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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1935316130

Doc# 1935316130 Fee \$88.00

THSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 12/19/2019 02:51 PM PG: 1 OF 21

The property identified as: PIN: 23-12-302-017-0000

Address:

Street: 9901-9913 South 78th Ave

Street line 2:

City: Hickory Hills

State: IL

ZIP Code: 60457

Lender: Voya Investment Managment LLC

Borrower: VIP Hickory Hills, LLC

Loan / Mortgage Amount: \$47,000,000.00

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

Certificate number: AF34403C-60F1-498D-B64D-323A02A8F157

Execution date: 12/10/2019

S Y
P 21
S 1
M —
SC —
E —
INT 5B

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This instrument was prepared by:
~~and, when recorded, should be returned to:~~

Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, GA 30363
Attn: Rusty A. Fleming, Esq.
Tel: (404) 322-6466

when recorded, return to:



Fidelity National Title

ATTN: John Wallace

National Commercial Services

20 N. Clark St. Ste. #220

Chicago, IL 60602

Premises: 9901-9913 South 78th Ave., Hickory Hills, Cook County, Illinois 60457

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted and/or supplemented, referred to as this "Mortgage") is made this 17th day of December, 2019, by **VIP HICKORY HILLS, LLC**, an Illinois limited liability company, having an address at c/o Value Industrial Partners, LLC, 970 N. Oaklawn Ave., Suite 300, Elmhurst, Illinois 60126 (hereinafter, individually and collectively as the context may require, referred to as the "Mortgagor"), to and for the benefit of **VOYA INVESTMENT MANAGEMENT LLC**, a Delaware limited liability company, having an address located at 5780 Powers Ferry Road, NW, Suite 300, Atlanta, Georgia 30327-4349, in its capacity as the administrative agent for the "Lenders" (as such term is hereinafter defined) (hereinafter, together with its successors and/or assigns in such capacity, referred to as the "Mortgagee").

WITNESSETH:

KAS of

WHEREAS, the Mortgagor is the owner of a fee simple estate and interest in that certain real property more fully described on Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Land"); and

WHEREAS, pursuant to the terms, conditions, and provisions of that certain Loan Agreement dated of even date herewith, executed by and among the Mortgagor and (collectively, the "Borrower"), certain lenders party thereto from time to time (hereinafter collectively referred to as the "Lenders"), and the Mortgagee (hereinafter, as it may be from time to time amended, modified, extended, renewed,

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substituted and/or supplemented, referred to as the "Loan Agreement"), the Lenders have agreed to make available to the Borrower a commercial mortgage loan facility in the aggregate original principal amount of **FORTY-SEVEN MILLION AND 00/100 (\$47,000,000.00) DOLLARS** (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Loan"); and

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

WHEREAS, as of the date hereof, the Loan is evidenced by the Notes; and

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

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

1. **Granting Clauses.** Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Mortgagee, their successors and assigns, with all powers of sale (if any) and all statutory rights under the laws of the State of Illinois (hereinafter referred to as the "State"), and grants to the Mortgagee, for the benefit of the Lenders, a security interest in and to, all of the Mortgagor's present and hereafter acquired estate, rights, title, and interests, if any, in, to, and under the following (hereinafter collectively referred to as the "Mortgaged Premises"):

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

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

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

(d) All machinery, apparatus, equipment, goods, systems, building materials, carpeting, furnishings, fixtures, fittings, furniture, and property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Land and/or the Improvements, or any part thereof, or used or usable in connection with any construction on or any present or future operation of the Land and/or the Improvements, now owned or hereafter acquired by the Mortgagor, including, without

