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Illinois Anti-Predatory Lending Database Program

Doc#: 2116855148 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 06/17/2021 02:52 PM Pg: 1 of 32

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN:** 12-31-100-005-0000

Address:

Street: 505 Northwest Avenue

Street line 2:

City: Northlake

State: IL

ZIP Code: 60164

Lender: Toronto Dominion (Texas) LLC, as collateral agent for the secured parties under the Credit Agreement dated as of September 2, 2020

Borrower: Aligned Data Centers (ORD) Propco, LLC, a Delaware limited liability company

Loan / Mortgage Amount: \$61,410,888.00

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

CL# 2006063 LD 1 of 1

CT# JY/14

Certificate number: B05C2C8C-4A80-4DA2-9518-ADADC48A9F34

Execution date: 6/9/2021

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Paul Hastings LLP
Attn.: Gregory E. Spitzer, Esq.
71 South Wacker Drive, Suite 4500
Chicago, IL
File #: CCHI2006063LD¹

Document title(s): **Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing (Illinois)**

Reference numbers of related documents:

Mortgagor(s): **ALIGNED DATA CENTERS (ORD) PROFCO, LLC**, a Delaware limited liability company

Grantee(s): **TORONTO DOMINION (TEXAS) LLC, as collateral agent for the Secured Parties under the Credit Agreement dated as of September 2, 2020 (Mortgagee)**

Legal description (abbreviated): 505 Northwest Avenue, Northlake, IL 60164

Additional legal description is on Exhibit A of document.

Assessor's Tax Parcel Number(s): 12-31-100-005-0000; 12-31-100-008-0000; 12-31-301-021-0000; 12-31-301-033-0000; 12-31-301-043-0000

¹ NOTE: If this Mortgage or the Notes secured by the Mortgage are in your possession, DO NOT DESTROY THEM. State law may require presentation of this Mortgage, the Mortgage and/or the Notes in order to obtain a termination or release of the Mortgage upon satisfaction of the indebtedness secured thereby. The termination or release must be recorded in the city, town, county or parish records for the jurisdiction in which the land described in Exhibit A is located.

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (ILLINOIS) (this "*Mortgage*") is dated as of June 14, 2021 by and from **ALIGNED DATA CENTERS (ORD) PROPCO, LLC**, a Delaware limited liability company ("*Mortgagor*"), whose address is 2800 Summit Ave, Plano, TX 75074 to **TORONTO DOMINION (TEXAS) LLC**, as collateral agent (in such capacity, together with any successor collateral agent appointed pursuant to Article VIII of the Credit Agreement (defined below), "*Agent*") for the Secured Parties as defined in the Credit Agreement, having an address at E&Y Tower, 15th Floor, 222 Bay Street, Toronto, Ontario M5K 1A2, Canada. The Agent, together with its successors and assigns, is referred to herein as the "*Mortgagee*."

THIS MORTGAGE SECURES FUTURE ADVANCES.

RECITALS

WHEREAS **ALIGNED DATA CENTERS (ORD) PROPCO, LLC**, a Delaware limited liability company and wholly owned subsidiary of Ultimate Parent Guarantor (the "*SLC Borrower*"), **ALIGNED DATA CENTERS (DFW) PROPCO, LLC**, a Delaware limited liability company and wholly owned subsidiary of Ultimate Parent Guarantor (the "*DFW Borrower*"), **ALIGNED DATA CENTERS (PHOENIX) PROPCO, LLC**, a Delaware limited liability company and wholly owned subsidiary of Ultimate Parent Guarantor (the "*Phoenix Borrower*"), **ALIGNED ENERGY DATA CENTERS (ASHBURN) PROPCO, LLC**, a Delaware limited liability company and wholly owned subsidiary of Ultimate Parent Guarantor (the "*Ashburn Borrower*"), and **ALIGNED ENERGY DATA CENTERS (IAD) PROPCO, LLC**, a Delaware limited liability company and wholly owned subsidiary of Ultimate Parent Guarantor (the "*IAD Borrower*" and together with the SLC Borrower, DFW Borrower, Phoenix Borrower and Ashburn Borrower, collectively, the "*Borrowers*"), the Parent Guarantors, and the Subsidiary Guarantors (including, without limitation, Mortgagor) have entered into that certain Credit Agreement dated as of September 2, 2020 (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, the "*Credit Agreement*") with the Lenders party thereto, Agent, and the other Secured Parties; and

WHEREAS, Mortgagor acknowledges that it will derive substantial direct and indirect benefit from the Credit Agreement and has agreed to secure its obligations with respect thereto and to the Guaranty pursuant to this Mortgage.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby grants this Mortgage on the terms and provisions hereof:

ARTICLE 1. DEFINITIONS

Section 1.1 Definitions. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) "*Event of Default*": An Event of Default under and as defined in the Credit Agreement.

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(b) **“Guaranty”**: That certain guaranty provided pursuant to Article VII of the Credit Agreement by and from Mortgagor and the other guarantors referred to therein for the benefit of the Secured Parties dated as of even date herewith, as the same may hereafter be amended, amended and restated, supplemented or otherwise modified from time to time.

(c) **“Indebtedness”**: (1) All indebtedness of Mortgagor to Mortgagee or any of the other Secured Parties under the Credit Agreement or any other Loan Document, including, without limitation (except as otherwise set forth in Section 7.01(b) of the Credit Agreement), the sum of all (a) principal, interest and other amounts owing under or evidenced or secured by the Credit Agreement and the Loan Documents, (b) principal, interest and other amounts which may hereafter be lent by or owed to Mortgagee or any of the other Secured Parties under or in connection with the Credit Agreement or any of the other Loan Documents, whether evidenced by a promissory note or other instrument which, by its terms, is secured hereby, and (c) obligations and liabilities of any nature now or hereafter existing under or arising in connection with other extensions of credit under the Credit Agreement or any of the other Loan Documents and reimbursement obligations in respect thereof, together with interest and other amounts payable with respect thereto, and (2) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Mortgagor to Mortgagee or any of the other Secured Parties under documents which recite that they are intended to be secured by this Mortgage. The Indebtedness secured hereby includes, without limitation, all interest and expenses accruing after the commencement by or against Mortgagor or any of its affiliates of a proceeding under the Bankruptcy Code (defined below) or any similar law for the relief of debtors. This Mortgage secures all Indebtedness under the Credit Agreement and the other Loan Documents.

(d) **“Mortgaged Property”**: The fee interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference, together with any greater estate therein as hereafter may be acquired by Mortgagor (the **“Land”**), and all of Mortgagor’s right, title and interest now or hereafter acquired in and to (1) all improvements now owned or hereafter acquired by Mortgagor, now or at any time situated, placed or constructed upon the Land (the **“Improvements”**); the Land and Improvements are collectively referred to as the **“Premises”**), (2) all materials, supplies, equipment, infrastructure, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements, and all equipment, infrastructure, inventory and other goods (including, without limitation, all partitions, appliances, furniture, furnishings, machinery, elevators, boilers, building materials, computers and software, window coverings and floor coverings and other property now or in the future attached, or installed in the Improvements and all replacements, repairs, additions, or substitutions to these items) in which Mortgagor now has or hereafter acquires any rights or any power to transfer rights and that are or are to become fixtures (as defined in the UCC, defined below) related to the Land (the **“Fixtures”**), (3) all goods, accounts, inventory, general intangibles, instruments, documents, contract rights and chattel paper, including all such items as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Premises (the **“Personalty”**), (4) all reserves, escrows or impounds required under the Credit Agreement or any of the other Loan Documents and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property (the **“Deposit Accounts”**), (5) all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits, including, without limitation, all rights, easements, title, interest, benefits, privileges and franchises of Mortgagor in, to, under, or arising from any reciprocal easement agreements affecting the Mortgaged Property (the **“Leases”**), (6) all of the rents, revenues, royalties, income, proceeds, profits, accounts receivable, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, leasing, licensing possessing, operating

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from, residing in, selling or otherwise enjoying the Mortgaged Property, including, without limitation, all payments, rights and claims for payments under or in respect of any reciprocal easement agreements affecting the Mortgaged Property (the “*Rents*”), (7) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (the “*Property Agreements*”), (8) all rights, privileges, tenements, hereditaments, rights- of-way, easements, appendages and appurtenances appertaining to the foregoing, and the reversion(s), remainder(s), and claims of Mortgagor with respect to such items, and the benefits of any existing or future conditions, covenants and restrictions affecting the Land (9) all property tax refunds payable with respect to the Mortgaged Property (the “*Tax Refunds*”), (10) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the “*Proceeds*”), (11) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor (the “*Insurance*”), and (12) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to any condemnation or other taking (or any purchase in lieu thereof) of all or any portion of the Land, Improvements, Fixtures or Personalty (the “*Condemnation Awards*”). As used in this Mortgage, the term “Mortgaged Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein. For the avoidance of doubt, the term “Mortgaged Property” shall exclude any Personalty owned by Tenants under Tenancy Leases and Fixtures that Tenants are entitled to remove pursuant to Tenancy Leases unless and until the same become the property of Mortgagor pursuant to the terms of the applicable Tenancy Lease or otherwise pursuant to applicable laws.

