

THIS MORTGAGE, (the "Mortgage") made as of May 1, 1986, by LASALLE NATIONAL BANK, not personally but solely as Trustee under the provision of a deed or deeds in trust duly recorded and delivered to said Trustee in pursuance of a Trust Agreement dated January 19, 1982 and known as Trust No. 104642 (the "Mortgagor") and LASALLE NATIONAL BANK, not personally but solely as Trustee under the provisions of a deed or deeds in trust duly recorded and delivered to said Trustee in pursuance of a Trust Agreement dated January 28, 1982 and known as Trust No. 104753 (the "Fee Mortgagor") (the Mortgagor and Fee Mortgagor are hereinafter collectively referred to as "Mortgagors") to THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation (the "Mortgagee").

W I T N E S S E T H:

WHEREAS, Mortgagor has executed and delivered to Mortgagee a Mortgage Note (the "Note") of even date herewith payable to the order of Mortgagee in the principal sum of One Hundred Two Million Dollars (\$102,000,000.00), bearing interest and payable as set forth in the Note, and due on May 1, 2003.

WHEREAS, Fee Mortgagor is the fee simple title holder to the Land (as hereinafter defined).

WHEREAS, Mortgagor holds a leasehold interest in the Land and fee simple title to all Improvements (as hereinafter defined) pursuant to that certain Ground Lease dated February 1, 1982 between Mortgagor and Fee Mortgagor (said Ground Lease together with all amendments and modifications thereof herein referred to as "Ground Lease"). The Ground Lease has been memorialized by that certain Memorandum of Lease recorded with the Recorder's Office of Cook County, Illinois on October 12, 1983 as Document No. 26818321.

WHEREAS, to enable Mortgagor to obtain the loan evidenced by the Note and secured hereby, Fee Mortgagor has agreed to join in and execute this Mortgage for the purpose of subjecting all of its right, title and interest in, to and under the Land (and other sundry items) to the lien created by this Mortgage.

NOW, THEREFORE, to secure the payment of the principal indebtedness under the Note and interest and premiums, if any, on the principal indebtedness under the Note (and all replacements, provided the same are consented to by Fee Mortgagor, renewals and extensions thereof, in whole or in part) according to its tenor and effect, and to secure the payment of all other sums which may be at any time due and owing or required to be paid under the Note, this Mortgage or any of the other "Loan Documents" (as that term is defined in Exhibit C attached hereto and made a part hereof) (collectively sometimes referred to herein as "Indebtedness Hereby Secured"); and to secure the performance and observance by Mortgagors, Tishman Speyer North LaSalle General Partnership, an Illinois general

THIS INSTRUMENT PREPARED BY:

Thomas H. Fraerman, Esq.
Rudnick & Wolfe
30 N. LaSalle Street
Suite 2900
Chicago, Illinois 60602

MAIL TO: Box 77
ATTN: John Foster

STL. 86-134/C

86173569

UNOFFICIAL COPY

000000000000

Property of Cook County Clerk's Office

000000000000

UNOFFICIAL COPY

partnership ("Leasehold Beneficiary"), and the mortgagor ("525 Mortgagor") under the Second mortgage described as item no. 2(b) on Exhibit C hereto of all the covenants, agreements and provisions contained in this Mortgage, the Note, and the other Loan Documents and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Mortgagors DO HEREBY GRANT, REMISE, RELEASE, ALIEN, MORTGAGE AND CONVEY unto Mortgagor, its successors and assigns forever, all of their respective rights, title and interests in, to and under the Land (as hereinafter defined) together with the following described property, rights and interests all of which are hereby pledged primarily and on a parity with the Land and not secondarily (and are, together with the Land, referred to herein as the "Premises"):

THE LAND located in the County of Cook, State of Illinois and legally described in Exhibit "A" attached hereto and made a part hereof (the "Land");

TOGETHER WITH all right, title and interest of Mortgagor in and to the Ground Lease and the leasehold estate created thereby and (a) all modifications, extensions and renewals of the Ground Lease and all rights to renew or extend the term of the Ground Lease, and (b) all options, privileges and rights granted and demised to Mortgagor under the Ground Lease;

TOGETHER WITH any and all other, further or additional title, estates, interests or rights which may at any time be acquired by Mortgagor in or to the premises demised by the Ground Lease (Mortgagor expressly agrees that if Mortgagor shall, at any time prior to payment in full of the Indebtedness Hereby Secured, acquire fee title or any other greater estate to the premises demised by the Ground Lease, the lien of this Mortgage shall attach, extend to, cover and be a lien upon such fee simple title or other greater estate);

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, machinery, appliances, equipment, furniture, and personal property of every nature whatsoever now or hereafter owned by either or both of the Mortgagors and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements thereon, or in connection with any construction being conducted or which may be conducted thereon and owned by either or both of the Mortgagors, including all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing and all of the right, title and interest of Mortgagors in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by either or both of Mortgagors or on their behalf (the "Improvements");

TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by either or both of the Mortgagors and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10/10/2010

UNOFFICIAL COPY

whatsoever, at law as well as in equity, of Mortgagors of, in and to the same;

TOGETHER WITH all rents, royalties, issues, profits, revenue, income and other benefits from the Premises to be applied against the Indebtedness Hereby Secured, provided, however, that permission is hereby given to Mortgagor so long as no Default has occurred hereunder, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable, but not more than one (1) month in advance thereof;

TOGETHER WITH all right, title and interest of Mortgagors in and to any and all leases other than the Ground Lease now or hereafter on or affecting the Premises whether written or oral and all agreements for use of the Premises (the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagors to collect the rentals under any such Lease;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by either or both of Mortgagors and forming a part of or used in connection with the Land or the Improvements or the operation thereof, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, kitchen equipment and utensils, lighting, machinery, motors, office and data processing equipment, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, restaurant and bar equipment (including glassware, silverware and dishes), screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by either or both of Mortgagors and placed on the Land or the Improvements shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness Hereby Secured; notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code of Illinois), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party and Mortgagors as debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Paragraph 16 hereof; and

TOGETHER WITH all proceeds of the foregoing, including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and, subject to Paragraphs 10 and 12 hereof, Mortgagors hereby authorize, direct and empower Mortgagee, at its option, on behalf of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

3 5 1 7 3 5 5 9

Mortgagors or the successors or assigns of Mortgagors, to adjust, compromise, claim, collect and receive such proceeds, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Indebtedness Hereby Secured, notwithstanding the fact that the same may not then be due and payable or that the Indebtedness Hereby Secured is otherwise adequately secured.

TO HAVE AND TO HOLD the Premises, unto the Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Default as hereinafter defined; Mortgagors hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State in which the Premises are located.

PROVIDED, NEVERTHELESS, that if Mortgagor shall pay in full when due the Indebtedness Hereby Secured and if Mortgagors, Leasehold Beneficiary and the S25 Mortgagor shall duly and timely perform and observe all of the terms, provisions, covenants and agreements herein and in the Note and the other Loan Documents provided to be performed and observed by the Mortgagor, then this Mortgage and the estate, right and interest of Mortgagee in the Premises shall cease and become void and of no effect, but shall otherwise remain in full force and effect.

THE MORTGAGORS FURTHER COVENANT, AGREE AND REPRESENT AS FOLLOWS:

1. Payment of Indebtedness and Performance of Covenants.
Mortgagor shall (a) pay when due the Indebtedness Hereby Secured; and (b) duly and punctually perform and observe all of the terms, provisions, conditions, covenants and agreements on Mortgagor's part to be performed or observed as provided in the Note, this Mortgage, and the other Loan Documents. Fee Mortgagor shall duly and punctually perform and observe all of the terms, provisions, conditions, covenants and agreements on Fee Mortgagor's part to be performed or observed as provided in this Mortgage. Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Note, but not otherwise.

2. Intentionally Omitted.

3. Maintenance, Repair, Compliance with Law, Use, Etc.
Mortgagor shall (a) subject to Paragraphs 10 and 11 hereof, promptly repair, restore, replace or rebuild any portion of the Improvements which may become damaged or be destroyed to be of at least equal value and of substantially the same character as prior to such damage or destruction whether or not proceeds of insurance are available or sufficient for that purpose; (b) keep the Premises in good condition and repair, free from waste; (c) pay all operating costs of the Premises; (d) complete, within a reasonable time, any building or buildings or other Improvements now or at any time in the process of erection upon the Premises; (e) comply with all requirements of statutes, ordinances, rules, regulations, orders, decrees and other requirements of law relating to the Premises or any part thereof by any federal, state or local authority; (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements or any portion thereof; (g) comply with any restrictions and covenants of record with respect to the Premises and the use thereof; (h) observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy; and (i) cause the Premises to be managed in a competent and professional

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

manner. Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit, and Fee Mortgagor shall not cause or consent to any (i) additions to or diminutions or material alterations of the Premises (including landscaped, recreation and paved parking areas) except as required by law or ordinance or except as permitted or required to be made by the terms of any Leases approved or deemed approved (pursuant to the terms of the Collateral Assignment of Leases and Rents, which is one of the Loan Documents), provided, however, that except as required under the Disbursement Agreement (one of the Loan Documents) Mortgagor shall not be required to obtain Mortgagee's consent to any improvements within tenant space; (ii) change in the intended use or occupancy of the Premises for which the Improvements are to be or have been constructed including without limitation any change which would increase any fire or other hazard; (iii) change in the identity of the managing agent for the Premises (provided that Mortgagee shall not unreasonably withhold consent to a change in the identity of the managing agent); (iv) zoning reclassification with respect to the Premises; (v) unlawful use of, or nuisance to exist upon, the Premises; (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Premises, other than use restrictions contained or provided for in Leases approved by Mortgagee; (vii) operation of the Premises as a cooperative or condominium or other form of operation in which tenants or occupants of the Premises participate in the ownership, control or management of the Premises or any part thereof, whether as tenant shareholders or otherwise, except as may be permitted without violation of the restrictions set forth in Paragraph 17 hereof or otherwise expressly approved by Mortgagee; or (viii) execution of any Leases of the Premises subsequent to the date hereof without the prior written consent of Mortgagee except as otherwise permitted under the Collateral Assignment of Leases and Rents (one of the Loan Documents).