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

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

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

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

THIS MORTGAGE IS GIVEN TO SECURE: Payment of the Indebtedness and payment of such additional sums with interest thereon which may hereafter be loaned to the Mortgagor by the Mortgagee or by any of the Lenders pursuant to the Loan Agreement, the Notes, or this Mortgage or otherwise advanced under the Loan Documents, including, without limitation, advances made by the Mortgagee or by any of the Lenders to protect the Mortgaged Premises or the lien of this Mortgage or to pay taxes, assessments, insurance premiums, and all other amounts that the Mortgagor has agreed to pay pursuant to the provisions of the Loan Agreement or this Mortgage or that the Mortgagee or any of the Lenders has incurred by reason of the occurrence of an "Event of Default" (as such term is defined in the Loan Agreement), including, without limitation, advances made to enable completion of any of the

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Improvements or any restoration or repair thereof, even though the aggregate amount outstanding at any time may exceed the original principal balance stated herein and in the Notes; and the due, prompt, and complete performance of each and every covenant, condition, and agreement contained in the Loan Documents. The Mortgagor hereby warrants that (a) the Mortgagor has good and indefeasible fee simple title to the Mortgaged Premises, is lawfully seized and possessed of the Mortgaged Premises and every part thereof, and has the right to convey same, (b) the Mortgagor shall forever warrant and defend the title to the Mortgaged Premises unto the Mortgagee against the claims of all persons whomsoever, and (c) the Mortgaged Premises are unencumbered except as set forth on the Title Insurance Policy regarding the Mortgaged Premises.

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

3. **Lease Assignment; Observance of Lease Assignment.**

(a) To ensure the payment of the Indebtedness and the faithful performance of the terms, conditions, and provisions contained herein, the Mortgagor, as landlord, hereby irrevocably and absolutely assigns to the Mortgagee, for the benefit of the Lenders, all of the Mortgagor's rights, title, and interests in, to, and under: (i) all Leases of all or any portion of the Mortgaged Premises, whether now existing or entered into after the date hereof, and (ii) all of the Rents of the Mortgaged Premises, including, without limitation, all amounts payable and all rights and benefits accruing to the Mortgagor under the Leases and all termination payments. The term "Leases" as used herein shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals, or modifications thereto. This is a present and absolute assignment, not an assignment for security purposes only, and the Mortgagee's rights in and to the Leases and the Rents is not contingent upon, and may be exercised without possession of, the Mortgaged Premises.

(b) Notwithstanding the foregoing Paragraph 3(a) to the contrary, the Mortgagee hereby confers upon the Mortgagor a revocable license (hereinafter referred to as the "License") to exercise the rights as landlord under the Leases and to collect and retain the Rents as they become due and payable for so long as no Event of Default exists. Upon the occurrence of an Event of Default, the License shall be automatically revoked and the Mortgagee shall be entitled to collect and apply the Rents pursuant to Paragraph 9 of this Mortgage without any notice and without taking possession of the Mortgaged Premises. At such time, if at all, as such Event of Default is waived by the Mortgagee (if the Mortgagee, in its sole and absolute discretion, agrees in writing to waive said Event of Default) or if the cure of said Event of Default shall have been accepted in writing by the Mortgagee, the License shall be reinstated on the terms contained in this Paragraph 3. The Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand given by or on behalf of the Mortgagee in accordance with the terms of this Paragraph 3 for the payment to the Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. The Mortgagor hereby relieves the tenants from any liability to the Mortgagor by reason of relying upon and complying with any such notice or demand by the Mortgagee.

(c) Except as otherwise set forth in the Loan Agreement, all Leases entered into after the date hereof are subject to the prior express written approval of the Mortgagee as to form and content,

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and the Mortgagor shall not enter into any Lease without the prior express written consent of the Mortgagee.

(d) The Mortgagor shall not, without the prior express written consent of the Mortgagee execute an assignment or pledge of any Rents and/or any Leases.

