to enforce the terms of this Section. Borrower's obligations under this Section are exclusive of, and in addition to, any and all insurance obligations which Borrower has under this Mortgage and any of its obligations under the Environmental Indemnity. If any action or proceeding shall be commenced (including, but not limited to, an action to foreclose this Mortgage, collect the indebtedness secured hereby or to enforce Mortgagee's rights under the Assignment of Leases or any other Loan Document) by Mortgagee or Borrower or any third party, to which action or proceeding Mortgagee is made a party by reason of the execution of this Mortgage, the Note, the Assignment of Leases, or any other Loan Document, in which it

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becomes necessary to enforce, defend or uphold the lien of this Mortgage or Mortgagee's rights under the Note, all actual expenses incurred by Mortgagee in connection with any litigation to enforce, prosecute or defend the rights and lien created hereby or otherwise incurred in connection with any action or proceeding referred to in this Section (including, but not limited to, attorneys' charges, disbursements and reasonable fees) shall be paid by Borrower to Mortgagee within ten (10) Business Days after Mortgagee's demand for payment. In case any action, suit or proceeding is brought against Mortgagee by reason of any such occurrence, Borrower, upon request of Mortgagee, will, at Borrower's sole cost and expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Borrower and approved by Mortgagee, which approval shall not be unreasonably withheld or delayed. The obligations of Borrower under this Section shall survive repayment of the Secured Obligations and the satisfaction of this Mortgage.

## 7.8 Intentionally Omitted.

7.9 Estoppe! Certificates. Borrower and Mortgagee agree at any time and from time to time, upon ten (10) Business Days prior written notice from either party, to execute and deliver to such party, or to any person or entity designated by such party, a statement in writing certifying (a) the outstanding principal balance of the Secured Obligations, (b) the last date to which interest has been paid by Borrower, (c) that the Loan is in full force and effect, (d) to the knowledge of Borrower, whether Borrower has any defenses or offsets thereto, and (e) whether any default on the part of Borrower has occurred (if made by Mortgagee, subject to its knowledge).

7.10 Effect of Extensions and Amendments. If the payment of the Secured Obligations, or any part thereof, shall be extended or varied, or if any part of the security or guaranties therefor be released, all persons (including, without limitation Guarantor) now or at any time hereafter liable therefor, or interested in the Property, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage or other Lien upon the Property or any part thereof or any interest therein, shall, without waiving any other limitations in this Mortgage on such Liens, take the said Lien subject to the rights of Mortgagee to amend, modify, extend or release the Note, this Mortgage or any other document or instrument evidencing, securing or guarantying the indebtedness secured hereby, in each case without obtaining the consent of the holder of such junior Lien and without the lien of this Mortgage losing its priority over the rights of any such junior Lien.

7.11 No Joint Venture. Borrower acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event shall Mortgagee be deemed to be a partner or joint venturer with Borrower. Mortgagee shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or any other of the Loan Documents.

7.12 Funds Held in Accounts. Borrower hereby agrees that Mortgagee shall have no liability for any investment losses or reduction in value which accrue or occur with respect to any

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amounts held by Mortgagee in any accounts hereunder for the benefit or account of Borrower or the Premises (such as insurance proceeds or partial condemnation awards) and any such losses shall be borne solely by Borrower. In addition, Borrower agrees that all interest and/or other income on such funds shall for income tax purposes be deemed to belong to Borrower.

**7.13 Expenses of Mortgagee.** Any reference herein to “actual expenses incurred by Mortgagee” shall be deemed to refer to actual costs and expenses incurred by Mortgagee paid or payable to third parties or allocated expenses and charges if in-house counsel is used.

**7.14 Governing Law.** This Mortgage and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the Laws of the State of Illinois. Borrower hereby irrevocably submits to the non-exclusive jurisdiction of any state or Federal court sitting in the County of Cook in the State of Illinois over any suit, action or proceeding arising out of or relating to this Mortgage, and Borrower hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any suit, action or proceeding in any state or Federal court sitting in the County of Cook in the State of Illinois may be made by certified or registered mail, return receipt requested, directed to Borrower and its attorney at the addresses indicated above, and service so made shall be complete two (2) days after the same shall have been so mailed.