(e) “*Obligations*”: All of the agreements, covenants, conditions, warranties, representations and other obligations of Mortgagor under the Credit Agreement and the other Loan Documents to which it is a party.

(f) “*Permitted Liens*”: Permitted Liens as defined in the Credit Agreement.

(g) “*Security Agreement*”: That certain Security Agreement by and from Mortgagor and the other Mortgagors referred to therein, as debtors, to Agent and the other Secured Parties, as secured parties, dated as of September 2, 2020, as the same may hereafter be amended, amended and restated, supplemented or otherwise modified from time to time.

(h) “*UCC*” or “*Uniform Commercial Code*”: The Uniform Commercial Code as in effect in the State of Illinois from time to time or, if pursuant to the Uniform Commercial Code as in effect in the State of Illinois from time to time, the creation, perfection and enforcement of any security interest granted under any Collateral Document is governed by the laws of a state other than the State of Illinois, then, as to the matter in question, the Uniform Commercial Code as in effect in that state from time to time.

ARTICLE 2.

GRANT

Section 2.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely payment and performance of the Obligations, Mortgagor GRANTS, BARGAINS, ASSIGNS, SELLS, CONVEYS and CONFIRMS, to Mortgagee the Mortgaged Property, subject, however, only to the matters that are set forth on Exhibit B attached hereto (the “*Permitted Encumbrances*”) and to Permitted Liens, TO HAVE AND TO HOLD the Mortgaged Property, IN TRUST FOR THE BENEFIT OF MORTGAGEE, WITH POWER OF SALE, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND DEFEND the title to the Mortgaged Property unto Mortgagee.

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ARTICLE 3. WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 3.1 Title to Mortgaged Property and Lien of this Instrument. Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Encumbrances and the Permitted Liens. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property.

Section 3.2 First Lien Status. Mortgagor shall preserve and protect the first priority lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than a Permitted Encumbrance or a Permitted Lien is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same pursuant to a Good Faith Contest in compliance with the requirements of the Credit Agreement.

Section 3.3 Payment and Performance. Mortgagor shall pay the Indebtedness when due under the Credit Agreement and the other Loan Documents and shall perform the Obligations in full when they are required to be performed.

Section 3.4 Replacement of Fixtures and Personalty. Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty owned or leased by Mortgagor to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or is permitted to be removed by the Credit Agreement and shall not transfer any of the Fixtures or Personalty owned or leased by Mortgagor unless the transferred item is (a) permitted to be transferred by the Credit Agreement, (b) not material to the value and use of the applicable Base Borrowing Asset, (c) obsolete, or (d) replaced with assets of similar character and use.

Section 3.5 Inspection. Subject to the rights of Tenants under Tenancy Leases, Mortgagor shall permit Mortgagee and the other Secured Parties and their respective agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and all books and records of Mortgagor located thereon, pursuant to the provisions of the Credit Agreement, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property or the rights of tenants at the Mortgaged Property.

Section 3.6 Other Covenants. All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the Land.

Section 3.7 Insurance: Condemnation Awards and Insurance Proceeds.

(a) **Insurance.** Mortgagor shall maintain or cause to be maintained, with financially sound and reputable insurers, insurance with respect to the Mortgaged Property in compliance with the requirements set forth on Schedule I attached hereto.

(b) **Condemnation Awards.** Mortgagor assigns all Condemnation Awards to Mortgagee and authorizes Mortgagee to collect and receive such Condemnation Awards and to give proper receipts and acquittances therefor, subject to the terms of the Credit Agreement and the applicable provisions of Schedule I attached hereto.

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(c) Insurance Proceeds. Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. Subject to the terms of the Credit Agreement and the applicable provisions of Schedule I attached hereto, Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly.

ARTICLE 4.

[INTENTIONALLY OMITTED]

ARTICLE 5.

DEFAULT AND FORECLOSURE

Section 5.1 Remedies. Upon the occurrence and during the continuance of an Event of Default, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration. Subject to any provisions of the Loan Documents providing for the automatic acceleration of the Indebtedness upon the occurrence of certain Events of Default, declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) Entry on Mortgaged Property. Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon. If Mortgagor remains in possession of the Mortgaged Property following the occurrence and during the continuance of an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) Operation of Mortgaged Property. Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may reasonably deem necessary or desirable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee reasonably deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 5.7.

(d) Foreclosure and Sale. Institute proceedings for the complete foreclosure of this Mortgage by judicial action or by power of sale, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels to the fullest extent permitted by law. With respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee or any of the other Secured Parties may be a purchaser at such sale. If Mortgagee or such other Secured Party is the highest bidder, Mortgagee or such other Secured Party may credit the portion of the purchase price that would be distributed to Mortgagee or such other Secured Party against the Indebtedness in lieu of paying cash. To the fullest extent permitted

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by law, in the event this Mortgage is foreclosed by judicial action, appraisal of the Mortgaged Property is waived.

(e) Receiver. Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 5.7.

(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity.

Section 5.2 Separate Sales. Upon the occurrence and during the continuance of an Event of Default, it is agreed by Mortgagor that the Mortgaged Property may be sold in one or more parcels as permitted by law. The right of sale arising out of or during the continuance of any Event of Default shall not be exhausted by any one or more sales.

Section 5.3 Remedies Cumulative, Concurrent and Nonexclusive. Upon the occurrence and during the continuance of an Event of Default, Mortgagee and the other Secured Parties shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee or such other Secured Party, as the case may be, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee or any other Secured Party in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 5.4 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 5.5 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of any election by Mortgagee to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents (except to the extent such notice is expressly required pursuant to the Loan Documents), and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 5.6 Discontinuance of Proceedings. If Mortgagee or any other Secured Party shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and

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shall thereafter elect to discontinue or abandon it for any reason, Mortgagee or such other Secured Party, as the case may be, shall have the unqualified right to do so and, in such an event, Mortgagor, Mortgagee and the other Secured Parties shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee and the other Secured Parties shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee or any other Secured Party thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 5.7 Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the reasonable out-of-pocket costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) trustee's and receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) court costs, (3) reasonable attorneys' and accountants' fees and expenses and (4) costs of advertisement;

(b) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(c) the balance, if any, to the Persons legally entitled thereto.

Section 5.8 Occupancy After Foreclosure. Any sale of the Mortgaged Property or any part thereof in accordance with Section 5.1(d) will divest all right, title and interest of Mortgagor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Mortgagor retains possession of such property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

Section 5.9 Additional Advances and Disbursements; Costs of Enforcement.

(a) Upon the occurrence and during the continuance of any Event of Default, Mortgagee and each of the other Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee or any other Secured Party under this Section 5.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the rate of interest that would be payable at such time on a Base Rate Advance pursuant to Section 2.07(b) of the Credit Agreement, and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

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Section 5.10 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 5, the assignment of the Rents and Leases under Article 6, the security interests under Article 7, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee or any other Secured Party to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee or any other Secured Party to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 6. ASSIGNMENT OF RENTS AND LEASES

Section 6.1 Assignment. In furtherance of and in addition to the assignment made by Mortgagor in Section 2.1 of this Mortgage, Mortgagor hereby absolutely and unconditionally assigns as security, sells, transfers and conveys to Mortgagee all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment intended as security and Mortgagee shall be entitled to all of the rights and benefits available under Section 15-1704 of the Illinois Mortgage Foreclosure Law. So long as no Event of Default shall have occurred and be continuing, Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate, without notice to Mortgagor by Mortgagee (any such notice being hereby expressly waived by Mortgagor to the extent permitted by applicable law), except to the extent such notice is expressly required pursuant to the Loan Documents.