4. Liens.

A. Prohibition. Subject to the provisions of Paragraphs 5 and 17 hereof, the Mortgagors shall not create or suffer or permit any mortgage, lien, charge or encumbrance to attach to or be filed against the Premises, whether such lien or encumbrance is inferior, at parity with or superior to the lien of this Mortgage, including mechanic's liens, materialmen's liens, or other claims for lien made by parties claiming to have provided labor or materials with respect to the Premises (which liens are herein defined as "Mechanic's Liens") and excepting only the lien of real estate taxes and assessments not due or delinquent, and any liens and encumbrances of Mortgagee.

B. Contest of Mechanic's Liens Claims. Notwithstanding the foregoing prohibition against Mechanic's Liens against the Premises, Mortgagor, or any party obligated to Mortgagor to do so, may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Lien and defer payment and discharge thereof during the pendency of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Mechanic's Lien; (ii) that, within fifteen (15) days after Mortgagor has been notified of the filing of such Mechanic's Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Mechanic's Lien or to cause such other party to contest such Mechanic's Lien; and (iii) that, subject to subparagraph 4C below, the Mortgagor shall have obtained a title insurance endorsement over such Mechanic's Lien insuring Mortgagee against loss or damage by reason of the existence of such Mechanic's Lien or Mortgagor shall have deposited or caused to be deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, a sum of money which shall be sufficient in the reasonable judgment of Mortgagee to pay in full such Mechanic's Lien and

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/2011

UNOFFICIAL COPY

all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the reasonable judgment of Mortgagee, such increase is advisable. In case Mortgagor shall fail to maintain or cause to be maintained sufficient funds on deposit as hereinabove provided, shall fail to prosecute such contest or cause such contest to be prosecuted with reasonable diligence or shall fail to pay or cause to be paid the amount of the Mechanic's Lien plus any interest finally determined to be due upon the conclusion of such contest, Mortgagee may, at its option, apply the money as deposited in payment of or on account of such Mechanic's Lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Mechanic's Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. In the event the contest of the Mechanic's Lien claim is ultimately resolved in favor of the claimant, Mortgagee shall, upon Mortgagor's written request, apply the money so deposited in payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when furnished with evidence satisfactory to Mortgagee of the amount of payment to be made. Any overplus remaining in the control of Mortgagee shall be paid to Mortgagor, provided Mortgagor is not then in default hereunder. Amounts deposited under this Paragraph 4B shall be invested in the manner described in Paragraph 4I hereof.

C. Title Indemnities. Notwithstanding Mortgagor's right to obtain a title insurance endorsement in connection with the contest of any Mechanic's Lien as provided in 4B(iii) above, such endorsement must be obtained by establishing with the title insurer a title indemnity in form and content satisfactory to Mortgagee under the terms of which (i) Mortgagor shall deposit cash or marketable securities in an amount satisfactory to Mortgagee and the title insurer, but in no event less than 150% of the amount of the Mechanic's Lien; (ii) Mortgagee, Leasehold Beneficiary and the title insurer shall be a party to such title indemnity; (iii) Mortgagee shall have the right to approve any disbursement of funds from such title indemnity; and (iv) Mortgagee shall have the right, following a Default, to (x) apply such title indemnity funds to the payment of such portion of the Indebtedness Hereby Secured as it may elect, although in such event, the title insurer shall be released from its obligation to insure over such Mechanic's Lien, or (y) pay the amount of the Mechanic's Lien and interest thereon without any duty to inquire into the validity of such claim or its current status. In no event shall Mortgagor, unless Mortgagor has obtained Mortgagee's prior written consent, which consent may be withheld in Mortgagee's sole discretion, have the right, prior to full disbursement of the loan evidenced by the Note as provided in the Disbursement Agreement (one of the Loan Documents), to establish title indemnities covering more than five (5) claims or aggregating in excess of \$200,000.00, or, subsequent to the earlier to occur of (a) such full disbursement or (b) May 1, 1989, to establish title indemnities covering more than seven (7) claims or aggregating in excess of \$4,000,000.00.

5. Taxes and Liens.

A. Payment. Mortgagor shall pay or cause to be paid when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Premises or any part thereof or any interest therein or any obligation or instrument secured hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Mortgagor, and Mortgagor shall furnish to Mortgagee evidence of payment therefor on or before the date the same are

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0000000000

UNOFFICIAL COPY

due and receipts from the taxing authority when same are available; and shall discharge any claim or lien relating to Taxes upon the Premises, other than matters expressly permitted hereunder.

B. Contest. Mortgagor may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any such Taxes, provided that:

(a) such contest shall have the effect of preventing the collection of the Taxes so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same;

(b) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same or to cause the same to be contested before any Tax has been increased by any interest, penalties, or costs; and

(c) Mortgagor has deposited or caused to be deposited with Mortgagee, at such place as Mortgagee may from time to time in writing designate, a sum of money or other security acceptable to Mortgagee that, when added to the monies or other security, if any, deposited pursuant to Paragraph 9 hereof, is sufficient, in Mortgagee's reasonable judgment, to pay in full such contested Tax and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Mortgagee's judgment, to pay in full such contested Tax, increasing such amount to cover additional penalties and interest whenever, in Mortgagee's reasonable judgment, such increase is advisable.

In the event Mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the monies and liquidate any securities deposited with Mortgagee, in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such Taxes, together with all penalties and interest thereon, Mortgagor shall forthwith, upon demand, either deposit with Mortgagee a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Mortgagee has applied funds on deposit on account of such Taxes, restore such deposit, on demand, to an amount satisfactory to Mortgagee. Provided that Mortgagor is not then in default hereunder, Mortgagee shall, if so requested in writing by Mortgagor, after final disposition of such contest and upon Mortgagor's delivery to Mortgagee of an official bill for such Taxes, apply the money so deposited in full payment of such Taxes or that part thereof then unpaid, together with all penalties and interest thereon. Amounts deposited under this Paragraph 5B shall be invested in the manner described in Paragraph 41 hereof.

6. Change in Tax Laws. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor, Fee Mortgagor or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by the Mortgagor or Fee Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Premises, or the manner of collection of taxes, so as to affect this Mortgage, the Indebtedness Hereby Secured or Mortgagee, then, and in any such event, Mortgagor, upon

UNOFFICIAL COPY

Property of Cook County Clerk's Office

20110112

UNOFFICIAL COPY

demand by Mortgagee, shall pay such taxes, or reimburse Mortgagee therefor on demand, unless Mortgagee determines, in Mortgagee's sole and exclusive judgment, that such payment or reimbursement by Mortgagor is unlawful; in which event the Indebtedness Hereby Secured shall be due and payable within ninety (90) days after written demand by Mortgagee to Mortgagor. Nothing in this Paragraph 6 shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against the income of Mortgagee (assuming the income under the Note were the only income of Mortgagee) as a complete or partial substitute for taxes required to be paid by Mortgagor or Fee Mortgagor pursuant hereto.

7. Insurance Coverage. Mortgagor will insure the Premises against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

(a) Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood, earthquake and other risks covered by the so-called extended coverage endorsement in amounts not less than the full insurable replacement value of all Improvements, fixtures and equipment from time to time on the Premises and bearing a replacement cost agreed amount endorsement with waiver of depreciation, if available;

(b) Comprehensive public liability (including contractual liability) against death, bodily injury and property damage in an amount not less than Ten Million Dollars (\$10,000,000), or such lesser amount as is available at commercially reasonable rates, but in no event less than Five Million Dollars (\$5,000,000);

(c) Rental or business interruption insurance in amounts sufficient to pay for a period of up to one (1) year, all amounts required to be paid by Mortgagor pursuant to the Note and this Mortgage;

(d) Steam boiler, machinery and pressurized vessel insurance;

(e) If the Federal Insurance Administration (FIA) has designated the Premises to be in a special flood hazard area and designated the community in which the Premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available;

(f) The types and amounts of coverage as required by and in accordance with the Ground Lease; and

(g) If reasonably required by Mortgagee pursuant to notice given to Mortgagor, other types and amounts of coverage as are customarily maintained by owners or operators of like properties in the Chicago Loop area.

If there is a material adverse change in conditions or the condition of any carrier, Mortgagee may, at any time and in its sole discretion upon written notice to Mortgagor and failure of Mortgagor to satisfy Mortgagee's requirements with respect thereto, within 30 days of such notice, procure and substitute for any and all of the policies of insurance required above, such other policies of insurance, in such amounts, and carried in such companies, as it may select, and in such event, those policies of insurance shall be included within the definition of "Insurance Policies" set forth herein. All such policies procured by Mortgagee shall be those reasonably required for a commercial building or property and the charges for premiums shall be reasonably competitive. Anything in the foregoing to the contrary notwithstanding, in the event any of the types and amounts of coverage required above by Mortgagee are not being

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2011-09-01

UNOFFICIAL COPY

generally carried by owners or operators and are not required by first mortgage institutional lenders on like properties in the Chicago Loop area, then Mortgagee shall not unreasonably withhold its approval of any requested reduction of the types and amounts of coverage.