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

(f) The Mortgagor shall not (i) conduct directly any on-site dry cleaning operations on any portion of the Mortgaged Premises, (ii) enter into any new Lease or amend any existing Lease that would permit any tenant to commence any on-site dry cleaning operations on any portion of the Mortgaged Premises that are not currently being conducted as of the date hereof, and (iii) permit any tenant to conduct any on-site dry cleaning operations on any portion of the Mortgaged Premises that (A) are not currently permitted under or pursuant to the provisions of the tenant's existing Lease or (B) are in violation of any applicable law or governmental regulation. Nothing in this Paragraph 3(f) shall be deemed to be a consent or approval by the Mortgagee or by any of the Lenders of any environmental condition at the Mortgaged Premises that may have been caused by the operation of any on-site dry cleaning operation (whether presently or in the past), or as a waiver by the Mortgagee or any of the Lenders, in each case, of any of their respective rights under Article V of the Loan Agreement or under the Environmental Indemnity.

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

5. **Effect of Changes in Laws Regarding Taxation**. In the event of the enactment after the date hereof of any Law of the State deducting from the value of the Mortgaged Premises for the purpose of taxing any Lien thereon, or imposing upon the Mortgagee or any of the Lenders, in each case, the payment of the whole or any part of the Impositions or Liens required to be paid by the Mortgagor under the Loan Agreement or this Mortgage, or changing in any way the laws relating to the taxation of mortgages, deeds of trust, or debts secured by mortgages or deeds of trust or the interest of the Mortgagee in the Mortgaged Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holders thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such Impositions, or reimburse the Mortgagee or any of the Lenders therefor if the Mortgagee or any of the Lenders pays such Impositions and submits proof of payment to the Mortgagor; provided, however, that if, in the opinion of counsel for the Mortgagee: (a) it might be unlawful to require the Mortgagor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by Law; then and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the Indebtedness to be and become due and payable sixty (60) days from the giving of such notice, without the payment of the applicable Prepayment Premium.

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6. **Mortgagee's Performance of Defaulted Acts.** Upon the occurrence of an Event of Default, the Mortgagee may, but need not, and whether electing to declare the whole of the Indebtedness due and payable or not, and without waiver of any other remedy, make any payment or perform any act herein required of the Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior Lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Premises or contest any tax or assessment or cure any default of the Mortgagor as landlord under any Lease. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, costs, and expenses, and any other monies advanced by the Mortgagee or any of the Lenders in regard to any Imposition referred to in Paragraphs 2 and 5 of this Mortgage, or to protect the Mortgaged Premises or the lien hereof, shall be additional Indebtedness and shall become immediately due and payable without notice and with interest thereon at the Default Rate. Inaction of the Mortgagee or the Lenders shall never be considered as a waiver of any right accruing to it on account of any Event of Default on the part of the Mortgagor.

7. **Acceleration of Indebtedness in Event of Default.** It is expressly understood and agreed by the Mortgagor that time is of the essence hereof and that the whole of the Indebtedness shall become immediately due and payable without notice to the Mortgagor at the option of the Mortgagee upon the occurrence of any Event of Default, together with a Prepayment Premium in the amount, if any, required to be paid pursuant to the terms of the Loan Agreement in the event of a prepayment.

8. **Acceleration of Indebtedness; Remedies.**

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

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

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

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(iii) sell the Mortgaged Premises to the highest bidder or bidders at public auction at a sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner as may be required by law, or in the absence of any such requirement, as the Mortgagee may deem appropriate, and from time to time adjourn such sale by announcement at the time and place specified for such sale or for such adjourned sale or sales without further notice except such as may be required by law;

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

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

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

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

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

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

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

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

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

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part thereof so sold free and discharged of the estate of the Mortgagor therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including the Mortgagee, may purchase at any such sale. The Mortgagee is hereby irrevocably appointed the attorney-in-fact of the Mortgagor in its name and stead to make all appropriate transfers and deliveries of the Mortgaged Premises or any portions thereof so sold and, for this purpose, the Mortgagee may execute all appropriate instruments of transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, promptly upon the written request of the Mortgagee, the Mortgagor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for the purpose, and as may be designated, in such request. Any sale or sales made under or by virtue of this Mortgage shall operate to divest all the estate, rights, title, interests, property, claim, and demand whatsoever, whether at law or in equity, of the Mortgagor in, to and under the Mortgaged Premises, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor, its successors and assigns, and against any and all persons claiming or who may claim the same, or any part thereof, by, through or under the Mortgagor, or its successors or assigns. The powers and agency herein granted are coupled with an interest and are irrevocable.