Section 6.2 Perfection Upon Recordation. Mortgagor acknowledges that Mortgagee has taken all actions necessary to obtain, and that upon recordation of this Mortgage Mortgagee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases. Mortgagor acknowledges and agrees that upon recordation of this Mortgage Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and to the extent permitted under applicable law, all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "*Bankruptcy Code*"), without the necessity of commencing a foreclosure action with respect to this Mortgage, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

Section 6.3 Bankruptcy Provisions. Without limitation of the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

Section 6.4 No Merger of Estates. So long as part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any tenant or any third party by purchase or otherwise.

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ARTICLE 7. SECURITY AGREEMENT

Section 7.1 Security Interest. This Mortgage constitutes a “security agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance, Condemnation Awards and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property, subject to Permitted Liens. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor. In the event of any conflict or inconsistency between the terms of this Mortgage and the terms of the Security Agreement with respect to the collateral covered both therein and herein, the Security Agreement shall control and govern to the extent of any such conflict or inconsistency.

Section 7.2 Financing Statements. Mortgagor shall prepare and deliver to Mortgagee such financing statements, and shall execute and deliver to Mortgagee such other documents, instruments and further assurances, in each case in form and substance reasonably satisfactory to Mortgagee, as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee’s security interest hereunder. Mortgagor hereby irrevocably authorizes Mortgagee to cause financing statements (and amendments thereto and continuations thereof) and any such documents, instruments and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor represents and warrants to Mortgagee that Mortgagor’s jurisdiction of organization is the State of Delaware. After the date of this Mortgage, Mortgagor shall not change its name, type of organization, organizational identification number (if any), jurisdiction of organization or location (within the meaning of the UCC) without giving at least thirty (30) days’ prior written notice to Mortgagee (or such other period as may be agreed by the Agent).

Section 7.3 Fixture Filing. This Mortgage shall also constitute a “fixture filing” for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. The information provided in this Section 7.3 is provided so that this Mortgage shall comply with the requirements of the UCC for a mortgage instrument to be filed as a financing statement. Mortgagor is the “Debtor” and its name and mailing address are set forth in the preamble of this Mortgage immediately preceding Article 1. Mortgagee is the “Secured Party” and its name and mailing address from which information concerning the security interest granted herein may be obtained are also set forth in the preamble of this Mortgage immediately preceding Article 1. A statement describing the portion of the Mortgaged Property comprising the fixtures hereby secured is set forth in Section 1.1(d) of this Mortgage. Mortgagor represents and warrants to Mortgagee that Mortgagor is the record owner of the Mortgaged Property, the employer identification number of Mortgagor is [86-2296991]² and the organizational identification number of Mortgagor is [5057451]³.

² Mortgagor to provide.

³ Mortgagor to provide.

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ARTICLE 8. ILLINOIS LAW PROVISIONS

Section 8.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 8 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 8 shall control and be binding.

Section 8.2 Use of Proceeds. Mortgagor hereby covenants, represents and agrees that all of the proceeds of the Loan secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire liabilities and obligations evidenced by the Loan Documents and secured by this Mortgage: (a) constitute a business loan which comes within the purview of 815 ILCS 205/4 as amended; (b) constitute "a loan secured by a mortgage on real estate," within the purview and operation of 815 ILCS 205/4(1)(l); and (c) is an exempt transaction under the Truth-in-Lending Act, 15 U.S.C., §1601 et seq.

Section 8.3 Power of Sale. Each of the remedies set forth herein, including without limitation the remedies involving a power of sale on the part of the Mortgagee and the right of Mortgagee to exercise self-help in connection with the enforcement of the terms of this Mortgage, shall be exercisable if, and to the extent, permitted by the Laws of the State of Illinois in force at the time of the exercise of such remedies without regard to the enforceability of such remedies at the time of the execution and delivery of this Mortgage.

Section 8.4 Maximum Principal Indebtedness. Notwithstanding any provision contained herein to the contrary, the liabilities and obligations secured by this Mortgage shall not exceed \$61,410,888.00.

Section 8.5 Future Advances. This Mortgage is given for the purpose of securing loan advances which the Mortgagee may make to or for Mortgagor pursuant and subject to the terms and provisions of the Loan Documents. The parties hereto intend that, in addition to any other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of loan advances made after this Mortgage is delivered to the Office of the Recorder of Cook County, Illinois, whether made pursuant to an obligation of Mortgagee or otherwise, provided that such advances are within (20) years from the date hereof and in such event, such advances shall be secured to the same extent as if such future advances were made on the date hereof, although there may be no advance made at the time of execution hereof and although there may be no indebtedness outstanding at the time any advance is made. Such loan advances may or may not be evidenced by notes executed pursuant to the Loan Agreement.

Section 8.6 Illinois Mortgage Foreclosure Law.

(a) In the event any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS Sections 5/15-1101 et seq., Illinois Compiled Statutes) (the "Foreclosure Act"), the provisions of the Foreclosure Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Foreclosure Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law.

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(c) Without limiting the generality of the foregoing, all expenses incurred by the Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

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

Section 8.7 Collateral Protection Act. Pursuant to the terms of the Collateral Protection Act, 815 ILCS 180/1 et seq., Mortgagor is hereby notified that unless Mortgagee provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Property, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required hereunder. If Mortgagee purchases insurance for the Property, the Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations secured hereby. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.

Section 8.8 Protective Advances. All advances, disbursements and expenditures made by 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 authorized by this Mortgage or by the Foreclosure Act (collectively, "**Protective Advances**"), shall have the benefit of all applicable provisions of the Foreclosure Act. All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after an Event of Default under the terms of the Note. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Foreclosure Act. 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 Foreclosure Act, apply to and be included in:

- (a) determination of the amount of indebtedness secured by this Mortgage at any time;
- (b) the indebtedness found due and owing to 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 of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (c) if right of redemption has not been waived by the Mortgagor in this Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Foreclosure Act;

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- (d) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Foreclosure Act;
- (e) application of income in the hands of any receiver or Mortgagee in possession; and
- (f) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Foreclosure Act.

Section 8.9 Waiver of Rights of Redemption and Reinstatement. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement of any rights or remedies of Mortgagee under this Mortgage, but hereby waives the benefit of such laws and the benefit of any homestead or other exemptions which it may now or hereafter from time to time have with respect to the Property or the Obligations. Mortgagor for itself and all creditors, mortgagees, trustees, lienholders and other persons or entities who may claim through or under it waives any and all right to have the property and estates comprising the Property, or any part thereof, marshaled upon any foreclosure or other disposition (whether or not the entire Property be sold as a unit, and whether or not any parcels thereof be sold as a unit or separately) of any kind or nature of the Property, or any part thereof, or interest therein, and agrees that any court having jurisdiction to foreclose or otherwise enforce the liens granted and security interests created by this Mortgage may order the Property sold as an entirety. On behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the maximum extent permitted by applicable law, Mortgagor hereby waives any and all rights (x) of redemption from any foreclosure, or other disposition of any kind or nature of the Property, or any part thereof, or interest therein, under or pursuant to rights herein granted to Mortgagee, and (y) to reinstatement of the indebtedness hereby secured, including, without limitation, any right to reverse any acceleration of such indebtedness pursuant to 735 ILCS 5/15-1602. Mortgagor further waives and releases (a) all errors, defects, and imperfections in any proceedings instituted by Mortgagee under the Note, this Mortgage, or any of the other Loan Documents, (b) all benefits that might accrue to the Mortgagor by virtue of any present or future laws exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy, or sale under civil process, or extension, exemption from civil process, or extension of time for payment, and (c) all notices not specifically required by this Mortgage of default, or of Mortgagee's exercise, or election to exercise, any option under this Mortgage. All waivers by Mortgagor in this Mortgage have been made voluntarily, intelligently and knowingly by Mortgagor after Mortgagor has been afforded an opportunity to be informed by counsel of Mortgagor's choice as to possible alternative rights. Mortgagor's execution of this Mortgage shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

Section 8.10 Fixture Filing. THIS MORTGAGE IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED. THE ADDRESS OF MORTGAGEE AND THE MAILING ADDRESS OF MORTGAGOR ARE SET FORTH WITHIN. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS MORTGAGE OR ANY FINANCING STATEMENT RELATING TO THIS MORTGAGE SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

ARTICLE 9. **MISCELLANEOUS**

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Section 9.1 Notices. Any notice required or permitted to be given under this Mortgage shall be given in accordance with Section 9.02 of the Credit Agreement, to its address first set forth above or as otherwise notified by the Mortgagee to the other parties hereto in writing from time to time.

