



2016341201

Doc# 2016341201 Fee \$229.00

SHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 06/11/2020 03:09 PM PG: 1 OF 90

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: PIN: 29-19-100-029-0000

Address:

Street: 15958 S. Western Avenue

Street line 2:

City: Markham

State: IL

ZIP Code: 60428

Lender: Wells Fargo Trust Company, National Association, as Trustee

Borrower: Scannell Properties #425, LLC, Scannell Properties #430, LLC and Scannell Properties, #431, LLC

Loan / Mortgage Amount: \$368,571,868.80

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: A2743547-4CEF-41B5-89E9-774416FAA98F

Execution date: 5/13/2020

S
P
S
M
S
E
NT

UNOFFICIAL COPY

Execution Version

**This document was prepared
by:**

Daniel J. Favero, Esq.
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606

After recording return to:

Daniel J. Favero, Esq.
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606

Mortgage Agreement 23 -
Tract 10 Parcel 1

This space reserved for Recorder's use only.

**MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS
AND FIXTURE FILING STATEMENT (PROPERTY GROUP 23)**

Dated as of May 12, 2020

From

SCANNELL PROPERTIES #425, LLC, SCANNELL PROPERTIES #430, LLC AND SCANNELL
PROPERTIES #431, LLC, AS TENANTS-IN-COMMON

(collectively, the "*Company*" and, each individually a "*TIC*")

To

WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE
(the "*Mortgagee*")

City of Markham
County of Cook, Illinois

UNOFFICIAL COPY

TABLE OF CONTENTS

SECTION 1.	DEFINITIONS.....	11
SECTION 2.	GENERAL COVENANTS AND WARRANTIES.....	22
Section 2.1.	Office for Notices	22
Section 2.2.	Maintenance of Existence, Rights.....	22
Section 2.3.	Negative Covenants	22
Section 2.4.	Mergers and Consolidations	28
Section 2.5.	Financial Information and Reports	28
Section 2.6.	Notice of Default.....	29
Section 2.7.	Mortgage Title Insurance Policy.....	29
Section 2.8.	Payment of Certain Taxes.....	29
Section 2.9.	Ownership of Mortgaged Property	29
Section 2.10.	Further Assurances.....	30
Section 2.11.	Payment of Principal and Interest.....	30
Section 2.12.	Prepayment of Note	30
Section 2.13.	Method and Place of Payment of Principal and Interest.....	32
Section 2.14.	Maintenance of Mortgaged Property, Other Liens, Compliance with Laws, Etc	33
Section 2.15.	Insurance	34
Section 2.16.	Payment of Taxes and Other Charges.....	37
Section 2.17.	Limitation on Liens.....	38
Section 2.18.	Assignment; Obligations and Terms Respecting the Lease, the Other Leases and the Lease Guaranties; Automatic Put.....	39
Section 2.19.	Advances.....	45
Section 2.20.	Recordation.....	46
Section 2.21.	After-Acquired Property	47
Section 2.22.	Environmental Indemnity	47
Section 2.23.	Separate Identity	47
Section 2.24.	General Indemnity	48
Section 2.25.	No Forfeiture.....	49
Section 2.26.	Environmental Remediation and Conditions.....	49
Section 2.27.	Consolidated Plat.....	49
SECTION 3.	POSSESSION, USE AND RELEASE OF PROPERTY.....	50
Section 3.1.	The Company's Right of Possession	50
Section 3.2.	Release of Mortgaged Property - Event of Loss and Prepayment of Note	50
Section 3.3.	Eminent Domain.....	51
SECTION 4.	APPLICATION OF INSURANCE AND CERTAIN OTHER MONEYS RECEIVED BY THE MORTGAGEE.	51
Section 4.1.	Insurance Proceeds and Condemnation Awards.....	51
Section 4.2.	Title Insurance	53
Section 4.3.	Investment of Insurance Proceeds and Condemnation Awards or Compensation	53
Section 4.4.	Application If Event of Default Exists.....	54

UNOFFICIAL COPY

TABLE OF CONTENTS

SECTION 5.	DEFAULTS AND REMEDIES THEREFOR.....	54
Section 5.1.	Events of Default	54
Section 5.2.	Remedies.....	56
Section 5.3.	Application of Proceeds.....	59
Section 5.4.	Waiver of Extension, Appraisal and Stay Laws	60
Section 5.5.	Costs and Expenses of Foreclosure and/or Exercise of Remedies.....	60
Section 5.6.	Delay or Omission Not a Waiver.....	61
Section 5.7.	Restoration of Positions	61
Section 5.8.	Note to Become Due upon Sale.....	61
SECTION 6.	MISCELLANEOUS.....	61
Section 6.1.	Successors and Assigns.....	61
Section 6.2.	Severability	62
Section 6.3.	Addresses for Notices and Demands	62
Section 6.4.	Headings and Table of Contents.....	62
Section 6.5.	Release of Mortgage	62
Section 6.6.	Counterparts.....	62
Section 6.7.	Successor Mortgagee	63
Section 6.8.	Governing Law	63
Section 6.9.	Time	63
Section 6.10.	Limitations of Liability.....	63
Section 6.11.	Expenses, Stamp Tax Indemnity.....	63
Section 6.12.	Cooperation.....	64
Section 6.13.	No Merger of Estates	64
Section 6.14.	NAIC Filing	64
Section 6.15.	Commitment	65
Section 6.16.	Usury Savings Clause	65
Section 6.17.	Certain Prohibited Amendments.....	65
SECTION 7.	STATE SPECIFIC PROVISIONS.....	65
Section 7.1.	Benefits of Act	65
Section 7.2.	Insurance	66
Section 7.3.	Protective Advances.....	66
Section 7.4.	The Mortgagee in Possession.....	68
Section 7.5.	Waiver of Redemption.....	68
Section 7.6.	Limitation on indebtedness.....	69
Section 7.7.	Future Advances	69
SECTION 8.	CONCERNING THE TRUSTEE.....	69
SECTION 9.	JOINT AND SEVERAL LIABILITY	70
SECTION 10.	TENANTS IN COMMON.....	70
SECTION 11.	PAYDOWN OPTION	71

UNOFFICIAL COPY

TABLE OF CONTENTS

Section 11.1.	The Indebtedness Hereby Secured may not be prepaid except as described below and except in accordance with Section 2.12 hereof.	71
Section 11.2.	The Paydown	71
Section 11.3.	Distribution of Aggregate Paydown Amount	73
Section 11.4.	The Readvance	73
Section 11.5.	Satisfaction of Readvance Conditions	75
Section 11.6.	Failure of Readvance Option	76
Section 11.7.	Definitions.....	76
SECTION 12.	REVERSE EXCHANGE.....	76
Section 12.1.	1031 Reverse Exchange.....	77
Section 12.2.	Exchange Loan.....	77
Section 12.3.	Exchange Permitted Transfer to Effectuate Tax Free Exchange	77
Section 12.4.	Exculpation of Exchange Accommodator	78

ATTACHMENTS TO MORTGAGE:

EXHIBIT A - Legal Description of Real Property

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING STATEMENT dated as of May 13, 2020 (this "*Mortgage*"), from Scannell Properties #425, LLC, a limited liability company organized under the laws of the State of Delaware ("*TIC #1*"), Scannell Properties #430, LLC, a limited liability company organized under the laws of the State of Delaware ("*TIC #2*"), and Scannell Properties #431, LLC, a limited liability company organized under the laws of the State of Delaware ("*TIC #3*"), as tenants-in-common (TIC #1, TIC #2 and TIC #3 are referred to herein, collectively, as the "*Company*" and each individually, as a "*TIC*"), each having its principal office at 8801 River Crossing Blvd., Suite 300, Indianapolis, Indiana 46240, to Wells Fargo Trust Company, National Association, as Trustee under that certain Pass-Through Trust Agreement and Declaration of Trust dated as of the date hereof (the "*Mortgagee*"), whose address is MAC: U1228-051, 299 South Main Street, 5th Floor, Salt Lake City, Utah 84111, Attention: Corporate Trust Lease Group (Project Dixie).

This Mortgage is also a Security Agreement and financing statement under the Uniform Commercial Code of the State of Illinois and in compliance therewith the following information is set forth:

1. The names and addresses of the Debtor and Secured Party are:

Debtor:

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC
 8801 River Crossing Blvd., Suite 300
 Indianapolis, Indiana 46240
 Attention: Marc Pfleging

Secured Party:

Wells Fargo Trust Company, National
 Association, as Trustee
 MAC: U1228-051
 299 South Main Street, 5th Floor
 Salt Lake City, Utah 84111
 Attention: Corporate Trust Lease Group
 (Project Dixie)

2. The property covered by this Security Agreement and financing statement is described in the Granting Clauses hereof.

3. Some or all of the fixtures, equipment and other property described herein are or may become fixtures.

4. The Debtor is the record owner of the real estate described in Exhibit A attached hereto and made a part hereof.

RECITALS

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filings Statement

A. The Company and the Mortgagee have executed and delivered the Note Purchase Agreement dated as of the date hereof (as amended from time to time, the "*Note Purchase Agreement*") providing for the commitment of the Mortgagee to purchase the 2.98% Senior Secured Note due on the Maturity Date (as defined therein) (as amended, amended and restated and/or replaced from time to time, the "*Note*") in the principal amount of \$368,571,868.80 to be dated the date of issue, expressed to bear interest from the date of issue until maturity at the rate of 2.98% per annum and will amortize as set forth in the amortization schedule attached thereto. Interest on the Note will be computed on the basis of a 360-day year of twelve 30-day months.

B. The Company has leased the Property described in Granting Clause First below to Amazon.com Services LLC, a limited liability company organized under the laws of the State of Delaware (the "*Tenant*"), under and pursuant to the terms of that certain Lease Agreement dated MAY 13, 2020 (such Lease Agreement as it may heretofore or hereafter be amended, supplemented or modified and any replacement thereof is herein referred to as the "*Lease*") and is assigning all of its right, title and interest in and to the Lease to the Mortgagee pursuant to this Mortgage which is one of the mortgages which comprise the "Mortgage" (as such term is defined in the Note Purchase Agreement). The obligations of the Tenant under the Lease and under Construction Agency Agreement (as defined below) have been guaranteed by Amazon.com, Inc., a Delaware corporation (the "*Parent Guarantor*"), pursuant to that certain Parent Guaranty dated MAY 13, 2020 (such Parent Guaranty as it may heretofore or hereafter be amended, supplemented or modified and any replacement thereof is hereinafter referred to as the "*Parent Guaranty*") and the Company is assigning all of its right, title and interest in and to the Parent Guaranty to the Mortgagee pursuant to this Mortgage.

C. The Note, as may be amended from time to time, and all principal thereof, premium, if any, and interest thereon and all additional amounts and other sums at any time due and owing from, and required to be paid by the Company under the terms of the Note, the Note Purchase Agreement, this Mortgage and the other Operative Agreements (as defined herein) are collectively hereinafter sometimes referred to as the "*Indebtedness Hereby Secured*."

D. This Mortgage is one of the several mortgages comprising the term "Mortgage" under the Note Purchase Agreement, which collectively secure the Indebtedness Hereby Secured.

E. The Company is duly authorized under all applicable provisions of law and its Organizational Documents (as defined herein) to issue the Note, to execute and deliver this Mortgage and to mortgage, convey and assign the Mortgaged Property (as defined herein) to the Mortgagee as security for the Indebtedness Hereby Secured and all action and all consents, approvals and other authorizations and all other acts and things necessary to make this Mortgage the valid, binding and legal instrument for the security of the Indebtedness Hereby Secured have been done and performed.

NOW, THEREFORE, THIS MORTGAGE WITNESSETH: That the Company, in consideration of the premises, the purchase and acceptance of the Note by the Mortgagee and of the sum of Ten Dollars received by the Company from the Mortgagee and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the

UNOFFICIAL COPY

Scannell Properties #425, LLC

Scannell Properties #430, LLC

Scannell Properties #431, LLC

**Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement**

principal of, premium, if any, and interest on the Note according to its tenor and effect, and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, agreements and conditions contained in or incorporated by reference into the Note, this Mortgage, the Note Purchase Agreement or the other Operative Agreements, the Company does hereby grant, warrant, mortgage, assign, pledge, sell, demise, bargain, convey, transfer, set over and hypothecate unto the Mortgagee, its successors and assigns, forever, and grants to the Mortgagee, its successors and assigns, forever, a security interest in and to all and singular the following described properties, rights, interest and privileges and all of the Company's estate, right, title and interest therein, thereto and thereunder (all of which properties, rights, interests and privileges hereby mortgaged, assigned, pledged and hypothecated or intended so to be are hereinafter collectively referred to as the "*Mortgaged Property*"):

GRANTING CLAUSE FIRST**THE PROPERTY**

The parcel of land in County of Cook, State of Illinois, described in Exhibit A attached hereto and made a part hereof (the "*Land*"), together with the entire interest of the Company in and to all buildings, structures, improvements and appurtenances now standing, or at any time hereafter constructed or placed, upon the Land, including all right, title and interest of the Company, if any, in and to all building material, building equipment and fixtures of every kind and nature whatsoever on the Land or in any building, structure or improvement now or hereafter standing on the Land which are classified as fixtures under applicable law and which are used in connection with the operation, maintenance or protection of said buildings, structures and improvements as such (including, without limitation, all boilers, air conditioning, ventilating, plumbing, heating, lighting and electrical systems and apparatus, all communications equipment and intercom systems and apparatus, all sprinkler equipment and apparatus and all elevators and escalators) and the reversion or reversions, remainder or remainders, in and to the Land, and together with the entire interest of the Company in and to all and singular the tenements, hereditaments, easements, rights of way, rights, privileges and appurtenances to the Land, belonging or in anywise appertaining thereto, including, without limitation, the entire right, title and interest of the Company in, to and under any streets, ways, alleys, gores or strips of land adjoining the Land, and all claims or demands whatsoever of the Company either in law or in equity, in possession or expectancy, of, in and to the Land, it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or is hereafter acquired by the Company and is affixed or attached or annexed to the Land, shall be and remain or become and constitute a portion of the Land and the security covered by and subject to the lien of this Mortgage, together with all accessions, parts and appurtenances appertaining or attached thereto and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all thereof, and together with all rents, income, revenues, awards, issues and profits thereof, and the present and continuing right to make claim for, collect, receive and receipt for any and all of such rents, income, revenues, awards, issues and profits arising therefrom or in connection therewith (collectively, the "*Property*").

UNOFFICIAL COPY

Scannell Properties #423, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

GRANTING CLAUSE SECOND**THE LEASE, THE OTHER LEASES, RENTS AND THE LEASE GUARANTIES**

The Lease, the Other Leases (defined below) and all of the Company's estate, right, title, interest, claim and demand as landlord in, to and under the Lease and the Other Leases, including all extensions and renewals of the term thereof, and all existing or future amendments, supplements or modifications of the Lease and the Other Leases (and to any short memorandum form of the Lease and the Other Leases executed for recording purposes), together with all rights, powers, privileges, options and other benefits of the Company, if any, in, to and under the Lease Guaranties (as defined herein) and all rights, powers, privileges, options and other benefits of the Company as landlord under the Lease and the Other Leases, including, without limitation, (a) the immediate and continuing right (whether or not an Event of Default under this Mortgage shall have occurred and be continuing) to receive and collect all rents (whether as fixed rent, basic rent, percentage rent, additional rent or otherwise), income, revenues, issues, profits, insurance proceeds, condemnation awards, bankruptcy claims, liquidated damages, purchase price proceeds and other payments, tenders and security payable to or receivable by the landlord under the Lease and the Other Leases; (b) if the Tenant exercises any right, or shall be required, to purchase the Mortgaged Property or the landlord's interest therein, the right and power (such power and right being coupled with an interest) to execute and deliver as agent and attorney-in-fact of the landlord under the Lease and the Other Leases, an appropriate deed or other instruments of transfer necessary or appropriate for the conveyance and transfer to the purchaser of the Mortgaged Property or the portion thereof being so purchased, and all interest of the landlord therein and to perform in the name and for and on behalf of the landlord, as such agent and attorney-in-fact, any and all other necessary or appropriate acts with respect to any such purchase, conveyance and transfer; (c) the right to make all waivers, consents and agreements; (d) the right to give and receive copies of all notices and other instruments or communications; (e) the right to take such action upon the occurrence of an event of default or default under the Lease, the Other Leases and the Lease Guaranties, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease, the Other Leases, the Lease Guaranties, or by law; and (f) the right to do any and all other things whatsoever which the Company or any landlord is or may be entitled to do under the Lease, the Other Leases and the Lease Guaranties, or by law.

GRANTING CLAUSE THIRD**CONDEMNATION AWARDS**

All of the right, title and interest of the Company now owned or at any time hereafter acquired in and to any award or awards or settlements or payments heretofore made or hereafter to be made by any municipal, county, state or federal authorities to the present or any subsequent owners of the Mortgaged Property, including without limitation any award or awards, or settlements or payments, hereafter made resulting from (i) condemnation proceedings or the taking of the Mortgaged Property, or any part thereof, under the power of eminent domain; or (ii) the

UNOFFICIAL COPY

Scannell Properties #423, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

alteration of grade or the location or the discontinuance of any street adjoining the Mortgaged Property or any portion thereof, or (iii) any other injury to or decrease in value of the Mortgaged Property; and the Company hereby agrees to execute and deliver from time to time such further instruments as may be requested by the Mortgagee to confirm such assignment to Mortgagee of any such award, damage, payment or other compensation.

GRANTING CLAUSE FOURTH**PERSONAL PROPERTY**

All tangible and intangible personal property now owned or at any time hereafter acquired by the Company of every nature and description, and used in any way in connection with the Mortgaged Property, or any other portion of the same, including, without limitation, all inventory; goods; materials; supplies; equipment; furnishings; fixtures; accounts; accounts receivable; chattel paper; documents; instruments; investment property; money; bank accounts (including, without limitation, the Escrow Reserves (as defined in the Escrow and Servicing Agreement (as defined herein)) any accounts or reserves held by Mortgagee or by the Escrow Agent (as defined herein) under the terms of the Escrow and Servicing Agreement); deposit accounts (including, but not limited to, the Construction Agency Account); security deposits; claims to rebates, refunds or abatements of real estate taxes or any other taxes, contract rights, plans and specifications; permits, licenses and general intangibles; the rights of the Company under contracts (including, without limitation, all right, title and interest of the Company in and to the Construction Agency Agreement, the Custody and Control Agreement, the TIC Agreement and the Exchange Transaction Documents)), with respect to the Mortgaged Property or any portion thereof; signs, brochures, advertising and good will.

GRANTING CLAUSE FIFTH**OTHER AND AFTER-ACQUIRED PROPERTY**

Any and all moneys and other property (including each amendment or supplement to any and all instruments included in the Mortgaged Property) which may from time to time, by delivery to the Mortgagee or by any instrument, including this Mortgage, be subjected to the lien hereof by the Company or by anyone on behalf of the Company or with the consent of the Company, or which may come into the possession or be subject to the control of the Mortgagee pursuant to this Mortgage, or pursuant to any instrument included in the Mortgaged Property, it being the intention of the Company and the Mortgagee and it being hereby agreed by them that all property hereafter acquired by the Company and required to be subjected to the lien of this Mortgage or intended so to be shall forthwith upon the acquisition thereof by the Company be as fully embraced within the lien of this Mortgage as if such property were now owned by the Company and were specifically described in this Mortgage and granted hereby or pursuant hereto.

GRANTING CLAUSE SIXTH**PROCEEDS, PRODUCTS, PROFITS, OFFSPRING, ETC.**

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance and condemnation awards and payments and all products, offspring, profits, additions, accessions, substitutions and replacements of any of the foregoing it being intended that all Mortgaged Property, including without limitation, any and all such proceeds, products, offspring, profits, additions, accessions, substitutions and replacements, owned or held by the Company prior to any bankruptcy filing or similar action or proceeding shall continue to be subject to the lien of this Mortgage after any such bankruptcy filing or similar action or proceeding.

SUBJECT, HOWEVER, as to all property or rights in property at any time subject to the lien hereof (whether now owned or hereafter acquired), to the following:

- (a) The agreement of the parties hereto that any and all improvements, trade fixtures, signs, furniture, furnishings, equipment, machinery or other tangible or intangible personal property located on the Mortgaged Property not owned by the Company, whether or not classified as fixtures under applicable law, are expressly excluded from the lien and security interest created by this Mortgage, and that the same shall in no instance be deemed to be encompassed within the term "*Mortgaged Property*"; and
- (b) The Permitted Encumbrances, as defined in Section 1 hereof;
- (c) The rights of the Tenant under the Lease and the Construction Agency Agreement; and
- (c) Excepted Rights.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee and its successors and assigns, in fee simple title forever, with the purpose of securing performance of each agreement, covenant and warranty of the Company contained in the Operative Agreements and payment of all Indebtedness Hereby Secured.

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth for the benefit and security of all present and future holders of the Indebtedness Hereby Secured in accordance with its terms and all other sums payable hereunder or under the Note, and for the performance and observance of the Note and this Mortgage, all as herein set forth.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if the Company performs the covenants herein contained and pays to the Mortgagee, its successors or assigns, the full amount of all Indebtedness Hereby Secured, the estate, right and interest of the Mortgagee in the property hereby conveyed shall cease and this Mortgage shall become null and void, but otherwise to remain in full force and effect.

It is agreed and understood by the parties hereto that:

UNOFFICIAL COPY

Scannell Properties #425, LLC

Scannell Properties #430, LLC

Scannell Properties #431, LLC

**Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement**

1. This Mortgage is intended to and shall constitute security for the entire Indebtedness Hereby Secured. In the event further or future advances are made to Company by Mortgagee, such advances, with interest thereon, will be secured by the lien of this Mortgage when evidenced by one or more promissory notes stating that the Note or notes are secured hereby. This Mortgage secures payment and performance of all future advances and other obligations that Company or any successor in ownership of all or part of the Mortgaged Property may agree in writing to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Company, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage.

2. Any part of the security herein described, and any security described in any other mortgage, assignment of lease or other instrument now or hereafter given to secure the indebtedness which is secured by this Mortgage, may be released by the Mortgagee without affecting the lien hereof on the remainder.

3. The Company for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof, or to have the Mortgaged Property hereunder and the property covered by any other mortgage or assignment of lease securing the Note marshalled upon any foreclosure of any of said mortgages or assignments of leases, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety.

4. Upon the occurrence of an Event of Default hereunder, the Mortgagee has, among other things, the right to foreclose on the Mortgaged Property and dispose of the same. To the extent permitted by law, the Mortgagee's deed or other instrument of conveyance, transfer or release (which, if permitted by law, may be in the name of the Mortgagee or as attorney for the Company and the Mortgagee hereby is irrevocably appointed) shall be effective to convey and transfer to the grantee an indefeasible title to the property covered thereby, discharged of all rights of redemption by the Company or any person claiming under it, and to bar forever all claims by the Company or the said Mortgagee to the property covered thereby and no grantee from the Mortgagee shall be under any duty to inquire as to the authority of the Mortgagee to execute the same, or to see to the application of the purchase money.

5. The assignment made under Granting Clause Second and Section 2.18 hereof is executed as a present, unconditional and absolute assignment and not merely as collateral security, and the execution and delivery of this Mortgage shall not in any way impair or diminish any obligations of the Company as landlord under the Lease nor impair, affect or modify any of the terms and conditions of the Note or the Note Purchase Agreement, nor shall any of such obligations be imposed upon the Mortgagee, including but not limited to collecting rentals or enforcing performance by the Tenant. Without limiting the generality of the foregoing, the Mortgagee shall not be obligated to perform or discharge, nor does the Mortgagee hereby undertake to perform or discharge, any obligation, duty or liability under the Lease, or under or by reason of this Mortgage; and it

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

is further understood and agreed that this Mortgage shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Property upon the Mortgagee, nor for the carrying out of any of the terms and conditions of the Lease, nor shall it operate to make the Mortgagee responsible or liable for any waste committed on the Mortgaged Property by the Tenant or any other parties, or for any dangerous, non-compliant or defective condition of the Mortgaged Property, or for any negligence of the management, upkeep, or repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. The Mortgagee may, at its option, although it shall not be obligated to do so, after giving written notice to the Tenant and the Company, perform any Lease covenant for and on behalf of the Company and may recover any money advanced, for any such purpose from the Company on demand, with interest at the Default Rate (as defined herein) (or at the maximum rate permitted by applicable law, whichever is less) from date of advancement. Upon the payment of the principal of (and premium, if any) and all interest on the Note and of all other sums payable on the Note or under the Note Purchase Agreement or this Mortgage or any other Operative Agreement and the performance and observance of the provisions thereof, this Mortgage shall cease and terminate and all the estate, right, title, interest, claim and demand of the Company under the Lease in and to the above-described assigned property shall revert to the Company under the Lease, and the Mortgagee shall at the request of the Company deliver to the Company an instrument cancelling the assignment of Lease set forth in this Mortgage and reassigning the above-described assigned property to the Company.