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

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

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

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and payable by the Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

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

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

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

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

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

11. **Release Upon Payment and Discharge of Mortgagor's Obligations.** The Mortgagee shall release this Mortgage and the lien thereof by proper instrument promptly upon payment and discharge of all Indebtedness including any applicable Prepayment Premium and receipt of written request from the Mortgagor for such release.

12. **Giving of Notice.** All notices, demands, requests, and other communications desired or required to be given hereunder, including, without limitation, notices to the Mortgagee from a person claiming priority of a Lien over the lien of this Mortgage for any future advances made under the Loan Agreement (hereinafter collectively referred to as "Notices", and individually referred to as a "Notice"), shall be in writing and shall be given in accordance with the requirements of Section 10.1 of the Loan Agreement.

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

14. **Waiver of Statutory Rights.** The Mortgagor shall not apply for or avail itself of any homestead, appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. The Mortgagor, for itself and all who may claim through or under it, hereby expressly, knowingly, and voluntarily waives any and all right to have

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the property and estates comprising the Mortgaged Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. The Mortgagor does hereby expressly, knowingly, and voluntarily waive any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of the Mortgagor, the trust estate and all persons beneficially interested therein and each and every person, acquiring any interest in or title to the Mortgaged Premises subsequent to the date of this Mortgage.

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

16. **Security Agreement.** The Mortgagor and the Mortgagee hereby agree that this Mortgage shall constitute a security agreement within the meaning of the UCC with respect to all sums on deposit with the Mortgagee with respect to insurance proceeds or condemnation proceeds (hereinafter collectively referred to as the "Deposits") and with respect to any personal property included in the definition herein of the word "Mortgaged Premises" in the granting clause of Paragraph 1 of this Mortgage, which property may not be deemed to form a part of the real estate described in Exhibit "A" attached hereto and made a part hereof, and all replacements of such property, substitutions, and additions thereto and the proceeds thereof, all such property being sometimes hereinafter collectively referred to as the "Collateral", and that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee and the Deposits and all of the Mortgagor's rights, title, and interests therein are hereby assigned to the Mortgagee, for the benefit of the Lenders, all to secure payment of the Indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof. Upon the occurrence of an Event of Default, the Mortgagee, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding with respect to the Collateral in accordance with its rights and remedies with respect to the real property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, ten (10) days' notice of the sale of the Collateral shall be reasonable notice. The costs and expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, without limitation, attorneys' fees and legal costs and expenses incurred by the Mortgagee or by any of the Lenders. It is hereby expressly understood and agreed that all replacements of the Collateral and any additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor hereby covenants and represents that all Collateral, and all replacements thereof, substitutions therefor or additions thereto, now are and will be and remain free and clear of Liens (other than the lien of taxes not yet due or payable). The Mortgagor shall, upon demand, authorize, execute, and deliver, as applicable, to the Mortgagee such financing statements and other documents in form satisfactory to the Mortgagee, and will do all such acts and things as the Mortgagee may at any time, or from time to time, request or as may be necessary or appropriate to establish and maintain a first perfected security interest in the Deposits and Collateral, subject to no Liens (other than the lien of taxes not yet due or payable).