Section 9.2 Covenants Running with the Land. All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Land. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property. All Persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; *provided, however*, that no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 9.3 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, with full authority in the place and stead of Mortgagor and in the name of Mortgagor or otherwise (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee reasonably deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within thirty (30) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the exercise of any power of sale contained herein or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose (without representation or warranty of any kind), (c) to prepare and file or record financing statements and continuation statements, and to prepare, execute and file or record applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, if Mortgagor shall fail to do so within ten (10) Business Days after written request by Mortgagee, and (d) after the occurrence and during the continuance of any Event of Default, to perform any obligation of Mortgagor hereunder; *provided, however*, that (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the rate at which interest is computed at such time on a Base Rate Advance pursuant to Section 2.07(b) of the Credit Agreement; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section 9.3.

Section 9.4 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee, the other Secured Parties and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder except as allowed pursuant to the Credit Agreement.

Section 9.5 No Waiver. Any failure by Mortgagee or the other Secured Parties to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee and the other Secured Parties shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 9.6 Credit Agreement. If any conflict or inconsistency exists between this Mortgage and the Credit Agreement, the Credit Agreement shall control and govern to the extent of any such conflict or inconsistency.

Section 9.7 Release or Reconveyance. Upon (x) the latest of payment in full of the Indebtedness and performance in full of the Obligations, the termination of all Commitments and the

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termination or expiration of all Letters of Credit (or until the applicable Borrower has deposited in the L/C Cash Collateral Account Cash Collateral in an amount equal to 105% of the aggregate Available Amount of all Letters of Credit then outstanding pursuant to this Agreement) or (y) upon a sale or other disposition of the Mortgaged Property to a Person other than a Loan Party and permitted by the Credit Agreement, Mortgagee, at Mortgagor's request and expense, shall release the liens and security interests created by this Mortgage or reconvey the Mortgaged Property to Mortgagor.

Section 9.8 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Indebtedness or Obligations secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee or any other Secured Party.

Section 9.9 Applicable Law. The provisions of this Mortgage regarding the creation, perfection and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the state in which the Mortgaged Property is located. All other provisions of this Mortgage shall be governed by the laws of the State of New York.

Section 9.10 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 9.11 Severability. If any provision of this Mortgage shall be held by any court of competent jurisdiction to be unlawful, void or unenforceable for any reason, such provision shall be deemed severable from and shall in no way affect the enforceability and validity of the remaining provisions of this Mortgage.

Section 9.12 Entire Agreement. This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagor and Mortgagee relating to the subject matter hereof and thereof and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 9.13 Mortgagee as Agent; Successor Agents.

(a) Agent has been appointed to act as Agent hereunder by the other Secured Parties. Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of the Mortgaged Property) in accordance with the terms of the Credit Agreement, any related agency agreement among Agent and the other Secured Parties (collectively, as amended, amended and restated, supplemented or otherwise modified or replaced from time to time, the "*Agency Documents*") and this Mortgage. Mortgagor and all other Persons shall be entitled to rely on releases, waivers, consents, approvals, notifications and other acts of Agent, without inquiry into the existence of required consents or approvals of the Secured Parties therefor.

(b) Mortgagee shall at all times be the same Person that is Agent under the Agency Documents. Written notice of resignation by Agent pursuant to the Agency Documents shall also constitute notice of resignation as Agent under this Mortgage. Removal of Agent pursuant to any provision of the Agency Documents shall also constitute removal as Agent under this Mortgage. Appointment of a

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successor Agent pursuant to the Agency Documents shall also constitute appointment of a successor Agent under this Mortgage. Upon the acceptance of any appointment as Agent by a successor Agent under the Agency Documents, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Agent as the Mortgagee under this Mortgage, and the retiring or removed Agent shall promptly (i) assign and transfer to such successor Agent all of its right, title and interest in and to this Mortgage and the Mortgaged Property, and (ii) execute and deliver to such successor Agent such assignments and amendments and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Agent of the liens and security interests created hereunder, whereupon such retiring or removed Agent shall be discharged from its duties and obligations under this Mortgage. After any retiring or removed Agent's resignation or removal hereunder as Agent, the provisions of this Mortgage and the Agency Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was Agent hereunder.

Section 9.14 Subrogation. If any or all of the proceeds of the Indebtedness are used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of the funds so used, Mortgagee and the other Secured Parties shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and the other Secured Parties and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the performance of the Obligations.

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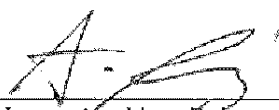
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IN WITNESS WHEREOF, Mortgagor has on the date set forth in the acknowledgement hereto, effective as of the date first above written, caused this instrument to be duly EXECUTED AND DELIVERED by authority duly given.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FOREBEAR FROM ENFORCING REPAYMENT OF DEBT ARE NOT ENFORCEABLE UNDER UTAH LAW.

MORTGAGOR: ALIGNED DATA CENTERS (ORD) PROPCO, LLC,
a Delaware limited liability company

By:


Name: Anubhav Raj

Title: CFO

Property of Cook County Clerk's Office

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MORTGAGOR:

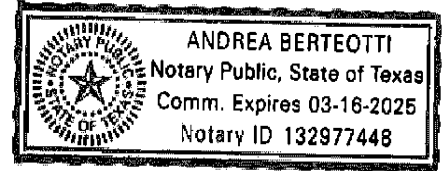
STATE OF Texas)
) ss.:
COUNTY OF Collin)

On this 9 day of June, 2021, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Anubhav Raj, to me known to be the CFO of ALIGNED DATA CENTERS (ORD) PROPCO, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that (s)he was duly authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public Andrea BerTEOTTI
Print Name:
Residing at:

My Commission Expires:



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EXHIBIT A LEGAL DESCRIPTION

Parcel 1:

All that certain tract of Land situated in the West 1/2 of fractional Section 31, Township 40 North, Range 12 East of the Third Principal Meridian, being More Fully described as follows: commencing at the Southwest Corner of Section 30; thence North 00 degrees 00 minutes 00 seconds East along the West Line of Section 30 said line also being the division line between DuPage County and Cook County, a distance of 1,051.81 feet to a point on the Southerly right of way line of that certain easement conveyed by the Chicago and Northwestern Railway Company to the Commonwealth Edison Company by easement deed dated January 16, 1957 and recorded in the office of the recorder of deeds in and for Cook County, Illinois as document 16327903, on February 18, 1957 in book 52875 on Pages 192-195; thence North 70 degrees 11 minutes 30 seconds East along said Southerly right of way of said easement, a distance of 338.80 feet to a point; thence South 00 degrees 00 minutes 00 seconds West along a line parallel with and 60 feet East of (measured at Right Angles) the East right of way line of the Northern Illinois toll highway a distance of 1,147.84 feet to a point; thence continuing along the last mentioned course South 00 degrees 00 minutes 00 seconds West, a distance of 2,500 feet to a point being the Southwest corner of a certain parcel of Land conveyed to the Kroger Company by the Chicago and Northwestern Railway Company by deed dated on February 26, 1960 for a place of beginning; thence South 90 degrees 00 minutes 00 seconds East along the South Line of said parcel conveyed to the Kroger Company, a distance of 911.99 feet to a point 94 feet West of the Southeast Corner Thereof; thence South 00 degrees 00 minutes 00 seconds West along a line drawn perpendicular to said South Line, a distance of 40 feet to a point; thence South 15 degrees 00 minutes 00 seconds East, a distance of 346.50 feet to a point 150 feet Westerly of (as measured perpendicular to) the center line of yard track number 834 as now existing of the Chicago and Northwestern Railways Proviso Yard; thence South 04 degrees 16 minutes 49 seconds West along a line parallel with and 150 feet Westerly of (as measured perpendicular to) said center line of yard number 834, a distance of 434.57 feet; thence North 90 degrees 00 minutes 00 seconds West, a distance of 957.88 feet to a point on the Easterly right of way line of access road "C", said point also being 60 feet Easterly of (measured perpendicular to) the Easterly right of way line of the Northern Illinois Toll Highway; thence Northerly along said Easterly right of way line of access road "C", also being a line 60 feet Easterly of (as measured perpendicular to) the Easterly right of way line of the Northern Illinois toll highway, being a curve convex Westerly and having a radius of 7,597.44 feet, a distance of 415.42 feet to a point of tangency; thence North 00 degrees 00 minutes 00 seconds East along said Easterly right of way line of access road "C", a distance of 392.84 feet to a place of beginning, in Cook County, Illinois.