6. To the fullest extent permitted by applicable law, the Company does hereby irrevocably constitute and appoint the Mortgagee, its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acceptance for any and all rents, income and other sums which are assigned under the Granting Clauses of this Mortgage with full power to sue for, settle, adjust or compromise any claim thereunder as surely as the Company could itself do and to endorse the name of the Company on all commercial paper given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings either in its own name or in the name of the Company or otherwise, which the Mortgagee may deem necessary or appropriate to protect and preserve the right, title and interest of the Mortgagee in and to such rents and other sums and the security intended to be afforded by this Mortgage.

SECTION 1. DEFINITIONS.

The following terms shall have the following meanings for all purposes of this Mortgage (any capitalized terms not otherwise defined herein shall have the meanings set forth therefor in the Note Purchase Agreement):

"Advances" is defined in the Note Purchase Agreement.

"Affiliate" of any specified Person, shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person,

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

and any immediate family member of such specified Person and their Affiliates. For the purposes of this definition, “*control*” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “*controlling*” and “*controlled*” have meanings correlative to the foregoing.

“*Bankruptcy Claims*” is defined in Section 2.18(a) of this Mortgage.

“*Bankruptcy Code*” is defined in Section 2.18(a) of this Mortgage.

“*Closing Date*” is defined in the Note Purchase Agreement.

“*Company*” is defined in the introductory paragraph of this Mortgage together with its successors and assigns pursuant to the terms hereof.

“*Construction Agency Account*” means that certain deposit account #82486800 in the name of the Company held by Wells Fargo Trust Company, National Association.

“*Construction Agency Agreement*” is defined in the Note Purchase Agreement.

“*Construction Contract*” is defined in the Construction Agency Agreement.

“*Creditor*” shall mean a Person (x) to whom the Company or Member or any Affiliate thereof has, at any time from and after the date hereof, outstanding indebtedness in an amount equal to or greater than ten percent (10%) of the Company’s or Member’s or such Affiliate’s, as the case may be, total outstanding general unsecured indebtedness at such time, or (y) to whom total payments have been made by the Company or Member or such Affiliate during the immediately preceding fiscal year which are equal to or greater than ten percent (10%) of the respective gross annual revenues of the Company or Member or such Affiliate for such immediately preceding fiscal year.

“*Custodian*” shall mean Wells Fargo Trust Company, National Association, its successors and assigns.

“*Custody and Control Agreement*” shall mean the Custody and Control Agreement dated as of the date hereof among the Company, the Tenant and the Custodian.

“*Default*” shall mean any event which would constitute an Event of Default if any requirement in connection therewith for the giving of notice, or the lapse of time, or the happening of any further condition, event or action had been satisfied.

“*Default Rate*” shall mean 4.98% per annum.

“*Environmental Legal Requirement*” shall mean any applicable local, state or federal law, common law, statute, ordinance, rule, regulation, or legally binding requirement relating to public health, safety or the environment, including, without limitation, relating to releases, discharges or

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, transportation, treatment, storage or management of solid or hazardous wastes or to exposure to toxic or hazardous materials, to the handling, transportation, discharge or release of gaseous or liquid substances and any regulation, order, notice or demand issued pursuant to such law, statute, ordinance, rule or regulation, in each case applicable to the property of the Company and its Subsidiaries or the operation, construction or modification of any thereof, including without limitation the following: the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste amendments of 1986, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Materials Transportation Act, the Solid Waste Disposal Act, all as amended, and any local, state or federal laws, statutes, ordinances, rules or regulations addressing similar matters, and any local, state or federal law, statute, ordinance, rule or regulation providing for financial responsibility for cleanup or other actions with respect to the release or threatened release of hazardous substances.

“Escrow Agent” shall mean Wells Fargo Trust Company, National Association, as Escrow Agent under the Escrow and Servicing Agreement, and its successors and assigns.

“Escrow and Servicing Agreement” shall mean that certain Escrow and Servicing Agreement dated as of the date hereof among the Company, the Mortgagee and the Escrow Agent.

“Escrow Shortfall” is defined in the Escrow and Servicing Agreement.

“Event of Default” shall mean any events specified in Section 5.1 hereof including all notice, cure and grace periods.

“Event of Loss” with respect to the Mortgaged Property shall mean any casualty or condemnation described in the Lease.

“Excepted Rights” shall mean the Company’s right prior to the occurrence of a Default or an Event of Default, but not to Mortgagee’s exclusion (1) to receive from the Tenant and the Parent Guarantor certificates, notices, financial statements and other documents and information that the Tenant or the Parent Guarantor is required to, or does, give or furnish to the Company in accordance with the Construction Agency Agreement, the Lease or the Parent Guaranty, (2) to inspect the Mortgaged Property and all records relating thereto, and to undertake repairs and maintenance of the Mortgaged Property or any part thereof, (3) except during the continuance of an Event of Default, to demand performance or observance by the Tenant, and exercise self-help remedies, under the Lease and the Construction Agency Agreement of the applicable terms, conditions and agreements of the Lease and the Construction Agency Agreement, as the case may be, as allowed by law, equity, or the Lease or Construction Agency Agreement, as the case may be, and by the Parent Guarantor under the Parent Guaranty of the applicable terms, conditions and agreements of the Parent Guaranty as allowed by law, equity or the Parent Guaranty; *provided*,

UNOFFICIAL COPY

Scannell Properties #423, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

however, the Company may not (X) accelerate payment of Rent, or (Y) give any notice, sue or pursue any remedy or take any action under the Lease that might have the effect of (A) terminating the Lease or the Parent Guaranty, (B) dispossessing the Tenant, (C) declaring the Lease or the Parent Guaranty forfeited or terminated, (D) reducing any of the Tenant's obligations under the Lease or reducing any of the Parent Guarantor's obligations under the Parent Guaranty (except with respect to Excepted Rights), or (E) adversely affecting the rights of the Company as landlord under the Lease, the value of the Mortgaged Property or the rights or interests of Mortgagee under the Operative Agreements, without in each instance Mortgagee's prior written consent, which Mortgagee may grant or withhold in its sole discretion

"*Exchange Accommodation Agreement*" shall mean, collectively, Exchange Accommodation Agreement A, Exchange Accommodation Agreement B and Exchange Accommodation Agreement C.

"*Exchange Accommodation Agreement A*" shall mean that certain Qualified Exchange Accommodation Agreement, dated as of the date hereof, between Exchange Accommodator A and TIC #1.

"*Exchange Accommodation Agreement B*" shall mean that certain Qualified Exchange Accommodation Agreement, dated as of the date hereof, between Exchange Accommodator B and TIC #2.

"*Exchange Accommodation Agreement C*" shall mean that certain Qualified Exchange Accommodation Agreement, dated as of the date hereof, between Exchange Accommodator C and TIC #3.

"*Exchange Accommodator*" shall mean, collectively, Exchange Accommodator A, Exchange Accommodator B and Exchange Accommodator C.

"*Exchange Accommodator A*" shall mean Scannell Properties #252, LLC, an Indiana limited liability company.

"*Exchange Accommodator B*" shall mean Scannell Properties #253, LLC, an Indiana limited liability company.

"*Exchange Accommodator C*" shall mean Scannell Properties #254, LLC, an Indiana limited liability company.

"*Exchange Lease*" shall mean, collectively, Exchange Lease A, Exchange Lease B and Exchange Lease C.

"*Exchange Lease A*" shall mean that certain Lease Agreement between TIC #1, as landlord and Exchange Accommodator A, as tenant, dated as of the date hereof, with respect to TIC #1's interest in the Mortgaged Property (as defined in the Note Purchase Agreement).

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

“*Exchange Lease B*” shall mean that certain Lease Agreement between TIC #2, as landlord and Exchange Accommodator B, as tenant, dated as of the date hereof, with respect to TIC #2’s interest in the Mortgaged Property (as defined in the Note Purchase Agreement).

“*Exchange Lease C*” shall mean that certain Lease Agreement between TIC #3, as landlord and Exchange Accommodator C, as tenant, dated as of the date hereof, with respect to TIC #3’s interest in the Mortgaged Property (as defined in the Note Purchase Agreement).

“*Exchange Loan*” shall mean the equity funds lent by Exchange Accommodator to the Company, as evidenced by the Exchange Loan Documentation, for the acquisition of the Mortgaged Property (as defined in the Note Purchase Agreement) in connection with the Reverse Exchange.

“*Exchange Loan Documentation*” shall mean the Exchange Promissory Note evidencing the Exchange Loan.

“*Exchange Permitted Transfer*” shall mean the transfer of one hundred percent (100%) of the ownership interests in the Company in accordance with the terms of the Exchange Accommodation Agreement.

“*Exchange Promissory Note*” shall mean, collectively, the Exchange Promissory Note A, the Exchange Promissory Note B and the Exchange Promissory Note C.

“*Exchange Promissory Note A*” shall mean that certain Promissory Note, dated as of the date hereof, made by TIC #1 in favor of Exchange Accommodator A.

“*Exchange Promissory Note B*” shall mean that certain Promissory Note, dated as of the date hereof, made by TIC #2 in favor of Exchange Accommodator B.

“*Exchange Promissory Note C*” shall mean that certain Promissory Note, dated as of the date hereof, made by TIC #3 in favor of Exchange Accommodator C.

“*Exchange Termination Date*” shall mean that certain one hundred eighty (180) days after the date of this Mortgage.

“*Exchange Transaction Documents*” shall mean, collectively, the Exchange Lease, the Exchange Promissory Note, the Exchange Accommodation Agreement and all other documents and instruments entered into by or for the benefit of the Company as contemplated by the Exchange Accommodation Agreement and/or otherwise in connection with the Reverse Exchange.

UNOFFICIAL COPY

Scannell Properties #429, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

“Existing Guarantors” shall mean the owners of the Company acting as guarantors under the Indemnity and Guaranty Agreement.

“Existing Indemnitors” shall mean the owners of the Company acting as indemnitors under the Hazardous Material Indemnity Agreement.

“Existing Owner” is defined in Section 2.3(h) of this Mortgage.

“Hazardous Material” shall mean any hazardous, toxic or harmful chemical, substance, waste, material, byproduct, pollutant, contaminant, compound or product, including without limitation, asbestos, polychlorinated byphenyls, petroleum products (including crude oil or any fraction thereof), flammable explosives, radioactive materials, mold, mildew, infectious substances or raw materials which include hazardous constituents and any other substance or material the exposure, use, disposal or handling of which is regulated by any Environmental Legal Requirement.

“Hazardous Material Indemnity Agreement” shall mean that certain Hazardous Material Indemnity Agreement dated as of the Closing Date from the Existing Indemnitors and the Company in favor of the Mortgagee.

“Improvements” means all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements, improvements and appurtenances now standing, or at any time hereafter constructed or placed, upon the Land.

“Indebtedness” of any Person shall mean, without duplication (a) all obligations of such Person for borrowed money or which have been incurred in connection with the acquisition of property or assets, (b) rents payable by such Person under all leases (whether or not capitalized on the books of such Person in accordance with generally accepted accounting principles) having a fixed term of one year or more from the original date or which are renewable or extendible by the lessee for a period or periods aggregating one year or more from the original date, (c) all indebtedness, obligations and liabilities secured by any lien existing on property owned by such Person subject to such lien, whether or not such indebtedness, obligations or liabilities have been assumed, and (d) all guarantees (whether by discount or otherwise), endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, or otherwise acquire, or become liable upon or in respect of, the indebtedness, obligations or liabilities of any Person or other entity whether or not reflected in the balance sheet of such Person.

“Indebtedness Hereby Secured” is defined in Recital C hereto.

“Indemnified Liabilities” is defined in Section 2.24 of this Mortgage.

“Indemnitor” shall mean any Existing Indemnitor or any Successor Indemnitor.

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

"Indemnity and Guaranty Agreement" shall mean that certain Indemnity and Guaranty Agreement dated as of the Closing Date from the Existing Guarantors in favor of the Mortgagee, as amended from time to time.

"Independent Manager or Member" shall mean an individual who is not at the time of his or her appointment as Independent Manager or Member and has not been at any time during the preceding five (5) years, and does not become subsequently: (i) a direct or indirect legal or beneficial holder of any stock, partnership or other equity interest in the Company or any of its Affiliates (other than ownership of publicly traded securities issued by an Affiliate of the Company so long as such ownership is not of a controlling interest in such Affiliate); (ii) a Creditor, Supplier, employee, officer, director, family member, manager (other than during the individual's tenure as Independent Manager or Member) or contractor of the Company or any of its Affiliates; or (iii) an individual who controls, directly, indirectly or otherwise, the Company or any of its Affiliates or any Creditor, Supplier, officer, director, member, manager or contractor of such Person or its Affiliates, *provided* that the Independent Manager may serve as an independent manager or member of other single purpose Affiliates of the Company.

"Investment Grade" shall mean a rating of "BBB" or better, as rated by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. or a rating of "Baa" or better, as rated by Moody's Investor Service, Inc.

"Lease" is defined in Recital B hereto.

"Lease Assignment" shall mean the assignment of the Lease, the Other Leases, the Lease Guaranties and Rents set forth in Granting Clause Second and Section 2.18 of this Mortgage.

"Lease Guarantor" is defined in Section 2.18(a) of this Mortgage.

"Lease Guaranty" is defined in Section 2.18(a) of this Mortgage.

"Loan" is defined in Section 6.12 of this Mortgage.

"Make-Whole Amount" means, with respect to the Note an amount equal to the greater of (i) an amount equal to 1.00% of the then outstanding principal amount of the Note and (ii) the excess, if any, of the Discounted Value of the Remaining Scheduled Payments on the Note with respect to the Called Principal of the Note over the amount of such Called Principal, *provided* that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

"Called Principal" means, with respect to the Note, the principal of the Note that is to be prepaid pursuant to Section 2.12 of this Mortgage or has become or is declared to be immediately due and payable pursuant to Section 5.2 of this Mortgage, as the context requires.

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

“Discounted Value” means, with respect to the Called Principal of the Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Note is payable) equal to the Reinvestment Yield with respect to such Called Principal.

“Reinvestment Yield” means, with respect to the Called Principal of the Note, 0.50% over the yield to maturity implied by (i) the yields reported, as of 10:00 A.M. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PX-1” on the Bloomberg Financial Markets (or such other display as may replace Page PX-1 on the Bloomberg Financial Markets) for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. Such implied yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the actively traded U.S. Treasury security with the duration closest to and greater than the Remaining Average Life and (2) the actively traded U.S. Treasury security with the duration closest to and less than the Remaining Average Life.

“Remaining Average Life” means, with respect to any Called Principal, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years (calculated to the nearest one-twelfth year) that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

“Remaining Scheduled Payments” means, with respect to the Called Principal of the Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the terms of the Note, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 2.12 of this Mortgage or Section 5.2 of this Mortgage.

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

“*Settlement Date*” means, with respect to the Called Principal of a Note, the date on which such Called Principal is to be prepaid pursuant to Section 2.12 of this Mortgage or has become or is declared to be immediately due and payable pursuant to Section 5.2 of this Mortgage, as the context requires.

“*Management Agreement*” is defined in Section 2.14(e) of this Mortgage.

“*Maturity Date*” is defined in the Note.

“*Mortgaged Property*” is defined in the Recitals hereto.

“*Mortgage*” shall mean Wells Fargo Trust Company, National Association, as Trustee, as Trustee under that certain Pass-Through Trust Agreement and Declaration of Trust dated as of the Closing Date, and its successors and assigns.

“*Non-Consolidation Opinion*” means the opinion of counsel delivered on the Closing Date (or upon any subsequent sale of the Mortgaged Property in accordance with Section 2.3(g)) as to the non-consolidation of the Company with its members.

“*Non-Recourse Person*” is defined in Section 6.10 of this Mortgage.

“*Note*” is defined in Recital A hereto.

“*Note Purchase Agreement*” is defined in Recital A hereto.

“*Operative Agreements*” shall mean, collectively, the Note Purchase Agreement, the Lease, the Parent Guaranty, this Mortgage, the Mortgage (as such term is defined in the Note Purchase Agreement), the Hazardous Material Indemnity Agreement, the Indemnity and Guaranty Agreement, the SNDA Agreement, the Escrow and Servicing Agreement, the Construction Agency Agreement, the Custody and Control Agreement, the Exchange Transaction Documents and the Note.

“*Organizational Documents*” of any entity shall mean (a) in the case of a corporation, the articles or certificate of incorporation (or the equivalent of such items under state law) and the by-laws of such corporation, (b) in the case of a limited liability company, the certificate or articles of existence or formation and the operating agreement of such limited liability company, (c) in the case of a limited partnership, the certificate of formation and limited partnership agreement of such limited partnership and the Organizational Documents of the general partner of such limited partnership, (d) in the case of a trust, the certificate of formation (if applicable) and the trust agreement for such trust, and (e) any equivalent documents, to the foregoing under the State law where such entity was organized or formed.

“*Other Leases*” is defined in Section 2.18(a) of this Mortgage.

“*Parent Guarantor*” shall mean not only Amazon. com, Inc., but also its successors and assigns.

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

“*Parent Guaranty*” is defined in Recital B hereto.

“*Permitted Encumbrances*” shall mean the liens described in Section 2.17 of this Mortgage.

“*Person*” shall mean an individual, partnership, limited liability company, corporation, trust or unincorporated organization.

“*Personal Property*” shall mean the personal property described in Granting Clause Fourth of this Mortgage.

“*Rents*” is defined in Section 2.18(a) of this Mortgage.

“*Restoration*” is defined in Section 4.1 of this Mortgage.

“*Restoration Funds*” is defined in Section 4.1 of this Mortgage.

“*Reverse Exchange*” – The like-kind exchange under Section 1031 of the Internal Revenue Code contemplated under the Exchange Accommodation Agreement.

“*Secondary Market Transaction*” is defined in Section 6.12 of this Mortgage.

“*Security*” shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

“*SNDA Agreement*” shall mean the Subordination, Non-Disturbance and Attornment Agreement among the Mortgagee, the Tenant and the Company.

“*Special Risk Insurer*” shall mean the issuer of the Special Risk Policy, its successors and assigns.

“*Special Risk Policy*” is defined in Section 2.15(a)(iii).

“*Subsidiary*” shall mean any Person of which more than 50% (by number of votes) of the Voting Interest is owned and controlled by the Company and/or one or more Persons which are Subsidiaries of the Company.

“*Successor Company*” is defined in Section 2.3(g) of this Mortgage.

“*Successor Indemnitor*” is defined in Section 2.3(g) of this Mortgage.

“*Successor Owner*” is defined in Section 2.3(h) of this Mortgage.

“*Supplier*” shall mean a Person who provides or has provided goods or services to the Company or Member, and any Affiliate thereof such that the total payments received by or due to such Person by the Company or Member, and such Affiliate during such Person’s immediately

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

preceding fiscal year are equal to or greater than ten percent (10%) of such Person's total annual gross revenue for such Person's immediately preceding fiscal year.

"*Taxes*" is defined in Section 2.16 of this Mortgage.

"*Tenant*" shall mean not only Amazon.com Services LLC, a Delaware limited liability company, but also its successors and assigns.

"*TIC*" is defined in the introductory paragraph to this Mortgage.

"*TIC #1*" is defined in the introductory paragraph to this Mortgage.

"*TIC #2*" is defined in the introductory paragraph to this Mortgage.

"*TIC #3*" is defined in the introductory paragraph to this Mortgage.

"*TIC Agreement*" shall mean, collectively, those certain Tenancy-in-Common Agreements dated on or about the date hereof among each of the TICs with respect to the Mortgaged Property (as defined in the Note Purchase Agreement), as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*TIC Manager*" shall mean Scannell Properties #425, LLC, a Delaware limited liability company.

"*Transfer Fee*" shall mean an amount equal to (i) if the applicable sale, transfer, exchange or disposition of the Mortgaged Property or Transfer of a controlling equity interest in the Company is the first such sale, transfer, exchange, disposition or Transfer to occur after the Closing Date, then the Transfer Fee shall be equal to 0.00% of the then outstanding principal amount of the Note, (ii) with respect to any Family Transfer, Family Conveyance, Non-Controlling Transfer or Public Company Transfer, the Transfer Fee shall be equal to \$0.00, and (iii) in any circumstance other than as described in clause (i) or (ii) above, the Transfer Fee shall be equal to 1.00% of the then outstanding principal amount of the Note.

"*Un-Advanced Principal*" shall mean on any date of determination that portion of the principal amount of the Note that is scheduled to be advanced but, as of such date, has not yet been advanced under Section 1.5 of the Note Purchase Agreement.

"*Uniform Commercial Code*" shall mean the Uniform Commercial Code as in effect in the State of Illinois, as amended.

"*Voting Interest*" shall mean Securities or equity ownership interest of any class or classes of a Person, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

SECTION 2. GENERAL COVENANTS AND WARRANTIES.

From and after the Closing Date (as defined in the Note Purchase Agreement) and continuing so long as the Indebtedness Hereby Secured, remains unpaid, the Company covenants that:

Section 2.1. Office for Notices. The Company will keep an office at 8801 River Crossing Blvd., Suite 300, Indianapolis, Indiana 46240 where notices, presentations and/or demands to or upon the Company in respect of said Note or this Mortgage may be given or made, until such time as the Company shall so notify the Mortgagee in writing of any change of location of such office.

Section 2.2. Maintenance of Existence, Rights. The Company will at all times preserve and keep in full force and effect its existence and will obtain and maintain in full force and effect all franchises, privileges, rights, licenses and permits and all other consents, approvals and authorizations of any governmental authority necessary for the ownership and efficient operation and maintenance of its business and property which failure to obtain and maintain would materially and adversely affect the properties, business, prospects, profits or condition of the Company.