8. Insurance Policies. All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Mortgagee. All Insurance Policies insuring against casualty, rent loss and business interruption and other appropriate policies shall include non-contributing mortgagee endorsements in favor of and with loss payable to Mortgagee, as well as standard waiver of subrogation endorsements, shall provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Mortgagee. If such Insurance Policies contain a co-insurance clause, the insurance carried must be in an amount at least equal to the co-insurance percentage contained in such Insurance Policies multiplied by the full insurable value of the Premises. Mortgagor will deliver certified copies of all Insurance Policies, premium prepaid, to Mortgagee (provided that so long as Mortgagee has received certificates or binders evidencing the coverage provided by any such Insurance Policies, Mortgagor may deliver certified copies of such Insurance Policies to Mortgagee within one hundred twenty (120) days following the effective date of such Insurance Policies) and, in case of Insurance Policies about to expire, Mortgagor will deliver certificates or binders evidencing renewal or replacement thereof not less than fifteen (15) days prior to the date of expiration. Mortgagor shall not insure the Premises under separate policies of insurance taken out by Mortgagor concurrent in form or contributing in the event of loss with the Insurance Policies unless such separate policies conform to the provisions of this Paragraph 8. Insurance Policies maintained by tenants under the Leases may, if in conformity with the requirements of this Mortgage and if approved by Mortgagee, be presented to Mortgagee in satisfaction of Mortgagor's obligation to provide the insurance coverages provided by those Insurance Policies.

9. Deposits for Taxes and Insurance Premiums. In order to assure the payment of Taxes and premiums payable with respect to all Insurance Policies ("Premiums") as and when the same shall become due and payable:

(a) Mortgagor shall, if required by Mortgagee, deposit with Deposit Escrowee (as hereinafter defined) on the first business day of each and every month, an amount equal to one-twelfth (1/12) of the Taxes and Premiums to become due upon the Premises between one and thirteen months after the date of such deposit; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly deposits to be made hereunder with respect to Taxes and Premiums to become due and payable within thirteen months after such first deposit, will provide (without interest) a sufficient fund to pay each installment of such Taxes and Premiums, one month prior to the date when each such installment is due and payable. The amounts of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Mortgagee's estimate as to the amount of Taxes and Premiums. Mortgagor shall promptly upon the demand of Mortgagee make additional Tax and Insurance Deposits as Mortgagee may from time to time require due to (i) failure of Mortgagee to require, or failure of Mortgagor to make, Tax and Insurance Deposits in previous months, (ii) underestimation of the amounts of Taxes and/or Premiums, (iii) the particular due dates and amounts of Taxes and/or Premiums, or (iv) application of the Tax and Insurance Deposits pursuant to Paragraph 9(c) hereof. Additionally, upon the execution hereof, Mortgagor shall deposit with Mortgagee, as a Tax and Insurance Deposit, the amount of all Taxes and Premiums to become due

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000

UNOFFICIAL COPY

and payable prior to the first monthly Tax and Insurance Deposit or within one month thereafter. Notwithstanding any provision hereof to the contrary, Mortgagee shall not require Mortgagor to make Tax and Insurance Deposits unless one or more of the following events has occurred: (i) a Default has occurred hereunder; or (ii) Mortgagor has failed to provide for the payment of Taxes and Premiums in a manner reasonably satisfactory to Mortgagee. All Tax and Insurance Deposits shall be invested in the manner provided in Paragraph 41 hereof.

(b) Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to the Mortgagee by Mortgagor of the bills therefor, pay the Taxes and Premiums or will, upon the presentation of receipted bills therefor, reimburse Mortgagor for such payments made by Mortgagor. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and Premiums when the same shall become due, then Mortgagor shall pay to the Mortgagee on demand the amount necessary to make up the deficiency.

(c) Upon a Default under this Mortgage, Mortgagee may, at its option, without being required so to do, apply or cause to be applied any Tax and Insurance Deposits on hand to any of the Indebtedness Hereby Secured, in such order and manner as Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, any remaining Tax and Insurance Deposits shall be paid to Mortgagor. All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held by Mortgagee irrevocably to be applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of Mortgagor.

(d) Notwithstanding anything herein contained to the contrary, Mortgagee, or its successors and assigns, shall not be liable for any failure to apply the Tax and Insurance Deposits unless Mortgagor, while no Default exists hereunder, shall have requested Mortgagee in writing to make application of such Deposits on hand to the payment of the Taxes or Premiums for the payment of which such Deposits were made, accompanied by the bills therefor.

(e) The provisions of this Mortgage are for the benefit of Mortgagors and Mortgagee alone. No provision of this Mortgage shall be construed as creating in any party other than Mortgagors and Mortgagee any rights in and to the Tax and Insurance Deposits or any rights to have the Tax and Insurance Deposits applied to payment of Taxes and Premiums. Mortgagee shall have no obligation or duty to any third party to collect Tax and Insurance Deposits.

10. Proceeds of Insurance. Mortgagor will give Mortgagee prompt notice of any loss or damage to the Premises, and:

(a) In case of loss or damage covered by any of the Insurance Policies, Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such Insurance Policies jointly with Mortgagor, provided that if either (A) the insurer offers a full replacement cost settlement or (B) no settlement is reached within 3 months of the loss or damage, then Mortgagee may settle and adjust any claim by itself, but further provided that this clause (i) shall not be applicable if the total loss is reasonably estimated by Mortgagor's architect as indicated in a written estimate delivered to Mortgagee to be \$500,000 or less, or (ii) allow Mortgagor to settle and adjust such claim without the consent of Mortgagee; provided that in either case Mortgagee shall, and is hereby

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000000000

UNOFFICIAL COPY

authorized to, collect and receipt for any such insurance proceeds except where the total claim paid is \$500,000 or less and in such latter case Mortgagee shall allow such claim to be paid directly to Mortgagor; and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to Mortgagee upon demand or may be deducted by Mortgagee from said insurance proceeds prior to any other application thereof. Each insurance company which has issued an Insurance Policy is hereby authorized and directed to make payment for all losses covered by any Insurance Policy to Mortgagee alone, and not to Mortgagee and Mortgagor jointly.

(b) Provided that the Rebuilding Conditions (as hereinafter defined) are fully satisfied, Mortgagee shall apply the proceeds of Insurance Policies consequent upon any casualty to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the loss or damage caused by the casualty, subject to the conditions and in accordance with the provisions of Paragraph 11 hereof. Otherwise Mortgagee shall have the right to apply the proceeds of Insurance Policies to the Indebtedness Hereby Secured in the order determined by Mortgagee. In the event Mortgagee has a right to and does apply the proceeds of Insurance Policies to the Indebtedness Hereby Secured and such proceeds do not discharge that indebtedness in full, the entire Indebtedness Hereby Secured shall, at the option of Mortgagee and upon notice to Mortgagor, become immediately due and payable with interest thereon at the Default Rate. In such event, unless a Default otherwise exists, no prepayment penalty or premium shall be payable notwithstanding the provisions of the Note. The following conditions (the "Rebuilding Conditions") are all conditions to Mortgagor's right to have the proceeds of Insurance Policies applied to the cost of restoring, repairing, replacing or rebuilding: (i) no Default exists hereunder; (ii) the sum of (1) rental income from tenants which will continue to be paid during the period of restoration, repair, replacement or rebuilding plus (2) rent loss insurance with respect to tenants who will be obligated to recommence paying rent upon completion thereof plus (3) the amount of any irrevocable documentary letter of credit delivered by Mortgagor to Mortgagee in favor of Mortgagee and having a term of one (1) year and otherwise being in form acceptable to Mortgagee, equals or exceeds, at the time of Commencement and continuously during the course of the required work, one hundred twenty percent (120%) of the payments which will be payable under the Note during such period; provided that Mortgagee's architect shall determine the time reasonably necessary for restoration, repair, rebuilding or replacement; and further provided that no rental income or rent loss insurance proceeds shall be counted with respect to any tenant if such tenant will have a right to terminate its lease if the restoration, repair, rebuilding or replacement requires the period of time so determined; and (iii) the proceeds are sufficient to complete all necessary work as determined by Mortgagee or, if not sufficient, Mortgagor deposits the deficiency promptly with Mortgagee. If a letter of credit is deposited by Mortgagor to satisfy clause (ii) above then such letter of credit shall be renewed or replaced by Mortgagor at least thirty (30) days prior to expiration until and unless the rental income (not including rental income of any tenant if such tenant has the right to terminate its lease if the restoration, repair, rebuilding or replacement requires the period of time so determined) from the Improvements equals or exceeds one-hundred twenty percent (120%) of the payments which will be payable under the Note. The letter of credit will be returned to Mortgagor within thirty (30) days of the date on which Mortgagor provides evidence of (x) completion of all restoration,

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/2011 10:00 AM

UNOFFICIAL COPY

repair, rebuilding or replacement work to Mortgagee and (y) aggregate rentals, as determined at the Net Rental Rate (as that term is defined in the Disbursement Agreement described in Exhibit C), payable pursuant to any and all Leases equal to or exceeding 120% of the then amount of debt service payments (including principal and interest) under the Note, as determined on an annualized basis.

(c) Whether or not insurance proceeds are made available to Mortgagor, Mortgagor hereby covenants to restore, repair, replace or rebuild the Improvements, to be of at least equal value, and of substantially the same character as prior to such loss or damage, all to be effected in accordance with plans, specifications and procedures to be first submitted to and approved by Mortgagee, and Mortgagor shall pay all costs of such restoring, repairing, replacing or rebuilding. Anything to the contrary in the foregoing notwithstanding, said plans, specifications and procedures shall be deemed approved by Mortgagee unless within twenty-five (25) Business Days (as defined in the Note) following receipt by Mortgagee of such plans, specifications and description of procedures Mortgagor has informed Mortgagee of its disapproval of any of said plans, specifications and description of procedures and the reasons therefor except that if less than fifteen (15%) percent of the tenant space is left untenable as a result of the casualty, then said twenty-five (25) day period shall be reduced to fifteen (15) Business Days. However, Mortgagor shall have no obligation to restore, repair, replace or rebuild any tenant improvements in premises for which the applicable tenant is not obligated and does not agree to recommence paying rent thereafter.