**7.15 Captions and Pronouns.** The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

**7.16 Amendments, Waivers, Etc.** No amendment, modification, termination, or waiver of any provision of this Mortgage nor consent to any departure therefrom shall in any event be effective unless the same shall be in writing and signed by the party against which such action or waiver is sought to be charged, and then such action or waiver shall be effective only in the specific instance and for the specific purpose for which given or omitted. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances except as provided in this Mortgage.

**7.17 Entire Agreement.** This Mortgage, the Note, the Loan Agreement, the Assignment of Leases and the other Loan Documents embody the entire agreement between the parties hereto and supersede all prior agreements and understandings between them relating to the same subject matter.

**7.18 Covenants Running With the Land; Successors and Assigns.** All of the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the land and shall apply to and bind the successors and assigns of Borrower, and apply to, and inure to the benefit of the successors and assigns of Mortgagee.

**7.19 Time is of the Essence.** Time is of the essence under this Mortgage.



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7.20 Counterparts. This Mortgage may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

## ARTICLE VIII ILLINOIS PROVISIONS

8.1 Maximum Principal Amount. This Mortgage shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. This Mortgage also secures any and all future obligations and Indebtedness arising under or in connection with this Mortgage, which future obligations and Indebtedness shall have the same priority as if all such future obligations and Indebtedness were made on the date of execution hereof. Nothing in this Section or in any other provision of this Mortgage shall be deemed an obligation on the part of Lender to make any future advances of any sort. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage shall secure (in addition to any Loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Lender in connection with the Indebtedness to be secured hereby and which are to be reimbursed by Borrower under the terms of this Mortgage; provided, however, that in no event shall the total amount of Loan proceeds disbursed plus such additional amounts exceed \$104,000,000.00.

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

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

8.2.2 payments by Mortgagee of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Property; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

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

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

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

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

8.2.7 expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member if in any way affecting the Property; (G) costs incurred by Mortgagee for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Property.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become due and payable without notice and with interest thereon from ten (10) days after the date Mortgagee notifies Borrower of the advance until paid at the applicable rate set forth in the Loan Agreement. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Secured Obligations secured by this Mortgage at any time; (B) the amount of the Secured Obligations found due and owing to Mortgagee in a judgment of foreclosure or any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional indebtedness becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose); (C) if right of redemption is deemed not to be waived by this Mortgage, computation of any amounts required to redeem, pursuant to Section 15-1603(d)(2) and (e) of the Act; (D) determination of amounts deductible from sale proceeds pursuant to

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Section 15-1512 of the Act; (E) application of income in the hands of any receiver or Mortgagee in possession; and (F) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of sections 15-1508 and Section 15-1511 of the Act.

**8.3 Waiver of Right of Redemption and Reinstatement.** Without limiting the generality of Section 3.2.1 of this Mortgage, the waiver by Borrower of its rights of redemption and reinstatement include the waiver of such rights as provided under 735 ILCS 5/15-1601 and 735 ILCS 5/15-1602.

**8.4 Business Loan Recital/Statutory Exemption.** (i) Borrower acknowledges and agrees that (A) the Secured Obligations have been incurred by Borrower solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said Section 4; (B) the Secured Obligations secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (C) the Secured Obligations is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et. seq.* has been entered into solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said section

**8.5 Not an Agricultural Loan.** Without limiting the generality of anything contained herein, Borrower acknowledges and agrees that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201 (1992)) or residential real estate (as defined in 735 ILCS 5/15-1219 (1992)), and Borrower warrants and represents to Mortgagee that none of the Property is presently, or will during the term of this Mortgage, be used principally or at all for agricultural or farming purposes.