Parcel 2:

The North 12 feet (as measured at right angles to the North Line) of the Northerly 330 feet of the following described tract of Land in the Southwest 1/4 of Fractional Section 31, Township 40 North, Range 12 East of the Third Principal Meridian, described as follows: commencing at the Southwest corner of the Southwest 1/4 of Said Fractional Section 31; thence North 00 degrees 00 minutes 00 seconds East along the West Line of the Southwest 1/4 of said Fractional Section 31, a distance of 99.65 feet to a point on the North right of way line of state Bond issue route 64 (commonly known as North Avenue) thence North 88 degrees 20 minutes 15 seconds East along said North right of way line of state Bond issue route 64, a distance of 555.85 feet to the Southwest corner of a certain parcel of Land conveyed to Burny Brothers, Inc., by the Chicago and northwestern railway company by deed dated April 1, 1960; thence Northerly along the Westerly line of said Burny Brothers, Inc. Property, said line also being the Easterly line of access road "C", the following 5 courses and distances; North 00 degrees 03 minutes 45 seconds East, a distance of 43.52 feet to a point of curvature; thence Northwesterly along a curve convex Northeasterly and having a radius of 192 feet, a distance of 143.73 feet to a point of tangency; thence North 42 degrees 49 minutes

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45 seconds West, a distance of 115.47 feet to a point of curvature; thence Northwesterly along a curve convex Southwesterly and having a radius of 188 feet, a distance of 138.66 feet to a point of tangency; thence North 00 degrees 34 minutes 15 seconds West, a distance of 206.35 feet to the Northwest corner of said Burny Brothers, Inc. Property for a place of beginning; thence Northerly along the Easterly line of access road "C" the following 4 courses and distances; thence North 00 degrees 34 minutes 15 seconds West, a distance of 563.37 feet to a point of curvature; thence Northerly along a curve convex Easterly and having a radius of 7,542 feet, a distance of 485.94 feet to a point of tangency; thence North 4 degrees 15 minutes 45 seconds West, a distance of 94.32 feet to a point of curvature; thence Northerly along a curve convex Westerly and having a radius of 7,597.44 feet, a distance of 149.79 feet to the Southwest corner of a parcel of Land conveyed to radio steel manufacturing company, by the Chicago and northwestern railway company by a deed dated January 24, 1962; thence North 90 degrees 00 minutes 00 seconds East along the South Line of Said Radio Steel Manufacturing Company Property, a distance of 957.88 feet to the Southeast Corner of Said Radio Steel Manufacturing Company property, said corner also being a point 150 feet Westerly of (as measured perpendicular to) the center line of yard track number 834 as now existing of the Chicago and northwestern Railway Company's Proviso Yard; thence South 04 degrees 16 minutes 49 seconds West along a line parallel with and 150 feet Westerly of (as measured perpendicular to) said center line of yard track number 834, a distance of 1,272.05 feet to a point on the North line of said Burny Brothers, Inc. Property; thence South 28 degrees 20 minutes 15 seconds West along the North line of said Burny Brothers, Inc. Property, a distance of 820.52 feet to the place of beginning, in Cook County, Illinois.

Parcel 3:

That part of a certain tract of Land situated in the West 1/2 of fractional Section 31, Township 40 North, Range 12 East of the Third Principal Meridian, being More Fully described as follows: commencing at the Southwest Corner of Section 30, Township 40 North, Range 12, East of the Third Principal Meridian; thence North 00 degrees 00 minutes 00 seconds East along the West Line of said Section 30 (said line also being the division line between DuPage and Cook Counties) a distance of 1051.81 feet to a point on the Southerly right of way line of that certain easement conveyed by the Chicago and Northwestern Railway Company to the Commonwealth Edison Company by easement deed dated January 16, 1957 and recorded in the office of the recorder of deeds in and for Cook County, Illinois as document 16827903 on February 18, 1957 in book 52875 on Pages 192-195; thence North 70 degrees 11 minutes 30 seconds East, along said Southerly right of way of said easement, a distance of 338.80 feet to a point; thence South 00 degrees 00 minutes 00 seconds West along a line parallel with and 60 feet East of (measured at right angles) the East right of way line of the Northern Illinois Toll Highway, a distance of 1147.84 feet to a point; thence continuing South 00 degrees 00 minutes 00 seconds West along the last mentioned course, a distance of 2500.00 feet to a point being the Southwest corner of a certain parcel of Land conveyed to the Kroger Company by the Chicago Northwestern Railway Company by deed dated February 26, 1930; thence South 90 degrees 00 minutes 00 seconds East along the South Line of said parcel conveyed to the Kroger Company, a distance of 911.99 feet to a point 94.0 feet West of the Southeast corner of said parcel conveyed to the Kroger Company, said point also being the place of beginning of the property to be described herein: Thence continuing South 90 degrees 00 minutes 00 seconds East along said South Line, a distance of 92 feet; thence South 00 degrees 00 minutes 00 seconds West at right angles to said South Line, a distance of 160.0 feet; thence North 90 degrees 00 minutes 00 seconds West at right angles to the last described course, a distance of 59.99 feet; thence North 14 degrees 56 minutes 10 seconds West, 124.20 feet; thence North 00 degrees 00 minutes 00 seconds East, 40.0 feet to the place of beginning, all in Cook County, Illinois.

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EXHIBIT B PERMITTED ENCUMBRANCES

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SCHEDULE I INSURANCE, CASUALTY AND CONDEMNATION REQUIREMENTS

Section 1.1 Insurance. Except, in each case, as may be otherwise agreed by the Agent:

1.1.1 Insurance Policies. (a) Mortgagor shall obtain and maintain, or cause to be maintained, insurance for Mortgagor and the Mortgaged Property providing at least the following coverages:

(i) Property insurance against loss or damage by fire, any type of wind (including named storms), lightning and such other perils as are included in a standard "special form" or "all-risk" policy, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy, with no exclusion for damage or destruction caused by acts of terrorism (or, subject to Section 1.1.1(b) below) riot and civil commotion, vandalism, malicious mischief, burglary and theft (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Mortgage shall mean actual replacement value (exclusive of costs for foundations, underground utilities and footings), but the amount insured in the aggregate collectively in this section and section iv below shall in no event be less than the aggregate outstanding principal balance of the Facility; (B) containing an agreed amount endorsement (or its equivalent) with respect to the Improvements and personal property at the Mortgaged Property waiving all or containing no co-insurance provisions; (C) providing for no deductible in excess of One Hundred Thousand and No/100 Dollars (\$100,000) for all such insurance coverage, except for (1) windstorm and earthquake coverage in which the deductible may not exceed five percent (5%) of the total insurable value of the Mortgaged; (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Mortgaged Property shall at any time constitute legal non-conforming structures or uses and compensating for loss to the undamaged portion of the building (with a limit equal to replacement cost), the cost of demolition and the increased costs of construction, each in amounts as required by Grantee. In addition, Mortgagor shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended plus such additional coverage as Agent shall require, subject to a deductible not to exceed an amount equal to the maximum available through the Flood Insurance Acts;; and (z) earthquake insurance in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and covering similar properties in the same general areas as the Mortgaged Property or otherwise in amounts and in form and substance satisfactory to Grantee in the event the Mortgaged Property is located in an area with a high degree of seismic activity (provided that Grantee shall not require earthquake insurance unless the Property is located in an area with a high degree of seismic activity and a Probable Maximum Loss ("PML") or Scenario Expected Loss ("SEL") of greater than 20%) provided that the insurance pursuant to clauses (y) and (z) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this subsection (i).