Section 2.3. Negative Covenants. The Company will not:

(a) engage in any business other than the ownership, construction and development of the Mortgaged Property, the leasing of the Mortgaged Property to the Tenant and the financing thereof through the issuance of the Note, as expressly contemplated by the Operative Agreements to which the Company is a party;

(b) be or become liable in respect of any guaranty, except for any guaranties that are part of, or permitted by the Operative Agreements,

(c) incur any Indebtedness other than (i) Indebtedness Hereby Secured, (ii) Taxes not yet due and payable and items being contested pursuant to Section 2.16(b), (iii) trade payables incurred in the ordinary course of business not exceeding \$25,000.00 paid within sixty (60) days of date incurred, (iv) obligations under the Lease, (v) obligations under the Construction Agency Agreement and the Custody and Control Agreement and (vi) the Exchange Loan;

(d) make, or permit to remain outstanding, any investment, loan or advance to, or own or acquire any stock or Securities of, any Person except that the Company may make any investment, loan or advance required to be made to satisfy its obligations under the Operative Agreements to which the Company is a party, any investment of funds in the Escrow Account (as defined in the Construction Agency Agreement) as permitted by the Construction Agency Agreement and any investment of funds permitted under the Escrow and Servicing Agreement;

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

(e) pay or declare any dividend, or make any other distribution if, after giving effect thereto, a Default or Event of Default would exist;

(f) enter into any lease of any of the Mortgaged Property, whether as lessor or as lessee, other than the Lease, any sublease permitted under the Lease or the Exchange Lease;

(g) sell, transfer, exchange, subdivide or otherwise dispose of the Mortgaged Property or any part or portion thereof, except as expressly permitted by Section 5.2 of this Mortgage, *provided, however*, that in addition to sales and/or transfers permitted by this Mortgage (A) without changing the Existing Guarantors or the Existing Indemnitors, the entire Mortgaged Property may be transferred to a single purpose entity wholly owned by family members of an Existing Owner (as defined below) or trusts for estate planning purposes of an Existing Owner, so long as the Company has provided prior written notice of the identity of such family members and each such family member's reputation shall be acceptable to the Mortgagee (such transfer under this clause (A) of this Section 2.3(g) a "*Family Conveyance*") from time to time any number of times but not more frequently than once per twelve month period and (B) together with any Transfers permitted by Section 2.3(h)(C) below, an aggregate of three (3) times prior to the Maturity Date each TIC shall have the right to sell or transfer its entire interest in the Mortgaged Property to another entity (such transferee entity as described in clause (A) or (B) of this Section 2.3(g) is herein referred to as the "*Successor Grantor*"); (such sale or transfer under this clause (B) is herein referred to as a "*Non-Family Conveyance*"), and (C) any sale or transfer from one TIC to another TIC shall in each case be permitted; *provided, further*, that in connection with any such transfer or sale described in clause (A) or (B) in this Section 2.3(g) above, the following conditions are met::

(i) the Successor Company shall be a single purpose entity (the Organizational Documents of which shall contain provisions acceptable to the Mortgagee and similar to those required by the Mortgagee to be added to the Company's Organizational Documents in connection with the issuance of the Note) and shall obtain all required governmental consents, approvals and authorizations;

(ii) after giving effect to such sale or transfer, the Successor Company shall be in compliance with this Mortgage and no Default or Event of Default shall have occurred which shall then be continuing and the Successor Company shall be required to certify in writing that the representation and warranty set forth in Paragraph 22 of Exhibit B to the Note Purchase Agreement is true and correct;

(iii) the Successor Company shall assume all rights, duties and obligations of the Company under the Operative Agreements arising after the date of such assumption;

(iv) the Successor Company shall have delivered to the Mortgagee an opinion of its counsel which is satisfactory in form to the Mortgagee covering the

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

due authorization, execution, delivery and enforceability of documents entered into by the Successor Company to comply with the foregoing conditions of this paragraph (g) and covering such other related matters as the Mortgagee or special counsel to the beneficial holder of the Note may reasonably require;

(v) if the sale or transfer is a Non-Family Conveyance, (A) the Successor Company and the beneficial owner or owners of equity interests in the Successor Company (the "*Successor Indemnitors*") shall, immediately prior to such Non-Family Conveyance, be in compliance with the Minimum Liquid Assets Requirement and the Minimum Tangible Net Worth Requirement covenants as required in the Indemnity and Guaranty Agreement without giving effect to the Non-Family Conveyance and have entered into and delivered to the Mortgagee a Hazardous Material Indemnity Agreement and an Indemnity and Guaranty Agreement as applicable, in the same form as such documents delivered to the Mortgagee on the Closing Date and the reputation, creditworthiness and experience of the Successor indemnitors in real estate management and development shall be reasonably acceptable to the Mortgagee; *provided, however*, it shall not be unreasonable for the Mortgagee to reject a Successor Indemnitor that has a net worth less than ten million dollars (\$10,000,000), and (B) upon the execution and delivery of the Indemnity and Guaranty Agreement and the Hazardous Material Indemnity Agreement by the Successor Company and the Successor Indemnitors, as applicable, to the Mortgagee, the Company, the Existing Indemnitors and the Existing Guarantors shall be released from any future liability accruing from and after the effective date thereof;

(vi) each of the holders of the equity interest in the Successor Company (the "*Principals*") shall certify in writing that (w) in the immediately preceding ten (10) year period, such Principal has not been convicted of a felony and has not, and has not been the controlling person of a special purpose entity that, commenced a case under the Bankruptcy Code and has not been a party to a lawsuit with any holder of a Trust Certificate issued under the Trust Agreement or any of such holder's Affiliates, other than as co-defendant or as co-plaintiff and other than a foreclosure proceeding involving non-recourse debt, (x) such Principal has not then been accused of a felony, and (y) after giving effect to such transfer the representation and warranty set forth in Paragraph 22 of Exhibit B to the Note Purchase Agreement is true and correct;

(vii) all filings, recordings and title insurance date downs or endorsements which are deemed necessary by the Mortgagee or special counsel to the beneficial holder of the Note shall have been made in appropriate public offices;

(viii) the Company shall (A) pay to the Mortgagee a fee equal to the Transfer Fee (*provided, however*, no such fee shall be due in connection with a Family Conveyance) and (B) pay all of the reasonable legal fees and expenses of

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

the special counsel representing the beneficial holder of the Note in connection with the sale of the Mortgaged Property to the Successor Company;

(ix) the Company shall deliver to the Mortgagee a copy of a waiver executed by the Tenant pursuant to which the Tenant waives any right of first refusal, right of first offer or other purchase option (if any) vested in the Tenant pursuant to the terms of the Lease or otherwise;

(x) if required under the Special Risk Policy, the Company shall have obtained the consent of the Special Risk Insurer and the Successor Company shall have assumed all of the Company's obligations under the Special Risk Policy;

(xi) the Successor Company shall deliver to the Mortgagee (1) a copy of the written notice sent by the Successor Company to the Tenant advising Tenant of the transfer of the Mortgaged Property to the Successor Company, together with copies of the Successor Company's IRS Form W-9 and evidence of the conveyance of the Mortgaged Property to the Successor Company, in each case, submitted to Tenant in accordance with the terms of the Lease and (2) a copy of the written letter sent by the Successor Company to the Tenant advising the Tenant to continue to pay rents due under the Lease to the Mortgagee; and

(xii) all then applicable "know your customer" requirements of the Beneficiary and each holder of a Trust Certificate shall have been satisfied.

Notwithstanding anything to the contrary contained herein or in any other Operative Agreement, the Company shall not be permitted to sell the Mortgaged Property to the Tenant unless either (i) the Parent Guarantor assumes on a fully recourse basis the Company's obligations under the Note and the other Operative Agreements or the Tenant assumes such obligations on a fully recourse basis and the Parent Guarantor provides its guaranty of such obligations in substantially the same form as the Parent Guaranty, (ii) the Tenant confirms in writing that the Lease shall remain in full force and effect after giving effect to the transfer to the Tenant, or (iii) the Indebtedness Hereby Secured is paid in full in connection therewith.

If the Mortgaged Property is sold or transferred in accordance with the terms of this Section 2.3(g), then upon satisfaction of the conditions set forth therein, the transferring TIC or TICs (but, if it is a Family Conveyance, not the Existing Guarantors or the Existing Indemnitors) shall be released from all liability under this Mortgage and the other Operative Agreements, except for obligations accruing prior to the date of such sale.

(h) permit any direct or indirect holder or owner of an equity, ownership, membership, partnership, or voting interest in the Company (an "Existing Owner") to sell, transfer, exchange or otherwise dispose of such interest in any transaction or series of transactions that would result in a different Person or entity holding or owning, directly or indirectly, a controlling interest in the Company than held or owned such controlling

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

interest on the Closing Date (each a “*Transfer*”) (nothing herein shall be deemed a limitation on the transfer, directly or indirectly, of non-controlling ownership interests in the Company so long as (y) the same Person or entity holding or owning a controlling interest in the Company on the Closing Date continues to hold or own such controlling interest after giving effect to such transfer and (z) after giving effect to such transfer there is no Default or Event of Default in existence and the representation and warranty set forth in Paragraph 22 of Exhibit B to the Note Purchase Agreement is true and correct (a “*Non-Controlling Transfer*”)); *provided, however*, that (A) without changing the Existing Guarantors or the Existing Indemnitors, interests may be transferred to family members of an Existing Owner or trusts for estate planning purposes of an Existing Owner from time to time any number of times but not more frequently than once every twelve month period, so long as the Company has provided prior written notice of the identity of such family members and each such family member’s reputation shall be acceptable to the Mortgagee, (B) this Section 2.3(h) shall not prohibit the sale, transfer, exchange or other disposition of any of the equity interests in any Affiliate of the Company that are publicly traded or any sale, transfer or exchange or other disposition of any equity interests in the Company or any of its Affiliates to any Person that immediately prior to such sale, transfer or other disposition is an Affiliate of the Company (a “*Public Company Transfer*”), and (C) together with any sale or transfer of the Mortgaged Property permitted under Section 2.3(g)(B) above, an aggregate of one time prior to the maturity date of the Note the holder or holders of a controlling interest in the Company shall have the right to sell such controlling interest to another Person or entity (the “*Successor Owner*”); *provided* that in connection with such Transfer, the following conditions are met:

(i) after giving effect to the sale, the Company shall be in compliance with this Mortgage and no Default or Event of Default shall have occurred which shall then be continuing;

(ii) the Successor Owner shall have assumed the obligations of the Existing Guarantors and Existing Indemnitors under, or entered into agreements in the same form as, the Indemnity and Guaranty Agreement and the Hazardous Material Indemnity Agreement delivered on the Closing Date;

(iii) the reputation, creditworthiness and experience of such Successor Owner in real estate management and development shall be reasonably acceptable to the Mortgagee; *provided, however*, it shall not be unreasonable for the Mortgagee to reject a Successor Owner that has a net worth less than ten million dollars (\$10,000,000);

(iv) each Successor Owner shall certify in writing that (w) in the immediately preceding ten (10) year period, such Successor Owner has not been convicted of a felony or been the controlling person of a special purpose entity that commenced a case under the Bankruptcy Code and such Successor Owner has not been a party to a lawsuit with any holder of Trust Certificates issued under the Trust Agreement or any of such holder’s Affiliates, other than as co-defendant or as co-

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

plaintiff and other than a foreclosure proceeding involving non-recourse debt, (x) such Successor Owner is not then accused of a felony, and (y) such Successor Owner has made the representation, warranties and covenants set forth in paragraph 22 of Exhibit B to the Note Purchase Agreement;

(v) the Successor Owner shall (A) pay to the Mortgagee a fee equal to the Transfer Fee and (B) pay all of the reasonable legal fees and expenses of the special counsel representing the beneficial holder of the Note in connection with the sale of such interest to the Successor Owner; and

(vi) all then applicable "know your customer" requirements of the Beneficiary and each holder of a Trust Certificate shall have been satisfied; and

(vii) if required under the Special Risk Policy, the Company shall have obtained the consent of the Special Risk Insurer.

If a controlling interest in the Company is sold in accordance with the terms of Section 2.3(h)(B), then upon satisfaction of the conditions set forth therein, the Existing Owner shall be released from all liability under this Mortgage and the other Operative Agreements, except for obligations accruing prior to the date of such sale.

(i) A Transfer within the meaning of Section 2.3(h) shall not include (i) transfers of ownership interests in the Company made by devise or descent or by operation of law upon the death of a member of the Company, subject however, to all the following requirements: (A) written notice of any transfer under this Section 2.3(i) whether by will, trust or other written instrument, operation of law or otherwise, is provided to Mortgagee, together with copies of such documents relating to the transfer as Mortgagee may reasonably request, (B) control over the management and operation of the Mortgaged Property thereafter is assumed by persons who are acceptable in all respects to Mortgagee in its reasonable discretion, (C) no such transfer will release the respective estate from any liability as an Existing Indemnitor, and (D) no such transfer, death or other event has any adverse effect either on the bankruptcy-remote status of each TIC or on the status of each TIC as a continuing legal entity liable for the payment of the Indebtedness Hereby Secured and the performance of all other obligations secured hereby;

(j) institute proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against it, or file a petition under state law relating to bankruptcy or insolvency, or consent to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Company, or a substantial part of its property, or make any assignment for the benefit of creditors, or, except as required by law, admit in writing its inability to pay its debts generally as they become due, or take any company action in furtherance of any such action;

(k) amend or modify the Organizational Documents of the Company;

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

- (l) create, organize or establish any Subsidiary;
- (m) conduct its business in any manner that would likely result in the substantive consolidation of a TIC with its member or members in bankruptcy;
- (n) conduct its business in any manner such that the facts and assumptions made by the opinion giver with respect to the Company and its members in the Non-Consolidation Opinion are not true and correct in all material respects on and after the Closing Date; or
- (o) amend or modify the Exchange Transaction Documents.

Section 2.4. Mergers and Consolidations. No TIC will not consolidate with or be a party to a merger with any other Person.

Section 2.5. Financial Information and Reports. Each TIC will keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of such TIC in accordance with the accounting basis used for income tax purposes and will furnish to the Mortgagee:

- (a) As soon as available and in any event within one hundred twenty (120) days after the close of each fiscal year of the Company, copies of:
 - (i) a balance sheet of the Company (on a consolidated basis with respect to all of the TICs) as of the close of such fiscal year, and
 - (ii) a statement of operating income, retained earnings and cash flows of the Company (on a consolidated basis with respect to all of the TICs) for such fiscal year,

in each case setting forth in comparative form the figures for the preceding fiscal year, all in reasonable detail and accompanied by a certificate of an officer of the Company to the effect that such financial statements have been prepared in accordance with the accounting basis used for tax purposes, are complete and correct and present fairly, in all material respects, the financial condition of the Company; *provided*, that if the financial statements required by this paragraph (a) shall be prepared by a firm of independent public accountants, then in lieu of a statement certified by an officer of the Company, copies of such statements shall be furnished to the Mortgagee at the times required by the preceding provisions of this paragraph (a);

- (b) Within the periods provided in paragraph (a) above, the written statement of the Company, signed by an authorized officer of the Company, stating whether, to the best of his or her knowledge, there existed as of the date of such financial statements and on the date of the certificate any Default or Event of Default under this Mortgage, and

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

specifying the nature and period of existence thereof and the action the Company is taking and proposes to take with respect thereto;

(c) All items delivered to the Company in accordance with Section 4.2 of the Construction Agency Agreement; and

(d) Such additional information as the Mortgagee may reasonably request concerning the Company and the Indemnitor (including without limitation financial statements of the Indemnitor).

The Company will permit the Mortgagee (or such Persons as the Mortgagee may designate) to visit and inspect the Mortgaged Property under the Company's guidance, to examine all of its books of account, records, reports and other papers, to make copies and extracts therefrom and to discuss its affairs, finances and accounts with its officers, agents and representatives, all at such reasonable times and as often as any such holder may reasonably desire, in each case subject to the terms and conditions set forth in the Lease, *provided*, that at any time when an Event of Default shall have occurred and be then continuing, such visit and inspection shall be at the expense of the Company.

Section 2.6. Notice of Default. The Company will, immediately upon an officer or member of the Company acquiring actual knowledge of a Default or Event of Default, furnish a written notice to the Mortgagee specifying the nature and period of existence of such condition or event and what action the Company is taking or proposes to take with respect thereto.

Section 2.7. Mortgage Title Insurance Policy. The Company will, within sixty (60) days following the Closing Date, at its own cost and expense, procure and deliver to the Mortgagee or its counsel an ALTA Policy issued by a title insurance company acceptable to the Mortgagee which policy shall conform to the commitment or pro forma, as applicable, for title insurance issued to the Mortgagee in the form attached as an exhibit to the Escrow Instruction Letter delivered at Closing which policy shall be not less than the principal amount of the Note issued and delivered on the Closing Date covering the Mortgaged Property showing marketable fee title to the Mortgaged Property to be in the Company, subject only to Permitted Encumbrances, which policy shall also insure the Mortgagee against all loss or damage sustained by reason of this Mortgage not being a first and paramount lien at the date of such policy upon title to the Mortgaged Property and which policy shall show recordation of this Mortgage and the SNDA Agreement, shall be dated the Closing Date and shall otherwise be in form and substance satisfactory to the Mortgagee.

Section 2.8. Payment of Certain Taxes. The Company covenants and agrees to pay all taxes, assessments and governmental charges or levies imposed upon this Mortgage or the Note or any other Indebtedness Hereby Secured.

Section 2.9. Ownership of Mortgaged Property. The Company covenants and warrants that it has good and marketable title to the Mortgaged Property hereinbefore conveyed to the Mortgagee free and clear of all liens, charges and encumbrances whatever except Permitted Encumbrances, and the Company has full right, power and authority to grant, warrant, mortgage,

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

pledge, assign, sell, demise, bargain, hypothecate, convey, grant a security interest in, transfer and set over the same to the Mortgagee for the uses and purposes in this Mortgage set forth; and the Company will warrant and defend the title to the Mortgaged Property against all claims and demands whatsoever. Without limiting the foregoing, the Company represents and warrants that the restrictions, exceptions, reservations, limitations, interests and other matters, if any, set forth immediately following the specific descriptions of the parcels of Land, together with all other restrictions, exceptions, reservations, limitations, interests and other matters, if any, existing on the date of execution and delivery of this Mortgage, do not in the aggregate impair the value of the Mortgaged Property or adversely affect the utility, structural integrity or beneficial enjoyment of the Mortgaged Property for the uses to which the Mortgaged Property is being put.

Section 2.10. Further Assurances. The Company will, at its own expense, do, execute, acknowledge and deliver all and every further act, deed, conveyance, transfer and assurance necessary or proper for the better assuring, conveying, assigning and confirming unto the Mortgagee all of the Mortgaged Property, or property intended so to be, whether now owned or hereafter acquired.

Section 2.11. Payment of Principal and Interest. The Company will duly and punctually pay the principal of, and premium of, if any, and interest on the Note secured hereby according to the terms thereof.

Section 2.12. Prepayment of Note. No prepayment of the Note may be made except to the extent and in the manner expressly permitted by this Section 2.12.

(a) *Required Prepayment without Make-Whole Amount in the Event of Casualty, Condemnation or Tenant Purchase Prior to Completion.* In the event of a casualty or condemnation of all or a portion of the Mortgaged Property which results in a termination of the Lease (but with respect to any casualty only if permitted during the last year of the Lease Term), the Company shall prepay the Note in whole, but not in part, by payment of the principal amount of the Note then outstanding, together with accrued interest thereon to the date of such prepayment, which prepayment shall be made taking into account the proceeds paid under any insurance policies carried pursuant to this Mortgage, but without any Make-Whole Amount. In the event of a condemnation of a portion of the Mortgaged Property which does not result in a termination of the Lease, the Company shall prepay the Note in part, by payment of the principal amount of the Note then outstanding in the amount of the Real Property Award (as defined in the Lease) net of any reasonable expenses incurred by the Company in connection therewith and net of any amounts the Company is required to use to reimburse the Tenant for restoration pursuant to Section 15 of the Lease, together with accrued interest thereon to the date of such prepayment, which prepayment shall be made taking into account the proceeds paid under any insurance policies carried pursuant to this Mortgage, but without any Make-Whole Amount; upon such prepayment, the Company will prepare and deliver to the Mortgagee an updated amortization schedule that reflects such prepayment in form reasonably acceptable to the Mortgagee to replace Annex I to the Note. In the event that the Tenant purchases the Mortgaged Property or exercises its Disposition Option (as defined in the

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

Construction Agency Agreement) pursuant to Section 5.3(b) or (c) of the Construction Agency Agreement, the Company shall prepay the Note in whole, but not in part, by payment of the principal amount of the Note then outstanding, together with accrued interest thereon to the date of such prepayment, but without any Make-Whole Amount.

(b) *Optional Prepayment with Make-Whole Amount.* The Company shall have the privilege, at any time and from time to time of prepaying the outstanding Note, in whole but not in part, by payment of the principal amount of the Note, and accrued interest thereon to the date of such prepayment, together with a premium equal to the Make-Whole Amount, determined as of two (2) business days prior to the date of such prepayment pursuant to this Section 2.12(b), *provided* that (i) if the Company prepays the Note prior to the final Advance, then the Company shall pay the Make-Whole Amount calculated on the assumption that the Mortgagee had made all of the Advances when required to be made pursuant to the Note Purchase Agreement and (ii) no Make-Whole Amount shall be due in connection with any optional prepayment that occurs during the 180 consecutive day period immediately prior to the Maturity Date.

(c) *Optional Prepayment without Make-Whole Amount in the Event of Rent Reduction due to Reduced Total Project Costs.* If the Tenant delivers a Funding Adjustment Notice (as defined in the Construction Agency Agreement) pursuant to Section 4.1(d) of the Construction Agency Agreement or is obligated to pay Savings (as defined in the Construction Agency Agreement) to the Company pursuant to Section 7.1 of the Construction Agency Agreement, in each case such that the Base Rent is reduced as contemplated under Section 4.1(d) or 7.1, as applicable, of the Construction Agency Agreement and such reduced monthly Base Rent would not then be sufficient to pay an amount equal to the sum of the monthly amounts scheduled to be due under the Note plus the Monthly Servicing Fee (as defined in the Escrow and Servicing Agreement) (such amounts on the Note plus the Monthly Servicing Fee are herein referred to as the "*Monthly Minimum Debt Service*"), then the Company may prepay an amount up to the Permitted Portion (as defined below) of the then outstanding principal amount of the Note, by payment of such Permitted Portion of the principal amount of the Note then outstanding, together with accrued interest thereon to the date of such prepayment, but without any Make-Whole Amount, provided that if the amount of the Savings paid to the Company pursuant to Section 7.1 of the Construction Agency Agreement exceeds the Permitted Portion, the Company may prepay the then outstanding principal amount of the Note by the amount of such Savings, together with accrued interest thereon to the date of such prepayment and the Make-Whole Amount, if any, on the portion of such Savings that exceed the Permitted Portion. The term "*Permitted Portion*" as used in this Section 2.12(c), shall mean a portion of the principal amount of the Note, not to exceed in any event \$18,428,593.44, such that after giving effect to such prepayment, the Base Rent shall be sufficient to cover in full in each instance the Monthly Minimum Debt Service so that the then remaining principal amount of the Note will be fully amortized to an amount equal to not more than 5% of the principal amount of the Note outstanding after giving effect to such prepayment and all interest on the Note if accrued at the original interest rate shall be

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

paid in full by the Maturity Date. Following a prepayment of the Loan in accordance with this Section 2.12(c), any remaining amounts from the Adjustment Amount (as defined in the Construction Agency Agreement) may be disbursed to the Company.

(d) *Notice of Prepayments.* The Company will give notice of any intended prepayment of the Note pursuant to Section 2.12(b) or (c) above, as the case may be, to the Mortgagee not less than thirty (30) days (in the case of a prepayment in accordance with clause (b) above) or eight (8) Business Days (in the case of a prepayment in accordance with clause (c) above) nor, in either such case, more than sixty (60) days before the date fixed for such prepayment to the Mortgagee, in each case specifying (i) such date, (ii) the principal amount of the Note to be prepaid on such date, (iii) that a premium may be payable (in the case of a prepayment pursuant to Section 2.12(b)), (iv) the date as of which such premium will be calculated, if applicable, and (v) the accrued interest applicable to the prepayment. In the case of a prepayment pursuant to Section 2.12(b), such notice shall be accompanied by a written request that the Mortgagee calculate the estimated premium due with respect to the Note in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Upon receipt of such request, the Mortgagee shall, within ten (10) Business Days thereafter, provide to the Company a detailed calculation of the estimated premium. Notice of prepayment having been so given, the principal amount of the Note specified in such notice, together with accrued interest thereon and, in the case of Section 2.12(b), the premium, if any, payable with respect thereto shall become due and payable on the prepayment date specified in said notice, subject to any conditions specified in such notice of prepayment relating to the closing of another transaction that is providing funding for such prepayment; *provided* that, if the Mortgagee is not provided written notice of any delay or cancellation of such prepayment until after the day that is two (2) Business Days prior to the specified date of such prepayment, the Company shall reimburse the Mortgagee for any actual out-of-pocket expenses incurred by the Mortgagee as a result of cancelling any contracts or arrangements entered into in anticipation of receiving such prepayment, but such expenses shall not in any event include any lost opportunity or lost profit expense. Not later than three (3) Business Days prior to the prepayment date specified in such notice, the Mortgagee shall, in the case of Section 2.12(b), provide the Company written notice of the premium, if any, payable in connection with such prepayment and, whether or not any premium is payable, a reasonably detailed computation of the Make-Whole Amount due with respect to the Note in connection with such prepayment.

Section 2.13. Method and Place of Payment of Principal and Interest. Anything in the Note or this Mortgage to the contrary notwithstanding, the Company will promptly and punctually pay, or cause the Escrow Agent to pay, the principal of the Note and premium, if any, and interest thereon, without any presentment thereof, at the address set forth for payment on Schedule I attached to the Escrow and Servicing Agreement (or to any nominee designated by the Mortgagee) as payee, at its address specified in writing to, and received by, the Company at least ten (10) days prior to the date fixed for such payment) and if a bank account is designated for the Mortgagee in said Schedule I, payments will be made in immediately available funds to such bank account, or

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

payments will be made in such other manner or such other place within the continental limits of the United States as the Mortgagee may reasonably direct in writing. If the Mortgagee shall sell or transfer the Note, the Mortgagee will notify the Company of such action and of the name and address of the transferee of the Note and the Mortgagee will, prior to the delivery of the Note, make a notation on the Note of the date to which interest has been paid on the Note and, if not previously made, a notation on the Note of the extent to which any payment has been made on account of the principal of the Note.