**8.6 Illinois Mortgage Foreclosure Act.** It is the express intention of Mortgagee and Borrower that the rights, remedies, powers and authorities conferred upon Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Mortgage is deemed inconsistent with any provision in the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

**8.7 Collateral Protection Act.** Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows:

Unless Borrower provides Mortgagee with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or any of the other Loan Documents, Mortgagee may purchase insurance at Borrower's expense to protect Mortgagee's interest in the Property or any other collateral for the indebtedness or Secured Obligations. This insurance may, but need not protect Borrower's interests. The coverage Mortgagee purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property or any other collateral for the indebtedness or Secured Obligations. Borrower may later cancel any insurance purchased by Mortgagee but only after

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providing Mortgagee with evidence that Mortgagee has obtained insurance as required by this Mortgage, the Loan Agreement or any of the other Loan Documents. If Mortgagee purchases insurance for the Property or any other collateral for the indebtedness or Secured Obligations, Borrower will be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connect 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 more than the cost of insurance that Borrower may be able to obtain on its own.

8.8 Sealed Instrument. Borrower intends for this Mortgage to be executed and delivered by Borrower, and accepted by Mortgagee, as a sealed instrument.

8.9 Financing Statement. This Mortgage shall constitute a fixture filing pursuant to 810 ILCS 5/9-502(b) *et seq.*, and shall be filed as a fixture filing in the Cook County, Illinois, Recorder of Deeds and covers goods which are or are to become fixtures on the Property.

8.10 Interest Rate. The interest rate under this Mortgage shall be a variable rate of interest in accordance with the Loan Agreement unless the Default Rate is applicable.

8.11 Lender in Possession. In addition to any provision of the Mortgage authorizing the Lender to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15 1701 and 5/15 1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in the Mortgage, all powers, immunities, and duties as provided for in Sections 5/15 1701 and 5/15 1703 of the Act.

If there is any conflict or inconsistency between the provisions of this Article VIII and any other provision of this Mortgage, the provisions of this Article VIII shall govern and control.

[Signature page follows.]

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

**BORROWER:**

625 WEST DIVISION, LLC,  
an Oregon limited liability company

By: Gerding Edlen Green Cities II, L.P.,  
a Delaware limited partnership

Its: Sole Member

By: Gerding Edlen Fund Management II, LLC,  
a Delaware limited liability company

Its: General Partner

By: GEFM II Management, LLC,  
an Oregon limited liability company

Its: Sole Member

By:

  
\_\_\_\_\_  
Kelly T. Saito, Manager



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State of Oregon  
County of multnomah

On this 1<sup>st</sup> day of August, 2018, before me, the undersigned notary public, personally appeared Kelly Saito, as Manager of GEFM II Management, LLC, as sole member of Gerding Edlen Fund Management II, LLC, as general partner of Gerding Edlen Green Cities II, L.P., as sole member of 625 WEST DIVISION, LLC, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Machell Rene Dawson

Notary Public [Affix Seal]

My commission expires: 9/21/19



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## EXHIBIT A

### LEGAL DESCRIPTION OF LAND

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

#### PARCEL 1:

LOTS 1, 2, THE WESTERNMOST 3 FEET OF LOT 3, LOTS 6, 7, 8 AND 9 IN BLOCK 88 OF ELSTON'S ADDITION TO CHICAGO IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

#### VACATED ALLEY DESCRIBED AS FOLLOWS:

THE EAST-WEST 12 FOOT ALLEY LYING NORTH OF AND ADJOINING LOT 6, LYING SOUTH OF AND ADJOINING LOTS 1, 2 AND PART OF 3, LYING EAST OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF LOT 1 TO THE NORTHWEST CORNER OF LOT 6, AND LYING WEST OF THE NORTHERLY EXTENSION OF THE EAST LINE OF SAID LOT 6, ALL IN BLOCK 88 IN ELSTON'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ANTE-FIRE MAY 11, 1855 AS DOCUMENT NO. 59194, IN BOOK 85 PAGES 121 AND 122, IN COOK COUNTY, ILLINOIS.

#### P.I.N.S.

17-04-303-001-0000  
17-04-303-002-0000  
17-04-303-003-0000  
17-04-303-010-0000  
17-04-303-019-0000

ADDRESS: 625 WEST DIVISION STREET, CHICAGO ILLINOIS 60610