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

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Name of Mortgagor: VIP Hickory Hills, LLC

Mortgagor's Mailing Address: c/o Value Industrial Partners, LLC
970 N. Oaklawn Ave., Suite 300
Elmhurst, Illinois 60126
Attention: John F. Horrigan, III

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

Name of Secured Party: Voya Investment Management LLC

Address of Secured Party: Voya Investment Management LLC
5780 Powers Ferry Road, NW, Suite 300
Atlanta, Georgia 30327-4349
Attention: Mortgage Loan Servicing Department

and

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

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

17. **Due on Sale or Further Encumbrance.** Other than as permitted pursuant to the terms and provisions of the Loan Agreement, if, without the prior express written consent of the Mortgagee: (i) the Mortgaged Premises or any part thereof or any direct or indirect interest in the Mortgaged Premises or any part thereof or in the Mortgagor is sold, transferred, or otherwise conveyed; (ii) title to the Mortgaged Premises or any part thereof or any interest in the Mortgaged Premises or any part thereof or in the Mortgagor is divested; (iii) the Mortgaged Premises or any part thereof or any interest in the Mortgaged Premises or any part thereof or in the Mortgagor is further encumbered or pledged; (iv) any Lease which gives the tenant any option to purchase the Mortgaged Premises or any part thereof is entered into without the prior express written approval of the Mortgagee; or (v) without limiting the generality of clause (i) above, the ownership of shares of the Mortgagor, if a corporation, or of any corporate general partner of the Mortgagor, if a partnership, or the general partnership interests in any partnership which is a general partner of the Mortgagor, or any membership interest in the Mortgagor which is a limited liability company, or any beneficial or fiduciary interest in the Mortgagor which is a trust or trustee is sold or conveyed, the Mortgagee, in its sole and absolute discretion, shall be entitled to accelerate the Indebtedness and declare the then unpaid principal balance and all accrued interest and other sums due and payable under the Notes to be immediately due and payable and exercise all rights and remedies available to the Mortgagee under the Loan Agreement and the other Loan Documents. The Mortgagor understands that the present ownership of the Mortgaged Premises and the Improvements is a material inducement to the Lenders in making the Loan available to the Mortgagor. Any consent by the Mortgagee or any of the Lenders to a change in ownership or to a change in the composition of the Mortgagor may be conditioned upon payment of a transfer fee equal to one percent (1.0%) of the then

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outstanding Indebtedness for processing such request for consent, upon an increase in the rate of interest on the unpaid balance of the Indebtedness to a then-current market rate, and/or other terms and conditions as the Mortgagee or the Lenders may impose in their sole and absolute discretion.

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

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

20. **Relationship.** The Mortgagee is only the administrative agent for the Lenders under the Loan Documents and each Lender is only a lender under the Loan Documents, and nothing contained in this Mortgage or the other Loan Documents and no action taken by the parties pursuant hereto shall be deemed to constitute the Mortgagee, any Lender or any of the other parties to the Loan Documents, including, without limitation, any of the Lenders, a partnership, an association, a joint venture or other entity, nor constitute the Mortgagee or any Lender as a fiduciary for any of said parties.

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

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

23. **Construction; Terms of Loan Agreement.** The Mortgagor has been represented by its own counsel in this transaction, and this Mortgage shall not be construed more strongly against any party regardless of who was more responsible for its preparation. All of the terms, conditions, and provisions set forth and contained in the Loan Agreement are hereby made part of this Mortgage to the same extent and with the same force as if they were fully set forth herein, *mutatis mutandis*.

24. **Gender; Number; Terms.** Words and phrases herein shall be construed as in the singular or plural number and as masculine, feminine or neuter gender, according to the context. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Mortgage and not to any particular section, paragraph or provision.

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

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

27. **Severability.** In the event one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein.

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

29. **Reliance on Other Property.** The Mortgagor shall not by act or omission permit any building or other improvement on any premises not subject to the lien of this Mortgage to rely on the Mortgaged Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and the Mortgagor hereby assigns to the Mortgagee any and all rights to give consent for all or any portion of the Mortgaged Premises or any interest therein to be so used. Similarly, no building or other Improvement on the Mortgaged Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. The Mortgagor shall not by act or omission impair the integrity of the Mortgaged Premises as a single zoning lot separate and apart from all other premises. Any act or omission by the Mortgagor which would result in a violation of any of the provisions of this Paragraph 29 shall be null and void and of no force or effect.