Section 2.14. Maintenance of Mortgaged Property, Other Liens, Compliance with Laws, Etc. (a) The Company shall (i) subject to Sections 3 and 4 hereof, promptly repair, restore or rebuild or cause any such repair, restoration or rebuilding of, any buildings or improvements now or hereafter located on the Mortgaged Property which may become damaged or be destroyed, (ii) keep, or cause to be kept, the Mortgaged Property in good condition and repair, ordinary wear and tear excepted, without waste, and free from all claims, liens, charges and encumbrances other than Permitted Encumbrances, (iii) pay, or cause to be paid, when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property which does not constitute a Permitted Encumbrance, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee, (iv) comply with, or cause to be complied with, all requirements of law or municipal ordinances with respect to the Mortgaged Property and the use thereof (including, without limitation, any law or municipal ordinance with respect to environmental protection or hazardous wastes), (v) promptly procure, maintain and comply with, or cause to be promptly procured, maintained and complied with, all permits, licenses and other authorizations required for the use of the Mortgaged Property or any erection, installation, operation and maintenance of the Mortgaged Property or any part thereof, and (vi) make no material alterations in said Mortgaged Property except as required by law or municipal ordinance or as permitted under the Lease or the Construction Agency Agreement; *provided, however* that so long as the Mortgaged Property is subject to the Lease, (A) the requirements with respect to the maintenance, repair, restoration and rebuilding of the Mortgaged Property contained in this Section 2.14 shall be satisfied by the maintenance, repair, restoration and rebuilding of the Mortgaged Property in accordance with and to the extent provided in the Lease and (B) the exercise by Tenant of any right granted to it under the Lease or the Construction Agency Agreement, including, without limitation, any contest rights and rights regarding the ability to make alterations to the Mortgaged Property, shall not give rise to a default under this Mortgage if such right is exercised in compliance with the Lease or the Construction Agency Agreement, as applicable, so long as neither the lien nor the priority of this Mortgage is impaired by the exercise of such rights.

(b) The Company may, or may permit the Tenant to, (i) construct upon the Mortgaged Property additional buildings, structures and other improvements and (ii) install, assemble and place upon the Mortgaged Property any trade fixtures, signs, furniture, furnishings, equipment, machinery, inventory and other tangible personal property used or useful in the business of the Company or the Tenant or any subtenant, as the case may be, whether or not classified as fixtures under applicable law. All such buildings, structures and other improvements shall be and remain part of the realty and shall be subject to this Mortgage. Such trade fixtures, signs, furniture, furnishings,

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

equipment, machinery, inventory and other tangible personal property shall be and remain the property of the Company or the Tenant as the case may be, shall not be deemed part of the Mortgaged Property for purposes of condemnation or casualty, and the Company or the Tenant, as the case may be, may remove the same from the Mortgaged Property at any time prior to the expiration or earlier termination of this Mortgage, *provided* that the Company, at its expense, shall repair or shall cause the Tenant to repair any damage to the Mortgaged Property resulting from such removal.

(c) Any repair, restoration, rebuilding, substitution, replacement, modification, alteration of or addition to the Mortgaged Property pursuant to this Section 2.14 must not change the fundamental character or utility of the Mortgaged Property; shall be expeditiously performed in a good and workmanlike manner and be completed in compliance with all laws, ordinances, orders, rules, regulations and requirements applicable thereto, including to the extent necessary to maintain in full force and effect the policies of insurance required by Section 2.15 hereof. All costs and expenses of each such repair, restoration, rebuilding, substitution, replacement, the discharge of all liens filed against the Mortgaged Property arising out of the same, together with all costs and expenses necessary to obtain any permits or licenses required in connection therewith shall be promptly paid by the Company or the Tenant.

(d) The Company will only use and operate the Mortgaged Property, or permit the same to be used and operated, for any lawful purpose. The Company will not initiate, join in, acquiesce in, or consent to any change in any legal requirements, limiting or defining the use that may be made of the Mortgaged Property without the express written consent of the Mortgagee (which consent shall not be unreasonably withheld). If, under applicable zoning provisions, the use of all or a portion of the Mortgaged Property is or will become a nonconforming use, the Company will not cause or permit such nonconforming use to be discontinued or abandoned without the Mortgagee's express written consent.

(e) Prior to entering into any management agreement or other agreement with respect to the management of the Mortgaged Property (a "*Management Agreement*"), the Company shall execute and deliver to Mortgagee, or cause to be executed and delivered to Mortgagee, a Subordination of Management Agreement, in form and substance satisfactory to Mortgagee, pursuant to which the party who shall act as manager of the Mortgaged Property under such Management Agreement shall, among other things, subordinate its right to payment for services rendered in managing the Mortgaged Property to the payment of the debt service to Mortgagee with respect to the Note.

Section 2.15. Insurance. (a) The Company will continuously maintain, or will cause to be continuously maintained, the following-described insurance coverage, all of which must be satisfactory to the Mortgagee as to form of policy, amounts, deductibles, sublimits, types of coverages, exclusions and companies underwriting these coverages:

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

(i) Insurance with respect to the Improvements and Personal Property insuring against any peril now or hereafter included within the classification "Cause of Loss – Special Form" (sometimes referred to as "All Risk of Physical Loss"), including coverage for windstorm, hurricane and mold (provided that the sublimit for mold shall be consistent with industry standards but shall be not less than \$1,000,000) and without exclusion for terrorism and together with an "Ordinance and Law" endorsement, in amounts at all times sufficient to prevent Mortgagee from becoming a co-insurer within the terms of the 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 Personal Property, the term "full insurable value" to mean the actual replacement cost of the Improvements and Personal Property (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by an insurer, a recognized independent insurance broker or an independent appraiser selected and paid by the Company and in no event less than the coverage required pursuant to the terms of the Lease;

(ii) Comprehensive public liability insurance on an "*occurrence basis*" or a "*claims made basis*" against claims for "*personal injury*" including without limitation bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, *provided* that such insurance shall afford immediate minimum protection in the following amounts: \$1,000,000 combined single limit per occurrence, with a \$2,000,000 general aggregate limit, with \$5,000,000 commercial umbrella/excess liability coverage; provided that, prior to the earlier of (A) the date of the Completion Date (as defined in the Construction Agency Agreement), and (B) the date that Tenant occupies the Premises or any part thereof, the Company shall not be obligated to provide the liability insurance described in this clause (ii) so long as the Developer (as defined in the Construction Agency Agreement) or the Tenant is obligated to provide, or cause to be provided, liability insurance pursuant to the Development Management Agreement (as defined in the Construction Agency Agreement);

(iii) During such time as any construction or reconstruction on the Mortgaged Property or major repair of the Mortgaged Property is being undertaken, builder's completed value risk insurance against "all risks of physical loss", including, without limitation, collapse coverage, with annual deductibles not to exceed \$25,000 (\$250,000 deductible for flood windstorm and earthquake and for terrorism such deductible as is the commercially available at commercially available rates) in non-reporting form, covering the total value of any work performed on equipment, supplies and materials incorporated or to be incorporated into the Mortgaged Property and said policy of insurance shall contain the "permission to occupy upon completion of work or occupancy" endorsement; and

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

(iv) Non-cancelable insurance against a condemnation of the Mortgaged Property which results in a termination of the Lease or an abatement of or reduction in rent in an amount not less than the unamortized principal balance of the Note (the "*Special Risk Policy*").

(b) Any insurance coverage maintained in accordance with Section 2.15(a) shall at all times be written by insurance companies of recognized national standing and with a claims paying ability of A- or better by according to S&P (or an equivalent rating by an NAIC-approved rating organization) and authorized to do business in the State of Illinois and: (A) shall name the Company and the Mortgagee as insureds, additional insureds or loss payee (as applicable), as their interests may appear, (B) in the case of policies covering loss or damage to the Mortgaged Property, shall provide that such losses, if any, shall be payable solely to the Mortgagee or, at the direction of the Mortgagee, the depository under a standard mortgagee or beneficiary loss payable clause satisfactory to the Mortgagee, (C) shall provide that the Mortgagee's interest shall be insured regardless of any breach or violation by the Company of any warranties, declarations or conditions contained in such policies, (D) such insurance, as to the interest of the Mortgagee therein, shall not be invalidated by the use or operation of the Mortgaged Property for purposes which are not permitted by such policies, nor by any foreclosure or other proceedings relating to the Mortgaged Property, nor by change in title to or ownership of the Mortgaged Property, (E) the insurers shall waive any right of subrogation of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Company, (F) if any premium or installment is not paid when due, or if such insurance would lapse or be canceled, terminated or materially changed for any reason whatsoever, the insurers will promptly notify the Mortgagee and any such lapse, cancellation, termination or change shall not be effective as to the Mortgagee for thirty (30) days after receipt of such notice, (G) appropriate certification shall be made to the Mortgagee by each insurer with respect thereto, and (H) shall provide for deductibles in amounts not in excess of amounts as is customary for companies similarly situated and owning properties in the State of Illinois similar to the Mortgaged Property; *provided, however,* notwithstanding the foregoing, any insurance coverage maintained in accordance with Section 2.15(a)(i), (ii) and (iii) may be maintained by the Tenant with third party insurance companies or Tenant may self-insure, in each case, in accordance with the terms of the Lease and, prior to the Completion Date, may be maintained, or be caused to be maintained, by the Developer in accordance with the Development Management Agreement, and so long as such insurance is maintained in accordance with such agreements, the Company shall be deemed to be in compliance with the requirements under Section 2.15(a)(i), (ii) and (iii) hereunder. Provided no Default or Event of Default has occurred or is continuing, the loss, if any, under any policy pertaining to loss by reason of damage to or destruction of any portion of the Mortgaged Property shall be adjusted with the insurance companies by the Company, subject to the reasonable approval of the Mortgagee if the loss exceeds \$50,000. The loss so adjusted shall be paid to the Mortgagee pursuant to said loss payable clause unless said loss is \$50,000 or less in which case said loss shall be paid directly to the Company, *provided* no Default or Event of Default has

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

occurred and is continuing, in which event any such loss shall be paid to the Mortgagee. Notwithstanding the foregoing or anything contained herein to the contrary, so long as the Lease, the Construction Agency Agreement and/or the Development Management Agreement is in effect, the terms of those agreements with respect to builder's risk, casualty and liability insurance, including the settlement thereof and the application of proceeds therefrom and the procurement of builder's risk insurance by the Developer or the General Contractor, shall govern, and so long as the Tenant, Developer and/or General Contractor is in compliance with such provisions, the Company shall be deemed to be in compliance with this Section 2.15 with respect to the insurance coverage described in Section 2.15(a)(i), (ii) and (iii).

(c) The Company shall furnish the Mortgagee with certificates or other satisfactory evidence of maintenance of the insurance required hereunder (including, without limitation, evidence of self-insurance by the Tenant, in accordance with the requirements of the Lease, if applicable) and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal not less than thirty (30) days prior to the expiration date of the original policy or renewal policies. All such policies shall provide that the same shall not be canceled without at least thirty (30) days' prior written notice to each insured named therein.

Section 2.16. Payment of Taxes and Other Charges. (a) The Company will pay and discharge (if they are not otherwise paid by Tenant under the Lease), before the same shall become delinquent, together with interest and penalties thereon, if any, (i) all taxes, assessments (including assessments for benefits from public works or improvements whenever begun or completed), levies, fees, water, sewer, electrical and other utility service rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, and whether or not within the contemplation of the parties hereto, which are at any time levied upon or assessed against it or the Mortgaged Property or any part thereof or upon this Mortgage or the Note secured hereby, or upon the revenues, rents, issues, income and profits in respect of the Mortgaged Property, or arising in respect of the occupancy, use or possession thereof, which failure to pay would result in the creation of a lien upon the Mortgaged Property or any part thereof, or upon the revenues, rents, issues, income and profits of the Mortgaged Property or in the diminution thereof or would result in any material interference with the use or operation of the Mortgaged Property by the Company, (ii) all franchise, excise and other taxes, fees and charges assessed, levied or imposed in respect of its existence or its right to do business in any state, (iii) all income, excess profits, excise, sales, franchise, gross receipts and other taxes, duties or imposts, whether of a like or different nature, assessed, levied or imposed by any governmental authority on it or the Mortgaged Property, or any portion thereof, or upon the revenues, rents, issues, income and profits of the Mortgaged Property if the failure to pay any such tax, duty or impost might result in the creation of a lien upon any asset of the Company or the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or in the diminution thereof, and whether or not any such tax, duty or impost is payable directly by the Company or is subject to withholding at the source and (iv) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might result in the creation of a lien on the Mortgaged Property or upon

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

the revenues, rents, issues, income and profits of the Mortgaged Property and, in general, will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of the Company, without expense to the Mortgagee (items (i) through (iv), inclusive, are collectively, the "Taxes").

(b) After prior written notice to the Mortgagee, the Company, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, *provided* that (i) no Event of Default has occurred and is continuing under any of the Operative Agreements, (ii) such proceeding shall suspend the collection of the Taxes from the Company and from the Mortgaged Property or the Company shall have paid all of the Taxes under protest, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Company is subject and shall not constitute a default thereunder, (iv) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost and (v) the Company shall have maintained adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless the Company has paid all of the Taxes under protest, or the Company shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by the Mortgagee to insure the payment of any contested Taxes, together with all interest and penalties thereon. Nothing in this Section 2.16(b) shall prohibit the Tenant from contesting the payment of Taxes to the extent the Tenant is permitted to do so under the terms and conditions of the Lease or the Construction Agency Agreement, and the Company shall not be deemed in default of its obligations hereunder so long as Tenant is diligently contesting the payment of such Taxes in compliance with the terms of the Lease or the Construction Agency Agreement.

Section 2.17. Limitation on Liens. The Company will not create or incur or suffer to be incurred or to exist, any mortgage, pledge, security interest, encumbrance, lien or charge of any kind upon the Mortgaged Property, whether now owned or hereafter acquired, or upon any income or proceeds therefrom, except the following:

(a) liens for property taxes and assessments or governmental charges or levies and liens securing claims or demands of mechanics and materialmen, provided that payment thereof is not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings;

(b) liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Company shall at any time in good faith be prosecuting an appeal or proceeding for a review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;

(c) liens, charges, encumbrances and priority claims incidental to the conduct of business or the ownership of properties and assets (including warehousemen's and

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

attorneys' liens and statutory landlords' liens) and deposits, pledges or liens to secure payment of premiums on insurance purchased in the usual course of business or in connection with self-insurance or in connection with workmen's compensation, unemployment insurance or social security legislation, or to secure the performance of bids, tenders or trade contracts, or to secure statutory obligations, surety or appeal bonds or other liens of like general nature incurred in the ordinary course of business and not in connection with the borrowing of money, *provided* in each case, the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings;

(d) minor survey exceptions or minor encumbrances, easements or reservations of, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real properties, which encumbrances, easements, reservations, rights and restrictions do not in the aggregate materially detract from the value of said properties or materially impair their use in the operation of the business of the Company;

(e) the lien of this Mortgage and the other Operative Agreements;

(f) the lien of the Lease, subject to the SNDA Agreement;

(g) the lien of any permitted sublease from the Tenant, as sublessor, to any Person, as sublessee; *provided* that the lien thereof shall be subject to the terms of the Lease and the SNDA Agreement;

(h) easements, rights of way, reservations, restrictive agreements, servitudes and rights of others against the Mortgaged Property and any other matters which are listed on Schedule B to the ALTA Title Insurance Policy delivered to the Mortgagee following the issuance and delivery of the Note; and

(i) utility easements, rights of way or reservations granted or to be granted to service providers in connection with the development of the Mortgaged Property, which such utility easements, rights of way or reservations do not in the aggregate detract from or impair the value of or use of the Mortgaged Property and have been approved in writing by the Tenant.

Section 2.18. Assignment; Obligations and Terms Respecting the Lease, the Other Leases and the Lease Guaranties; Automatic Put; Exchange Transaction Documents.

(a) *Assignment.* In addition to, and not in contravention of, Granting Clause Second of this Mortgage, the Company, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to further secure the payment and performance by the Company of all Indebtedness Hereby Secured hereby absolutely and unconditionally assigns, transfers and grants to the Mortgagee the following property, rights, interests and estates, now owned, or hereafter acquired, by the Company:

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

(i) *Lease.* The Lease and the right, title and interest of the Company, its successors and assigns, therein and thereunder.

(ii) *Other Leases and Agreements.* All other leases, subleases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Mortgaged Property or any portion thereof now or hereafter made, together with any extension, renewal or replacement of the same (collectively, the "*Other Leases*"), this assignment of the Other Leases being effective without further or supplemental assignment.

(iii) *Rents.* All rents, additional rents, percentage rents, revenues, income, proceeds, payments, reimbursable amounts, issues and profits arising from the Lease, the Other Leases and the Lease Guaranties and any cash or security deposited in connection therewith (including, without limitation, all commissions and all oil and gas and other mineral royalties and bonuses) payable by the Tenant under the Lease or any other tenant under the Other Leases or any Lease Guarantor under any Lease Guaranty or otherwise, for or in connection with the use, enjoyment and occupancy of the Mortgaged Property (collectively, the "*Rents*").

(iv) *Bankruptcy Claims.* All of the Company's claims and rights (the "*Bankruptcy Claims*") to the payment of damages arising from any rejection by the Tenant of the Lease or any other tenant under the Other Leases under the Bankruptcy Code, 11 U.S.C. §101 *et seq.*, as the same may be amended (the "*Bankruptcy Code*") or under any comparable federal or state statute or law.

(v) *Lease Guaranties.* All of the Company's right, title and interest in and to any and all lease guaranties, letters of credit and any other credit support given in connection with the Lease and the Other Leases to the Company or predecessors including, without limitation, the Parent Guaranty (individually, a "*Lease Guaranty*", and, collectively, the "*Lease Guaranties*") by any guarantor including, without limitation, the Parent Guarantor (individually, a "*Lease Guarantor*," and, collectively, the "*Lease Guarantors*").

(vi) *Proceeds.* All proceeds from the sale or other disposition of the Lease, the Other Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(vii) *Other.* All rights, powers, privileges, options and other benefits of the Company as lessor under the Lease and the Other Leases and beneficiary under the Lease Guaranties, including without limitation, (A) the immediate and continuing right to make claims for, receive, collect and receipt for, all Rents payable or receivable under the Lease and the Other Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Indebtedness Hereby Secured) and to do all other things which the Company or any lessor is or may become entitled to do under the Lease, the Other

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

Leases or the Lease Guaranties; (B) the right to pursue and collect any claim in bankruptcy or receivership proceedings of the Tenant, any other tenant under the Other Leases or any Lease Guarantor; (C) the right to accept or reject any offer made by the Tenant, any other tenant under the Other Leases or any Lease Guarantor to purchase the Mortgaged Property or any part thereof and any other property subject to the Lease, the Other Leases or any Lease Guaranty and to perform all other necessary or appropriate acts with respect to such purchases; (D) the right to make all waivers and agreements, to give and receive all notices, consents and releases, and to take such action upon the happening of a default beyond applicable cure periods, if any, under the Lease, the Other Leases or any Lease Guaranty as the Company shall have the right under the Leases, the Other Leases or any Lease Guaranty or at law to take, including the right to commence, conduct and consummate eviction proceedings; (E) the right, at Mortgagee's option to enter upon the Mortgaged Property or any portion thereof in person, by agent or by court-appointed receiver; and (F) the Company's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in this Mortgage and any or all other actions designated by Mortgagee for the proper management and preservation of the Mortgaged Property.

(viii) *Exchange Transaction Documents.* The Exchange Transaction Documents and the right, title and interest of the Company, its successors and assigns, therein and thereunder.

This assignment is a perfected present, absolute, direct and unconditional assignment and transfer of all the Company's right, title and interest in and to but not the obligations under, the Lease, the Other Leases, the Lease Guaranties and the Rents made in consideration of the loan by Mortgagee to the Company and as additional security for the repayment of the Indebtedness Hereby Secured.

(b) *Obligations and Terms Respecting the Lease, the Other Leases, the Lease Guaranties and the Construction Agency Agreement.*

(i) At all times the Mortgaged Property shall be leased to the Tenant under the Lease, provided that, to the extent permitted thereby and by the SNDA Agreement, the Lease may be assigned or the Mortgaged Property sublet by the Tenant upon the terms and conditions set forth in the Lease and in the SNDA Agreement. The Company will perform all obligations, covenants and agreements by it to be performed as and when required under the Lease, the Other Leases, the Lease Guaranties and the Construction Agency Agreement strictly in accordance with the terms thereof, and, subject to the terms of the Operative Agreements regarding required consents from the Mortgagee to certain actions and to all requirements of applicable law, will at all times do all things reasonably necessary to compel performance by the Tenant, any other tenant under the Other Leases and the Lease Guarantors of all covenants and agreements by them to be performed under the Lease, the Other Leases, the Lease Guaranties and the Construction

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

Agency Agreement, as applicable. The Company will take no action and permit no action to be taken by other Persons which will release the Tenant, any other tenant under the Other Leases or any Lease Guarantor from their obligations and liabilities under the Lease, the Other Leases, the Lease Guaranties or the Construction Agency, as applicable, or result in the termination, amendment or modification of, or impair the validity of, the Lease, the Other Leases, the Lease Guaranties or the Construction Agency Agreement, as applicable, other than (i) a termination of the Lease pursuant to an express provision thereof, (ii) a termination of the Construction Agency Agreement pursuant to an express provision of Section 2.6 thereof or any termination of the Construction Agency Agreement after the Completion Date (as defined in the Construction Agency Agreement) in accordance with an express provision thereof, (iii) an amendment to the Lease pursuant to clause (vi) of the first sentence of Section 4.2 of the Construction Agency Agreement, and (iv) terminations of the Lease and the Construction Agency Agreement as a result of the effectuation of the Automatic Put (as defined below). The Company will give to the Mortgagee notice of all defaults by the Tenant, any other tenant under the Other Leases or any Lease Guarantor, as applicable, under the Lease, the Other Leases, the Lease Guaranties or the Construction Agency Agreement, promptly after they have become known to the Company. Neither this Mortgage nor any action or inaction on the part of the Mortgagee shall constitute an assumption on the part of the Mortgagee of any obligation to the Tenant, any other tenant under the Other Leases or any Lease Guarantor or any other Person under the Lease, the Other Leases, the Lease Guaranties or the Construction Agency Agreement. No action or inaction on the part of the Company shall adversely affect or limit in any way the rights of the Mortgagee under this Mortgage, or, through this Mortgage, under the Lease, the Other Leases, the Lease Guaranties or the Construction Agency Agreement.

(ii) The Company will not, except with the prior written consent of the Mortgagee, take or suffer to be taken any action or consent to or permit any prepayment or discount of Rents or payment of Rents more than one month in advance, under the Lease, the Other Leases or the Lease Guaranties, *provided* that so long as the Lease is in effect, this subparagraph (ii) shall not apply to any subleases of the Mortgaged Property or any Lease Guaranties related thereto.

(iii) The Company will not, without the prior written consent of the Mortgagee:

(A) declare a default or exercise the remedies of the landlord or beneficiary under, or terminate, modify or accept a surrender of, or exercise any recapture rights with respect to, or offer or permit any termination, modification or surrender of, the Lease or the Construction Agency Agreement (other than (i) a termination of the Lease pursuant to an express provision thereof, (ii) a termination of the Construction Agency Agreement

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

pursuant to an express provision of Section 2.6 thereof or any termination of the Construction Agency Agreement after the Completion Date (as defined in the Construction Agency Agreement) in accordance with an express provision thereof, (iii) an amendment to the Lease pursuant to clause (viii) of the first sentence of Section 4.2 of the Construction Agency Agreement, and (iv) terminations of the Lease and the Construction Agency Agreement as a result of the effectuation of the Automatic Put (as defined below)), the Other Leases or the Lease Guaranties, or (except for easements or covenants or similar agreements running with the land that will benefit the Mortgaged Property and do not impair the value of or use of the Mortgaged Property in any material respect and have been approved in writing by the Tenant (which approval may be by email) or are otherwise permitted under the Lease) any reciprocal easement or restrictive covenant agreement or similar agreement running with the land or create or consent to the creation or existence of any mortgage or other lien to secure the payment of indebtedness upon the landlord's interest under the Lease or the leasehold estate created thereby, Other Leases, the Lease Guaranties or the Construction Agency Agreement or any part thereof, subject, however, to Tenant's rights to assign its interest in the Lease in accordance with the terms thereof and to sublease the Mortgaged Property in accordance with the terms thereof; or

(B) other than to the Mortgagee, assign, transfer or hypothecate any Rents or other payment due or to become due under the Lease, the Construction Agency Agreement, the Other Leases or the Lease Guaranties or anticipate any Rents or other payment thereunder, subject, however, to the rights of the Tenant under the Lease to any payments under any sublease or Lease Guaranty thereof;

provided, that so long as the Lease is in effect, the terms of this subparagraph (iii) shall not apply to any subleases of the Mortgaged Property or any Lease Guaranties related thereto.