(ii) commercial general liability insurance, including terrorism, on a broad form coverage for claims of personal injury, bodily injury, death or property damage occurring upon, in or about the Mortgaged Property, such insurance (A) to be on the so-

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called "occurrence" form and containing minimum limits per occurrence of One Million and 00/100 Dollars (\$1,000,000.00), with a combined limit per policy year, excluding umbrella coverage, of not less than Two Million and 00/100 Dollars (\$2,000,000.00); and (B) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; and (4) blanket contractual liability for all customarily insurable contractual obligations;

(iii) rental loss and/or business income insurance (A) with loss payable to Agent; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above and subsection (vi) and Section 1.1.1(b) below; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and personal property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Mortgaged Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred percent (100%) of the gross income (at the time of the loss) from the Mortgaged Property for a period of twelve (12) months from the date of loss (provided, however, that Mortgagor agrees that such twelve(12) month period shall, at the request of Agent, be extended to not more than eighteen (18) months, to the extent Agent at any time, in its reasonable discretion, determines that such longer period(s) of coverage are available at commercially reasonable rates and are those which a prudent owner of similar property would purchase). The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Mortgagor's reasonable estimate of the gross income from the Mortgaged Property for the succeeding twelve (12) month, or greater, as applicable, period;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the improvements, and only if the Mortgaged Property coverage form does not otherwise apply, (A) Borrower and General Contractor commercial general liability and umbrella liability insurance covering claims related to the construction, repairs or alterations being made which are not under the terms or provisions of the above mentioned commercial general liability and umbrella insurance policies required herein including commercially reasonable efforts to extended products/completed operations through the statute of repose in the local jurisdiction or obtain General Contractor confirmation that annual policies will be renewed on a recurring basis through the statute of repose in the local jurisdiction; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form with limits covering 100% of recurring hard and soft costs as identified in the project budget, as amended, including limits for material in transit and temporary storage acceptable to Grantee (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Mortgaged Property, and (4) with an agreed amount endorsement waiving co-insurance provisions, (ii) the project architect and engineer shall obtain and maintain evidence of liability coverage for such perils and with limits, terms and conditions standard in the industry for a comparable project; and (iii) notwithstanding the foregoing, Grantee shall waive the non-reporting form for Mortgagor's builder's risk at projects currently active at the time of this execution of this Mortgage;

(v) workers' compensation, subject to the statutory limits of the state in which the Mortgaged Property is located, and employer's liability worker's compensation insurance with respect to all employees of Borrower as and to the extent

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required by any Governmental Authority or Legal Requirement and employer's liability coverage of at least \$1,000,000 (if applicable);

(vi) comprehensive boiler and machinery insurance/equipment breakdown and testing, if applicable, in amounts as shall be reasonably required by Agent on terms consistent with the commercial property insurance policy required under subsection (i) above;

(vii) umbrella or excess liability insurance in addition to primary coverage in an amount not less than Fifty Million and No/100 Dollars (\$50,000,000) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, excluding umbrella coverage, of One Million and No/100 Dollars (\$1,000,000) (if applicable).

(ix) upon sixty (60) days' notice, such other reasonable insurance and in such reasonable amounts as Agent from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Mortgaged Property located in or around the region in which the Mortgaged Property is located.

(b) For so long as the Terrorism Risk Insurance Program Reauthorization Act of 2015 ("TRIPRA") or a similar or subsequent statute is in effect, terrorism insurance for foreign and domestic acts (as such terms are defined in TRIPRA or similar or subsequent statute) in an amount equal to the full replacement cost of the Property (plus rental loss and/or business interruption insurance coverage for a term set forth in clause (iii) above) Notwithstanding the foregoing, if acts of terrorism or perils of terrorism or other similar acts or events are hereafter excluded from the policies required under Sections 1.1.1(i), (ii), (iii), iv) and (vii), Mortgagor shall obtain an endorsement to such policy, or a separate policy from an insurance provider reasonably approved by Agent, insuring against all acts of terrorism and perils of terrorism and "fire following" (or, in the case of any period of time during which the Terrorism Risk Insurance Act of 2002 ("TRIA") or its successors, is in effect, insuring against all "certified acts of terrorism" as defined in TRIA and "fire following"), each in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Mortgage shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, plus required business income coverage, but the amount shall in no event be less than the aggregate outstanding principal balance of the Facility. The endorsement or policy shall be in form and substance reasonably satisfactory to Agent. Notwithstanding the foregoing, Mortgagor's obligation to obtain and maintain terrorism coverage shall be limited to an expenditure of funds for premiums relating thereto of not more than one hundred and fifty percent (150%) of the portion of the all-risk and business income insurance premiums allocated to terrorism coverage at the time terrorism coverage becomes an excluded risk. Further, notwithstanding the foregoing, Grantee shall waive the terrorism requirements for the owner controlled insurance program ("OCIP") at projects currently active at the time of this execution of this Mortgage, so long as the applicable general contractor and the borrower's liability policies contain such coverage.

(c) All insurance provided for in Section 1.1.1(a) above shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**") and, to the extent not

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specified above, shall be subject to the reasonable approval of Agent as to deductibles, loss payees and insureds. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Agent, certificates of insurance evidencing the Policies accompanied by evidence reasonably satisfactory to Agent of payment of the premiums then due thereunder (the "*Insurance Premiums*"), shall be delivered by Mortgagor to Agent.

(d) Any blanket insurance Policy shall specifically allocate to the Mortgaged Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Mortgaged Property in compliance with the provisions of Section 1.1.1(a) above.

(e) All Policies of insurance provided for or contemplated by Section 1.1.1(a) above, except for the Policy referenced in Section 1.1.1(a)(v), shall name Mortgagor as the named insured and Agent and its successors and/or assigns as the additional insured, as its interests may appear, and the Policies referenced in Sections 1.1.1(a)(ii)(iv) and 1.1.1(a)(viii) above shall also name each other Secured Party and its successors and/or assigns as additional insureds, and in the case of property damage, builder's risk, boiler and machinery, flood and earthquake insurance, shall contain a standard noncontributory mortgagee clause naming Grantee and its successors and assigns as their interests may appear as first mortgagee and loss payee (or its equivalent).

(f) All Policies of insurance provided for in Section 1.1.1(a) above, except for the Policies referenced in Section 1.1.1(a)(v) and (a)(ix), shall contain clauses or endorsements to the effect that:

(i) with respect to the Policies of property insurance, contain clauses or endorsements to the effect that, (1) no act or negligence of Mortgagor, or anyone acting for Mortgagor, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof or foreclosure or similar action, shall in any way affect the validity or enforceability of the insurance insofar as Agent or any Secured Party is concerned, (2) the Policies shall not be cancelled without at least 30 days' written notice to Grantee, except ten (10) days notice for non-payment of premium and (3) the issuer(s) of the Policies shall give written notice to Grantee if the issuers elect not to renew the Policies prior to its expiration;

(ii) with respect to all Policies of liability insurance, if obtainable by Borrower using commercially reasonable efforts, contain clauses or endorsements to the effect that, (1) the Policy shall not be canceled without at least thirty (30) days' written notice to Agent and any other party named therein as an additional insured (other than in the case of non-payment in which case only ten days prior notice, or the shortest time allowed by any applicable legal requirement (whichever is longer), will be required) and, if obtainable by Mortgagor using commercially reasonable efforts, shall not be materially changed (other than to increase the coverage provided thereby) without such a thirty (30) day notice and (2) the issuers thereof shall give notice to Grantee if the issuers elect not to renew such Policies prior to its expiration. If the issuers cannot or will not provide notice, the Borrower shall be obligated to provide such notice; and

(iii) Neither Agent nor any Secured Party shall be a co-insurer and they shall not be liable for any contribution or Insurance Premiums thereon or subject to any assessments thereunder.

(g) If at any time Agent is not in receipt of written evidence that all insurance required hereunder is in full force and effect and Mortgagor fails to provide the same within five (5) Business Days

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after written request therefor, Agent shall have the right, without notice to Mortgagor, to take such action as Agent deems reasonably necessary to protect its interest in the Mortgaged Property, including, without limitation, the obtaining of such insurance coverage as Agent in its sole discretion deems appropriate and all premiums incurred by Agent in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Mortgagor to Agent upon demand and until paid shall be secured by this Mortgage and shall bear interest at the default interest rate specified in the Credit Agreement. Within 30 days of the expiration dates of the Policies theretofore furnished to Grantee pursuant to Subsection 1.1.1(a), Borrower shall deliver proof of renewal Policies acceptable to Grantee, accompanied by evidence satisfactory to Grantee of payment of the premiums due thereunder (the "Insurance Premiums"). Mortgagor shall deliver, or cause to be delivered, certified complete copies of all Policies within ten (10) Business Days of Grantee's request, or as soon thereafter as the Policies are available from the issuing insurance company.

(b) In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the Facility, all right, title and interest of Mortgagor in and to the Policies that are not blanket Policies then in force concerning the Mortgaged Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Agent or other transferee in the event of such other transfer of title.