(d) If the Indebtedness Hereby Secured is not accelerated in accordance with Paragraph 10(b) above after a loss or damage covered by any of the Insurance Policies but Mortgagee has elected to apply the proceeds of the Insurance Policies to the payment of the Indebtedness Hereby Secured, then Mortgagor may execute and deliver a junior mortgage against the Premises to secure amounts advanced by the mortgagee thereunder in connection with a restoration, repair, replacement or rebuilding provided for in this Paragraph 10.

11. Disbursement of Insurance Proceeds. Insurance proceeds held by Mortgagee for restoration, repairing, replacement or rebuilding of the Premises shall be disbursed from time to time upon Mortgagee being furnished with (i) evidence reasonably satisfactory to it of the estimated cost of the restoration, repair, replacement and rebuilding, (ii) funds (or assurances satisfactory to Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance, to complete and fully pay for the restoration, repair, replacement and rebuilding, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Mortgagee may require and approve. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Mortgagee in its sole and exclusive judgment; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor to pay the cost of such repair, restoration, replacement or rebuilding, shall be at least sufficient in the reasonable judgment of Mortgagee to pay the entire unpaid cost of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

such costs of restoration, repair, replacement or rebuilding shall be paid to Mortgagor. All amounts held on account of any proceeds of insurance or other funds held by Mortgagee pursuant to this Paragraph 11 shall be invested in the manner provided for in Paragraph 41 hereof.

12. Condemnation and Eminent Domain. Any and all awards (the "Awards") heretofore or hereafter made or to be made to the present, or any subsequent, owner or owners of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereof, and the issuance of a warrant for payment thereof), are hereby assigned by Mortgagors to Mortgagee, which Awards Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagors further agree to make, execute, and deliver to Mortgagee, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all Awards and other compensation heretofore and hereafter made to Mortgagor or Fee Mortgagor for any taking, either permanent or temporary, under any such proceeding. If any portion of or interest in the Premises is taken by condemnation or eminent domain, either temporarily or permanently, and the remaining portion of the Premises is not, in the judgment of Mortgagee, a complete economic unit having substantially equivalent value to the Premises as it existed prior to such taking, then, at the option of Mortgagee, the entire Indebtedness Hereby Secured shall immediately become due and payable. After deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including reasonable attorneys' fees, Mortgagee shall be entitled to apply the net proceeds toward repayment of such portion of the Indebtedness Hereby Secured as it deems appropriate without affecting the lien of this Mortgage. In the event of any partial taking of the Premises or any interest in the Premises, which, in the judgment of Mortgagee leaves the Premises as a complete economic unit having equivalent value to the Premises as it existed prior to such taking, and provided no Default has occurred and is then continuing, the Award shall be applied to reimburse Mortgagor for the cost of restoration and rebuilding the Premises in accordance with plans, specifications and procedures which must be submitted to and approved by Mortgagee, and such Award shall be disbursed in the same manner as is hereinabove provided above for the application of insurance proceeds, provided that any surplus after payment of such costs shall be applied on account of the Indebtedness Hereby Secured. If the Award is not applied for reimbursement of such restoration costs, the Award shall be applied against the Indebtedness Hereby Secured, in such order or manner as Mortgagee shall elect, and any amount remaining after payment and discharge in full of the Indebtedness Hereby Secured shall be paid to Mortgagor.

13. Assignment of Rents, Leases and Profits. To further secure the Indebtedness Hereby Secured, Mortgagors hereby sell, assign and transfer unto Mortgagee all of the rents, leases, issues and profits now due and which may hereafter become due under or by virtue of any Leases which may have been heretofore or may be hereafter made or agreed to by Mortgagor, the Leasehold Beneficiary, Fee Mortgagor or the beneficiary of Fee Mortgagor ("Fee Beneficiary") or the agents of any of them or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/2011 10:11:11 AM

UNOFFICIAL COPY

absolute transfer and assignment of all such Leases, rents and all avails thereunder, to Mortgagee. Mortgagor and Fee Mortgagor hereby irrevocably appoint Mortgagee their agent in its name and stead (with or without taking possession of the Premises as provided in Paragraph 20 hereof) to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as said Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and that are now due or that may hereafter become due under each and every of the Leases, written or oral, or other tenancy existing, or which may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Paragraph 20 hereof. Mortgagor and Fee Mortgagor represent and agree that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Premises has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor or Fee Mortgagor. Mortgagor and Fee Mortgagor waive any rights of set off against any person in possession of any portion of the Premises. Mortgagor and Fee Mortgagor agree that they will not assign any of the rents or profits of the Premises, except to Mortgagee or a purchaser or grantee of the Premises. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to Paragraph 20 hereof. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor and Fee Mortgagor. Mortgagor and Fee Mortgagor further agree to assign and transfer to Mortgagee all future leases upon all or any part of the Premises and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Premises as Mortgagee shall from time to time require. Although it is the intention of the parties that the assignment contained in this paragraph shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this paragraph until a Default shall exist under this Mortgage. From time to time, Mortgagor will furnish Mortgagee with executed copies of each of the Leases and with estoppel letters from each tenant under each of the Leases, which estoppel letters shall be in a form reasonably satisfactory to Mortgagee and shall be delivered within thirty (30) days after Mortgagee's written demand therefor. In the event Mortgagee requires that Mortgagor or Fee Mortgagor execute and record a separate Collateral Assignment of Rents or separate assignments of any of the Leases to Mortgagee, the terms and provisions of those assignments shall control in the event of a conflict between the terms of this Mortgage and the terms thereof. Notwithstanding anything to the contrary in this Paragraph, the provisions of this Paragraph shall not apply to Fee Mortgagor prior to the earlier to occur of termination of the Ground Lease or exercise by the Fee Mortgagee of its rights to retake possession of the Premises as described in Paragraph 18B(c) hereof.

14. Observance of Lease Assignment. Mortgagor and Fee Mortgagor expressly covenant and agree that if any lessee under any of the Leases transferred, sold or assigned to Mortgagee or if Mortgagor or Fee Mortgagor, as lessor therein, shall fail to perform and fulfill any term, covenant, condition or provision in said Lease, on its or their part to be performed or fulfilled at the times and in the manner in said Lease provided; or if Mortgagor or Fee Mortgagor shall cancel, terminate, amend, modify or void any of the Leases without Mortgagee's prior written consent provided that no such consent will be required to any amendment or modification which does not materially

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

affect the Premises or Mortgagee's security or the rental income of the Premises; or if Mortgagor or Fee Mortgagor shall suffer or permit to occur any breach or default under the provisions of any assignment of any Lease given as additional security for the payment of the Indebtedness Hereby Secured and such default shall continue after expiration of any applicable cure period therein provided; then and in any such event, such breach or default shall constitute a Default hereunder and at the option of Mortgagee, and without notice to Mortgagor, the Indebtedness Secured Hereby shall become due and payable as in the case of other Defaults. Notwithstanding anything to the contrary in this Paragraph, the provisions of this Paragraph shall not apply to Fee Mortgagor prior to the earlier of termination of the Ground Lease or exercise by the Fee Mortgagee of its rights to retake possession of the Premises as described in Paragraph 18B(c) hereof.

15. Mortgagee's Performance of Mortgagor's Obligations. In case of Default, Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein required of Mortgagor or Fee Mortgagor (whether or not Mortgagor or Fee Mortgagor is personally liable therefor) in any form and manner deemed expedient to Mortgagee. Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises shall be operational and useable for their intended purposes. All monies paid, and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees and other monies advanced by Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises or to pay any such operating costs and expenses thereof or to keep the Premises operational and useable for their intended purpose shall be so much additional Indebtedness Hereby Secured, whether or not the Indebtedness Hereby Secured, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate (as such term is defined in the Note). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Default nor shall the provisions of this Paragraph or any exercise by Mortgagee of its rights hereunder prevent any default from constituting a Default. Mortgagee, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate. Nothing contained herein shall be construed to require Mortgagee to advance or expend monies for any purpose mentioned herein, or for any other purpose.

16. Security Agreement. Mortgagor, Fee Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) any and all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of the Mortgage and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025-01-14 10:00:00 AM

UNOFFICIAL COPY

Premises or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), (which property is hereinafter referred to as "Personal Property") and all replacements of such Personal Property, substitutions for such Personal Property, additions to such Personal Property, and the proceeds thereof (all of said deposits described in clause (i) above and Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagors' right, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the Indebtedness Hereby Secured. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor or Leasehold Beneficiary (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted hereby or by the other Loan Documents.

(b) The Collateral is to be used by Mortgagor solely for business purposes.

(c) The Collateral will be kept at the Land, and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Land but will not be affixed to any other real estate.

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

(e) Upon Default hereunder and subject to Fee Mortgagors rights under Paragraph 18B hereof, Mortgagee shall have the remedies of a Secured Party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagors can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least twenty (20) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least twenty (20) days before the time of the sale or disposition. Mortgagee may buy at any public sale and, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Premises, the Premises including the Collateral to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness Hereby Secured in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

(f) The terms and provisions contained in this Paragraph 16 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

(g) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor and Fee Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinafter set forth. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located. Mortgagor is the record owner of the Premises other than the Land and the Fee Mortgagor is the owner of the Land.