(iv) The Company acknowledges that the Mortgagee has directed the Tenant in a letter of direction to deliver or remit directly to the Escrow Agent, all Rents (including, without limitation, all fixed rent, basic rent, percentage rent and all additional rent), income, revenues, issues, profits, insurance proceeds, condemnation awards, liquidated damages, purchase price proceeds and other payments, tenders and security now or hereafter due and payable to or receivable by the Company under the Lease (other than payments set forth in clause (4) of the definition of Excepted Rights), such amounts to be paid directly to the Escrow Agent in the manner provided therein or in such other manner as the Mortgagee may from time to time designate in writing to the Tenant and the Company. All amounts received by the Escrow Agent shall be applied in the manner provided

UNOFFICIAL COPY

Scannell Properties #425, LLC
Scannell Properties #430, LLC
Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement

herein, in the SNDA Agreement and in the Escrow and Servicing Agreement. The Company hereby agrees to send to the Mortgagee, in accordance with Section 6.3 hereof, copies of all notices and all other instruments or written communications required or permitted to be given by the Company under the Lease, the Other Leases, the Lease Guaranties and the Construction Agency Agreement pursuant thereto.

(v) Notwithstanding anything to the contrary set forth in the SNDA Agreement or any other document, the Company agrees that it will not enter into any agreement subordinating, amending, supplementing, hypothecating, waiving, discharging or terminating the Lease, the Other Leases, any Lease Guaranty, the Construction Agency Agreement or this Mortgage without the Mortgagee's prior written consent thereto, and that any attempted subordination, amendment, supplement, hypothecation, waiver, discharge or termination without such consent shall be void other than (i) terminations of the Lease pursuant to an express provision thereof, (ii) terminations of the Construction Agency Agreement pursuant to an express provision of Section 2.6 thereof or any termination of the Construction Agency Agreement after the Completion Date (as defined in the Construction Agency Agreement) in accordance with an express provision thereof, (iii) terminations of the Lease and the Construction Agency Agreement as a result of the effectuation of the Automatic Put, and (iv) an amendment to the Lease pursuant to clause (viii) of the first sentence of Section 4.2 of the Construction Agency Agreement. The Company will not terminate the Lease, the Construction Agency Agreement or any Lease Guaranty or take possession of the Mortgaged Property in the event of default without the express prior written consent of the Mortgagee. So long as the Lease is in effect, this subparagraph (v) shall not apply to any subleases of the Mortgaged Property or any Lease Guaranties related thereto. In the event that the Lease, the Other Leases, any Lease Guaranty or the Construction Agency Agreement shall be amended or supplemented as herein permitted, the Lease, the Other Leases, the Lease Guaranties and the Construction Agency Agreement, as so amended or supplemented shall continue to be subject to the provisions of this Mortgage without the necessity of any further act by any of the parties hereto.

(vi) The Lease Assignment set forth in this Section 2.18 and Granting Clause Second of this Mortgage shall run with the land and be good and valid against the Company or those claiming by, under or through the Company, from the date hereof and such assignment shall continue to be operative during the foreclosure or any other proceeding taken to enforce this Mortgage. In the event of a sale or foreclosure which shall result in a deficiency, such assignment shall stand as security during the redemption period for the payment of such deficiency. The Mortgagee shall be permitted, at its sole option, to exercise remedies under such assignment separately from remedies exercised against other portions of the Mortgaged Property.

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

(vii) If the Completion Date shall fail to occur, on or prior to November 30, 2022, the Company shall on November 30, 2022 declare a Major Construction Period Event of Default (as such terms are defined in the Construction Agency Agreement) and shall otherwise diligently and in good faith at its sole cost and expense exercise remedies under Section 5.3 of the Construction Agency Agreement (the "*Automatic Put*"), unless otherwise the Mortgagee, in its sole discretion, sends a notice to the Company directing the Company to not exercise such remedies ("*Remedies Termination Notice*") (it being understood that, unless the Mortgagee sends a Remedies Termination Notice, in all events the Company may exercise the Automatic Put without any consent or direction of the Mortgagee, even if the Mortgagee waives the Company's obligation to so exercise the Automatic Put pursuant to this Section 2.18(b)(vii), unless otherwise agreed in writing by the Company), and the Company does hereby irrevocably constitute and appoint the Mortgagee its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to then declare a Major Construction Period Event of Default with full power to sue for, settle, adjust or compromise any claim under the Construction Agency Agreement as surely as the Company could itself do and to endorse the name of the Company on all documentation pertaining thereto, and in its discretion to file any claim or take any other action or proceedings either in its own name or in the name of the Company or otherwise, which the Mortgagee may deem necessary or appropriate to protect and preserve the right, title and interest of the Mortgagee in and to payments due under the Construction Agency Agreement (except that the Mortgagee shall in no event have the right to waive or amend the terms with respect to the Automatic Put under the Construction Agency Agreement without the Company's prior written consent unless an Event of Default (other than an Event of Default pursuant to Section 5.1(m) hereof) has occurred and is continuing and the Mortgagee has accelerated the Note).

(c) *Excepted Rights.* Notwithstanding anything to the contrary contained in this Section 2.18, Section 2.18 is in all respects subject to the Excepted Rights of Company.

Section 2.19. Advances. If the Company shall fail to comply with the covenants contained herein or in the Note Purchase Agreement or in any other Operative Agreement and incorporated herein by reference, the Mortgagee, after five (5) days' prior written notice to the Company, and without waiving or releasing any obligation or Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Company, and may enter upon the Mortgaged Property or any part thereof for such purpose and take all such action thereon as, in the opinion of the Mortgagee, may be necessary or appropriate therefor, subject to the terms of the Lease and the Construction Agency Agreement, provided that if such failure by the Company results from a failure by the Tenant to perform its obligations under the Lease or the Construction Agency Agreement, and the Lease or the Construction Agency Agreement provides for notice to the Tenant or a longer cure period for the Tenant, or both, in order to permit the Company to perform such obligation for the account of the Tenant, then the Mortgagee shall not pay or perform such obligation under this Mortgage until

UNOFFICIAL COPY

Scannell Properties #425, LLC
Scannell Properties #430, LLC
Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filings Statement

after such notice shall have been given to the Tenant or such cure period shall have elapsed, or both, as applicable. All sums so paid by the Mortgagee and all costs and expenses (including without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment or incurrence, shall be secured hereby in priority to the indebtedness evidenced by the Note and shall be paid by the Company to the Mortgagee on demand. The Mortgagee in making any payment authorized under this Section relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof.

Section 2.20. Recordation. The Company will, at its own expense, cause this Mortgage, the Lease (or a memorandum thereof), the SNDA Agreement, all supplements hereto and thereto, and any financing statements and continuation statements required by law, including the Uniform Commercial Code, in respect hereof and thereof at all times to be kept recorded and filed at its own expense in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Mortgagee hereunder and thereunder, and will furnish to the Mortgagee promptly after the execution and delivery of this Mortgage, the Lease, the SNDA Agreement and each supplement hereto and thereto an opinion of counsel stating that, in the opinion of such counsel, this Mortgage, the Lease (or a memorandum thereof), the SNDA Agreement or such supplement, as the case may be, has been properly recorded or filed for record so as to make effective of record the lien intended to be created hereby and/or thereby. The Company hereby specifically consents to any financing statements and/or financing statements and continuation statements or other filings related to this Mortgage being made electronically, to the extent permitted by law. Additionally, the Company hereby specifically consents to any other financing statements and/or financing statements and continuation statements or other filings related to this Security Agreement and/or this Mortgage being made electronically, to the extent permitted by law, or otherwise. The Company hereby authorizes the Mortgagee and its agents or counsel to file, in the name of the Company or otherwise, financing statements and continuation statements with regard to any filed financing statements. The Company hereby irrevocably appoints the Mortgagee, or any agent designated by the Mortgagee, its true and lawful attorney-in-fact, which power is coupled with an interest and with full power of substitution, to execute, acknowledge, file and deliver financing statements in the name of the Company. Furthermore, the Company hereby authorizes Mayer Brown LLP, and/or the Mortgagee and its agents or counsel to file financing statements that indicate the collateral (i) as all assets of the Company or words of similar effect or (ii) as being of an equal, greater or lesser scope, or with greater or lesser detail, than as set forth in this Security Agreement and/or this Mortgage, on behalf of the Company. The Company also hereby ratifies its authorization for Mayer Brown LLP, the Mortgagee and its agents or counsel to have filed in any jurisdiction any Uniform Commercial Code financing statements or amendments thereto if filed prior to the Closing Date. The Company shall not terminate, amend or file a correction statement with respect to any financing statement or fixture filing filed pursuant to this Security Agreement and/or this Mortgage without the Mortgagee's prior written consent. Notwithstanding anything to the contrary in this Mortgage, nothing herein shall obligate the Mortgagee to file or see to the maintenance of any financing statement or security instrument.

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

Section 2.21. After-Acquired Property. Any and all property hereafter acquired which is of the kind or nature described in the Granting Clauses hereof and is or intended to become a part thereof, shall ipso facto, and without any further conveyance, assignment or act on the part of the Company or the Mortgagee become and be, subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless the Company shall from time to time, if requested by the Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage any and all such property.

Section 2.22. Environmental Indemnity. The Company agrees to defend, indemnify and hold the Mortgagee harmless from and against any and all costs, penalties, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which Mortgagee may suffer as a result of a claim, suit, or action regarding: (i) any actual or alleged violation of an Environmental Legal Requirement in connection with the Mortgaged Property; (ii) the existence (or claimed existence) on, under or from the Mortgaged Property of any Hazardous Material (whether caused by the Company, any Indemnitor or the Tenant under the Lease or any other party), and/or (iii) regarding the investigation, removal, remediation and clean-up of such Hazardous Material.

Section 2.23. Separate Identity. Each TIC will maintain books, records, financial statements and bank accounts separate from those of its Affiliates (other than the other TICs) and any constituent party and each TIC will file its own tax returns (other than with respect to the other TICs and except if it is (x) required to file consolidated tax returns by law or (y) treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law). Each TIC shall maintain its books, records, resolutions and agreements as official records. Each TIC will be, and at all times will hold itself out to the public as a legal entity separate and distinct from any other entity (including any Affiliate of each TIC or any constituent party of each TIC, or any Affiliate of any constituent party), and shall conduct business in its own name and shall maintain and utilize separate invoices and checks (except as may be done by and in the name of any property and/or asset manager for and on behalf of such TIC and/or one or more other TICs pursuant to the terms of an asset management agreement and/or property management agreement entered into in accordance with the terms of the Operative Agreements so long as such asset manager and/or property manager, as applicable, holds itself out as an agent of such TIC(s), and all such asset management and/or property management agreements are on arm's length terms or otherwise approved in writing by the Mortgagee). Each TIC shall correct any known misunderstanding regarding its status as a separate entity and shall not identify itself or any of its Affiliates as a division or part of the other. Each TIC will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (provided, however, that the foregoing shall not require any constituent party of such TIC or any other Person to make any additional capital contributions to such TIC). No TIC nor any constituent party of any TIC will seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of such TIC. No TIC will commingle the funds and other assets of such TIC with those of any Affiliate or constituent party, or any Affiliate of any constituent party, or any other person, other than any other TIC (except as may be done by and in the name of any property and/or asset manager for and on behalf of such

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

TIC and/or one or more other TICs pursuant to the terms of an asset management agreement and/or property management agreement entered into in accordance with the terms of the Operative Agreements so long as such asset manager and/or property manager, as applicable, holds itself out as an agent of such TIC(s), and all such asset management and/or property management agreements are on arm's length terms or otherwise approved in writing by the Mortgagee). Each TIC has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or constituent party or any other person, other than any other TIC ((except as may be done by and in the name of any property an /or asset manager for and on behalf of such TIC and/or one or more other TICs pursuant to the terms of the Asset Management Agreement or any other an asset management agreement and/or property management agreement entered into in accordance with the terms of the Operative Agreements). Each TIC does not and will not hold itself out to be responsible for the debts or obligations of any other person other than the other TICs. Each TIC has not owned and shall not own any property other than the Mortgaged Property, each TIC has held and shall hold its assets in its own name, has not made and shall not make loans or advances to any other person or entity and has not and shall not acquire obligations or securities of its members, partners or holders, each TIC has paid and shall pay its own liabilities from its own funds and has and shall allocate fairly all shared expenses, each TIC has observed and shall observe all organizational formalities, and each TIC has maintained and shall maintain an arm's length relationship with the other TICs. To the extent such action does not conflict with this Section 2.23 or Section 12 (other than the prohibition on debt as set forth above if such debt is permitted under the TIC Agreement and is unsecured and fully subordinated to the Indebtedness Hereby Secured), each TIC may exercise the rights it has under the TIC Agreement, including the making of unsecured subordinate loans and advances to other TICs in accordance with the TIC Agreement.

Section 2.24. General Indemnity. In addition to any other indemnifications provided herein, or in the other Operative Agreements, the Company will, at its sole cost and expense protect, defend, indemnify and save harmless the Mortgagee on an after-tax basis from and against all liabilities, losses, damages, demands, claims, obligations, suits or other proceedings (including, causes of action, litigation and defenses), settlement proceeds, fines, penalties, assessments, citations, directives, judgments, fees, costs, disbursements or other expenses of any kind or of any nature whatsoever (including, reasonable attorneys', consultants', and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any demand, claim, obligation, suit or other similar proceeding (collectively, "*Indemnified Liabilities*") (except to the extent caused solely by the gross negligence or willful misconduct of the Mortgagee) which may be imposed on, incurred by or asserted or awarded against the Mortgagee because of (i) ownership of the Operative Agreements, the Mortgaged Property or receipt of any Rents or in connection with the Mortgagee exercising any right or performing any obligations under the Operative Agreements; (ii) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) any use, non-use or condition in, on or about the Mortgaged Property or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iv) any failure on Company's part to perform or comply with any of the terms of the Operative Agreements; (v) the performance of any labor or services or the

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

furnishing of any materials or other property in respect of the Mortgaged Property; (vi) to the extent not covered by insurance, any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to Hazardous Materials or asbestos; (vii) the Mortgaged Property's failure to comply with any legal requirements; (viii) the occupation, condition, operation, service, design, maintenance or management of the Mortgaged Property; and (ix) any tax, duty, assessment or other charge imposed by any governmental authority on the making and recording of this Mortgage. Any Indemnified Liabilities payable to the Mortgagee because of the application of this Section 2.24 will be secured by this Mortgage and will become immediately due and payable and will bear interest at the Default Rate from the date such Indemnified Liability is sustained by the Mortgagee until paid. The Company's obligations and liabilities under this Section 2.24 will survive any termination, satisfaction or assignment of the Operative Agreements and the exercise by the Mortgagee of any of its rights or remedies under the Operative Agreements including, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure as to events occurring prior thereto.

Section 2.25. No Forfeiture. The Company represents and warrants to the Mortgagee that, as of the Closing Date, the Company has not committed any act or omission affording any governmental authority the right of forfeiture against the Mortgaged Property or any monies paid in performance of the Company's obligations under the Operative Agreements. The Company agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, the Company indemnifies the Mortgagee and agrees to defend and hold the Mortgagee harmless from and against any costs because of the breach of the agreements or the representations and warranties set forth in this Section 2.25.

Section 2.26. Environmental Remediation and Conditions. On or prior to January 27, 2022 the Company shall deliver to the Mortgagee a copy of: (1) an executed comprehensive No Further Remediation letter issued by the Illinois Environmental Protection Agency ("IEPA") for the "Markham Redevelopment Property" and (2) an executed comprehensive No Further Remediation letter issued by the IEPA for the "90-Acre Markham Property" (collectively the "NFR Letters"). The NFR Letters shall include no Land Use Limitations other than those restricting the property to "industrial/commercial land use," shall include no Preventive Controls, shall include no Engineering Controls, and shall include no Institutional Controls other than those requiring that (i) any existing buildings or any future buildings constructed on the site must contain a full concrete slab-on-grade floor or full concrete basement floor and walls with no sumps; and (ii) no person shall construct, install, maintain, or operate a well on the property, and that all water supplies and water services must be obtained from a public water supply system.

Section 2.27. Consolidated Plat. The Company intends to consolidate the parcels comprising the Mortgaged Property as of the date hereof pursuant to a recordable plat (the "*Consolidated Plat*"), which Consolidated Plat shall be subject to the approval of the Mortgagee in its reasonable discretion. Simultaneously with the recording of any Consolidated Plat approved by the Mortgagee, the Company agrees to (a) cause this Mortgage to be amended by execution of a recordable document, such amendment and to be in form and substance reasonably acceptable to Mortgagee, and which amendment may be the amendment and consolidation of all of the

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

mortgages constituting the Mortgage into a single security instrument (the "*Mortgage Amendment*"), which shall include, among other things, a revised legal description for the Mortgaged Property based on the Consolidated Plat, (b) cause such other Operative Agreements as may be necessary to be amended in connection with the Mortgage Amendment, (c) cause First American Title Insurance Company to issue a date down/modification endorsement or policy amendment (redating and confirming the coverage provided under the title insurance policy originally delivered to the Mortgagee with respect to the Mortgaged Property pursuant to Section 2.7 hereof and each endorsement thereto), reflecting the recordation of the Consolidated Plat and the Mortgage Amendment, and insuring the Mortgage, as amended by the Mortgage Amendment, as a first and paramount lien as of the date of such endorsement upon title to the Mortgaged Property subject to no liens or encumbrances other than Permitted Encumbrances, and shall otherwise be in form and substance satisfactory to the Mortgagee as of the date of such recordation (the "*Mortgage Amendment Endorsement*") and (d) deliver opinions of its counsel which are satisfactory in form to the Mortgagee covering the due authorization, execution, delivery and enforceability of the Mortgage Amendment and any amendments to the Operative Agreements and covering such other related matters as the Mortgagee or special counsel to the beneficial holder of the Note may reasonably require, including but not limited to the perfection of the lien in the Property secured thereunder. In connection with the recording of the Consolidated Plat, the Company shall have a one-time right to amend, restate and consolidate the TIC Agreement, the form and substance of which shall be subject to the approval of the Mortgagee in its reasonable discretion. The Company agrees to pay for all costs, taxes and other fees related to the recording of Consolidated Plat, the Mortgage Amendment and any and other documentation required in connection therewith as well as the issuance of the Mortgage Amendment Endorsement, along with reasonable attorneys' fees incurred in connection therewith.

SECTION 3. POSSESSION, USE AND RELEASE OF PROPERTY.

Section 3.1. The Company's Right of Possession. Provided no Default or Event of Default has occurred and is continuing, the Company shall be permitted to remain in full possession, enjoyment and control of the Mortgaged Property subject always to the observance and performance of the terms of this Mortgage and the other Operative Agreements. It is expressly understood that the use and possession of the Mortgaged Property by the Tenant or any of its permitted subtenants under and subject to the Lease shall not constitute a violation of this Section 3.1.

Section 3.2. Release of Mortgaged Property - Event of Loss and Prepayment of Note. Upon the occurrence of any Event of Loss in respect of the Mortgaged Property, the Company shall give the Mortgagee, within sixty (60) days after the occurrence thereof, written notice of such Event of Loss, which notice shall specify (a) in the case of a casualty, whether (i) the Tenant or the Company, as the case may be, is obligated to repair or rebuild the Mortgaged Property as provided in the Lease, or (ii) the Tenant will terminate the Lease as provided therein and in consequence of which the Company will prepay the Note in accordance with the provisions of Section 4.1 hereof, or (b) in the case of a condemnation, whether (i) the Company shall, or shall cause the Tenant to restore the Mortgaged Property as provided in the Lease and the Company has

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

applied to the issuer of the policy described in Section 2.15(a)(3) hereof for payment of the amounts equal to any reduction in rent resulting from such condemnation or (ii) the Tenant will terminate the Lease as provided therein and the Company has applied to the issuer of the policy described in Section 2.15(a)(3) for distribution of proceeds to prepay the Note in accordance with Section 4.1 hereof. In the event such notice specifies that the Company will make such prepayment, then the Mortgagee shall execute a release in respect of the Mortgaged Property upon receipt of such prepayment in full and all other Indebtedness Hereby Secured.

Section 3.3. Eminent Domain. The Company, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property or any portion thereof, shall notify the Mortgagee and the Special Risk Insurer of the pendency of such proceedings. The Mortgagee and the Special Risk Insurer may participate in any such proceedings, and the Company from time to time will deliver or cause to be delivered to the Mortgagee and the Special Risk Insurer all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable to the Company shall be paid to the Mortgagee, and such award or compensation shall be retained by the Mortgagee as part of the Mortgaged Property and applied in accordance with Section 4.1(a)(i) or (ii) hereof; *provided* that, if such application results in only a partial prepayment of the Note and the Lease remains in effect, the amortization schedule on the Note will be adjusted to take into account any reduction in rent under the Lease. The Mortgagee shall be under no obligation to question the amount of the award or compensation and the Mortgagee may accept any such award or compensation. In any such condemnation proceedings the Mortgagee may be represented by counsel, whose reasonable costs and disbursements shall be paid by the Company.

SECTION 4. APPLICATION OF INSURANCE AND CERTAIN OTHER MONEYS RECEIVED BY THE MORTGAGEE.

Section 4.1. Insurance Proceeds and Condemnation Awards. (a) Subject to Section 4.4 hereof, the amounts received by or payable to the Mortgagee from time to time which constitute insurance proceeds in respect of any damage to or destruction or condemnation of the Mortgaged Property or any part thereof, condemnation awards or compensation covering the Mortgaged Property (less the actual costs, fees and expenses incurred in the collection thereof), proceeds from the Special Risk Policy shall be held by the Mortgagee as part of the Mortgaged Property and shall be applied by the Mortgagee as follows:

- (i) if a casualty occurs which results in a termination of the Lease, or if a condemnation occurs which results in the termination of the Lease (in either case as evidenced by a certificate of the Tenant detailing the same) and the Company shall be required to prepay the Note pursuant to Section 2.12 of this Mortgage, such proceeds, award or compensation, as the case may be, shall be applied in payment and satisfaction of the outstanding principal and accrued interest on the Note to the date of payment upon the terms and in the manner provided in Section 2.12 of this Mortgage, and the balance, if any, of any such proceeds shall be paid to the Company; or

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

(ii) if a casualty or condemnation occurs which does not result in the termination of the Lease and the Company or the Tenant shall be required to repair, rebuild or restore the Mortgaged Property as required pursuant to the Lease or Construction Agency Agreement, as applicable, all casualty insurance proceeds resulting from such casualty and/or all condemnation awards and condemnation insurance proceeds resulting from such condemnation shall be paid over by the Mortgagee to the Company (or as the Company may direct from time to time) upon a written application of the Company and accompanied by such evidence in reasonable detail as may be satisfactory to the Mortgagee supporting such application for the purpose of paying, or reimbursing the Company for the payment of, the reasonable cost, as shown by such certificate, of repairing, rebuilding or restoring part or all of the Mortgaged Property damaged, destroyed or taken ("*Restoration*"), but only for and to the extent that the Company shows by such evidence of costs that the proceeds, award or compensation ("*Restoration Funds*") remaining on deposit with the Mortgagee, together with any additional funds irrevocably allocated or otherwise provided for in a manner satisfactory to the Mortgagee for such purpose, shall be sufficient to complete such Restoration and restore the Mortgaged Property (as nearly as practicable) at least to the market value and condition which existed immediately prior to the damage, destruction, condemnation or taking, as the case may be, free from liens or encumbrances except Permitted Encumbrances. The Company shall deliver to the Mortgagee any additional funds needed to complete the Restoration prior to the disbursement of any Restoration Funds. Every such application for the payment of such proceeds, award or compensation shall state that no Event of Default has occurred and is continuing. Any proceeds in excess of the amount needed for Restoration remaining after the Restoration has been completed shall be (i) if the amount of rent payable under the Lease has been reduced as a result of such condemnation or casualty, such amounts shall be held by the Mortgagee and at the option of the Mortgagee either (y) applied to future payments on the Note as they come due (or as otherwise required to satisfy any obligations of the Company under any of the Operative Agreements) to the extent necessary after the application of each rent payment thereafter received or (z) applied to the outstanding principal (without premium) and interest then due on the Note (*provided* that, if amounts are applied to principal, the amortization schedule on the Note shall be adjusted to, if possible, avoid a future payment default while at the same time amortize the outstanding principal on the Note in full by the original maturity date of the Note) or (ii) if the amount of rent payable under the Lease has not been so reduced as a result of such condemnation or casualty and so long as no Default or Event of Default is then existing, such amounts shall be disbursed to the Company. The Mortgagee shall receive a supplement hereto, as insured by appropriate title insurance acceptable to the Mortgagee.