1.1.2 Insurance Company. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the state in which the Mortgaged Property is located and shall be otherwise reasonably satisfactory to Agent, and carry a rating of at least an "A" by S&P and "A2" by Moody's (or, if Moody's does not rate such insurer, at least "A:VIII" by AM Best), or by a syndicate of insurers through which at least 75% of the coverage (if there are 4 or fewer members of the syndicate) or at least 60% of the coverage (if there are 5 or more members of the syndicate) is with insurers having such ratings (provided that the first layers of coverage are from insurers rated at least "A" by S&P and "A2" by Moody's (or, if Moody's does not rate such insurer, at least "A:VIII" by AM Best), and all such insurers shall have ratings of not less than "BBB+" by S&P and "Baa1" by Moody's (or, if Moody's does not rate such insurer, at least "A:VIII" by AM Best)).

Section 1.2 Casualty and Condemnation. Except in each case, as may be otherwise agreed by the Agent, and subject to the terms of the Credit Agreement:

1.2.1 Casualty. If the Mortgaged Property shall sustain the occurrence of damage or destruction to the Mortgaged Property, or any part thereof, by fire, flood, vandalism, windstorm, hurricane, earthquake, acts of terrorism or any other casualty (a "**Casualty**"), Mortgagor shall give prompt notice of such Casualty to Agent unless such loss or damage is equal to or less than \$250,000 and, provided Agent makes or will make the insurance proceeds less the cost, if any, to Agent of recovering the insurance proceeds including, without limitation, reasonable attorney's fees and expenses, and adjuster's fees (the "**Net Proceeds**") available therefor (but irrespective of the sufficiency of the amount of such Net Proceeds for Restoration (as hereinafter defined)) pursuant to the Credit Agreement and such Net Proceeds are greater than \$1,000,000, shall promptly commence and diligently prosecute to completion the repair and restoration of the Mortgaged Property as nearly as possible to the condition the Mortgaged Property was in immediately prior to such Casualty (a "**Restoration**") and otherwise in accordance with the Credit Agreement and Section 1.3 below (subject to delays in permitting, government approvals, shortages of labor and materials supplies, government orders or other causes beyond the reasonable control of Mortgagor), it being understood, however, that Mortgagor shall not be obligated to restore the Mortgaged Property to the precise condition of the Mortgaged Property prior to such Casualty provided the Mortgaged Property is restored, to the extent practicable, to be of at least equal value and of substantially the same character as prior to the Casualty. Agent may, but shall not be obligated to, make proof of loss if not made promptly by Mortgagor in accordance with the Credit Agreement and, subject to the terms of the Credit Agreement and this Mortgage, participate in any claim recovery if loss or damage from such Casualty Event exceeds the

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Restoration Threshold (as defined below). Mortgagor shall provide Agent with a copy of any and all claims for which the proceeds are expected to exceed the Restoration Threshold (as defined below), and diligently continuously pursue such claim with the Insurer in a manner, which shall maximize the amount and expedite the timing of such claim. Mortgagor shall provide Agent with a copy of all such documents related to the processing of such claim. Mortgagor shall continue to inform Agent as to the status of recovery of the Net Proceeds and shall provide Agent with all information reasonably requested by Agent in connection therewith. In the event of a Casualty where the loss does not exceed Twenty Million Dollars (\$20,000,000) (the "**Restoration Threshold**"), Mortgagor may settle and adjust such claim; provided that (a) no Event of Default has occurred and is continuing, (b) with respect to any Mortgaged Property subject to a Specified Casualty Period, the Specified Casualty Period has not expired or terminated prior to the full restoration of such Mortgaged Property and (c) such adjustment is carried out in a commercially reasonable and timely manner and in accordance with the provisions of Section 5.01(s) of the Credit Agreement. In the event of a Casualty where the loss exceeds the Restoration Threshold or if an Event of Default then exists or, with respect to any Mortgaged Property subject to a Specified Casualty Period, the Specified Casualty Period has expired or terminated prior to the full restoration of such Mortgaged Property, Mortgagor may settle and adjust such claim only with the consent of Agent, not to be unreasonably withheld, conditioned or delayed, and Agent shall have the opportunity to participate, at Mortgagor's cost, in any such adjustments. Agent is hereby authorized and irrevocably appointed as attorney-in-fact, for Mortgagor coupled with an interest, to adjust or settle any claim(s) (i) if not adjusted or settled promptly by Mortgagor (provided that this clause shall not apply so long as Mortgagor is using diligent, commercially reasonable efforts to obtain such adjustment or settlement), (ii) if there has occurred an Event of Default or (iii) with respect to any Mortgaged Property subject to a Specified Casualty Period, the Specified Casualty Period has expired or terminated prior to the full restoration of such Mortgaged Property. Notwithstanding any Casualty, Mortgagor shall continue to repay the aggregate outstanding principal amount of the Indebtedness at the time and in the manner provided for its payment in the Credit Agreement and in this Mortgage.

1.2.2 Condemnation. Mortgagor shall give Agent prompt notice of any actual or threatened taking by any Governmental Authority (as hereinafter defined) of the Mortgaged Property or any part thereof through eminent domain or otherwise (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of such taking) (a "**Condemnation**") and shall deliver to Agent a copy of any and all papers served in connection with such proceedings. Provided no Event of Default has occurred and is continuing, in the event of a Condemnation where the amount of the taking does not exceed the Restoration Threshold, Mortgagor may settle and compromise such Condemnation; *provided* that the same is effected in a commercially reasonable and timely manner and in accordance with the provisions of Section 5.01(s) of the Credit Agreement. In the event of a Condemnation where the amount of the taking exceeds the Restoration Threshold or if an Event of Default then exists, Mortgagor may settle and compromise the Condemnation only with the consent of Agent, not to be unreasonably withheld, conditioned or delayed, and Agent shall have the opportunity to participate, at Mortgagor's cost, in any litigation and settlement discussions in respect thereof and Mortgagor shall from time to time deliver to Agent all instruments requested by Agent to permit such participation. Agent is hereby authorized and irrevocably appointed as attorney-in-fact for Mortgagor coupled with an interest to sell or compromise or litigate if the Condemnation (i) is not settled, compromised or litigated promptly by Mortgagor (provided that this clause shall not apply so long as Mortgagor is using diligent, commercially reasonable efforts to obtain such adjustment or settlement) or (ii) if there has occurred an Event of Default. Mortgagor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Agent, its attorneys and experts, and reasonably cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any Condemnation, Mortgagor shall continue to repay the aggregate outstanding principal amount of the Indebtedness at the time and in the manner provided for its payment in the Credit Agreement. Agent shall not be limited to the interest paid on the Condemnation Award by any nation or government, any state or other political subdivision thereof, and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government ("**Governmental Authority**"),

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but shall be entitled to receive out of the Condemnation Award interest at the rate or rates provided herein or in the Credit Agreement. Subject to the terms of the Credit Agreement, if the Mortgaged Property or any portion thereof is taken by Governmental Authority, Mortgagor shall promptly commence and diligently prosecute the Restoration of the Mortgaged Property and otherwise comply with the provisions of Section 1.3 below; *provided*, that, in the event all or substantially all of the land in respect of the Mortgaged Property is taken by Governmental Authority, Section 5.02(e)(C) of the Credit Agreement shall control over all other provisions of this Section 1.2.2 which may be in apparent conflict therewith. Subject to the terms of the Credit Agreement, if the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Agent of the Condemnation Award, Agent shall have the right, whether or not a deficiency judgment on the Indebtedness shall have been sought, recovered or denied, to receive the Condemnation Award, or a portion thereof sufficient to repay the aggregate outstanding principal amount of the Indebtedness.

1.2.3 Casualty Proceeds. Notwithstanding anything to the contrary herein, provided (i) no Event of Default has occurred and is continuing and (ii) with respect to any Mortgaged Property subject to a Specified Casualty Period, the Specified Casualty Period has not expired or terminated prior to the full restoration of such Mortgaged Property, Mortgagor has the right to make, settle and collect upon claims with respect to business interruption and rental loss insurance, and Mortgagor may utilize any proceeds received with respect thereto as it determines is appropriate in the operation of its business (including a Restoration). Subject to Section 5.01(s) of the Credit Agreement, in the event that the insurance company does not disburse such proceeds directly into the applicable Property Level Account or, if required pursuant to the Specified Casualty Condition, subaccount of the Casualty Insurance Lockbox Account, Mortgagor agrees to cause the same to be deposited into the applicable Property Level Account or subaccount of the Casualty Insurance Lockbox Account promptly upon receipt thereof. Provided (i) no Event of Default has occurred and is continuing and (ii) with respect to any Mortgaged Property subject to a Specified Casualty Period, the Specified Casualty Period has not expired or terminated prior to the full restoration of such Mortgaged Property, if Agent shall receive any such proceeds, Agent shall deposit such proceeds directly into the applicable Property Level Account or subaccount of the Casualty Insurance Lockbox Account within five (5) Business Days of Agent's receipt thereof.