(h) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover and include all Leases between Mortgagor or Leasehold Beneficiary as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor or Leasehold Beneficiary, as lessor thereunder, including, without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any and all of the rents, income, revenues, issues and profits and monies payable as damages or in lieu of the rent and monies payable as the purchase price of the Premises or any part thereof or of awards or claims for money and other sums of money payable or receivable thereunder howsoever payable, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Mortgagor or any lessor is or may become entitled to do under the Leases.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

17. Restrictions on Transfer. Mortgagor and Fee Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, contract for, consent to, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties, rights or interests which occurs, is granted, accomplished, attempted or effectuated through one or a series of transactions or events without the prior written consent of Mortgagee (except for Permitted Transfers, as hereinafter defined) shall constitute a "Prohibited Transfer":

- (a) the Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that such Obsolete Collateral has been replaced by Collateral of at least equal value which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral within twenty (20) days of the sale or other disposition thereof (provided that such twenty (20) day period shall be subject to extension if and to the extent any delay in providing substitute Collateral is due to Force Majeure Causes (as such term is defined in the Security Agreement described in Exhibit C);
- (b) all or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor or Fee Mortgagor is acting, if Mortgagor or Fee Mortgagor is a Trustee;
- (c) any shares of capital stock of a corporate Mortgagor or a corporate Fee Mortgagor, a corporation which is a direct or indirect beneficiary of a trustee Mortgagor or trustee Fee Mortgagor, a corporation which is a general partner in a partnership Mortgagor or partnership Fee Mortgagor, a corporation which is a general partner in a direct or indirect partnership beneficiary of a trustee Mortgagor or a trustee Fee Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealer's Automated Quotation System);
- (d) any general partnership interest in Mortgagor's or Fee Mortgagor's beneficiary, or more than fifty percent (50%) of the general partnership interest in any direct or indirect general partner of Mortgagor's or Fee Mortgagor's beneficiary;
- (e) more than twenty-five percent (25%) of the ownership of Mortgagor's or Fee Mortgagor's beneficiary (and for purposes of this subsection (e), the "ownership" of any party shall be its percentage interest in the profits, distributions and capital of Mortgagor's or Fee Mortgagor's beneficiary, if such party is a partner in Mortgagor's or Fee Mortgagor's beneficiary, or its percentage interest in the profits, distributions and capital of the applicable entity multiplied by such entity's similar percentage interest in Mortgagor's or Fee Mortgagor's beneficiary, and in all cases where a party has a different percentage interest in profits, distributions and capital, the highest percentage shall be used);

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by Mortgagor, Fee Mortgagor, the beneficiary of Mortgagor, the beneficiary of Fee Mortgagor, or any third party, by operation of law or otherwise.

The preceding paragraph shall not apply to and the following shall be deemed "Permitted Transfers" hereunder: (1) the Mortgage or any liens expressly permitted in the Mortgage; (2) the lien of current taxes and assessments not in default; (3) if the Premises or any part thereof is held by a trustee of an Illinois land trust, a transfer of the Premises or any part thereof by Mortgagor or Fee Mortgagor to another trustee of an Illinois land trust without any change in the beneficiary of said trusts; (4) if the Premises or any part thereof is held by a trustee of an Illinois land trust, any transfer of any part thereof to the beneficiary or beneficiaries of such land trust; (5) any transfers of shares of stock, partnership interests, joint venture interests or other interests in the Premises or any part thereof, as the case may be, (w) by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representative, or (x) by an owner thereof to any member of the immediate family of such owner, or (y) by an owner thereof to an Affiliate (as hereinafter defined), or (z) by any partner of a partnership or joint venture to a general partner thereof as of the date hereof, provided that no transferee of any interest pursuant to this subsection (5) who is not an Affiliate may be admitted after the date hereof as a general partner of Mortgagor's or Fee Mortgagor's beneficiary or any direct or indirect general partner of Mortgagor's or Fee Mortgagor's beneficiary without the prior written consent of Mortgagor; or (6) any change in the nominees holding the beneficial interest in Fee Mortgagor; (7) any transfer of the Premises or any part thereof to Fee Mortgagor following a default under the Ground Lease, subject to the provisions of Paragraph 18B hereof. As used herein, the term "immediate family" shall mean such owner's spouse and lineal descendants (including adopted children) and ascendants, or a trust for the benefit of or corporation or partnership controlled by such family member. As used herein, the term "Affiliate" shall mean any of the following parties: (i) Henry Crown & Company (Not Incorporated), an Illinois limited partnership, Tishman Speyer Properties, a New York limited partnership, TSE Limited Partnership, an Illinois limited partnership, or Tishman Speyer Associates, a New York limited partnership, (ii) a person or entity controlling, controlled by or under common control with any of the entities listed in clause (i), (iii) any general partner of any of the entities listed in clause (i), (iv) any controlling shareholder of a corporate general partner of any of the entities listed in clause (i), (v) any lineal descendant of Henry Crown or Irving Crown who is over twenty-one (21) years of age, (vi) a bona fide full time employee of any of the entities listed in clause (i) or of any entity controlled by Henry Crown & Company (Not Incorporated), or (vii) any lineal descendant of Arie and Ida Crown or a trust for the benefit of or a corporation or partnership controlled by any such party, or (viii) any senior officer of the corporate general partner of Tishman Speyer Properties (provided that no person described in clause (vi) or clause (vii) may be admitted after the date hereof as a general partner of Mortgagor's or Fee Mortgagor's beneficiary or any direct or indirect general partner of Mortgagor's or Fee Mortgagor's beneficiary without the prior written consent of Mortgagor. As used herein the term "control" or derivatives thereof shall mean the ability to direct the affairs of the applicable person or entity, which ability is not subject to the veto rights of others. Notwithstanding the foregoing provisions of Paragraph 17, subject to the last sentence of Paragraph 18B(c) hereof, such provisions shall not be applicable to Fee Mortgagor or the Fee Mortgagor's beneficiary following such time as all of the conditions precedent to the return of the

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025/01/28

UNOFFICIAL COPY

letter of credit described in the Letter of Credit Agreement (one of the Loan Documents) have been satisfied.

18. Defaults. A. If one or more of the following events (herein called "Defaults") shall occur:

(a) If any default be made in the due and punctual payment of principal or interest due under the Note and such default shall continue for four (4) Business Days (as defined in the Note);

(b) If any default be made in the due and punctual payment of monies (other than principal and interest under the Note) required under the Note, under this Mortgage or under the other Loan Documents, as and when the same is due and payable pursuant to notice given to Mortgagor (except that no notice shall be required with respect to the late charge or prepayment premium provided for in the Note) and such default shall continue for four (4) Business Days (as defined in the Note);

(c) If default shall exist for any reason other than the non-payment of money hereunder or under any other document or instrument regulating, evidencing, securing or guarantying any of the Indebtedness Hereby Secured in the due and punctual performance or observance of any agreement or condition herein or therein contained, including but not limited to any of the Loan Documents but excluding a default under the Second Mortgage described as item no. 2(b) on Exhibit C hereto (525 Second Mortgage) as a result solely of the institution of proceedings to foreclose the First Mortgage (as such term is defined in said Second Mortgage), and in each case after the expiration of the applicable cure period or if no express cure period is provided then in each case if such default shall continue for forty-five (45) days after notice thereof by Mortgagee to Mortgagor provided, however, that if a default cannot be cured within such time for reasons beyond Mortgagor's control then Mortgagor shall be entitled to such additional time as is reasonably necessary so long as Mortgagor commences the required curative action within such forty-five (45) day period and thereafter diligently, expeditiously and in good faith prosecutes such action to completion;

(d) The occurrence of a Prohibited Transfer;

(e) If (and for the purpose of this Subparagraph 18A(e) only, the term Mortgagor shall mean and include not only Mortgagor, but also any beneficiary of a trustee Mortgagor including Leasehold Beneficiary, Fee Mortgagor, any beneficiary of a trustee Fee Mortgagor, including Fee Beneficiary, any general partner in a partnership Mortgagor or partnership Fee Mortgagor or in a partnership which is a beneficiary of a trustee Mortgagor or trustee Fee Mortgagor, any owner of more than ten percent (10%) of the stock in a corporate Mortgagor or corporate Fee Mortgagor or a corporation which is the beneficiary of a trustee Mortgagor or a trustee Fee Mortgagor and each person who, as guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein);

(i) Mortgagor shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect;

(ii) Mortgagor shall file an answer or other pleading in any proceeding admitting insolvency,

86173569

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0000000000

0000000000

UNOFFICIAL COPY

bankruptcy, or inability to pay its debts as they mature;

(iii) Within ninety (90) days after the filing against Mortgagor of any involuntary proceeding under the Federal Bankruptcy Act or similar law, state or federal, now or hereafter in effect such proceedings shall not have been vacated;

(iv) All or a substantial part of Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within ninety (90) days;

(v) Mortgagor shall be adjudicated a bankrupt;

(vi) Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises; or

(vii) Any order appointing a receiver, trustee or liquidator of Mortgagor or all or a major part of Mortgagor's property or the Premises is not vacated within ninety (90) days following the entry thereof;

provided that this Subparagraph 18A(e) shall not apply to Fee Mortgagor prior to the earlier to occur of any termination of the Ground Lease or commencement by Fee Mortgagor of its rights to cure a Default pursuant to Subparagraph 18B(c), unless the Ground Lease is successfully rejected in any proceeding affecting Fee Mortgagor of the nature described in this Subparagraph 18A(e) and Mortgagor's possession of the Premises pursuant to the Ground Lease is disturbed;

(f) If at any time any material representation, statement, report or certificate made now or hereafter by Mortgagor, Leasehold Beneficiary, Fee Mortgagor or Fee Beneficiary is not true and correct and the matter represented in such representation, statement, report or certificate is not corrected within thirty days after written notice thereof;