(b) To the extent that the provisions of the Lease or the Construction Agency Agreement with respect to casualty insurance proceeds or condemnation awards require a

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

different treatment of such amounts, the provisions of the Lease or the Construction Agency Agreement, as the case may be, shall control with respect thereto.

(c) Subject to Section 2.15(b) hereof with respect to adjustments of losses, any appraisal or adjustment of such loss or any settlement or payment of indemnity therefor which shall be agreed upon between the Company and the relevant insurance company shall be accepted by the Mortgagee.

(d) The Special Risk Insurer shall have been given the right, but not the obligation, to participate as an interested party in any proceedings which may result in a claim under the Special Risk Policy and the Company shall take all actions necessary to enable the Special Risk Insurer to so participate including, without limitation, in relation to proceedings with any governmental entity relating to the condemnation event covered by the Special Risk Policy, and any award relating thereto, and in relation to any negotiations or proceedings to determine whether the scheduled payments of Rent may be abated or terminated under the Lease on account of a condemnation.

(e) In the event of a condemnation with respect to the Mortgaged Property, each of the Company and the Mortgagee will take all reasonable measures available to it to preserve its rights of recovery with respect to the Mortgaged Property and maximize any condemnation award or other recoveries to which it may be entitled (including without limitation, as against the Tenant and the Company), and will not impair any of such rights without the Special Risk Insurer's consent, such consent not to be unreasonably withheld or delayed.

Section 4.2. Title Insurance. Any moneys received by the Mortgagee as payment for any loss under any policy of title insurance which was delivered by the Company shall become part of the Mortgaged Property and shall be paid and applied in the same manner contemplated by Section 5.3 hereof.

Section 4.3. Investment of Insurance Proceeds and Condemnation Awards or Compensation. All insurance proceeds, condemnation awards or compensation received by the Mortgagee as payment for any casualty occurrence or condemnation relating to the Mortgaged Property under any policy of insurance or as an award or compensation for the taking in condemnation or other eminent domain proceedings relating to the Mortgaged Property or any part thereof which is to be disbursed pursuant to Section 4.1(a) hereof shall, at the written request of the Company, be invested or reinvested by the Mortgagee in (a) direct obligations of the United States of America maturing in not more than ninety (90) days from the date of such investment, (b) commercial paper maturing within two hundred and seventy (270) days from the date of acquisition and rated in the highest rating classification by at least one national rating agency, or (c) certificates of deposit of commercial banks in the United States of America with capital and surplus of \$100,000,000 or more maturing in not more than five (5) days from the date of such investment. Any amounts earned on such investments shall accrue to the benefit of the Company and shall be disbursed in accordance with the terms of Section 4.1 hereof. Upon a written request of the Company in accordance with the terms of this Mortgage, or at any time when the Mortgagee

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

shall determine that cash is required pursuant to Section 4.1 hereof, the Mortgagee shall sell all or any designated part of such investments at the then market price therefor and shall pay and apply the proceeds in accordance with the terms of Section 4.1. Mortgagee may make any investments pursuant to this Section 4.3 by or through Wells Fargo Trust Company, National Association or any of its affiliates.

Section 4.4. Application If Event of Default Exists. Notwithstanding anything to the contrary contained in this Section 4, if an Event of Default has occurred and is continuing to the knowledge of the Mortgagee, all amounts received by the Mortgagee under this Mortgage shall be applied in the manner provided for in Section 5 hereof in respect of proceeds and avails of the Mortgaged Property.

SECTION 5. DEFAULTS AND REMEDIES THEREFOR.

Section 5.1. Events of Default. Any one or more of the following shall constitute an Event of Default as the term is used herein:

- (a) Default in the payment of interest or principal or premium, if any, on the Note when the same shall have become due and such Default shall continue for five (5) days; or
- (b) Default shall occur in the observance and performance of any covenant or agreement contained in Section 2.3, 2.4, 2.15, 2.18(b), 2.26 or 2.27 hereof; or
- (c) Default shall occur in the observance or performance of any other provision of this Mortgage not specifically described in the foregoing subparagraphs of this Section 5.1 which is not remedied within thirty (30) days after the earlier of (i) written notice thereof from the Mortgagee or the Escrow Agent to the Company, or (ii) the first date on which an officer, member, partner, trustee or beneficial owner of the Company shall have actual knowledge of such a Default; or
- (d) Default shall occur under the Lease or the Parent Guaranty and such default shall continue beyond the period of grace, if any, allowed with respect thereto; or
- (e) An Escrow Shortfall shall occur under the Escrow and Servicing Agreement; or
- (f) If any statement, certification, representation or warranty made by the Company herein or in any other Operative Agreement, or made by or on behalf of the Company in any statement or certificate furnished by or on behalf of the Company in connection with the consummation of the issuance and sale of the Note or furnished by or on behalf of the Company or pursuant to the Note Purchase Agreement or any other Operative Agreement, proves untrue in any material respect as of the date of the issuance or making thereof; or

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

(g) If any statement, certification, representation or warranty made by the Tenant or any Lease Guarantor in any Operative Agreement to which it is a party or made by the Tenant or any Lease Guarantor in any statement or certificate furnished by the Tenant or any Lease Guarantor in connection with the consummation of the issuance and sale of the Note or furnished by Tenant or any Lease Guarantor pursuant to any Operative Agreement proves untrue in any material respect as of the date of issuance or making thereof; or

(h) If final judgment for the payment of money shall be rendered against the Company and the Company shall not discharge or cause the same to be discharged within sixty (60) days from the entry thereof or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered and secure a stay of execution pending such appeal; or

(i) If the Company defaults under any other mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage and the same is accelerated as a result of such default; or

(j) The Company: (1) admits in writing its inability to pay its debts generally as they become due; (2) files a petition in bankruptcy or a petition to take advantage of any insolvency act; (3) makes an assignment for the benefit of creditors generally; (4) consents to, or acquiesces in, the appointment of a receiver, liquidator or trustee of itself or of the whole or any substantial part of its properties or assets; (5) files a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the federal bankruptcy laws or any other comparable federal or state statute or law; (6) has a court of competent jurisdiction enter an order, judgment or decree appointing a receiver, liquidator or trustee of the Company, or of the whole or any substantial part of the property or assets of the Company; (7) has a petition filed against it seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the federal bankruptcy laws or any other comparable federal or state statute or law and such petition shall remain undismissed for sixty (60) days; (8) under the provisions of any other law for the relief or aid of debtors, has any court of competent jurisdiction assume custody or control of the Company or of the whole or any substantial part of its property or assets; (9) has an attachment or execution levied against any substantial portion of any property of the Company which is not discharged or dissolved by a bond within ten (10) days; (10) ceases to exist, is liquidated, or is dissolved; or (11) if any of the foregoing events occurs with respect to the Tenant, any other tenant under any Other Lease, any Lease Guarantor (including, without limitation, the Parent Guarantor); or

(k) The Lease, any Other Lease, or any Lease Guaranty (including, without limitation, the Parent Guaranty) shall cease to be in full force and effect for any reason whatsoever, including, without limitation, a determination by any governmental body or court that such agreement is invalid, void or unenforceable or the Tenant or any Lease Guarantor (including, without limitation, the Parent Guarantor) shall contest or deny the

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

validity or enforceability of any of its obligations under the Lease or applicable Lease Guaranty, (including, without limitation, the Parent Guaranty), as applicable;

(l) An event of default shall occur under or with respect to any provision of any Operative Agreement, which event of default is not specifically described in any other subparagraph of this Section 5.1;

(m) The Completion Date has not occurred by the Outside Construction Period Termination Date (as such terms are defined in the Construction Agency Agreement); or

(n) Failure of Company to comply with or cause to be complied with Section 12.1 hereof.

Section 5.2. Remedies. When any Event of Default described in subparagraph (j) of Section 5.1 has occurred, then the Note shall immediately become due and payable without presentment, demand or notice of any kind and when any Event of Default has occurred and is continuing, to the fullest extent permitted by applicable law, the Mortgagee may, but shall be under no obligation to, exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Mortgagee may, by notice in writing to the Company declare the entire unpaid balance of the Note to be immediately due and payable; and thereupon all such unpaid balance, together with all accrued interest thereon and premium, if any, shall be and become immediately due and payable without any presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived. Upon the Note becoming due and payable as a result of any Event of Default as aforesaid, whether such acceleration is automatic or not and regardless of any remedies effectuated by the Mortgagee, the Company will forthwith pay to the Mortgagee the entire principal and interest accrued on the Note and, to the extent permitted by law and as liquidated damages and not as a penalty and not as a claim for un-matured interest, an additional amount equal to the then applicable Make-Whole Amount determined as of the date on which the Note shall so become due and payable. The Company hereby waives any provision of any present or future statute, court ruling or law that may prohibit the collection of the Make-Whole Amount in connection with an acceleration of the Note in accordance herewith. The Make-Whole Amount represents a reasonable forecast of the damages caused by any prepayment or any payment made prior to the scheduled payment date. No course of dealing on the part of the Mortgagee nor any delay or failure on the part of the Mortgagee to exercise any right shall operate as a waiver of such right or otherwise prejudice the Mortgagee's rights, powers and remedies. The Company further agrees, to the extent permitted by law, to pay to the Mortgagee all costs and expenses incurred by it in the collection of the Indebtedness Hereby Secured upon any default hereunder or thereon, including the reasonable

UNOFFICIAL COPY

Scannell Properties #425, LLC
Scannell Properties #430, LLC
Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement

compensation to the Mortgagee's attorneys for all services rendered in connection therewith.

(b) Subject always to the then existing rights, if any, of the Tenant or any permitted subtenant or assignee under the Lease, the Mortgagee personally or by agents or attorneys may, to the extent permitted by law (i) enter into and take possession of all or any part of the Mortgaged Property, and may forthwith use, operate, manage, insure, repair and improve the Mortgaged Property and take any other action which, in the Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Property, (ii) collect and receive all earnings, revenues, rents, issues, profits and income from the Mortgaged Property or any part thereof (and for such purpose the Company does hereby irrevocably constitute and appoint the Mortgagee its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, the Company irrevocably acknowledging that any payment made to the Mortgagee hereunder shall be a good receipt and acquittance against the Company to the extent so made), (iii) pay all principal charges including taxes and assessments levied thereon and operating and maintenance expenses and all disbursements and liabilities of the Company hereunder and (iv) apply the net proceeds arising from any such operation of the Mortgaged Property as provided in Section 5.3 hereof in respect of the proceeds of a sale of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of the Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which the Company promises to pay upon demand together with interest at the Default Rate. The Mortgagee shall not be liable to account to the Company for any action taken pursuant hereto other than to account for any rents and other proceeds actually received by the Mortgagee. Without taking possession of the Mortgaged Property, the Mortgagee may, in the event the Mortgaged Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Indebtedness Hereby Secured payable upon demand with interest thereon at the Default Rate.

(c) The Mortgagee may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale to the Company at least thirty (30) days prior to the date of such sale and having given any other notice which may be required by law, sell and dispose of said Mortgaged Property or any part thereof at public auction or private sale to the highest bidder, which may be the Company in one lot as an entirety or in separate lots (the Company for itself and for all who may claim by, through or under it hereby expressly waiving and releasing all rights to have the Mortgaged

UNOFFICIAL COPY

Scannell Properties #425, LLC
Scannell Properties #430, LLC
Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement

Property marshalled to the extent permitted by law), and either for cash or on credit and on such terms as the Mortgagee may determine and at any place (whether or not it be the location of the Mortgaged Property or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales or for any such adjourned sale or sales, without further published notice.

(d) The Mortgagee may proceed to protect and enforce its rights by a suit or suits in equity or at law, or for the specific performance of any covenant or agreement contained herein or in the Note, or in aid of the execution of any power herein or therein granted, or for the foreclosure of this Mortgage, or for the enforcement of any other appropriate legal or equitable remedy. Upon the bringing of any suit to foreclose this Mortgage or to enforce any other remedy available hereunder, the plaintiff shall be entitled as a matter of right, without notice and without giving bond to the Company or anyone claiming under, by or through it, and without regard to the solvency or insolvency of the Company or the then value of the Mortgaged Property, to apply to an appropriate court to have a receiver appointed of all the Mortgaged Property and of the earnings, income, rents, issues, profits and proceeds thereof, with such power as the court making such appointment shall confer and the Company does hereby irrevocably consent to such appointment.

(e) In case of any sale of the Mortgaged Property, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Mortgage, the Mortgagee may bid and become the purchaser, and the purchaser or purchasers, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Note and any claims for interest and premium matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Note, including principal and interest and premium thereof, out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in actual cash. If at any foreclosure proceeding the Mortgaged Property shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the Mortgagee shall be entitled to the entry of a deficiency decree against the Company and against the property of the Company for the amount of such deficiency.

(f) The Mortgagee shall have any and all rights and remedies provided to a secured party by the Uniform Commercial Code with respect to any and all parts of the Mortgaged Property which are and which are deemed to be governed by the Uniform Commercial Code. Without limiting the generality of the foregoing, the Mortgagee shall, with respect to any part of the Mortgaged Property constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code, including, without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said

UNOFFICIAL COPY

Scannell Properties #429, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

Uniform Commercial Code for reasonable notification shall be met by mailing written notice to the Company at its address set forth in Section 6.3 at least thirty (30) days prior to the sale or other event for which such notice is required.

(g) The provisions of this Section 5.2 are subject to the condition that if at any time after the Note has been declared due and payable by reason of the occurrence of any Event of Default described in Section 5.1, then in every such case the Mortgagee may at its option by notice in writing sent to the Company, rescind and annul any such declaration and its consequences with respect to the Note and in any such event the Company and the Mortgagee shall be restored to their former positions and rights hereunder, respectively; *provided that* at the time such declaration is annulled and rescinded:

(i) no judgment or decree has been entered for the payment of any monies due pursuant to the Note or this Mortgage;

(ii) all arrears of interest upon the Note and all other sums payable under the Note and under this Mortgage (except any principal, interest or premium on the Note which has become due and payable solely by reason of such declaration under Section 5.2) shall have been duly paid; and

(iii) each and every other Default and Event of Default shall have been made good, cured or waived pursuant to Section 5.1;

and *provided further*, that no such rescission and annulment shall extend to or affect any subsequent Default or Event of Default or impair any right consequent thereto.

Section 5.3. Application of Proceeds. The purchase money proceeds and/or avails of any sale of the Mortgaged Property, or any part thereof, and the proceeds and the avails of any remedy hereunder and/or amounts held pursuant to Section 4 hereof shall be paid to and applied as follows:

(a) first, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and to the extent permitted by applicable law, the reasonable compensation of the Mortgagee, its agents, attorneys and counsel and of all proper expenses, liability and advances incurred or made hereunder by the Mortgagee, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made; and

(b) second, to the amount then owing or unpaid on the Note for principal, premium, if any, and interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Note, then to the Mortgagee, with application on the Note to be made, first, to unpaid premium, if any, second, to the unpaid interest thereon, and third, to unpaid principal thereof; and

(c) third, to the payment of any other Indebtedness Hereby Secured; and

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

(d) fourth, to the payment of the surplus, if any, to the Company, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

Section 5.4. Waiver of Extension, Appraisal and Stay Laws. The Company covenants that, upon the occurrence of an Event of Default and the acceleration of the Note pursuant to Section 5.2 and to the extent that such rights may then be lawfully waived, it will not at any time thereafter insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension or moratorium law now or at any time hereafter in force, or claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction or, after confirmation of any such sale or sales claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the extent permitted by applicable law, hereby expressly waives for itself and on behalf of each and every Person, all benefit and advantage of any such law or laws which would otherwise be available to any such Person in connection with the enforcement of any of the Mortgagee's remedies hereunder; and covenants that it will not in connection with any such enforcement proceedings invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Mortgagee but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted. The Company hereby waives any and all rights of redemption from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of the Company, and each and every Person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other Persons to the extent permitted by applicable law.

Any sale shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Company in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Company, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Company, its successors or assigns.

Section 5.5. Costs and Expenses of Foreclosure and/or Exercise of Remedies. In any suit to foreclose the lien hereon and/or in connection with the exercise by the Mortgagee of any remedial rights under this Mortgage, any of the other Operative Agreements or any other document entered into in connection with the Operative Agreements, there shall be allowed and included as additional Indebtedness Hereby Secured in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as the Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or the exercise of such remedial rights or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

the Mortgaged Property, all of which expenditures shall become so much additional Indebtedness Hereby Secured which the Company agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

Section 5.6. Delay or Omission Not a Waiver. No delay, failure or omission of the Mortgagee to exercise any right, power or remedy arising from any default on the part of the Company shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Mortgagee of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom, except as may be otherwise provided herein. No right, power or remedy hereunder is intended to be exclusive of any other right, power or remedy but each and every right, power and remedy shall be cumulative and in addition to any and every other right, power and remedy given hereunder or otherwise existing. Nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the Indebtedness Hereby Secured operate to prejudice, waive or affect the security of this Mortgage or any rights, powers or remedies hereunder; nor shall the Mortgagee be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

Section 5.7. Restoration of Positions. If the Mortgagee has instituted any proceeding to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise and such proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Mortgagee, then and in every such case the Company and the Mortgagee shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Mortgagee shall continue as though no such proceedings had been instituted.

Section 5.8. Note to Become Due upon Sale. Upon any sale under or by virtue of this Mortgage, except as permitted under Section 2.3(g) or (h) hereof, whether pursuant to foreclosure or otherwise, the entire unpaid principal amount of the Note shall, if not previously declared due and payable, immediately become due and payable, together with interest accrued thereon and premium, if any, (it being understood that no premium shall be payable in connection with any sale of the Mortgaged Property to Tenant pursuant to any provision of the Construction Agency Agreement or to any other person if Tenant exercises its Disposition Option (as defined in the Construction Agency Agreement) pursuant to the Construction Agency Agreement), and all other Indebtedness Hereby Secured, anything contrary in this Mortgage, the Note or any other instrument serving the Note notwithstanding.

SECTION 6. MISCELLANEOUS.

Section 6.1. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, premises and agreements in this Mortgage contained by or on behalf of the Company, or by or on behalf of the Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

Section 6.2. Severability. The unenforceability or invalidity of any provision or provisions of this Mortgage shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 6.3. Addresses for Notices and Demands. All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when received (or refused) delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, or by prepaid overnight air courier, addressed as follows:

If to the Company: Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC
 8801 River Crossing Blvd., Suite 300
 Indianapolis, Indiana 46240
 Attention: Marc Pflieger

with a copy to:

Bryan B. Woodruff
 Bose McKinney & Evans LLP
 111 Monument Circle, Suite 2700
 Indianapolis, Indiana 46204

If to the Mortgagee: Wells Fargo Trust Company, National
 Association, as Trustee
 MAC: U1228-051
 Salt Lake City, Utah 84111
 Attention: Corporate Trust Lease Group

or as to either party at such other address as such party may designate by notice duly given in accordance with this Section to the other party.

Section 6.4. Headings and Table of Contents. The headings of the sections of this Mortgage and the table of contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

Section 6.5. Release of Mortgage. The Mortgagee shall release this Mortgage and the lien hereof by proper instrument or instruments upon payment in full of all Indebtedness Hereby Secured.

Section 6.6. Counterparts. This Mortgage may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Mortgage.

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

Section 6.7. Successor Mortgagee. The Mortgagee may, at any time, by instrument in writing, appoint a successor or successors to, or discharge and appoint a new Mortgagee in the place of, any Mortgagee named herein or acting hereunder, which instrument, executed and acknowledged by the Mortgagee, and recorded in the office of the County Recorder of the county wherein the Mortgaged Property is situated, shall be conclusive proof of the proper substitution of such successor or successors or new Mortgagee, who shall have all the estate powers, duties, rights and privileges of the predecessor Mortgagee.

Section 6.8. Governing Law. This Mortgage should be construed in accordance with and governed by the laws of the State of Illinois.

Section 6.9. Time. Time shall be of the essence for this Mortgage.

Section 6.10. Limitations of Liability. Notwithstanding anything to the contrary contained in the Operative Agreements, except as set forth in the Indemnity and Guaranty Agreement and the Hazardous Material Indemnity Agreement, no Person who directly or indirectly owns any membership or other equity interest in the Company (each, a "Non-Recourse Person") shall have any personal liability for (i) the payment of any sum of money which is or may be payable under the Note or any other Operative Agreement, including, but not limited to, the repayment of the Note or (ii) the performance or discharge of any covenants, obligation or undertakings of the Company under any Operative Agreement, and no monetary or deficiency judgment shall be sought or enforced against any Non-Recourse Person with respect thereto. Nothing in this Section 6.10 is intended to or shall in any way affect or invalidate any lien or security interest created by this Mortgage. This Section 6.10 shall not be construed to prohibit the joining of the Company in any foreclosure procedure involving the Mortgaged Property. This Section 6.10 shall not in any way affect the obligations of the Tenant under the Lease, any other tenant under the Other Leases or any Lease Guarantor (including, without limitation, the Parent Guarantor) under any Lease Guaranty (including, without limitation, the Parent Guaranty).

Section 6.11. Expenses, Stamp Tax Indemnity. Whether or not the Note is sold, the Company will pay all reasonable expenses relating to the Operative Agreements including but not limited to: (i) the cost of reproducing the Operative Agreements; (ii) the reasonable fees and disbursements of Mayer Brown LLP, special counsel for the beneficial holder of the Note; (iii) the Mortgagee's reasonable out-of-pocket expenses; (iv) all recording and filing fees and stamp taxes in connection with the recordation or filing and re-recordation or re-filing of the items referred to in Section 3.1(b) of the Note Purchase Agreement; (v) the reasonable fees and disbursements of the title company referred to in Section 3.2(c) of the Note Purchase Agreement in connection with the issuance of the title insurance policy and the reasonable fees and disbursements of the civil engineer or surveyor which conducted the survey referred to in Section 3.2(b) of the Note Purchase Agreement in connection with the preparation of such survey; (vi) the reasonable fees and disbursements of (a) the Person that prepared the Environmental Assessment referred to in Section 3.2(d) of the Note Purchase Agreement and (b) the Person that prepared the appraisal referred to in Section 3.2(e) of the Note Purchase Agreement; (vii) the reasonable fees and disbursements of the Escrow Agent in connection with its duties under the Escrow and Servicing Agreement; and (viii) all expenses relating to any amendments, waivers or consents pursuant to

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

the provisions of any of the Operative Agreements, including without limitation, any amendments, waivers or consents resulting from any work-out, restructuring or similar proceedings relating to the performance by the Company of its obligations under any of the Operative Agreements or relating to the performance by the Tenant of its obligations under the Lease. The obligations of the Company under this Section 6.11 shall survive the payment or prepayment of the Note and the termination of any of the Operative Agreements.

Section 6.12. Cooperation. The Company acknowledges that the Mortgagee and its successors and assigns may (a) sell, transfer or assign this Mortgage, the Note and the Operative Agreements to one or more investors as a whole loan, in a rated or unrated public offering or private placement, (b) participate the loan (the "*Loan*") secured by this Mortgage to one or more investors in a rated or unrated public offering or private placement, (c) deposit this Mortgage, the Note and the Operative Agreements with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets in a rated or unrated public offering or private placement, or (d) otherwise sell the Loan or any interest therein to investors in a rated or unrated public offering or private placement (the transactions referred to in clauses (a) through (d) are hereinafter referred to as "*Secondary Market Transactions*"). The Company shall, at Mortgagee's expense, cooperate in good faith with Mortgagee in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements reasonably imposed by the participants involved in any Secondary Market Transaction (including without limitation, an institutional purchaser, participant or investor) including, without limitation, all structural or other changes to the Loan, modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel reasonably acceptable to such other purchasers, participants or investors may require; *provided, however*, that the Company shall not be required to modify any documents evidencing or securing the Loan which would modify (i) the interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the amortization of principal of the Note, or (iv) any other material terms or covenants of the Loan. The Company shall provide such information and documents relating to the Company, the Mortgaged Property and the Tenant as Mortgagee shall reasonably request. The Company acknowledges that certain information regarding the Loan and the parties thereto and the Mortgaged Property may be included in a private placement memorandum, prospectus or other disclosure documents.