30. **Estoppel.** The Mortgagor will, no more than semi-annually (provided that, upon the occurrence of an Event of Default, no such limitation shall be applicable) upon ten (10) Business Days prior written request by the Mortgagee, execute, acknowledge, and deliver to the Mortgagee, a certificate stating that this Mortgage is unmodified and in full force and effect (or, if there have been modifications, that this Mortgage is in full force and effect as modified and setting forth such modifications) and stating the principal amount secured hereby and the interest accrued to date on such principal amount. The estoppel certificate from the Mortgagor shall also state, to the best knowledge of the Mortgagor, whether any offsets or defenses to the Indebtedness exist and if so shall identify them.

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31. **Late Charge as part of the Indebtedness.** The Loan Agreement includes provisions for the assessment of a Late Charge, as defined therein. Said Late Charge shall be secured hereby as Indebtedness, as that term is used herein.

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

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

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

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

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

37. **Recourse Liability.** The provisions of Sections 7.1 and 7.2 of the Loan Agreement are hereby incorporated by reference into this Mortgage to the same extent and with the same force as if fully set forth herein.

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

39. **WAIVER OF JURY TRIAL. THE MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, THE MORTGAGEE, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY**

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RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS MORTGAGE, OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS, WHETHER ORAL OR WRITTEN, OR ACTION OF ANY PARTY HERETO. NO PARTY SHALL SEEK TO CONSOLIDATE BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY THE MORTGAGOR OR THE MORTGAGEE EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY THE MORTGAGOR AND THE MORTGAGEE.

40. **State-Specific Provisions.** The state-specific provisions set forth and contained in this Paragraph 40, to the extent inconsistent with the remaining terms, conditions, and provisions of this Mortgage, shall supersede said inconsistent provisions and, in the event of such conflict, govern and control:

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

(b) **Collateral Protection Act.** Pursuant to the terms of the Collateral Protection Act, 815 ILCS 180/1 et seq., the Mortgagor is hereby notified that unless the Mortgagor provides the Mortgagee, with evidence of the insurance coverage required by this Mortgage, the Mortgagee, may purchase insurance at the Mortgagor's expense to protect the Mortgagee's interests in the Mortgaged Premises, which insurance may, but need not, protect the interests of the Mortgagor. The coverage purchased by the Mortgagee, may not pay any claim made by the Mortgagor or any claim made against the Mortgagor in connection with the Mortgaged Premises. The Mortgagor may later cancel any insurance purchased by the Mortgagee, but only after providing the Mortgagee with evidence that the Mortgagor has obtained the insurance as required hereunder. If the Mortgagee, purchases insurance for the Mortgaged Premises, the Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness secured hereby. The costs of such insurance may be greater than the cost of insurance the Mortgagor may be able to obtain for itself.

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

(i) The Mortgagee, shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, to the maximum extent permitted by law, the Mortgagee, shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take

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precedence over the provisions of this Mortgage but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to the Mortgagee, (including the Mortgagee, acting as a lender-in-possession) or a receiver, any powers, rights or remedies prior to or upon the occurrence and during the continuance of an Event of Default, which are more limited than the powers, rights or remedies that would otherwise be vested in the Mortgagee, or in such receiver under the Act in the absence of said provision, the Mortgagee, and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by the Mortgagee, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Indebtedness and shall have the benefit of all applicable provisions of the Act.

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

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

(d) Not Residential or Agricultural Real Estate. The Mortgagor acknowledges that the Mortgaged Premises do not constitute residential real estate as defined in Section 15-1219 of the Act or agricultural real estate as defined in Section 15-1201 of the Act.