Section 1.3 Delivery of Net Proceeds. Except, in each case, as may otherwise be agreed by the Agent:

1.3.1 Minor Casualty or Condemnation. Notwithstanding anything to the contrary herein, *provided* (i) no Event of Default has occurred and is continuing and (ii) with respect to any Mortgaged Property subject to a Specified Casualty Period, the Specified Casualty Period has not expired or terminated prior to the full restoration of such Mortgaged Property, if a Casualty or Condemnation has occurred to the Mortgaged Property and the Net Proceeds shall be less than the Restoration Threshold and the costs of completing the Restoration shall be less than the Restoration Threshold, the Net Proceeds will be disbursed directly to Mortgagor to be used for the Restoration of the Mortgaged Property. Promptly after receipt of the Net Proceeds, Mortgagor shall commence and satisfactorily complete with due diligence the Restoration in accordance with the terms of this Mortgage and Section 5.01(s) of the Credit Agreement. If any Net Proceeds are received by Mortgagor and may be retained by Mortgagor pursuant to the terms hereof, such Net Proceeds shall, until completion of the Restoration, be held in trust for Agent and shall be segregated from other funds of Mortgagor to be used to pay for the cost of Restoration in accordance with the terms hereof. To the extent that a Restoration is undertaken, Mortgagor shall have (A) commenced with such Restoration as soon as reasonably practicable and thereafter proceeded continuously and diligently with the Restoration (subject to delays in permitting, government approvals, shortages of labor and materials supplies, government orders or other causes beyond the reasonable control of Mortgagor) and (B) completed such Restoration on or before the earliest to occur of (i) the date which is the earlier of (x) twelve (12) months after the date of loss or casualty and (y) twelve (12) months prior to the Maturity Date (as the

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same may be extended), and (ii) such time as may be required under Applicable Law or the applicable Major Lease in order to repair and restore the Mortgaged Property as required hereby.

1.3.2 Major Casualty or Condemnation.

(a) If a Casualty or Condemnation has occurred to the Mortgaged Property and the Net Proceeds are equal to or greater than the Restoration Threshold or the costs of completing the Restoration is equal to or greater than the Restoration Threshold, Agent shall make the Net Proceeds available for the Restoration, *provided* that the Specified Casualty Condition has been satisfied.

(b) Except as otherwise provided herein, the Net Proceeds shall be paid directly to Agent and held by Agent in an interest-bearing account, which account shall be an "Account" under and as defined in the Cash Management Agreement, and, until disbursed in accordance with the provisions of this Section 1.3.2, shall constitute additional security for the Facility. The Net Proceeds shall be disbursed by Agent to, or as directed by, Mortgagor from time to time during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Agent that (A) all requirements set forth in Section 1.3.2(a) have been satisfied, (B) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with that portion of the Restoration for which such disbursement was requested have been paid for in full, and (C) there exist no notices of pendency, stop orders, mechanic's or material man's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Mortgaged Property arising out of the Restoration which have not either been fully bonded to the reasonable satisfaction of Agent and discharged of record or in the alternative fully insured to the satisfaction of Agent by the title company issuing the Mortgage Policy. Notwithstanding the foregoing or anything to the contrary herein or in any Loan Document, provided (i) no Event of Default has occurred and is continuing and (ii) with respect to any Mortgaged Property subject to a Specified Casualty Period, the Specified Casualty Period has not expired or terminated prior to the full restoration of such Mortgaged Property, if any reciprocal easement agreement, ground lease or Major Lease requires Mortgagor to restore any portion of the Mortgaged Property or to make available to the counterparty insurance Proceeds or Condemnation Awards, then Agent shall release to Mortgagor any such insurance Proceeds or Condemnation Awards received by it for Mortgagor's application to such use.

(c) All plans and specifications required in connection with any Restoration where the proceeds are greater than the Restoration Threshold shall be subject to prior approval of Agent and, to the extent requested by the Agent, an independent architect selected by Agent (the "*Casualty Consultant*"), such approval not to be unreasonably withheld, conditioned or delayed. The plans and specifications shall require that the Restoration be completed in a first-class workmanlike manner to a similar quality and character of the original work in the Improvements (provided, however, that in the case of a partial Condemnation, the Restoration shall be done to the extent reasonably practicable after taking into account the consequences of such partial Condemnation), so that upon completion thereof, the Mortgaged Property shall be at least equal in value and general utility to the Mortgaged Property prior to the damage or destruction; it being understood, however, that Mortgagor shall not be obligated to restore the Mortgaged Property to the precise condition of the Mortgaged Property prior to such Casualty provided the Mortgaged Property is restored, to the extent practicable, to be of at least equal value and of substantially the same character as prior to the Casualty. Provided Agent makes or will make the Net Proceeds available therefor, Mortgagor shall restore all Improvements such that when they are fully restored and/or repaired, such Improvements and their contemplated use fully comply with all applicable material applicable law. The identity of the contractors, subcontractors and material men engaged in any Restoration where the contract value for such subcontract or material man is greater than the Restoration Threshold, as well as the contracts under which they have been engaged, shall be subject to approval of Agent and the Casualty Consultant, such approval not to be unreasonably withheld, conditioned or delayed. All reasonable out-of-pocket costs and expenses incurred by Agent in connection with recovering, holding and advancing the Net Proceeds

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for the Restoration including, without limitation, reasonable attorneys' fees and disbursements and the Casualty Consultant's fees and disbursements, shall be paid by Mortgagor. In the event that a Casualty Consultant shall not be designated, references herein to the Casualty Consultant shall be deemed to mean the Agent, and in such case, the Mortgagor shall deliver to the Agent such documentation and other information as the Agent shall reasonably request in connections with the determinations to be made hereunder.

(d) In no event shall Agent be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, less the Casualty Retainage. The term "Casualty Retainage" shall mean, as to each contractor, subcontractor or material man engaged in the Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been fifty percent (50%) completed, such fifty percent (50%) completion to be certified by the Casualty Consultant, it being understood that upon such 50% completion of such Restoration, such Casualty Retainage would be reduced to an amount equal to five percent (5%) of the costs actually incurred for work in place as part of such Restoration; *provided*, that, if a lower retainage amount is required by Applicable Law, such lower retainage amount shall apply. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 1.3.2(d), be less than the amount actually held back by Mortgagor from contractors, subcontractors and material men engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Agent that the Restoration has been completed in accordance with the provisions of this Section 1.3.2(d) and that all approvals necessary for the re-occupancy and use of the Mortgaged Property have been obtained from all appropriate Governmental Authorities, and Agent receives evidence reasonably satisfactory to Agent that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; *provided*, however, that Agent will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or material man engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Agent that the contractor, subcontractor or material man has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or material man's contract, the contractor, subcontractor or material man delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or material man as may be reasonably requested by Agent or by the title company issuing the Mortgage Policy, and Agent receives an endorsement to the Mortgage Policy insuring the continued priority of the lien of the Mortgage and evidence of payment of any premium payable for such endorsement. If required by Agent, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or material man. This clause (d) shall only apply to Casualties or Condemnations where the insurance Proceeds or Condemnation Awards exceed the Restoration Threshold.

(e) Agent shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Agent in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Mortgagor shall either (1) pay the deficiency (the "**Net Proceeds Deficiency**") or (2) deposit the Net Proceeds Deficiency with Agent before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Agent shall be held by Agent and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 1.3.2 shall constitute additional security for the Facility.

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(g) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Agent after the Casualty Consultant certifies to Agent that the Restoration has been completed in accordance with the provisions of this Section 1.3.2, and the receipt by Agent of evidence reasonably satisfactory to Agent that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Agent to Mortgagor, provided (i) no Event of Default shall have occurred and shall be continuing under any of the Loan Documents and (ii) with respect to any Mortgaged Property subject to a Specified Casualty Period, the Specified Casualty Period has not expired or terminated prior to the full restoration of such Mortgaged Property.

(h) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Mortgagor as excess Net Proceeds pursuant to Section 1.3.2(g), other than those which Mortgagor is entitled to receive and/or collect directly in accordance herewith, may be retained and applied by Agent toward the payment of the aggregate outstanding principal amount of the Indebtedness, whether or not then due and payable, in such order, priority and proportions as Agent in its sole discretion shall deem proper, or, at the discretion of Agent, the same may be paid, either in whole or in part, to Mortgagor for such purposes as Agent shall designate.