Section 6.13. No Merger of Estates. There shall be no merger of the Lease or the leasehold estate created thereby with the fee estate in the Mortgaged Property or any part thereof by reason of the same person or entity acquiring or holding, directly or indirectly, any interest in the Lease or the leasehold estate created thereby as well as the fee estate in the Mortgaged Property. Nothing contained in this Section shall be deemed to prohibit the Tenant under the Lease from acquiring the fee interest in the Mortgaged Property, subject, however, to the terms of the preceding sentence and Section 2.3(g) hereof.

Section 6.14. NAIC Filing. The Company hereby represents and warrants to, and covenants with, the Mortgagee that as of the date hereof and until such time as the Indebtedness Hereby Secured shall be indefeasibly paid in full, the Company will take all such actions and otherwise cooperate with any request made by the Mortgagee or its special counsel which is

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

reasonably necessary to ensure that the subject transaction shall be eligible for "Schedule D" reporting on the Mortgagee's NAIC Annual Statement and, if the NAIC determines that the Mortgagee's investment in the Note is not eligible for such "Schedule D" reporting, the Company will take such actions and otherwise cooperate with any request made by the Mortgagee or its counsel which is reasonably necessary to obtain such eligibility; *provided, however*, that the Mortgagee acknowledges and agrees that the Company shall not be required to make any change or amendments which would have a material adverse monetary effect on the Company or materially increase the obligations of the Company under the Operative Agreements. For purposes of this Section 6.14, any reference to Mortgagee shall also include any beneficial owner of the Mortgagee.

Section 6.15. Commitment. The terms and conditions of the commitment and/or loan application entered into by or on behalf of the Company with respect to the transactions contemplated by the Operative Agreements are hereby incorporated herein by this reference and the Indebtedness Hereby Secured is hereby made expressly subject thereto. In the event of a conflict between the terms and conditions contained in such commitment and/or loan application on the one hand and the terms and conditions contained herein and in the other Operative Agreements on the other hand, the terms and conditions contained herein and in the other Operative Agreements shall control.

Section 6.16. Usury Savings Clause. Interest on the debt secured by this mortgage shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be cancelled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

Section 6.17. Certain Prohibited Amendments. The Mortgagee shall not consent to or otherwise approve any amendment or modification to any Operative Agreement that increases the Loss Amount (as defined in the Special Risk Policy) without the prior written consent of the Special Risk Insurer.

SECTION 7. STATE SPECIFIC PROVISIONS.

Section 7.1. Benefits of Act. If any provision of this Mortgage is inconsistent with any applicable provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, *et seq.* (the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but the Act shall not invalidate or render unenforceable any other provision of this Mortgage that can be fairly construed in a manner consistent with the Act. Without in any way limiting any of the Mortgagee's rights, remedies, powers and authorities provided in this Mortgage or otherwise, and in addition to all of such rights, remedies, powers and authorities, the Mortgagee shall also have all rights, remedies, powers and authorities permitted to the holder of a mortgage under the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

the Mortgagee any rights, remedies, powers or authorities upon default of the Company which are more limited than what would be vested in the Mortgagee under the Act in the absence of said provision, the Mortgagee shall have such rights, remedies, powers and authorities that would be otherwise vested in it under the Act. Without limitation, all expenses (including reasonable attorneys' fees and costs) incurred by the Mortgagee to the extent reimbursable under 735 ILCS 5/15-1510, 5/15-1512, or any other provision of the Act, whether incurred before or after any judgment of foreclosure, shall be added to the indebtedness secured by this Mortgage and included in the judgment of foreclosure.

Section 7.2: Insurance. Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of the Mortgagee, or to confer authority upon the Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale.

Section 7.3. Protective Advances.

(a) All advances, disbursements and expenditures made or incurred by the

Mortgagee before and during a foreclosure, and before and after 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 Act (collectively, the "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(i) all advances by the Mortgagee in accordance with the terms of this Mortgage to: (1) preserve, maintain, repair, restore or rebuild the Improvements upon the Mortgaged Property; (2) preserve the lien of this Mortgage or the priority thereof; or (3) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(ii) payments by the Mortgagee of: (1) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (2) 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 Mortgaged Property or any part thereof; (3) other obligations authorized by this Mortgage; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

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

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

(iv) reasonable attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Act; (2) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (3) in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Mortgaged Property;

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

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

(vii) reasonable out-of-pocket expenses incurred and expenditures made by the Mortgagee for any one or more of the following: (1) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof deemed by the Mortgagee to be required to be paid; (2) if the Company's interest in the Mortgaged 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; (3) premiums for casualty and liability insurance paid by the Mortgagee whether or not the Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property imposed by Subsection (c)(1) of Section 15-1704 of the Act; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments deemed by the Mortgagee to be required for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged 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 Mortgaged Property; (6) shares or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (7) if the loan secured hereby is a construction loan, costs incurred by the Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (8) payments reasonably deemed by this Mortgage to be required pursuant to any lease or other agreement for occupancy of the Mortgaged Property to which the Company is a party; and (9) if this Mortgage is insured, payments of FHA or private mortgage insurance required to keep such insurance in force.

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

(b) All Protective Advances shall be so much additional indebtedness secured

by this Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Applicable Interest Rate provided for in the Note.

(i) 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)(5) of Section 15-1302 of the Act.

(c) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(i) determination of the amount of indebtedness secured by this Mortgage at any time;

(ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry or judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purposes;

(iii) if right of redemption has not been waived by this Mortgage, computation of amount required to redeem, pursuant to Subsections (d) of Sections 15-1603 of the Act;

(iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(v) application of income in the hands of any receiver or the Mortgagee in possession; and

(vi) computation of any deficiency judgment pursuant to Subsections (b)(2) and (3) of Sections 15-1508 and Section 15-1511 of the Act.

Section 7.4. The Mortgagee in Possession. In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Mortgaged Property, 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 possession of the Mortgaged Property 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 as provided for in Sections 15-1702 and 15-1703 of the Act.

Section 7.5. Waiver of Redemption. The Company acknowledges and represents and warrants that the Mortgaged Property does not include "agricultural real estate" or "residential real

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

estate” as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b), the Company waives any and all rights of redemption from sale under any order of foreclosure of this Mortgage, or other rights of redemption which may run to the Company or any other Owner of Redemption, as that term is defined in 735 ILCS 5/15-1212. The Company waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by law.

Section 7.6. Limitation on indebtedness. Notwithstanding any provisions of the Mortgage, the Note or any other Operative Agreement which permits additional sums to be advanced on or after the date of this Mortgage, whether as additional loans or for any payments authorized by this Mortgage or any other Operative Agreement, the total amount of the principal component of the indebtedness Hereby Secured shall not at any time exceed three hundred percent (300%) of the original principal amount of the Note as set forth in this Mortgage.

Section 7.7. Future Advances. This Mortgage is granted to secure future advances made by the Mortgagee to the Company. The parties acknowledge and agree that all future advances shall be a lien from the time that this Mortgage is recorded as provided in 735 ILCS 5/15-1302(b)(1).

SECTION 8. CONCERNING THE TRUSTEE.

It is expressly understood and agreed by the parties hereto and the holders of the Trust Certificates that, (a) this Mortgage made in favor of the Trustee not in its individual or personal capacity but solely in its capacity as Trustee under the Trust Agreement on behalf of the Trust (as defined in the Trust Agreement), in the exercise of the powers and authority conferred and vested in it as Trustee under the Trust Agreement, subject to the protections, indemnities and limitations from liability afforded to the Trustee thereunder; (b) in no event shall Wells Fargo Trust Company, National Association, in its individual capacity have any liability for the representations, warranties, covenants, agreements or other obligations of the Trust (or on behalf of the Trust) hereunder, as to all of which recourse shall be had solely to the Trust Property of the Trust; (c) nothing contained herein shall be construed as creating any liability on Wells Fargo Trust Company, National Association, individually or personally, to perform any expressed or implied covenant, duty or obligation of any kind whatsoever contained herein; and (d) under no circumstances shall Wells Fargo Trust Company, National Association, be personally liable for the payment of any fees, costs, indebtedness or expenses of any kind whatsoever or, except as set forth in Section 6.01(c) of the Trust Agreement, be personally liable for the breach or failure of any obligation, representation, agreement, warranty or covenant whatsoever made or undertaken by the Trustee or the Trust hereunder.

Notwithstanding anything contained herein, it is expressly understood that Mortgagee is acting as a trustee on behalf of certain beneficiaries, and whenever any consent, approval, determination of acceptability, or other action of the Mortgagee is contemplated hereby, Mortgagee may act in accordance with the instructions of the appropriate percentage of such beneficiaries, or otherwise in accordance with the terms and provisions of the documents creating and relative to the administration of the Trust, and not on its own discretion.

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

SECTION 9. JOINT AND SEVERAL LIABILITY.

“*Company*” shall mean and include any and all of Scannell Properties #425, LLC, Scannell Properties #430, LLC and Scannell Properties #431, each a Delaware limited liability company, as the context requires or allows, and shall be deemed to include their respective heirs, representatives, successors and assigns, and shall denote the disjunctive and conjunctive singular and/or plural, and the masculine and/or feminine, and natural and/or artificial persons, in each case as determined by Mortgagee in order to give effect to the meaning intended by Mortgagee (e.g. “each and all” or “any and all” of the tenants-in-common collectively comprising Company or otherwise) in the context in which the term is used. The provisions of this Mortgage shall remain in full force and effect notwithstanding any changes in the shareholders, partners or members of Company. The obligations of each and all of the entities comprising Company shall be joint and several.

SECTION 10. TENANTS IN COMMON.

If the Mortgaged Property shall be owned by tenants-in-common, then so long as any portion of the Indebtedness Hereby Secured is outstanding: (a) each tenant-in-common shall be jointly and severally liable for the Indebtedness Hereby Secured and all other obligations under this Mortgage and the other Operative Agreements; (b) each tenant-in-common will comply with and observe all of the terms, covenants and conditions of the TIC Agreement, and except as permitted by the TIC Agreement, each tenant-in-common will not modify, amend or terminate the TIC Agreement except as expressly permitted pursuant to Section 2.27 hereof; (c) the TIC Agreement and any memorandum thereof are and shall be subject and subordinate in all respects to the liens of this Mortgage; (d) without limiting the foregoing, the respective rights and remedies of each tenant-in-common under the TIC Agreement are hereby subordinated to the rights and remedies of the Trustee and the Mortgagee under, and the lien of, this Mortgage; (e) each tenant-in-common will not assert any claim, institute any action or enforce any rights or remedies against any other tenant-in-common, whether arising pursuant to the TIC Agreement, under any of the legal requirements or otherwise; *provided* that any tenant-in-common may make a demand to any other tenant-in-common for payment or performance claimed to be owed under the TIC Agreement provided that no TIC may take any action or exercise any remedies other than such demand for payment or performance while any portion of the Indebtedness Hereby Secured is outstanding; (f) each tenant-in-common agrees that its rights as tenant-in-common, and all rights, privileges and remedies of each tenant-in-common, including without limitation, any right of first refusal (including any such right arising under Section 363(i) of the Bankruptcy Code), purchase options, call option or other similar rights under any tenant-in-common agreement, including the TIC Agreement, are subject and subordinate to this Mortgage and the other Operative Agreements and the liens created thereby, and to all rights of the Mortgagee hereunder; (f) each tenant-in-common waives and agrees not to assert any lien rights, whether statutory or otherwise, that it may have against the co-tenancy interest or any other interest of any other tenant-in-common; (g) to the fullest extent permitted by the legal requirements, each tenant-in-common waives any rights that it may have under any legal requirements or otherwise to partition the Mortgaged Property, whether by partition in kind or by sale and division of the proceeds, and further each tenant-in-

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

common will not take any action under any of the legal requirements or in equity to partition the Mortgaged Property and hereby waives the benefits of all legal requirements that may now or hereafter authorize such partition; (h) if Trustee or Mortgagee receives conflicting notices from any tenant-in-common with respect to any matter, the Trustee and the Mortgagee may rely conclusively upon the notice received from Scannell Properties #425, LLC for such matter as fully and completely as if such notice had been delivered by each tenant-in-common, and Trustee and Mortgagee may deliver any notice to TIC Manager with respect to any matter and delivery of such notice shall be deemed delivery to all of the tenants-in-common; (i) the number of tenants-in-common owning the Mortgaged Property, or under the TIC Agreement, shall not exceed six (6); and (j) if any provision in this Section 10 conflicts with any provision in the TIC Agreement, then the provisions of this Section 10 shall control. Each of the parties hereto acknowledges that the defined term "Company" collectively includes each individual or entity comprising Company. It is the intent of the parties hereto in making any determination under the Note, this Mortgage or any other Operative Agreements, including, without limitation, in determining whether (i) a breach of a representation, warranty or a covenant has occurred, (ii) there has occurred a Transfer, (iii) there has occurred a default or Event of Default, or (iv) an event has occurred which would create recourse obligations under any Operative Agreement, that any such breach, occurrence or event with respect to any individual or entity comprising Company shall be deemed to be such a breach, occurrence or event with respect to all TICs and that all TICs need not have been involved with such breach, occurrence or event in order for the same to be deemed such a breach, occurrence or event with respect to every TIC.

SECTION 11. PAYDOWN OPTION

Section 11.1. The Indebtedness Hereby Secured may not be prepaid except as described below and except in accordance with Section 2.12 hereof.

Section 11.2. The Paydown. In connection with each transfer or conveyance pursuant to Section 2.3(g) hereof and each Transfer pursuant to Section 2.3(h) hereof, the Company may (the "Paydown Option") prepay (a "Paydown") up to but not more than 99% of the principal balance of the Note on a pro rata basis based upon the outstanding principal amount of the Note as of the date of such prepayment (such amount of principal to be prepaid is herein referred to as the "Principal Paydown Amount") and upon satisfaction of each of the following terms and conditions (collectively, the "Paydown Conditions"):

(i) The Company must deliver its revocable notice (the "Proposed Paydown Notice") to the Purchaser (or its designee) of the Company's intention to exercise the Paydown Option not less than twenty (20) days before the proposed date of the payment of the Aggregate Paydown Amount (the "Paydown Date");

(ii) The Company must have complied with all of the applicable terms and conditions set forth in this Section 11.2 and (x) Section 2.3(g), or (y) Section 2.3(h), as applicable;

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

(iii) The Company must deposit the Aggregate Paydown Amount with the Purchaser or its designee; provided that the Company may satisfy the payment of the Paydown Make-Whole Amount through the delivery to the Purchaser of a Permitted Paydown Letter of Credit;

(iv) The Company must pay or reimburse (without double counting if deposited as part of the Aggregate Paydown Amount above) the Purchaser and only one counsel to Purchaser and all the holders of the Trust Certificates (the "*Beneficial Holders*") for all reasonable, third-party out-of-pocket expenses (including, reasonable attorneys' fees) incurred in connection with the execution, review, approval and documentation of the exercise of the Paydown Option. Other than expenses in the previous sentence and the Paydown Administration Fee, no other administration or other fee is due or payable to the Purchaser or the Beneficial Holders in connection with the exercise of the Paydown Option; and

(v) If not already provided under the terms of Section 2.3(g) or 2.3(h) in connection with such transfer, (A) the Purchaser shall have received a Non-Consolidation Opinion with the same conclusion, after giving effect to such transfer, as the Non-Consolidation Opinion issued in connection with the closing of the loan evidenced by the Operative Agreements.

The Proposed Paydown Notice must specify the following: (a) the amount of the proposed Principal Paydown Amount, (b) the proposed Paydown Date, (c) a calculation by the Company of the estimated Paydown Make-Whole Amount due in connection with such proposed Principal Paydown Amount (calculated for purposes of such estimate only as if the date of such notice were the date of the proposed Paydown Date), setting forth the details of such computation, (d) the proposed period within which the Company may exercise the Readvance Option (as hereinafter defined) which period shall end no later than thirty (30) days after the Paydown (the "*Readvance Option Period*"), and (e) the Paydown Accrued Interest due in connection with such proposed Principal Paydown Amount. The Company may revoke a Proposed Paydown Notice on any date on or before the proposed Paydown Date; provided, however, that the Company agrees to pay the reasonable third-party out-of-pocket expenses incurred by the Purchaser and the Beneficial Holders described in clause (iv) above in connection with the receipt or anticipated receipt of a Proposed Paydown Notice, which is later revoked by the Company.

The "*Aggregate Paydown Amount*" means an amount equal to the aggregate of the following amounts:

- (1) Principal Paydown Amount;
- (2) the Paydown Make-Whole Amount, calculated as of the date that is two (2) business days prior to the date that such amount is deposited with the Purchaser;
- (3) the Paydown Accrued Interest;

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

(4) the Readvance Reservation Fee;

(5) all amounts due pursuant to Section 2.3(g) or 2.3(h), as applicable, of this Agreement in connection with any transfer associated with the exercise of such Paydown Option;

(6) without duplication payment of, or reimbursement for, all the Purchaser's reasonable third-party out-of-pocket expenses incurred by the Purchaser and the Beneficial Holders described in clause (iv) above in connection with the execution, review, approval and documentation of the exercise of the Paydown Option; and

(7) the Paydown Administrative Fee.

Section 11.3. Distribution of Aggregate Paydown Amount. On the Paydown Date, the outstanding principal amount of the Note in an amount equal to the Principal Paydown Amount must be prepaid subject to the Readvance Option and the Purchaser will do the following:

(i) deposit the Aggregate Paydown Amount in an account (the "Paydown Account") for the benefit of the Purchaser or the Beneficial Holders, as the case may be, pursuant to the terms of the Trust Agreement;

(ii) distribute the Paydown Accrued Interest and the Readvance Reservation Fee to the Beneficial Holders on a pro rata basis pursuant to the terms of the Trust Agreement; and

(iii) distribute the Paydown Administration Fee to Wells Fargo Trust Company, National Association.

Section 11.4. The Readvance. If the Company exercises the Paydown Option, the Company may request a readvance of the Principal Paydown Amount (the "*Readvance Principal Amount*") which if advanced shall be deemed an advance of principal pursuant to the Note (the "*Readvance Option*") on any Business Day during the Readvance Option Period upon satisfaction of the Readvance Conditions (as hereinafter defined). The Company may exercise the Readvance Option, if at all, by giving written notice to the Purchaser (or its designee) of the Company's intention to exercise the Readvance Option (the "*Proposed Readvance Notice*"), which must specify the amount of the Readvance Principal Amount and the date on which the Readvance Principal Amount is to be disbursed (the "*Readvance Date*").

The following will constitute the conditions to the Purchaser's obligation to readvance the Readvance Principal Amount (the "*Readvance Conditions*"): .

(i) The Company must deliver the Proposed Readvance Notice to the Purchaser not later than two (2) Business Days before the Readvance Date;

(ii) [Intentionally Omitted];

UNOFFICIAL COPY

Scannell Properties #425, LLC
Scannell Properties #430, LLC
Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement

(iii) The Purchaser must have (A) received a legal opinion from the Company's attorney in form and substance reasonably acceptable to the Purchaser that the Purchaser is not required to qualify or to be licensed to do business as a mortgage lender in the State of Illinois assuming for the purposes of any such opinion that the only loan made by the Purchaser in the State of Illinois is the Loan or (B) qualified and obtained a license to do business as a mortgage lender in the State of Illinois, provided, however, the Purchaser will not be required to incur any costs in connection with any qualification or obtaining necessary licenses unless the Company delivers to the Purchaser a deposit equal to the projected amount of such costs, and the payment of such costs will be the Company's sole responsibility. If the opinion is in substantially the same form as delivered for the original closing of the loan evidenced by the Operative Agreements, such opinion will be deemed satisfactory;

(iv) The Purchaser must have received a legal opinion from the Company's attorney that the exercise of the Readvance Option should not result in a realization event under Section 1001 of the Internal Revenue Code of 1986, as amended, in such form as is reasonably acceptable to the Purchaser;

(v) The Company must pay or reimburse the Purchaser and only one counsel to Purchaser and all the Beneficial Holders for all reasonable, third-party out-of-pocket expenses (including, reasonable attorneys' fees) incurred in connection with the execution, review, approval and documentation of the exercise of the Readvance Option. Other than expenses in the previous sentence, no other administration or other fee is due or payable to the Purchaser or the Beneficial Holders in connection with the exercise of the Readvance Option;

(vi) The Company shall have provided the Beneficial Holders and the Purchaser with an indemnity reasonably satisfactory to the Purchaser and the Beneficial Holders in all respects from the Successor Indemnitor indemnifying Purchaser and Beneficial Holders from any tax liability or loss, damage, cost or expense with respect to the transactions contemplated by the Paydown and Readvance Option in excess of the tax liability that the Purchaser and Beneficial Holders would have incurred if the Paydown and Readvance Option transactions had not occurred, other than tax liability (a) attributable to the receipt by the Purchaser and/or Beneficial Holders of (i) the Paydown Administrative Fee, (ii) the earnings on the Aggregate Paydown Amount as invested pursuant hereto, (iii) the Paydown Make Whole Amount returned to the Company pursuant to Section 11.5(ii), (iv) the Paydown Accrued Interest, and (v) any portion of the Readvance Reservation Fee returned to the Company pursuant to the last grammatical paragraph of Section 11.5; (b) arising from the fact that the Beneficial Holders' adjusted basis in the Note immediately prior to the Paydown is less than its proportionate share of the balance of the Note; (c) with respect to the Purchaser or any Beneficial Holder that is a Real Estate Mortgage Investment Conduit pursuant

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

to Section 860 *et seq.* of the Internal Revenue Code of 1986; or (d) attributable to the willful misconduct or gross negligence of the Purchaser or any Beneficial Holder;

(vii) No Event of Default shall exist.

Section 11.5. Satisfaction of Readvance Conditions. Upon satisfaction of the Readvance Conditions on the Readvance Date, the Purchaser will:

(i) readvance the Readvance Principal Amount to the Company in accordance with written instructions to be delivered by the Company to the Purchaser at the time of the exercise of the Readvance Option;

(ii) return the Paydown Make-Whole Amount, to the extent of the funds available in the Paydown Account, (or the Permitted Paydown Letter of Credit, as the case may be) to the Company in accordance with written instructions the Company delivers to the Purchaser at the time the Company exercises the Readvance Option;

(iii) transfer all investment earnings received from the investment of the funds in the Paydown Account to the Beneficial Holders in the manner specified in the Trust Agreement; and

(iv) transfer (x) the Paydown Accrued Interest, and (y) the portion of the Readvance Reservation Fee applicable to the period beginning on the Paydown Date and ending on the Readvance Date, to the Beneficial Holders in the manner specified in the Trust Agreement (provided that the amount of interest payable on the re-advanced principal amount on the next scheduled payment date on the Note shall be the amount of interest accrued on such principal amount from the Readvance Date to such scheduled payment date).

in each case by delivering funds in such amounts from the monies deposited in the Paydown Account. Upon completion of the exercise of the Readvance Option, all of the terms and provisions of the Note, the Mortgage and the other Operative Agreements will apply to and secure the repayment of the Readvance Principal Amount as though the Readvance Principal Amount was a portion of the original principal amounts advanced under and evidenced by the Note.

Upon completion of the exercise of the Readvance Option, so long as no Event of Default exists immediately succeeding the Readvance Date, the Purchaser will remit to, or cause to be remitted to, the Company an amount equal to the remainder of the Readvance Reservation Fee after the application of Section 11.5(iv) above, to the extent actually received by or on behalf of the Purchaser under and pursuant to this Section 11 by delivering, or causing to be delivered, funds in such amounts to the Company.

UNOFFICIAL COPY

Scannell Properties #425, LLC
 Scannell Properties #430, LLC
 Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
 of Leases and Rents and Fixture Filings Statement

Section 11.6. Failure of Readvance Option. If the Company does not exercise the Readvance Option or if the Readvance Conditions are not satisfied by the end of the Readvance Option Period, then the Purchaser will return the Readvance Reservation Fee to the Company and retain the balance of the Aggregate Paydown Amount (and, if applicable, shall draw on the Permitted Paydown Letter of Credit), and the Note will be deemed to be prepaid on the Paydown Date in an amount equal to the Principal Paydown Amount. All remaining scheduled payments on the Note will be proportionately reduced so that upon the due payment of all remaining scheduled payments on the Note, there will have been paid to the Purchaser the entire unpaid principal balance thereof, together with accrued interest thereon. The Purchaser will determine such reduction, which determination will be conclusive and binding upon the Company, absent manifest error.