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

(f) Future Advances. This Mortgage secures future advances as defined and authorized under applicable Illinois statutes, including, without limitation, 205 ILCS 5/5d, 205 ILCS 105/1-6b, 815 ILCS 205/4.1, 735 ILCS 5/15-1207, 735 ILCS 5/15-1302 and 765 ILCS 5/39, and it shall secure not only presently existing indebtedness under the Notes, this Mortgage, and the other Loan Documents but also future advances that constitute Indebtedness and other secured obligations under this Mortgage and the other Loan Documents (whether such advances are obligatory or to be made at the option of the Mortgagee, the Lenders or otherwise) as are made within twenty years (or the maximum period permitted by applicable law, whichever is longer) from the date of this Mortgage, to the same extent and with the same priority as if such future advances were made on the date of the execution of this

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Mortgage and without regard as to whether or not there is any advance made at the time of execution of this Mortgage and without regard as to whether or not there is any indebtedness outstanding at the time any advance is made. This Mortgage secures all present and future disbursements of the Loan under the Loan Documents, and all other sums from time to time owing to the Mortgagee or any of the Lenders by the Mortgagor under the Loan Documents. The maximum principal amount which may be secured hereby at any one time is Ninety-Four Million and 00/100 (\$94,000,000.00) Dollars, plus interest thereon, and any disbursements made by the Mortgagee, or any Lender for the payment of taxes, special assessments, or insurance on the Mortgaged Premises, with interest on such disbursements; provided, however, that the foregoing limitation shall apply only to the maximum amount of the lien created by this Mortgage, and it shall not in any manner limit, affect or impair any grant of a security interest or other right in favor of the Mortgagee or the Lenders under the provisions of this Mortgage or under any of the other Loan Documents at any time executed by the Mortgagor. To the fullest extent permitted by applicable law, the lien of this Mortgage, as to all such sums so advanced, shall have priority over all subsequent liens and encumbrances, including statutory liens (excepting solely taxes and assessments levied on the Mortgaged Premises secured by this Mortgage).

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

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

UNOFFICIAL COPY

Voya Loan No. 29902

IN WITNESS WHEREOF, the Mortgagor, intending to be legally bound hereby, has executed and delivered this Mortgage as of the date first above written.

MORTGAGOR:

VIP HICKORY HILLS, LLC, an Illinois limited liability company

By: VIP Partners, LLC, an Illinois limited liability company, its Manager

By: John F. Horrigan, III, Member

Property of Cook County Clerk's Office

ACKNOWLEDGEMENT

STATE OF IL)

COUNTY OF DeKalb)

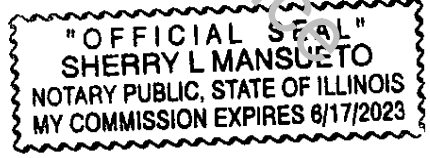
BE IT REMEMBERED, that on this 10th day of December, 2019 before me the undersigned, a Notary Public in and for the county and state aforesaid, came John F. Horrigan, III, Member of VIP Partners, LLC, an Illinois limited liability company, Manager of VIP Hickory Hills, LLC, an Illinois limited liability company, who is personally known to me to be the same person who executed the within instrument of writing in such capacity and on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year last above written.

Printed Name: Sherry L Mansueto

Notary Public

My commission expires:
6/17/2023



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Voya Loan No. 29902

EXHIBIT "A"

Legal Description of the Land

Lot 12 in K & K Industrial Park Subdivision, being a subdivision of part of the Northwest 1/4 and the Southwest 1/4 of Section 12, Township 37 North, Range 12 East of the Third Principal Meridian, according to Plat of Subdivision recorded July 11, 1979 as Document No. 25045447 and the Certificate of Correction recorded August 9, 1979 as Document No. 25092173 and the Consent and Ratification thereof recorded August 16, 1979 as Document No. 25103087, in Cook County, Illinois.

23-12-302-07

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