(g) If the mortgagor under the Second Mortgage as described as item no. 2(b) on Exhibit C hereto fails to replace the Letter of Credit (as defined in the Second Mortgage) or in case Mortgagee has not drawn on the Letter of Credit to amend the Letter of Credit as provided in Paragraph 8B of the Second Mortgage or deposit in lieu of such replacement or amended Letter of Credit the amount of "Taxes" (as defined in said Second Mortgage) as provided in Paragraph 8A thereof within forty-five (45) days after written notice of such default has been given by Mortgagee to such mortgagor;

then, subject to paragraph 18B, Mortgagee is hereby authorized and empowered, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Mortgagee hereunder, to declare, without further notice, all Indebtedness Hereby Secured to be immediately due and payable with interest thereon at the Default Rate, whether or not such Default be thereafter remedied by Mortgagor or Fee Mortgagor, and Mortgagee, may immediately proceed to foreclose this Mortgage and/or to exercise any right, power or remedy provided by this Mortgage, the Note, or by law or in equity or by any other document or instrument regulating, evidencing, securing or guarantying any of the Indebtedness Hereby Secured.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/10/2014

UNOFFICIAL COPY

B. Notwithstanding anything contained in this Paragraph 18 to the contrary, Mortgagee agrees not to accelerate the Indebtedness Hereby Secured or foreclose upon the Premises or exercise any of its other rights and remedies under the Loan Documents until:

(a) in the case of a Default in the payment of sums of money due under the Note, Mortgage or other Loan Documents, Fee Mortgagor shall fail to pay or cause to be paid such sum of money within the period which is fifteen (15) days following notice of such Default by Mortgagee to Fee Mortgagor;

(b) in the case of any other default by Mortgagor or Leasehold Beneficiary under the Note, Mortgage or other Loan Documents other than the defaults described in clause (c) below, Fee Mortgagor shall fail to cure such default within the time period provided to Mortgagor to cure such default following notice of such default by Mortgagee to Fee Mortgagor; or

(c) in the case of (w) a default under Paragraph 18A(e) hereof, (x) a default under the Loan Documents due solely to a default under the Ground Lease, (y) a default under Paragraph 18A(d) hereof unless such default is due to the default by Fee Mortgagor or Fee Beneficiary in the terms and provisions of Paragraph 17 hereof, or (z) a default under Paragraph 18A(f) hereof, unless such default is due to the default by Fee Mortgagor or Fee Beneficiary, which requires Fee Mortgagor to take possession of the Premises to cure or which by its nature cannot be cured by Fee Mortgagor, Fee Mortgagor shall fail to (i) give to Mortgagee written notice within the period which is thirty days beyond the applicable cure period provided to Mortgagor to cure such default or if there is no applicable cure period then within thirty days of notice from Mortgagee to Fee Mortgagor of the occurrence of such default that Fee Mortgagor intends to terminate the Ground Lease and undertake to re-enter and take possession of the Premises; and (ii) after the giving of such notice, pursue to conclusion the termination of the Ground Lease and the re-entering and taking of possession of the Premises continuously and diligently in good faith no later than 270 days from the giving of such notice; and (iii) upon the taking of possession and re-entering the Premises duly execute and acknowledge in a manner satisfactory to Mortgagee and entitling the same to be recorded in the office of the Recorder of Deeds of Cook County, Illinois an instrument whereby the Fee Mortgagor and, to the extent applicable, the Fee Beneficiary agree to perform and assume all the terms, covenants, conditions and agreements in the Note, Mortgage and other Loan Documents contained to be kept, observed or performed by the Mortgagor or Leasehold Beneficiary, respectively, and deliver such instrument to Mortgagee, provided that Fee Beneficiary shall have personal liability under such Loan Documents only to the extent Leasehold Beneficiary had such personal liability. Notwithstanding the foregoing provisions of clause (c) of this Paragraph 18B, the rights thereunder given to Fee Mortgagor shall only be applicable so long as there has been no transfer by the Fee Mortgagor or the Fee Beneficiary other than a Permitted Transfer, whether or not the applicability of Paragraph 17 hereof to the Fee Mortgagor and Fee Beneficiary has then been terminated as therein provided due to the termination of Mortgagor's obligation to provide a letter of credit in accordance with the Letter of Credit Agreement; and in the event that clause (c) of this Paragraph 18B is then not applicable to Fee Mortgagor, the requirements of Paragraph 17 hereof shall be deemed to be reinstated with respect to the Fee Mortgagor and to Fee Beneficiary upon the occurrence of any of the events

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0000000000

UNOFFICIAL COPY

described in clauses (w), (x), (y) and (z) of clause (c) above.

Mortgagee agrees to give to Fee Mortgagor concurrently with the giving of same to Mortgagor a copy of any notice of default given by Mortgagee to Mortgagor pursuant to this Mortgage or any of the other Loan Documents.

19. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof, in accordance with the laws of the State in which the Premises are located and to exercise any other remedies of Mortgagee provided in the Note, this Mortgage, the other Loan Documents, or which Mortgagee may have at law, at equity or otherwise. In any suit to foreclose the lien hereof or any portion thereof, there shall be allowed and included as additional Indebtedness Hereby Secured in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness Hereby Secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid. Mortgagor and Fee Mortgagor acknowledge and agree that the application of any proceeds realized from the foreclosure of the 525 Second Mortgage to the payment of any portion of the Indebtedness Hereby Secured shall not be deemed to cure any default hereunder or in any way prejudice Mortgagee's rights and remedies hereunder.

20. Right of Possession. When the Indebtedness Hereby Secured shall become due, whether by acceleration or otherwise, or in any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, Mortgagors shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Premises or any part thereof, personally or by its agent or attorneys, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of Mortgagors or the then owner of the Premises relating thereto, and may exclude Mortgagors, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagors or such owner, or in its own name as Mortgagee and under the powers herein granted:

(a) hold, operate, manage, and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises, including without limitation actions for recovery of rent, actions in forcible

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025/01/14

UNOFFICIAL COPY

detainer, and actions in distress for rent, all without notice to Mortgagors;

(b) cancel or terminate any Lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle either or both of Mortgagors to cancel the same;

(c) elect to disaffirm any Lease or sublease of all or any part of the Premises made subsequent to this Mortgage without Mortgagee's prior written consent;

(d) extend or modify any then existing Leases and make new Leases of all or any part of the Premises, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagors, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness Hereby Secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(e) make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Mortgagee, to insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

(f) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness Hereby Secured in such order and manner as Mortgagee shall select.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises.

21. Receiver. Upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagors at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when either or both of Mortgagors, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in payment in whole or in part of: (a) the Indebtedness Hereby Secured or the indebtedness secured by a

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

22. Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied towards payment of the following in whichever order of priority Mortgagee shall elect: on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 19 hereof; all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided; to interest remaining unpaid upon the Note; to the principal remaining unpaid upon the Note; and any overplus to Mortgagors, and their successors or assigns, as their rights may appear.

23. Insurance During Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty Insurance Policy to be cancelled and a new loss payable clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagors, to assign any and all Insurance Policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the Insurance Policies without credit or allowance to Mortgagors for prepaid premiums thereon.

24. Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, each of the Mortgagors hereby covenants and agrees that neither of them will at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, each of the Mortgagors hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on behalf of itself, or behalf of all persons claiming or having an interest (direct or indirect) by, through or under either of the Mortgagors and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagors and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law.

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

01/11/2014

UNOFFICIAL COPY

To the full extent permitted by law, each of the Mortgagors agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagors hereby agree that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. To the full extent permitted by law, Mortgagors hereby waive their rights, if any, to require that the Premises be sold as separate tracts or units in the event of foreclosure.

25. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee herein or in any of the other Loan Documents is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to Mortgagee. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to Mortgagee by this Mortgage is not required to be given.

26. Successors and Assigns.

A. Holder of the Note. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon each of the Mortgagors, respectively, to the extent expressly provided herein, and their respective successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Wherever herein Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such holder from time to time of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such holder of the Note from time to time were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated Mortgagee. Whenever Leasehold Beneficiary or Fee Beneficiary is referred to, such reference shall be deemed to include the successors and assigns, respectively, of such entities.

B. Covenants Run With Land; Successor Owners. All of the covenants of this Mortgage shall run with the Land and the Premises and be binding on any successor owners of the Land and the Premises. In the event that the ownership of Premises or any portion thereof becomes vested in a person or persons other than Mortgagors, Mortgagee may, without notice to Mortgagors, deal with such successor or successors in interest of the applicable of the Mortgagors with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with Mortgagors without in any way releasing or discharging either of the Mortgagors from its obligations hereunder. Mortgagors will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises or any part therein, but nothing in this Paragraph shall vary or negate the effective of provisions of Paragraph 17 hereof.

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025/08/14

UNOFFICIAL COPY

27. Effect of Extensions and Amendments. If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons liable under any of the Loan Documents being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Mortgagee to amend, modify, extend or release the Note, this Mortgage or any other document or instrument evidencing, securing or guarantying the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

28. Ground Lease.

A. Mortgagor will pay all rent and other charges required to be paid under the Ground Lease as and when the same are due and will keep, observe and perform, or cause to be kept, observed and performed, all of the other terms, covenants, provisions and agreements of the Ground Lease on the part of the lessee thereunder to be kept, observed and performed, and will not in any manner, cancel, terminate or surrender, or permit any cancellation, termination or surrender of the Ground Lease, in whole or in part, or, without the written consent of Mortgagee, modify or permit any modification of any of the terms thereof. Mortgagor does hereby expressly release, relinquish and surrender to Mortgagee all its right, power and authority to amend, modify or alter in any way the terms and provisions of the Ground Lease and any attempt on the part of Mortgagor to exercise any such right without the written consent of Mortgagee shall be null and void and of no effect. In the event of the failure of Mortgagor promptly to make any payment required to be made by Mortgagor pursuant to the provisions of the Ground Lease or to keep, observe or perform, or cause to be kept, observed or performed, any of the terms, covenants, provisions or agreements of the Ground Lease, Mortgagors agree that Mortgagee shall, on behalf of Mortgagor, be entitled to make or cause to be made any of such payments or to keep, observe or perform, or cause to be kept, observed or performed any such terms, covenants, provisions or agreements and to enter upon the Premises and take all such action thereon as may be necessary therefor, to the end that the rights of Mortgagor in and to the leasehold estate created by the Ground Lease shall be kept unimpaired and free from default. All monies so expended by Mortgagee, with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Mortgagor to Mortgagee promptly upon demand by Mortgagee and shall be added to the Indebtedness Hereby Secured. Mortgagee shall have, in addition to any other remedy of Mortgagee, the same rights and remedies in the event of non-payment of any such sums by Mortgagor as in the case of default by Mortgagor in the payment of any sums due under the Note.

B. Mortgagor will enforce the obligations of the Fee Mortgagor to the end that Mortgagor may enjoy all of the rights granted to it under the Ground Lease, and will promptly notify Mortgagee in writing of any default by the Fee Mortgagor, or by Mortgagor in the performance or observance of any of the terms, covenants and conditions on the part of the Fee Mortgagor or Mortgagor, as the case may be, to be performed or observed under the Ground Lease. Mortgagor will promptly advise Mortgagee in writing of the occurrence of any of the events of default enumerated in the Ground Lease and of the giving of any notice by the Fee Mortgagor to Mortgagor of any default by Mortgagor in the performance or observance of any of the terms, covenants or

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

conditions of the Ground Lease on the part of Mortgagor to be performed or observed and will deliver to Mortgagee a true copy of each such notice. If, pursuant to the Ground Lease, the Fee Mortgagor shall deliver to Mortgagee a copy of any notice of default given to Mortgagor, such notice shall constitute full authority and protection to Mortgagee for any action taken or omitted to be taken by Mortgagee in good faith in reliance thereon. If Mortgagor shall have notified Mortgagee that there is a bona fide dispute between Mortgagor and the Fee Mortgagor as to the existence of any default referred to in any such copy of notice of default delivered to Mortgagee, Mortgagee agrees not to take any action pursuant to the foregoing sentence which would prejudice the rights of Mortgagor in the event of any such dispute, unless, in the judgment of Mortgagee, the lien of this Mortgage on the Premises, or any part thereof, would, by reason of such forbearance, be in imminent danger of being forfeited, lost or subordinated.

C. If any action or proceeding shall be instituted to evict Mortgagor or to recover possession of the Premises or for any other purpose affecting the Ground Lease or this Mortgage, Mortgagor will, immediately upon service thereof on or by Mortgagor, deliver to Mortgagee a true copy of each precept, petition, summons, complaint, notice of motion, order to show cause and all other process, pleadings, and papers, however designated, served in any such action or proceeding.

D. Mortgagor covenants and agrees that no release of or forbearance to enforce any of Mortgagor's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release Mortgagor from any of its obligations under this Mortgage, including its obligation with respect to the payment of rent as provided for in the Ground Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Ground Lease, to be kept, performed and complied with by the lessee therein.

E. Mortgagor and Fee Mortgagor covenant and agree that unless Mortgagee shall otherwise expressly consent in writing, the fee title to the property demised by the Ground Lease and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in the lessor, the lessee, a third party by purchase or otherwise; and Mortgagor and Fee Mortgagor agree that if they shall acquire any estate in said land in addition to or in lieu of the estates now owned by them, the same shall be subject to this Mortgage with the same force and effect as though specifically described herein.

F. Mortgagors agree that notwithstanding anything in any statute or rule of law or in the Ground Lease or this Mortgage to the contrary, neither Mortgagee nor any of its successors or assigns shall ever be or become liable in any way, by operation of law or otherwise, under the Ground Lease, whether for the rent reserved therein or upon the other covenants or conditions thereof, unless and until Mortgagee or its successors or assigns become owners of the leasehold estate created by the Ground Lease, by purchase, or through foreclosure, or conveyance in lieu of foreclosure, all such liability being hereby expressly waived and released by Mortgagors.

G. Mortgagor hereby represents that subject only to the payment of the rent reserved in the Ground Lease and in compliance with the other terms and conditions thereof, Mortgagor is now possessed of the leasehold estate under and in accordance with the terms of the Ground Lease for the entire remainder of the term specified therein and has the right to assign and mortgage the same in the manner and form as provided herein; Mortgagor further covenants that there is no existing default or claim of default on the part of the Mortgagor as tenant under the Ground Lease.

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

29. Future Advances. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the Indebtedness Hereby Secured the payment of any and all loan commissions, service charges, liquidated damages, reasonable attorneys' fees, expenses and advances due to or incurred by Mortgagee in connection with the Indebtedness Hereby Secured, all in accordance with the Note, this Mortgage, and the other Loan Documents; provided, however, that in no event shall the total amount of the Indebtedness Hereby Secured, including loan proceeds disbursed plus any additional charges, exceed 500% of the face amount of the Note.

30. Execution of Separate Security Agreements, Financing Statements, Etc., Estoppel Letter. Mortgagors will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, mortgages, security agreements, financing statements and assurances as Mortgagee shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagors or hereafter acquired. Without limitation of the foregoing, Mortgagors will assign to Mortgagee, upon request, as further security for the Indebtedness Secured hereby, all of their respective interests in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments satisfactory to Mortgagee, but no such assignment shall be construed as a consent by the Mortgagee to any agreement, contract, license or permit or to impose upon Mortgagee any obligations with respect thereto. From time to time, Mortgagor will furnish within fifteen (15) days after Mortgagee's request a written and duly acknowledged statement of the Indebtedness Hereby Secured and whether any alleged offsets or defenses exist against the Indebtedness Hereby Secured. From time to time, Mortgagee will furnish within fifteen (15) days after Mortgagor's request, accompanied by the payment to Mortgagee of its customary fee, a written statement of the principal and interest due under the Note provided that upon Mortgagor's request, Mortgagee will deliver one such statement within any calendar year without charging any fee.

31. Subrogation. If any part of the Indebtedness Hereby Secured is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

32. Option to Subordinate. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated, of a unilateral declaration to that effect.

33. Governing Law. The place of negotiation, execution, and delivery of this Mortgage and the location of the Premises being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State.

34. Business Loan. Mortgagor certifies and agrees that the proceeds of the Note will be used for the purposes specified in Illinois Revised Statutes, Chapter 17, Section 6404, and that the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000000000

UNOFFICIAL COPY

35. Inspection of Premises and Records. Mortgagee and its representatives and agents shall have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose. Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises and, within ten (10) days (provided no such notice shall be required following a Default) after demand therefor by Mortgagee, permit Mortgagee or its agents to examine and copy such books and records and all supporting vouchers and data, income tax returns and other documents relating to the Premises at any time and from time to time on request at Mortgagor's offices or at such other location as may be mutually agreed upon; provided that so long as no Default has occurred, Mortgagee agrees that all such information obtained by Mortgagee shall be kept confidential. Mortgagor shall preserve the records related to the financial statements delivered to Mortgagee under Paragraph 36 hereof for a period of three (3) years following submission of such financial statements and records to Mortgagee.

36. Financial Statements. Mortgagor shall:

(a) promptly supply Mortgagee with such information concerning Mortgagor's and Leasehold Beneficiary's assets, liabilities and affairs, as Mortgagee may reasonably request from time to time hereafter; which shall (without necessity of any request by Mortgagee) include, as soon as available and in no event later than ninety (90) days after the close of each fiscal year of the Leasehold Beneficiary, operating statements of the Premises for such fiscal year, including, but without limitation, supporting schedules, detailed statement of income and expenditures and supporting schedules, all prepared on the accrual method of accounting adopted for federal income tax purposes. Such operating statements shall be prepared and certified to Mortgagee by Leasehold Beneficiary or by a firm of independent certified public accountants, and if the same are certified and prepared pursuant to audit, such certified public accountants shall state whether, during the course of their audit, they discovered or became aware of any information which would lead them to believe that a Default exists;

(b) promptly notify Mortgagee of any condition or event which constitutes (or which with the giving of notice or lapse of time or both would constitute) a Default, and of any material adverse change in the financial condition of Leasehold Beneficiary; and

(c) maintain a standard and modern system of accounting with respect to the operations of the Premises on the accrual method of accounting adopted for federal income tax purposes.

37. Time of the Essence. Time is of the essence of the Note, this Mortgage, and any other document or instrument evidencing or securing the Indebtedness Hereby Secured.

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

39. Notices. Any notice, demand or other communication which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given if and when personally delivered, or on the third business

UNOFFICIAL COPY

Property of Cook County Clerk's Office

4/15/2014

UNOFFICIAL COPY

day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth below, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to Mortgagee:

The Prudential Insurance Company
of America
Suite 2310
Prudential Plaza
Chicago, Illinois 60601
Attention: Vice-President,
The Prudential Mortgage Capital Company, Inc.

with copies to:

The Prudential Insurance Company
of America
Suite 3800
Prudential Plaza
Chicago, Illinois 60601
Attention: Regional Counsel

Rudnick & Wolfe
30 North LaSalle Street
Suite 2900
Chicago, Illinois 60602
Attention: Portia Owen Morrison, Esq. and
Thomas H. Fraerman, Esq.

If to Mortgagor:

LaSalle National Bank
135 South LaSalle Street
Chicago, Illinois 60690
Attn: Land Trust Department

with a copy to:

Tishman Speyer North LaSalle
General Partnership
c/o Tishman Speyer Properties
120 South Riverside Plaza
Chicago, Illinois 60606
Attn: Robert L. Belcaster

and

Tishman Speyer Associates Limited Partnership
520 Madison
New York, New York 10022
Attn: Leonard Chazen

and

Gould & Ratner
222 North LaSalle Street
Chicago, Illinois 60601
Attn: Gerald A. Weber, Esq. and
David M. Arnburg, Esq.

If to Fee Mortgagor:

LaSalle National Bank
135 South LaSalle Street
Chicago, Illinois 60690
Attn: Land Trust Department .

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

with a copy to:

The Irving and Rose Crown Trust and
 Sheridan Road-Lake Shore Drive Venture
 c/o Henry Crown & Co.
 300 West Washington Street
 Chicago, Illinois 60606
 Attn: Charles H. Goodman

Except as otherwise specifically required herein, notice of the exercise of any right, power or option granted to Mortgagee by this Mortgage is not required to be given.

40. Expenses. Mortgagor agrees to pay all recording and filing fees, transfer taxes, title insurance premiums, escrow and other title company charges, reasonable attorneys' fees (including the fees and expenses of outside counsel for Mortgagee), appraisal and survey fees, consulting architect fees, if any, fees of engineers and other consultants, financial consultant fees, insurance costs and all other expenses in connection with the making of the loan evidenced by the Note. Mortgagee shall have the right to pay any such expenses and upon such payment such expenses shall be deemed to be a part of the Indebtedness Hereby Secured and shall be payable on demand with interest at the Default Rate.

41. Investment of Funds. Whenever Mortgagor deposits funds with Mortgagee pursuant to Paragraphs 4, 5B, 9 or 10 hereof or proceeds of Insurance Policies are deposited with Mortgagee, during such period as no Default exists hereunder and such funds are to be held as security or for disbursement pursuant to Paragraph 11 such funds shall, in a reasonably timely manner, be deposited or invested by Mortgagee in such United States securities or investment grade instruments or accounts at such financial institutions as Mortgagor may direct in writing and all interest and earnings thereon shall be paid to Mortgagor or as Mortgagor directs in writing within seven (7) Business Days of Mortgagee's receipt of such direction. If Mortgagee receives no direction from Mortgagor as to the investment of any such funds, Mortgagee shall have no obligation to invest such funds or pay Mortgagor any interest thereon.

42. Deficiency Upon Foreclosure. Notwithstanding the non-recourse nature of the Note and this Mortgage, any deficiency realized by Mortgagee on the foreclosure of this Mortgage shall not be discharged by such foreclosure but may be collected out of the proceeds of foreclosure of the second mortgage described in Exhibit C as item 2(b), provided that such collection shall be Mortgagee's sole remedy with respect to such deficiency.

43. Mortgagor's Exculpatory Clause. This Mortgage is executed by the undersigned Mortgagor, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants in its individual capacity that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, representation, agreement or condition, either express or implied herein contained, or with regard to any warranty contained in this Mortgage except the warranty made in this Paragraph, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder; provided that nothing herein contained shall be construed in any way so as to affect or impair the lien of this Mortgage or Mortgagee's right to the foreclosure thereof, or construed in any way so as to limit or restrict any of the rights and remedies of Mortgagee in any such foreclosure proceedings or other enforcement of the payment of

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/11

UNOFFICIAL COPY

the Indebtedness Hereby Secured out of and from the security given therefor in the manner provided herein, or construed in any way so as to limit or restrict any of the rights and remedies of Mortgagee under any other document or instrument evidencing, securing or guarantying the Indebtedness Hereby Secured.

44. Fee Mortgagor's Exculpatory Clause. This Mortgage is executed by the undersigned Fee Mortgagor, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants in its individual capacity that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability against the Fee Mortgagor, Fee Beneficiary, the parties for whom Fee Beneficiary is acting as nominee or any partners thereof personally to pay the Note or any interest that may accrue thereon, or the Indebtedness Hereby Secured, or to perform any covenant, representation, agreement or condition, either express or implied herein contained, or with regard to any warranty contained in this Mortgage, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder; provided, that nothing herein contained shall be construed in any way so as to affect or impair the lien of this Mortgage or Mortgagee's right to the foreclosure thereof, or construed in any way so as to limit or restrict any of the rights and remedies of Mortgagee in any such foreclosure proceedings or other enforcement of the payment of the Indebtedness Hereby Secured out of and from the security given therefor in the manner provided herein, or construed in any way so as to limit or restrict any of the rights and remedies of Mortgagee under any other document or instrument evidencing, securing or guarantying the Indebtedness Hereby Secured.

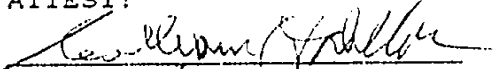
IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly signed, sealed and delivered the day and year first above written.

MORTGAGOR:

LaSalle National Bank not personally, but solely as Trustee under Trust No. 104642

By:  Title: ASSISTANT VICE PRESIDENT

ATTEST:

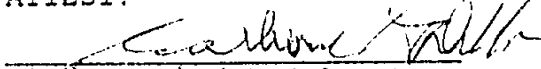

Title: Assistant Secretary

FEE MORTGAGOR:

LaSalle National Bank, not personally, but solely as Trustee under Trust No. 104753

By:  Title: ASSISTANT VICE PRESIDENT

ATTEST:


Title: Assistant Secretary

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000000000

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Alvin Yarnes, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that THOMAS A. BARKASSIANI President of LaSalle National Bank, known to me to be acting not personally but as Trustee under Trust Agreement dated January 19, 1982 and known as Trust Number 104642 and William E. Gillen Secretary of said Bank/Trust Company, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such: THOMAS A. BARKASSIANI President and William E. Gillen Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Bank/Trust Company, as Trustee as aforesaid, for the uses and purposes therein set forth; and said William E. Gillen Secretary then and there acknowledged that he, as custodian of the corporate seal of said Bank/Trust Company, did affix the corporate seal of said Bank/Trust Company to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank/Trust Company, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 1ST day of May, A.D., 1986.

Alvin Yarnes
Notary Public

My Commission Expires: 8-9-89

COOK COUNTY Clerk's Office

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00110000

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JAMES A. CLARK ^{Assistant Vice President} President of LaSalle National Bank, known to me to be acting not personally but as Trustee under Trust Agreement dated January 28, 1982 and known as Trust Number 104753 and William H. Dillon ^{Assistant Secretary} Secretary of said Bank/Trust Company, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such ^{Assistant Vice President} President and ^{Assistant Secretary} Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Bank/Trust Company, as Trustee as aforesaid, for the uses and purposes therein set forth; and said ^{Assistant Secretary} Secretary then and there acknowledged that he, as custodian of the corporate seal of said Bank/Trust Company, did affix the corporate seal of said Bank/Trust Company to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank/Trust Company, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 1ST day of May, A.D., 1986.

Alicia Yanoz
Notary Public

My Commission Expires: 8-9-89

PROPERTY OF COOK COUNTY CLERK'S OFFICE

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

001500000

UNOFFICIAL COPY

EXHIBIT A

TO
MORTGAGE

The Land

Lots 1, 2 and 3 in Block 19 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, also that part of the original 18 foot alley in Block 19, South of said Lots 1, 2 and 3 and North of the North line of the alley as narrowed by ordinance of the City of Chicago, passed September 17, 1852 (excepting from said Lot 1 and from said part of the original 18 foot alley those parts thereof taken for the widening of LaSalle Street per condemnation Case Number 53254 entered August 16, 1927) all in Cook County, Illinois.

ALSO: Lots 1, 2 and 3 in the Subdivision by George A. Robbins and others of Lot 4 in Block 19 in Original Town of Chicago, in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, Also that part of the original 18 foot alley in Block 19 South of said Lot 3 and North of the North line of the alley as narrowed by ordinance of the City of Chicago, passed September 17, 1852, all in Cook County, Illinois.

Property Address: 212 North LaSalle Street, Chicago, Illinois

PIN: 17-09-417-003 *TP ALL*
17-09-417-005

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

04/15/2010

UNOFFICIAL COPY

EXHIBIT B

TO
MORTGAGE

Intentionally Omitted

Property of Cook County Clerk's Office

86173569

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10/15/10

UNOFFICIAL COPY

EXHIBIT C

TO
MORTGAGE

Loan Documents

The term "Loan Documents," as used in this Mortgage, means the following documents and any other documents previously, now, or hereafter given to evidence, secure, or govern the disbursement of the Indebtedness Hereby Secured, including any and all extensions, renewals, amendments, modifications, and supplements thereof or thereto

1. The Note;
2. The following security documents:
 - (a) this Mortgage;
 - (b) a Second Mortgage of even date herewith executed by LaSalle National Bank, not personally but solely as Trustee under Trust Agreement dated November 1, 1966 and known as Trust No. 35766 in favor of Mortgagee constituting a second lien on the property commonly known as 525 West Monroe Street, Chicago, Illinois;
 - (c) a Collateral Assignment of Leases and Rents of even date herewith made by Mortgagor and Leasehold Beneficiary, as assignor, in favor of Mortgagee, as assignee;
 - (d) a Letter of Credit Agreement of even date herewith between Leasehold Beneficiary and Mortgagee governing the terms under which Mortgagee holds a letter of credit in the amount of \$5,475,000.00, as of the date of the Mortgage;
 - (e) a Security Agreement of even date herewith between Leasehold Beneficiary, as debtor, and Mortgagee, as secured party;
 - (f) certain Uniform Commercial Code Financing Statements made by Mortgagor and Leasehold Beneficiary, as debtor in favor of Mortgagee, as secured party;
 - (g) an Irrevocable Right to Approve Trust Documents of even date herewith executed by Leasehold Beneficiary, Mortgagee and Mortgagor;
 - (h) an Irrevocable Right to Approve Trust Documents of even date herewith executed by Fee Beneficiary, Mortgagee and Fee Mortgagor;
 - (i) a Disbursement Agreement of even date herewith between Mortgagor, Leasehold Beneficiary and Mortgagee; and
 - (j) a letter agreement of even date herewith between Mortgagor, Leasehold Beneficiary and Mortgagee regarding the limited liability of Leasehold Beneficiary.

86173569

86179509

67521-98-* W # 2290H
00:61:11 99/26/50 1650 NMMI 2200#1
DEFI-01 RECORDING \$48.00

UNOFFICIAL COPY

Property of Cook County Clerk's Office

001112