Section 11.7. Definitions. For the purposes of this Section 11, the following terms shall have the following definitions:

- (i) [Intentionally Omitted]
- (ii) “*Paydown Accrued Interest*” shall mean an amount equal to the interest which has accrued and is unpaid on the Note from the date through which interest was last paid on the Note to, but excluding, the first day of the Readvance Option Period.
- (iii) “*Readvance Reservation Fee*” shall mean an amount equal to the interest which would have accrued on the Note if the Paydown had never occurred from the first day of the Readvance Option Period to but not including the last day of the Readvance Option Period.
- (iv) “*Paydown Administrative Fee*” shall mean a fee payable by the Company to the Purchaser of \$1,000.
- (v) “*Paydown Make-Whole Amount*” shall mean an amount equal to the Make-Whole Amount on the Principal Paydown Amount (calculated as of as of two (2) business days prior to the date of the Paydown).
- (vi) “*Permitted Paydown Letter of Credit*” shall mean an irrevocable, direct draw standby letter of credit issued or confirmed by a bank organized under the laws of the United States of America or any state thereof which (i) has a current credit rating of Aa2 or better by Moody’s and AA or better by S&P, (ii) is otherwise reasonably acceptable to a majority of the Beneficial Holders, and (iii) has an expiration date no earlier than the date that is 60 days after the date of any applicable transfer, as the case may be.

SECTION 12. REVERSE EXCHANGE.

UNOFFICIAL COPY

Scannell Properties #425, LLC
Scannell Properties #430, LLC
Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filings Statement

Section 12.1. 1031 Reverse Exchange. The Company shall either (a) complete the Exchange Permitted Transfer in accordance with Section 12.3 of this Agreement on or before the Exchange Termination Date, or (b) if the Company is unable to complete the Reverse Exchange on or before the Exchange Termination Date, the Company shall promptly thereafter complete the Exchange Permitted Transfer and cause the termination of the Exchange Loan Documentation.

Section 12.2. Exchange Loan. The Company and Mortgagee acknowledge the Exchange Loan has been made, as evidenced by the Exchange Loan Documentation, and agree that the Exchange Loan is fully subordinate to the Loan, and will expressly so provide in the promissory note evidencing the Exchange Loan, and will be repaid or forgiven within 180 days of the making of the Exchange Loan and the Exchange Loan Documentation terminated upon completion of the Exchange Permitted Transfer.

Section 12.3. Exchange Permitted Transfer to Effectuate Tax Free Exchange. Notwithstanding the provisions of Section 2.3(h) of this Agreement, the Exchange Permitted Transfer shall be permitted, and shall not be prohibited hereunder, subject to the Company's satisfaction of the following conditions:

(a) At least three (3) Business Days prior to the Exchange Permitted Transfer, the Company shall have delivered to the Mortgagee written notice of such Exchange Permitted Transfer;

(b) The Company shall deliver to the Mortgagee on the Exchange Permitted Transfer date, copies of the fully executed documentation effectuating the Exchange Permitted Transfer (with copies of any documents to be recorded to follow thereafter promptly upon receipt);

(c) The Company shall deliver to the Mortgagee on the Exchange Permitted Transfer date, to the extent not previously delivered to the Mortgagee, fully executed copies of the then current organizational documents, resolutions, incumbency, certifications and current good standing certificates for the Company;

(d) The Company shall deliver to the Mortgagee on the Exchange Permitted Transfer date, a ratification of the Operative Agreements and all obligations thereunder executed by the Company and the Existing Indemnitors, in the form agreed upon prior to the closing of the Loan;

(e) The Existing Guarantors shall directly or indirectly manage and Control the day-to-day operations of the Mortgaged Property after giving effect to the Exchange Permitted Transfer;

(f) The Reverse Exchange shall in no way modify, change, supplement, alter or amend the Operative Agreements or release or relieve the Company or the Existing Guarantors from any of their respective obligations under the Operative Agreements; and

UNOFFICIAL COPY

Scannell Properties #429, LLC
Scannell Properties #430, LLC
Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filings Statement

(g) The Company shall have paid all fees, costs and expenses related to the Exchange Permitted Transfer, including all fees, costs and expenses (including reasonable attorneys' fees and expenses) actually incurred by the Mortgagee.

Section 12.4. Exculpation of Exchange Accommodator. Notwithstanding any provisions of the Operative Agreements to the contrary, except in the event of fraud, gross negligence or willful misconduct by Exchange Accommodator or any of its directors, officers, shareholders, employees, agents or representatives, Mortgagee will not look to Exchange Accommodator or its directors, officers, employees or shareholders (collectively, "*Exchange Accommodator Parties*") with respect to the Indebtedness Hereby Secured or any covenant, stipulation, promise, indemnity, agreement or obligation contained therein. In enforcing its rights and remedies under the Operative Agreements, the Mortgagee will look solely to any or all of the Property (including policies of hazard insurance on the Property and any proceeds thereof and any award of damages on account of condemnation for public use of the Property), the Company, the Existing Guarantors and the Existing Indemnitors for the payment of the Indebtedness Hereby Secured and for the performance of the provisions thereof. Subject to the foregoing, the Mortgagee will not seek a deficiency or other money judgment against Exchange Accommodator or Exchange Accommodator Parties and will not institute any separate action against Exchange Accommodator or Exchange Accommodator Parties by reason of any default that may occur in the performance of any of the terms and conditions of the Operative Agreements. This agreement on the part of Mortgagee shall not be construed in any way so as (a) to affect or impair the lien of the Operative Agreements or Mortgagee's right to foreclose as provided by law, (b) to limit or restrict any of the rights or remedies of Mortgagee in any foreclosure proceedings or other action to enforce payment of the Indebtedness Hereby Secured, (c) to limit or restrict any obligations of Company, Existing Guarantors or Existing Indemnitors under the terms and conditions of the Operative Agreements or the rights or remedies of Mortgagee to enforce the same, (d) to affect the Mortgagee's rights against the Liable Party pursuant to the Environmental Indemnity or the Guaranty. The terms of this Section 12.4 shall apply only during the period when all of the membership interests in Company are owned by Exchange Accommodator.

[SIGNATURES ON NEXT PAGE]

UNOFFICIAL COPY

Scannell Properties #425, LLC
Scannell Properties #430, LLC
Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement

IN WITNESS WHEREOF, the Company has caused this Mortgage to be executed, all as
of the day and year first above written.

COMPANY:

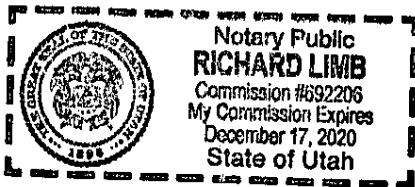
SCANNELL PROPERTIES #425, LLC
a Delaware limited liability company

By: Mark A. Bullock
Name: Mark A. Bullock
Title: Manager

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

I, Richard Limb, a Notary Public in and for the County and State aforesaid, do hereby
certify that Mark A. Bullock to me known, who declared and acknowledged that he is the Manager
of Scannell Properties #425, LLC, a Delaware limited liability company, subscribed to the
foregoing instrument, appeared before me this day in person and severally acknowledged that he,
being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary
act of said limited liability company and as his own free and voluntary act, for the uses and
purposes therein set forth.

Given under by hand and notarial seal this 27th day of March, 2020.



Richard Limb
Notary Public
Printed Name: Richard Limb

Commission expires: 12-17-2020

UNOFFICIAL COPY

Scannell Properties #425, LLC
Scannell Properties #430, LLC
Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement

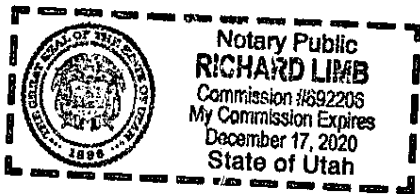
SCANNELL PROPERTIES #430, LLC
a Delaware limited liability company

By: Mark A. Bullock
Name: Mark A. Bullock
Title: Manager

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

I, Richard Limb, a Notary Public in and for the County and State aforesaid, do hereby certify that Mark A. Bullock to me known, who declared and acknowledged that he is the Manager of Scannell Properties #430, LLC, a Delaware limited liability company, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said limited liability company and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under by hand and notarial seal this 27th day of March, 2020.



Richard Limb
Notary Public
Printed Name: Richard Limb

Commission expires: 12-17-2020

UNOFFICIAL COPY

Scannell Properties #425, LLC
Scannell Properties #430, LLC
Scannell Properties #431, LLC

Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement

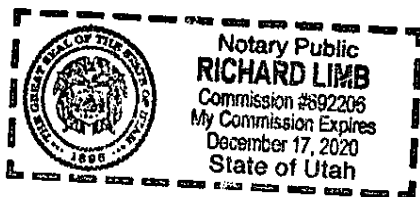
SCANNELL PROPERTIES #431, LLC
a Delaware limited liability company

By: Mark A. Bullock
Name: Mark A. Bullock
Title: Manager

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

I, Richard Limb, a Notary Public in and for the County and State aforesaid, do hereby certify that Mark A. Bullock to me known, who declared and acknowledged that he is the Manager of Scannell Properties #431, LLC, a Delaware limited liability company, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said limited liability company and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under by hand and notarial seal this 27th day of March, 2020.



Richard Limb
Notary Public
Printed Name: Richard Limb

Commission expires: 12-17-2020

UNOFFICIAL COPY

DESCRIPTION OF REAL PROPERTY

Parcel 1:

LOT 29 IN BLOCK 6 IN LORD'S 159TH STREET ADDITION TO HARVEY, A SUBDIVISION OF LOT 3 IN BLOCK 2, LOTS 3 AND 4 IN BLOCK 3, LOTS 3 AND 4 IN BLOCK 4, LOTS 5 THROUGH 9, LOTS 1, 3 AND 4 IN BLOCK 10, BLOCKS 11 THROUGH 16, LOT 2 IN BLOCK 17, LOT 2 IN BLOCK 18, BLOCK 19 AND LOT 2 IN BLOCK 20 IN ADELAIDE SPEIGHT'S SUBDIVISION OF THAT PART OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF VINCENNES ROAD (EXCEPT THE SOUTH 60.65 ACRES), TOGETHER WITH THE SOUTH HALF OF THE 12-FOOT WIDE EAST-WEST ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH ALL OF THE 14-FOOT NORTH-SOUTH ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH THE EAST 33 FEET OF WESTERN AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED WEST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 30 EXTENDED WEST; ALSO TOGETHER WITH THE NORTH HALF OF 160TH STREET VACATED BY DOCUMENT NO. 2004916000 LYING EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 AND WEST OF THE CENTERLINE OF CLAREMONT AVENUE; ALSO TOGETHER WITH THE WEST HALF OF CLAREMONT AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED EAST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 31 EXTENDED EAST, ALL IN COOK COUNTY, ILLINOIS.

Address: 15958 S. Western Avenue, Markham, IL 60428

PIN(s): 29-19-100-029-0000

Parcel 2:

LOT 30 IN BLOCK 6 IN LORD'S 159TH STREET ADDITION TO HARVEY, A SUBDIVISION OF LOT 3 IN BLOCK 2, LOTS 3 AND 4 IN BLOCK 3, LOTS 3 AND 4 IN BLOCK 4, LOTS 5 THROUGH 9, LOTS 1, 3 AND 4 IN BLOCK 10, BLOCKS 11 THROUGH 16, LOT 2 IN BLOCK 17, LOT 2 IN BLOCK 18, BLOCK 19 AND LOT 2 IN BLOCK 20 IN ADELAIDE SPEIGHT'S SUBDIVISION OF THAT PART OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF VINCENNES ROAD (EXCEPT THE SOUTH 60.65 ACRES), TOGETHER WITH THE SOUTH HALF OF THE 12-FOOT WIDE EAST-WEST ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH ALL OF THE 14-FOOT NORTH-SOUTH ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH THE EAST 33 FEET OF WESTERN AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE

EXHIBIT A

(to Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement)

UNOFFICIAL COPY

CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED WEST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 30 EXTENDED WEST; ALSO TOGETHER WITH THE NORTH HALF OF 160TH STREET VACATED BY DOCUMENT NO. 2004916000 LYING EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 AND WEST OF THE CENTERLINE OF CLAREMONT AVENUE; ALSO TOGETHER WITH THE WEST HALF OF CLAREMONT AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED EAST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 31 EXTENDED EAST, ALL IN COOK COUNTY, ILLINOIS.

Address: 15960 S. Western Avenue, Markham, IL 60428

PIN(s): 29-19-100-030-0000

Parcel 3:

LOTS 31 AND 32 IN BLOCK 6 IN LORD'S 159TH STREET ADDITION TO HARVEY, A SUBDIVISION OF LOT 3 IN BLOCK 2, LOTS 3 AND 4 IN BLOCK 3, LOTS 3 AND 4 IN BLOCK 4, LOTS 5 THROUGH 9, LOTS 1, 3 AND 4 IN BLOCK 10, BLOCKS 11 THROUGH 16, LOT 2 IN BLOCK 17, LOT 2 IN BLOCK 18, BLOCK 19 AND LOT 2 IN BLOCK 20 IN ADELAIDE SPEIGHT'S SUBDIVISION OF THAT PART OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF VINCENNES ROAD (EXCEPT THE SOUTH 60.65 ACRES), TOGETHER WITH THE SOUTH HALF OF THE 12-FOOT WIDE EAST-WEST ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH ALL OF THE 14-FOOT NORTH-SOUTH ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH THE EAST 33 FEET OF WESTERN AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED WEST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 30 EXTENDED WEST; ALSO TOGETHER WITH THE NORTH HALF OF 160TH STREET VACATED BY DOCUMENT NO. 2004916000 LYING EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 AND WEST OF THE CENTERLINE OF CLAREMONT AVENUE; ALSO TOGETHER WITH THE WEST HALF OF CLAREMONT AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED EAST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 31 EXTENDED EAST, ALL IN COOK COUNTY, ILLINOIS.

Address: A parcel approximately 250 feet by 125.07 feet at the Northwest corner of 160th Street and Claremont Avenue in Thornton Township, Markham, IL 60428

PIN(s): 29-19-100-048-0000 and 29-19-100-049-0000

EXHIBIT A

(to Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement)

UNOFFICIAL COPY

Parcel 4:

LOT 33 IN BLOCK 6 IN LORD'S 159TH STREET ADDITION TO HARVEY, A SUBDIVISION OF LOT 3 IN BLOCK 2, LOTS 3 AND 4 IN BLOCK 3, LOTS 3 AND 4 IN BLOCK 4, LOTS 5 THROUGH 9, LOTS 1, 3 AND 4 IN BLOCK 10, BLOCKS 11 THROUGH 16, LOT 2 IN BLOCK 17, LOT 2 IN BLOCK 18, BLOCK 19 AND LOT 2 IN BLOCK 20 IN ADELAIDE SPEIGHT'S SUBDIVISION OF THAT PART OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF VINCENNES ROAD (EXCEPT THE SOUTH 60.65 ACRES), TOGETHER WITH THE SOUTH HALF OF THE 12-FOOT WIDE EAST-WEST ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH ALL OF THE 14-FOOT NORTH-SOUTH ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH THE EAST 33 FEET OF WESTERN AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED WEST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 30 EXTENDED WEST; ALSO TOGETHER WITH THE NORTH HALF OF 160TH STREET VACATED BY DOCUMENT NO. 2004916000 LYING EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 AND WEST OF THE CENTERLINE OF CLAREMONT AVENUE; ALSO TOGETHER WITH THE WEST HALF OF CLAREMONT AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED EAST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 31 EXTENDED EAST, ALL IN COOK COUNTY, ILLINOIS.

Address: 15946 Claremont Avenue, Markham, IL 60426

PIN(s): 29-19-100-047-0000

Parcel 5:

LOT 34 IN BLOCK 6 IN LORD'S 159TH STREET ADDITION TO HARVEY, A SUBDIVISION OF LOT 3 IN BLOCK 2, LOTS 3 AND 4 IN BLOCK 3, LOTS 3 AND 4 IN BLOCK 4, LOTS 5 THROUGH 9, LOTS 1, 3 AND 4 IN BLOCK 10, BLOCKS 11 THROUGH 16, LOT 2 IN BLOCK 17, LOT 2 IN BLOCK 18, BLOCK 19 AND LOT 2 IN BLOCK 20 IN ADELAIDE SPEIGHT'S SUBDIVISION OF THAT PART OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF VINCENNES ROAD (EXCEPT THE SOUTH 60.65 ACRES), TOGETHER WITH THE SOUTH HALF OF THE 12-FOOT WIDE EAST-WEST ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH ALL OF THE 14-FOOT NORTH-SOUTH ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH THE EAST 33 FEET OF WESTERN AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE

EXHIBIT A

(to Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement)

UNOFFICIAL COPY

CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED WEST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 30 EXTENDED WEST; ALSO TOGETHER WITH THE NORTH HALF OF 160TH STREET VACATED BY DOCUMENT NO. 2004916000 LYING EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 AND WEST OF THE CENTERLINE OF CLAREMONT AVENUE; ALSO TOGETHER WITH THE WEST HALF OF CLAREMONT AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED EAST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 31 EXTENDED EAST, ALL IN COOK COUNTY, ILLINOIS.

Address: 15944 Claremont Avenue, Markham, IL 60428

PIN(s): 29-19-100-046-0000

Parcel 6:

LOT 35 IN BLOCK 6 IN LORD'S 159TH STREET ADDITION TO HARVEY, A SUBDIVISION OF LOT 3 IN BLOCK 2, LOTS 3 AND 4 IN BLOCK 3, LOTS 3 AND 4 IN BLOCK 4, LOTS 5 THROUGH 9, LOTS 1, 3 AND 4 IN BLOCK 10, BLOCKS 11 THROUGH 16, LOT 2 IN BLOCK 17, LOT 2 IN BLOCK 18, BLOCK 19 AND LOT 2 IN BLOCK 20 IN ADELAIDE SPEIGHT'S SUBDIVISION OF THAT PART OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF VINCENNES ROAD (EXCEPT THE SOUTH 60.65 ACRES), TOGETHER WITH THE SOUTH HALF OF THE 12-FOOT WIDE EAST-WEST ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH ALL OF THE 14-FOOT NORTH-SOUTH ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH THE EAST 33 FEET OF WESTERN AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED WEST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 30 EXTENDED WEST; ALSO TOGETHER WITH THE NORTH HALF OF 160TH STREET VACATED BY DOCUMENT NO. 2004916000 LYING EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 AND WEST OF THE CENTERLINE OF CLAREMONT AVENUE; ALSO TOGETHER WITH THE WEST HALF OF CLAREMONT AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED EAST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 31 EXTENDED EAST, ALL IN COOK COUNTY, ILLINOIS.

Address: 15942 Claremont Avenue, Markham, IL 60428

PIN(s): 29-19-100-045-0000

EXHIBIT A

(to Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement)

UNOFFICIAL COPY

Parcel 7:

LOT 36 IN BLOCK 6 IN LORD'S 159TH STREET ADDITION TO HARVEY, A SUBDIVISION OF LOT 3 IN BLOCK 2, LOTS 3 AND 4 IN BLOCK 3, LOTS 3 AND 4 IN BLOCK 4, LOTS 5 THROUGH 9, LOTS 1, 3 AND 4 IN BLOCK 10, BLOCKS 11 THROUGH 16, LOT 2 IN BLOCK 17, LOT 2 IN BLOCK 18, BLOCK 19 AND LOT 2 IN BLOCK 20 IN ADELAIDE SPEIGHT'S SUBDIVISION OF THAT PART OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF VINCENNES ROAD (EXCEPT THE SOUTH 60.65 ACRES), TOGETHER WITH THE SOUTH HALF OF THE 12-FOOT WIDE EAST-WEST ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH ALL OF THE 14-FOOT NORTH-SOUTH ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000 ALSO TOGETHER WITH THE EAST 33 FEET OF WESTERN AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED WEST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 30 EXTENDED WEST; ALSO TOGETHER WITH THE NORTH HALF OF 160TH STREET VACATED BY DOCUMENT NO. 2004916000 LYING EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 AND WEST OF THE CENTERLINE OF CLAREMONT AVENUE; ALSO TOGETHER WITH THE WEST HALF OF CLAREMONT AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED EAST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 31 EXTENDED EAST, ALL IN COOK COUNTY, ILLINOIS.

Address: 15940 Claremont Avenue, Markham, IL 60428

PIN(s): 29-19-100-044-0000

Parcel 8:

LOTS 37, 39 AND 40 IN BLOCK 6 IN LORD'S 159TH STREET ADDITION TO HARVEY, A SUBDIVISION OF LOT 3 IN BLOCK 2, LOTS 3 AND 4 IN BLOCK 3, LOTS 3 AND 4 IN BLOCK 4, LOTS 5 THROUGH 9, LOTS 1, 3 AND 4 IN BLOCK 10, BLOCKS 11 THROUGH 16, LOT 2 IN BLOCK 17, LOT 2 IN BLOCK 18, BLOCK 19 AND LOT 2 IN BLOCK 20 IN ADELAIDE SPEIGHT'S SUBDIVISION OF THAT PART OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF VINCENNES ROAD (EXCEPT THE SOUTH 60.65 ACRES),

EXHIBIT A

(to Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement)

UNOFFICIAL COPY

TOGETHER WITH THE SOUTH HALF OF THE 12-FOOT WIDE EAST-WEST ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH ALL OF THE 14-FOOT NORTH-SOUTH ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH THE EAST 33 FEET OF WESTERN AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED WEST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 30 EXTENDED WEST; ALSO TOGETHER WITH THE NORTH HALF OF 160TH STREET VACATED BY DOCUMENT NO. 2004916000 LYING EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 AND WEST OF THE CENTERLINE OF CLAREMONT AVENUE; ALSO TOGETHER WITH THE WEST HALF OF CLAREMONT AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED EAST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 31 EXTENDED EAST, ALL IN COOK COUNTY, ILLINOIS.

Address: A parcel approximately 250 feet by 125.07 feet at the Northwest corner of 160th Street and Claremont Avenue in Thornton Township, Markham, IL 60428

PIN(s): 29-19-100-043-0000, 29-19-100-040-0000 and 29-19-100-041-0000

Parcel 9:

LOT 38 IN BLOCK 6 IN LORD'S 159TH STREET ADDITION TO HARVEY, A SUBDIVISION OF LOT 3 IN BLOCK 2, LOTS 3 AND 4 IN BLOCK 3, LOTS 3 AND 4 IN BLOCK 4, LOTS 5 THROUGH 9, LOTS 1, 3 AND 4 IN BLOCK 10, BLOCKS 11 THROUGH 16, LOT 2 IN BLOCK 17, LOT 2 IN BLOCK 18, BLOCK 19 AND LOT 2 IN BLOCK 20 IN ADELAIDE SPEIGHT'S SUBDIVISION OF THAT PART OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF VINCENNES ROAD (EXCEPT THE SOUTH 60.65 ACRES), TOGETHER WITH THE SOUTH HALF OF THE 12-FOOT WIDE EAST-WEST ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH ALL OF THE 14-FOOT NORTH-SOUTH ALLEY IN SAID BLOCK 6 VACATED BY DOCUMENT NO. 2004916000; ALSO TOGETHER WITH THE EAST 33 FEET OF WESTERN AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED WEST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 30 EXTENDED WEST; ALSO TOGETHER WITH THE NORTH HALF OF 160TH STREET VACATED BY DOCUMENT NO. 2004916000 LYING EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 AND WEST OF THE CENTERLINE OF CLAREMONT AVENUE; ALSO TOGETHER WITH THE WEST HALF OF CLAREMONT AVENUE VACATED BY DOCUMENT NO. 2004916000 LYING SOUTH OF THE CENTERLINE OF SAID 12-FOOT WIDE EAST-WEST ALLEY EXTENDED EAST AND LYING NORTH OF THE SOUTH LINE OF SAID LOT 31 EXTENDED EAST, ALL IN COOK COUNTY, ILLINOIS.

EXHIBIT A

(to Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement)

UNOFFICIAL COPY

Address: 15936 Claremont Avenue, Markham, IL 60428

PIN(s): 29-19-100-042-0000

Property of Cook County Clerk's Office

EXHIBIT A
(to Mortgage, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement)