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Cook County Recorder of Deeds

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File: 2138/435

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

by and from

401 NORTH WABASH VENTURE LLC,
a Delaware limited liability company, "Mortgagor"

to

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Agent for Lenders, "Mortgagee"

Dated as of February 7, 2005

THIS INSTRUMENT IS A MORTGAGE, ASSIGNMENT, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT. THE TOTAL OUTSTANDING PRINCIPAL AMOUNT OF INDEBTEDNESS SECURED BY THIS INSTRUMENT AT ANY ONE TIME SHALL NOT EXCEED SIX HUNDRED FORTY MILLION AND NO/100 DOLLARS (\$640,000,000.00).

THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS, SECURES PAYMENT OF FUTURE ADVANCES AND COVERS PROCEEDS OF COLLATERAL.

THE SECURED PARTY (MORTGAGEE) DESIRES THIS FIXTURE FILING TO BE INDEXED AGAINST THE RECORD OWNER OF THE REAL ESTATE DESCRIBED HEREIN.

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THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Mortgage**") is dated as of February 7, 2005 and is made by and from **401 NORTH WABASH VENTURE LLC**, a Delaware limited liability company ("**Mortgagor**"), having an address c/o The Trump Organization, 725 Fifth Avenue, New York, New York 10022, to **DEUTSCHE BANK TRUST COMPANY AMERICAS**, in its capacity as administrative agent for Lenders (as defined below) ("**Mortgagee**"), having an address at 60 Wall Street, New York, New York 10005.

PRELIMINARY STATEMENT

WHEREAS, Mortgagor has entered into that certain Construction Loan Agreement among Mortgagor, as borrower, Deutsche Bank Trust Company Americas, as a lender and as administrative agent for the Lenders (as defined therein), Deutsche Bank Securities Inc., as sole lead arrangers and the Lenders, dated as of even date herewith (as the same may be amended, modified or supplemented from time to time the "**Construction Loan Agreement**");

WHEREAS, pursuant to the Construction Loan Agreement and subject to the terms and conditions therein set forth, Lenders have agreed to make a loan to Mortgagor in a principal amount of up to Six Hundred Forty Million and No/100 Dollars (\$640,000,000.00) (the "**Loan**");

WHEREAS, to evidence such indebtedness, Mortgagor has executed and delivered, or will in the future execute and deliver, one or more promissory notes (collectively, the "**Notes**"), in favor of Lenders in an aggregate principal amount equal to the Loan and issued pursuant to, and in accordance with, the Construction Loan Agreement;

WHEREAS, Mortgagor is the owner of the Mortgaged Property (as defined below) which is the "Mortgaged Property" referred to in the Construction Loan Agreement; and

WHEREAS, Mortgagor has duly authorized the execution and delivery of this Mortgage and has taken all actions required by law and all other actions of Mortgagor required therefor.

NOW, THEREFORE, in order to secure: (a) all indebtedness, obligations and liabilities now or hereafter existing of any kind of Mortgagor to Mortgagee and Lenders in connection with the Loan, including the sum of all (i) principal, interest and other amounts owing under or evidenced or secured by the Loan Documents and (ii) principal, interest, future or additional advances and other amounts which may hereafter be lent by Mortgagee or any of the other Lenders under or in connection with the Construction Loan Agreement or any of the other Loan Documents for any purpose, whether evidenced by a promissory note or other instrument which, by its terms, is secured hereby, (i) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Mortgagor to Mortgagee or any of the other Lenders under documents which recite that they are intended to be secured by this Mortgage (items (a) and (b) being referred to collectively herein as the "**Debt**") and (c) the performance by Mortgagor of all the covenants and agreements contained in the Notes, this Mortgage and the other Loan Documents, as the same may be amended, modified, supplemented or restated, to be performed or observed by or on the part of Mortgagor (items (a), (b) and (c) being referred to collectively herein as, the "**Secured Obligations**"), Mortgagor, in consideration of the premises and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents hereby agrees and covenants as follows:

MORTGAGOR HEREBY IRREVOCABLY GRANTS, BARGAINS, SELLS, PLEDGES, CONVEYS, TRANSFERS, MORTGAGES AND ASSIGNS unto Mortgagee (for the

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benefit of Lenders), its successors and assigns forever, and grants a security interest to Mortgagee (for the benefit of Lenders) in all of its estate, right, title and interest in and to, whether now owned or hereinafter acquired, all of the following property (such property being referred to collectively herein as the **"Mortgaged Property"**):

(a) those certain tracts or parcels of land as described in Exhibit A hereto, together with all rights of way or use, sidewalks, alleys, strips, gores, rights (including rights in streets (including those vacated or to be vacated)), privileges, air rights and development rights, sewer rights, waters, water courses, water rights, reservoir and drainage rights, and powers, servitudes, estates, licenses, easements, tenements, hereditaments and appurtenances incident, belonging or pertaining to such land, including any mineral, mining, oil and gas rights and rights to produce or share in the production of anything related thereto and similar or comparable rights of any nature whatsoever now or hereafter appurtenant (collectively, the **"Land"**), and all estate, right, title and interest of Mortgagor in the buildings, structures, fixtures and improvements now or hereafter located or placed thereon (which buildings and improvements, together with any additions thereto or alterations or replacements thereof, being referred to herein as the **"Improvements"**);

(b) all machinery, apparatus, equipment, materials, fittings, fixtures, chattels, articles of personal property and all other property (real, personal or mixed) owned by Mortgagor or in which Mortgagor has or shall acquire an interest (to the extent of such interest), and now or hereafter located on, attached to or contained in or used in connection with the Land or the Improvements, or placed on any part thereof though not attached thereto, including all indoor and outdoor furniture, landscaping, indoor plants, tools, screens, awnings, shades, blinds, curtains, draperies, partitions, carpets, rugs, furniture and furnishings, heating, lighting, plumbing, water heating, cooking, monitoring, ventilating, air conditioning, refrigerating, sanitation, waste removal, incinerating or compacting plants, systems, fixtures and equipment, elevators, escalators, stoves, ranges, vacuum systems, window washing and other cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, alarms, computers, televisions, telecommunications, entertainment, recreational or security systems and equipment, motors, machinery, pipes, ducts, conduits, dynamos, engines, compressors, generators, boilers, stokers, furnaces, pumps, tanks, appliances, beds, linens, cash registers, lamps, glassware, rehabilitation equipment, medical, dental, therapeutic and paramedical equipment and other fixed assets (for purposes herein, **"other fixed assets"** shall be deemed to include any and all **"furniture, furnishings and equipment"** contained in or used in connection with the Land and/or the Improvements as such term is commonly understood (including any and all fixtures, furnishings, equipment, furniture, and other items of corporeal (tangible) movable (personal) property now or hereafter located on or used in connection with the Land or the Improvements or used in connection with the use, occupancy operation and maintenance of all or any part of the Land or the Improvements, other than stocks of food and other supplies held for consumption in normal operation, but including appliances, machinery, equipment, signs, artwork (including paintings, prints, sculpture and other fine art), office furnishings and equipment, guest room furnishings, and specialized equipment for kitchens, laundries, bars, restaurant (dining room), public rooms, health and recreational facilities, linens, dishwashers, two-way radios, all partitions, screens, awnings, shades, blinds, floor coverings, hall and lobby equipment, heating, lighting, plumbing, ventilating, refrigerating, incinerating, elevators, escalators, air conditioning and communication plants or systems with appurtenant fixtures, vacuum cleaning systems, call or beeper systems, security systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, all equipment, manual, mechanical or motorized, for the construction, maintenance, repair and cleaning of parking areas, walks, underground ways, truck ways, driveways, common areas, roadways, highways and

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streets) (collectively, "**Equipment**"; the Land, Improvements and Equipment are collectively referred to herein as the "**Premises**");

(c) all personal property now or hereafter located at or used in connection with the Premises and owned by Mortgagor, including all building materials, supplies and equipment now or hereafter placed on the Land or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Land or the Improvements;

(d) all real estate tax refunds and credits and all awards or payments, including interest on any of them, and any right to receive the same which Mortgagor may have, which may be made with respect to any of the Premises whether from a condemnation thereof or for any other injury to, decrease in the value of, or other occurrence affecting any of the Premises;

(e) all leases, subleases, licenses and guarantees thereof, and all other agreements, documents, records and instruments for, affecting or related to, the Premises, including the use, development, construction, management and occupancy thereof and the sale of units at the Premises now or hereafter entered into (including (i) all contracts of sale for such units, (ii) all warranties, guarantees and Approvals and (iii) any use or occupancy arrangements created pursuant to Section 365(d) of Title 11 of the United States Code (the "**Bankruptcy Code**") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors in respect of any Tenant or occupant of any portion of the Premises) (collectively, the "**Agreements**");

(f) all rents, tolls, incomes, proceeds, issues, royalties, revenues, bonuses and profits derived by Mortgagor from the Premises (whether paid or accruing before or after filing by or against Mortgagor of any petition for relief under the Bankruptcy Code) (collectively, the "**Rents**") and the right to apply the Rents to the payment of the Debt, together with the security deposits or other payments or instruments delivered as security under the Agreements and all leases, licenses and other agreements with any Tenant or occupant of any portion of the Premises (collectively, the "**Leases**");

(g) all of Mortgagor's claims and rights to damages and any other remedies in connection with or arising from the rejection of the Leases by any Tenant or occupant or any trustee, custodian or receiver pursuant to the Bankruptcy Code in the event that there shall be filed by or against any Tenant or occupant any petition, action or proceeding under the Bankruptcy Code or under any other similar federal or state law now or hereafter in effect;

(h) all monies, accounts, instruments and other property (including all additional collateral and other pledges of money provided to Mortgagee pursuant to the terms of this Mortgage or any other Loan Documents) constituting a part of the security for the Loan or the performance by Mortgagor of its obligations under this Mortgage or the other Loan Documents as of any particular time, including all collateral subject to the Lien evidenced by any of the Loan Documents or assigned to Mortgagor on or after the date hereof, and any proceeds of the foregoing;

(i) all proceeds of, and any unearned premiums or refunds of premiums on, any insurance policies covering all or any part of the Premises or other portion of the Mortgaged Property, including the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof for damage to or the diminution of the Premises;

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(j) all awards or payments, including interest thereon, which may heretofore or hereafter be made with respect to the Premises, whether from the exercise of the right of eminent domain (including any transfer made in lieu or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in value of the Premises;

(k) all general intangibles relating to design, development, operation, management and use of the Premises, all certificates of occupancy, zoning variances, building, use or other Approvals in connection with the development, use, operation or management of the Premises, all construction, service, engineering, consulting, development, management, leasing, architectural and other similar contracts concerning the design, construction, development, management, administration, operation, occupancy and/or use of the Premises, all architectural drawings, plans, specifications, soil tests, appraisals, engineering reports and similar materials relating to all or any portion of the Premises and all payment and performance bonds or warranties or guarantees relating to the Premises;

(l) all intellectual property, trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other source and business identifiers, trademark registrations and applications for registration used exclusively at or relating exclusively to the Premises or any portion thereof; all renewals, extensions and continuations-in-part of the items referred to above; any written agreement granting to Mortgagor any right to use any trademark or trademark registration at or in connection with any of the Premises; and the right of Mortgagor to sue for past, present and future infringements of the foregoing;

(m) all rights, dividends and/or claims of any kind whatsoever relating to the Premises (including damage, secured, unsecured, lien, priority and administration claims); together with the right to take any action or file any papers or process in any court of competent jurisdiction, which may in the opinion of Mortgagee be necessary to preserve, protect, or enforce such rights or claims, including the filing of any proof of claim in any insolvency proceeding under any state, federal or other laws and any rights, claims or awards accruing to or to be paid to Mortgagor in connection with the Leases or Agreements; and the right in the name and on behalf of Mortgagor to appear in and defend any action or proceeding brought with respect to any of the Premises or any other component of the Mortgaged Property, and to commence any action or proceeding to protect the interest of Mortgagee therein;

(n) all rights which Mortgagor now has or may hereafter acquire, to be indemnified and/or held harmless and/or reimbursed from any Loss relating to the Mortgaged Property;

(o) all appurtenances in respect of or otherwise relating to the Leases and contracts of sale for units at the Premises, including all the estate and rights of the Mortgagor of, in and to (i) all modifications, extensions and renewals of the Leases and contracts of sale for units at the Premises and all rights to renew or extend the term of the Leases, (ii) all of Mortgagor's rights, if any, pertaining to deposits of the lessee under the Leases (including lessee security deposits, if any) and downpayments under such contracts of sale for units at the Premises, (iii) all the right or privilege of Mortgagor to terminate, cancel, abridge, surrender, merge, modify or amend the Leases and such contracts of sale and (iv) any and all possessory rights of Mortgagor and other rights and/or privileges of possession, including Mortgagor's right to elect to take possession of the Mortgaged Property;

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(p) all present and future monetary deposits given by Mortgagor to any public or private utility with respect to utility services furnished to any part of the Premises or the Improvements;

(q) all refunds, credits and rebates of taxes and assessments relating to the Premises (except to the extent such refunds, credits and rebates relate to taxes or assessments paid directly by any lessee under any Lease);

(r) all proceeds, products, substitutions and accessions (including claims and demands therefor) including interest receivable thereon, of the voluntary or involuntary conversion of any of the foregoing, including proceeds of insurance and condemnation awards, into cash or liquidated claims;

(s) without prejudicing the generality of the foregoing, all right, title and interest of Mortgagor in and to the contracts and agreements assigned to Mortgagee pursuant to the following agreements: Assignment of Agreements, Assignment of Sales Contracts, Assignment of Letter-of-Credit Rights and Assignment of Leases;

(t) any of the foregoing to the extent acquired from and after the date hereof; and

(u) all other or greater rights and interests of every nature in the Premises and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Mortgagor.

TOGETHER with all right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes, amendments, modifications, supplements and replacements of or to, and all additions and appurtenances to, any of the foregoing heretofore or hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed by Mortgagor on the Premises and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assemblage, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor, shall become subject to the Lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described herein.

TO HAVE AND TO HOLD the above granted and described property, subject in all respect only to the Permitted Encumbrances, unto and to the proper use and benefit of Mortgagee, its successors and assigns, forever, upon the terms and conditions set forth herein.

The following actions of Mortgagee, with or without notice, shall not affect the liability of Mortgagor for payment or performance of the Secured Obligations, and shall not affect the Lien hereof upon the Mortgaged Property not expressly released herefrom:

(a) retaining or obtaining a security interest in any additional property or collateral to secure all or any portion of the Secured Obligations;

(b) altering, amending, supplementing, exchanging, extending, renewing, modifying, releasing or canceling for any period (whether or not longer than their original maturity) any terms, conditions, provisions or covenants contained in any or all of the Loan Documents;

(c) releasing or compromising any liability of any Person or Persons primarily or secondarily liable on all or any portion of the Secured Obligations;

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(d) releasing its security interest, if any, in the Mortgaged Property and/or permitting any substitution or exchange for the Mortgaged Property;

(e) resorting to the Mortgaged Property for payment of the Secured Obligations, or any portion thereof, whether or not Mortgagee shall have resorted to any other property otherwise securing the Secured Obligations, or to the extent permitted by law, shall have proceeded against any other Person primarily or secondarily liable on the Secured Obligations; and/or

(f) applying the Mortgaged Property or directing the order or manner of sale thereof as Mortgagee in its sole discretion chooses in accordance with the terms of this Mortgage.

To protect the security of this Mortgage, Mortgagor covenants and agrees with and represents and warrants to Mortgagee, subject in all respects to the Permitted Encumbrances, as follows:

1. DEFINITIONS.

1.1 Capitalized Terms Not Defined Herein.

Capitalized terms, not otherwise defined in this Mortgage, shall have the respective meanings assigned thereto in the Construction Loan Agreement.

1.2 Construction.

For all purposes of this Mortgage, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in this **Section 1** shall have the meanings assigned to them in this **Section 1** and shall include the plural as well as the singular.

(b) All accounting terms not otherwise defined herein shall have the meanings assigned to them in accordance with generally accepted accounting principles in the United States of America, and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States of America as of the date of such computation.

(c) The word “including” shall be construed to be followed by the words “without being limited to”.

(d) Captions are for the convenience of the reader and shall not be considered in interpreting this Mortgage or the intent of the parties hereto.

(e) The words “herein”, “hereof” and “hereunder” and other words of similar import shall refer to this Mortgage as a whole and not to any particular Article, Section, paragraph or other subdivision.

(f) The term “Mortgaged Property” shall be deemed to mean “Mortgaged Property or any portion thereof or interest therein”.

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1.3 Certain Definitions.

As used in this Mortgage, the following terms shall have the following respective meanings:

- (a) **"Agreements"** shall have the meaning stated in the Preliminary Statement.
- (b) **"Bankruptcy Code"** shall have the meaning stated in the Preliminary Statement.
- (c) **"Claims"** shall have the meaning stated in **Section 8**.
- (d) **"Construction Loan Agreement"** shall have the meaning stated in the Preliminary Statement.
- (e) **"Debt"** shall have the meaning stated in the Preliminary Statement.
- (f) **"Equipment"** shall have the meaning stated in the Preliminary Statement.
- (g) **"Hazardous Substances Activity"** shall have the meaning stated in the Environmental Indemnity.
- (h) **"Hazardous Substances Claim"** shall have the meaning stated in the Environmental Indemnity.
- (i) **"IMFL"** shall mean the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et. seq.), as amended from time to time.
- (j) **"IMFL Protective Advances"** shall have the meaning stated in **Section 33.5**.
- (k) **"Improvements"** shall have the meaning stated in the Preliminary Statement.
- (l) **"Indemnified Party"** shall mean Agent, the Lead Arranger, each Lender, any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved with the servicing of the Loan, any Person in whose name the encumbrance created by the Mortgage is or will have been recorded, Persons who may hold or acquire or will have held a full or partial interest in the Loan (including participants in the Loan, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, members, managers, employees, agents, designees, nominees, servants, representatives, contractors, subcontractors, Affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Mortgaged Property, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including any successors by merger, consolidation or acquisition of all or a substantial portion of Agent's or any Lender's assets and business).
- (m) **"Land"** shall have the meaning stated in the Preliminary Statement.
- (n) **"Leases"** shall have the meaning stated in the Preliminary Statement.

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- (o) **"Loan"** shall have the meaning stated in the Preliminary Statement.
- (p) **"Loss"** shall mean any and all losses, liabilities, damages, punitive damages, demands, claims, actions, judgments, causes of action, assessments, penalties, costs and expenses (including sums paid in settlement of claims), liens, interest, fines or penalties, including the fees and disbursements of accountants, consultants, experts and reasonable legal fees and disbursements, and all other costs and expenses of any kind and/or nature.
- (q) **"Mortgagor's Contest Right"** shall mean Mortgagor's right to contest certain matters pursuant to Section 5.1(b)(ii) of the Construction Loan Agreement, subject to all of the terms and conditions set forth in said Section.
- (r) **"Lender"** shall have the meaning stated in the Preliminary Statement.
- (s) **"Mortgage"** shall mean this Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing, as modified, amended or supplemented from time to time pursuant to the provisions hereof.
- (t) **"Mortgaged Property"** shall have the meaning stated in the Preliminary Statement.
- (u) **"Mortgagee"** shall have the meaning set forth in the introductory paragraph.
- (v) **"Mortgagor"** shall have the meaning set forth in the introductory paragraph.
- (w) **"Notes"** shall have the meaning stated in the Preliminary Statement.
- (x) **"Personal Property"** shall have the meaning stated in **Section 19.1**.
- (y) **"Premises"** shall have the meaning stated in the Preliminary Statement.
- (z) **"Protective Advance"** shall have the meaning stated in **Section 17**.
- (aa) **"Remedy"** shall have the meaning stated in **Section 11**.
- (bb) **"Secured Obligations"** shall have the meaning stated in the Preliminary Statement.
- (cc) **"Tradename"** shall have the meaning stated in **Section 34**.
- (dd) **"Uniform Commercial Code"** shall mean The Uniform Commercial Code in effect in the State in which the Premises are located or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the State in which the Premises are located, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

2. PAYMENT OF THE DEBT.

Mortgagor shall duly pay all amounts constituting the Debt at the time and in the manner provided in the Loan Documents.

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3. PERFORMANCE AND OBSERVANCE OF LOAN DOCUMENTS.

Mortgagor shall duly perform, observe and comply with all of the affirmative and negative covenants, agreements and obligations to be performed, observed and complied with by Mortgagor, and all of the other terms and conditions applicable to Mortgagor, under the terms of the Construction Loan Agreement and all other Loan Documents, as if each such covenant, agreement, obligation, term and condition were expressly set forth herein in full. Without limiting the generality of the foregoing, Mortgagor shall maintain the Premises, pay or contest Taxes and Other Charges, obtain and maintain insurance, keep the Mortgaged Property free and clear of Liens (other than Permitted Encumbrances), pay the utility charges for the Premises, perform alterations and repairs in respect of the Premises, cause the Premises to comply with all Legal Requirements, restore the Premises upon any casualty or Condemnation, and lease the Premises, all in accordance with and subject to all of the applicable terms and conditions of the Construction Loan Agreement and the other Loan Documents.

4. INSURANCE.

Mortgagor shall, at its sole cost and expense, continuously keep and maintain insurance in respect to the Mortgaged Property and Mortgagor's operations thereat, of the type and in the form and with insurers, all as provided in the Construction Loan Agreement.

5. CASUALTY AND CONDEMNATION.

All Net Proceeds to which Mortgagor may be entitled resulting from a casualty at, or the Total Condemnation or Partial Condemnation of, the Mortgaged Property or injury to the Mortgaged Property in connection with such casualty, Total Condemnation or Partial Condemnation, as the case may be, shall be distributed and applied towards restoration of the Mortgaged Property or repayment of the Debt in accordance with the provisions of Article 11 of the Construction Loan Agreement.

6. MAINTENANCE OF VALIDITY AND RECORDING.

6.1 Filing, Registration, Recording.

Mortgagor covenants that it shall forthwith after the execution and delivery of this Mortgage and thereafter as necessary from time to time cause this Mortgage, the Assignment of Leases and UCC financing statements and any continuation statements or similar instruments relating to any property subject thereto or to any property intended to be granted, conveyed, transferred and assigned by this Mortgage to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to protect the validity thereof or the grant thereby of the property subject thereto and the interest and rights of Mortgagee therein. Mortgagor covenants that it has paid or shall pay or cause to be paid all taxes and fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all federal or state stamp taxes (including all documentary stamp taxes and non-recurring intangible personal property taxes) or other charges arising out of or in connection with the execution, delivery, filing, registration or recording of such instruments.

6.2 Warranty of Title.

Mortgagor warrants that it has good and marketable fee simple title to the Premises (other than any portion thereof consisting of easements) and a good and marketable easement estate in any portion of the Premises consisting of easements, in each case free and clear of all Liens, subject only to Permitted Encumbrances. Mortgagor warrants that it has and will continue to have full power and lawful

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authority to encumber and convey the Mortgaged Property as provided herein and that this Mortgage is and will continue to remain a valid and enforceable first priority mortgage Lien on and security interest in the Mortgaged Property, subject only to Permitted Encumbrances. Mortgagor further covenants that it shall preserve such title and shall forever warrant and defend the title to the Mortgaged Property, subject to the Permitted Encumbrances, unto Mortgagee against all lawful claims whatsoever and shall forever warrant and defend the validity, enforceability and priority of the Lien of this Mortgage against the claims of all Persons whomsoever.

6.3 Maintenance of Validity of Mortgage and Other Loan Documents.

Mortgagor shall maintain the validity, perfection, priority and effectiveness of this Mortgage and the other Loan Documents. Unless otherwise permitted in this Mortgage and the other Loan Documents, Mortgagor shall not take any action, shall not permit any action to be taken by others and shall not omit to take any action, nor shall Mortgagor give any notice, approval or consent or exercise, waive or modify any rights under or in respect of the Permitted Encumbrances, which action, omission, notice, approval, consent or exercise, waiver or modification of rights would release Mortgagor from, or reduce any of Mortgagor's obligations or liabilities under, or would result in the termination, surrender or assignment of, or the amendment or modification of, any of the Loan Documents, or would impair the validity of this Mortgage or any of the other Loan Documents, or would affect the Mortgaged Property in any adverse respect, without Mortgagee's consent, and any attempt to do any of the foregoing without such consent shall be null and void and of no force or effect.

6.4 Further Assurances.

Mortgagor shall, at the cost of Mortgagor, and without expense to Mortgagee or any Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, or for complying with all Legal Requirements. Mortgagor, on demand, shall execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements (including initial financing statements and amendments thereto and continuation statements) with or without the signature of Mortgagor as authorized by applicable law, to evidence more effectively the security interest of Mortgagee and Lenders in the Mortgaged Property. Mortgagor also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Mortgage. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all Remedies available to Mortgagee and Lenders. To the extent not prohibited by applicable law, Mortgagor hereby ratifies all acts Mortgagee has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney.

6.5 Replacement Documents.

Upon receipt of an affidavit of an officer of Mortgagee as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Mortgagor will

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issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

7. NO ENDORSEMENT.

Mortgagee shall not become or be considered to be an endorser, co-maker or co-obligor on the Notes or on any Secured Obligation.

8. INDEMNIFICATION.

(a) Mortgagor will protect, indemnify and save harmless each Indemnified Party from and against all Loss (including all fees and expenses incurred by any Indemnified Party in connection with litigation, mediation, arbitration, other alternative dispute processes, administrative proceedings and bankruptcy proceedings, and any and all appeals from any of the foregoing) imposed upon or incurred by or asserted against any Indemnified Party by reason of the occurrence or existence of any of the following prior to the payment and performance in full of the Secured Obligations and the satisfaction of all conditions for the satisfaction and release of this Mortgage, save to the extent caused by such Indemnified Party's gross negligence, fraud or willful misconduct (collectively, the "Claims"):

- (i) ownership of this Mortgage;
- (ii) ownership or possession of Mortgagor's interest in the Mortgaged Property or receipt of any Rents;
- (iii) any amendment to, or restructuring of, the Debt or any Loan Document;
- (iv) any accident, injury to or death of any Persons or loss of or damage to property occurring on or about the Premises or the adjoining parking areas, sidewalks, curbs, vaults and vault space, if any, streets or ways;
- (v) any use, non-use or condition of the Premises or the adjoining parking areas, sidewalks, curbs, streets or ways, including Loss arising from violation of any Legal Requirement or Insurance Requirement, as well as any Loss based on any patent or latent defect, whether or not discoverable by Mortgagee;
- (vi) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage, any Lease, Agreement or any other Loan Document or document to which it is a party and any breach in any material respect of any representation or warranty made by Mortgagor herein or by Mortgagor or any other Borrower Party in any other Loan Document;
- (vii) any performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property;
- (viii) any failure of the Mortgaged Property to be in compliance with any Legal Requirements;
- (ix) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease;

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(x) the payment of any commission, charge or brokerage fee to anyone claiming through Mortgagor which may be payable in connection with the funding of the Loan;

(xi) any bad faith, negligence or tortious act or omission on the part of Mortgagor or any Borrower Party or any of their respective agents, contractors, servants, employees, sublessees, licensees or invitees;

(xii) any contest undertaken by Mortgagor (even if the same is permitted by the terms of the Loan Documents);

(xiii) any Hazardous Substances Activity or any Hazardous Substances Claim; and

(xiv) the enforcement of this Mortgage or any other Loan Document, including the enforcement by any Indemnified Party of the provisions of this **Section 8**.

(b) Mortgagee shall, on behalf of any Indemnified Party, give notice to Mortgagor of any Claim for which any Indemnified Party believes it is entitled to indemnification hereunder promptly upon the applicable Indemnified Party's discovery of the action or event giving rise to such Claim and such Indemnified Party notifying Mortgagee of the same, but the failure of Mortgagee to provide such notice shall neither cause the forfeiture of the right to receive indemnity hereunder nor limit such right. Any amounts payable under this **Section 8** to an Indemnified Party that are not paid within ten (10) Business Days after written demand therefor by Mortgagee or the applicable Indemnified Party, setting forth in reasonable detail the amount of such demand and the basis therefor, shall bear interest from the date of demand until paid at the Default Rate and shall be secured by this Mortgage.

(c) In case any action, suit or proceeding is brought against an Indemnified Party by reason of any Claim, Mortgagor, upon the request of such Indemnified Party, shall (or, at the option of such Indemnified Party, such Indemnified Party may) at Mortgagor's expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel for the insurer of the liability or by counsel selected by Mortgagor (unless reasonably disapproved by such Indemnified Party, for example, if an Indemnified Party believes in its reasonable discretion that a conflict exists). So long as Mortgagor is resisting and defending such action, suit or proceeding in a commercially reasonable manner, such Indemnified Party shall not be entitled to settle such action, suit or proceeding or claim the benefit of this **Section 8** with respect to such action, suit or proceeding (including the right to reimbursement of such Indemnified Party's counsel fees and expenses), and such Indemnified Party agrees that it will not settle any such action, suit or proceeding without the written consent of Mortgagor which consent shall not be unreasonably withheld or delayed; *provided* that if Mortgagor is not diligently defending such action, suit or proceeding in a commercially reasonable manner as provided above, such Indemnified Party may settle such action, suit or proceeding, and claim the benefit of this **Section 8** with respect to settlement of such action, suit or proceeding.

(d) The Indemnification set forth in this **Section 8** shall be in addition to and shall not derogate from any other indemnities in favor of any Indemnified Party as set forth in this Mortgage or any other Loan Document and shall survive the payment and performance in full of the Secured Obligations.

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9. BRUNDAGE; NO CREDIT FOR PAYMENT OF TAXES OR OTHER CHARGES; DOCUMENTARY STAMPS.

9.1 Payment of Taxes.

If any Law or Regulation is enacted or adopted or amended after the date hereof which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's or any Lender's interest in the Mortgaged Property, Mortgagor shall pay the tax, with interest and penalties thereon, if any. If Mortgagee is advised by counsel chosen by it that the payment of tax by Mortgagor would be unlawful or taxable to Mortgagee or any Lender or unenforceable or provide the basis for a defense of usury then Mortgagee shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

9.2 No Credit.

Mortgagor shall not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Premises and no deduction shall otherwise be made or claimed from the assessed value of the Premises for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by Law or Regulation, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

9.3 Documentary Stamps.

If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Notes, this Mortgage, or any of the other Loan Documents or impose any other tax or charge on same, Mortgagor shall pay same, with interest and penalties thereon, if any.

10. COMPROMISE OF ACTIONS BY MORTGAGEE.

Any action, suit or proceeding brought by Mortgagee pursuant to this Mortgage or otherwise and any claim made by Mortgagee under this Mortgage or otherwise may be compromised, withdrawn or otherwise dealt with by Mortgagee without notice to or the approval of Mortgagor.

11. REMEDIES.

(a) Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other Remedies of Mortgagee or Lenders:

- (i) declare the entire unpaid Debt to be immediately due and payable;
- (ii) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law, as described further in **Section 12**;

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(iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing Lien and security interest of this Mortgage for the balance of the Debt not then due, unimpaired and without loss of priority;

(iv) sell for cash or upon credit the Mortgaged Property and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained in the Loan Documents;

(vi) recover judgment on the Notes either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;

(vii) apply for the appointment of a receiver, trustee, liquidator or conservator of the Mortgaged Property, as described further in **Section 13**;

(viii) enter into or upon the Premises, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, as described further in **Section 14**;

(ix) exercise any and all Remedies granted to a secured party upon default under the Uniform Commercial Code,

(x) apply any sums then deposited or held in escrow or otherwise by or on behalf of Mortgagee or Lenders in accordance with the terms of the Loan Documents to the payment of the following items in any order in its uncontrolled discretion: (A) Taxes and Other Charges, (B) Insurance Premiums, (C) interest on the unpaid principal balance of the Debt, (D) amortization of the unpaid principal balance of the Debt and (E) all other sums constituting the Secured Obligations that are due and payable; and

(xi) pursue such other Remedies as Mortgagee or Lenders may have, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Mortgagee in its sole discretion.

(b) In the event of a sale, by foreclosure or otherwise, of less than all of Mortgaged Property, this Mortgage shall continue as a Lien and security interest on the remaining portion of the Mortgaged Property unimpaired and without loss of priority.

(c) Neither the acceptance of this Mortgage or any other Loan Document nor the enforcement thereof in any one state, whether by court action, foreclosure or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure or otherwise, of the Notes, this Mortgage or any other Loan Document through one or more additional proceedings in that state or in any other state.

(d) Each right, privilege, recourse, power and remedy of Mortgagee and Lenders provided for in this Mortgage or any other Loan Document, now or hereafter existing at law or in equity or by statute or otherwise (each, a "**Remedy**") shall be cumulative and concurrent and shall be in addition

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to every other Remedy, and the exercise or beginning of the exercise of a Remedy shall not preclude the simultaneous or later exercise, to the extent permitted by law, of any or all such other Remedies.

12. FORECLOSURE.

12.1 Foreclosure.

If any Event of Default shall have occurred and be continuing, Mortgagee may proceed, at law or in equity or otherwise, to enforce the payment of the Debt in accordance with the terms of the Loan Documents and, if the Debt has been declared due and payable:

(a) to institute an action to foreclose its interest under the Lien of this Mortgage against the Mortgaged Property by judicial foreclosure sale or strict foreclosure in one proceeding or against portions of the Mortgaged Property in a series of separate proceedings, and to have the same sold under the judgment or decree of a court of competent jurisdiction or proceed to take any of such actions;

(b) to take such other action at law or in equity or otherwise for the enforcement of this Mortgage and the realization, upon obtaining a judgment for foreclosure, on the security or any other security herein or elsewhere provided for, in such manner and at such times as the law may allow, and may proceed therein to the extent permitted, and subject to the limitations imposed by law, to final judgment and execution for the entire unpaid balance of the Debt, together with all other sums payable by Mortgagor in accordance with the provisions of the Notes, this Mortgage and the other Loan Documents, and all sums which may have been advanced by Mortgagee for Taxes and Other Charges, water or sewer rents, charges or claims, payment on prior Liens, insurance or repairs to the Mortgaged Property, all costs of suit, together with interest thereon at such interest rate as may be awarded in any judgment obtained by Mortgagee, as the case may be, from and after the date of any foreclosure sale until actual payment is made to Mortgagee of the full amount due Mortgagee, and reasonable attorneys' fees through and including all appellate levels; and/or

(c) to sell, assign, transfer and deliver the Mortgaged Property at any private sale or at public auction permitted by law, with such demand, advertisement or notice as required by law, and on such other terms as required or permitted by law.

Upon the occurrence and during the continuation of any Event of Default, Mortgagee may order the performance of environmental assessments of the Mortgaged Property by qualified professionals, the cost of which shall be borne by Mortgagor and secured hereby.

12.2 Mortgagor's Waivers.

In the event of a transfer of the Mortgaged Property as permitted by the provisions of this Mortgage or the Loan Documents, it shall not be necessary for Mortgagee to have actual or constructive possession of the Mortgaged Property in order to pass the title to and the right of possession of the Mortgaged Property, and the title to and the right of possession of the Mortgaged Property shall pass to the purchaser(s) thereof at any sale hereunder as fully as if the same actually had been present and delivered. To the fullest extent allowed by applicable law, upon foreclosure of this Mortgage, whether by power of sale or any other nonjudicial or judicial foreclosure process, Mortgagor or any Person claiming the Mortgaged Property by, through or under Mortgagor shall not be entitled to direct the order of sale, a marshaling of assets or a sale in inverse order of alienation. The recitals and statements of fact contained in any notice or in any conveyance to the purchaser(s) at any sale hereunder shall be prima facie evidence

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of the truth of such facts, and all prerequisites and requirements necessary to the validity of any such sale shall be presumed to have been performed. In the event of a foreclosure sale, to the extent that Mortgagor is in possession of the Premises, Mortgagor shall be deemed a tenant at will of the purchaser(s) at such judicial foreclosure sale and shall be liable for a market rate rental for the use of the Premises; and if Mortgagor refuses to surrender possession of the Premises upon demand, the purchaser(s) shall be entitled to institute and maintain the statutory action of forcible entry and detainer and procure a writ of possession thereunder, and Mortgagor expressly waives all damages not caused directly by the gross negligence or willful misconduct of Mortgagee or such purchaser(s), sustained by reason thereof and Mortgagor agrees to pay to such purchaser(s) the costs and expenses (including all reasonable attorneys' fees and expenses) of such action and writ.

12.3 Recovery of Advances.

To the extent permitted by law, Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage and the other Loan Documents as they become due, without regard to whether the principal indebtedness evidenced by the Notes or any other sums constituting a part of the Secured Obligations shall be due, and, subject to the limitations imposed by law, without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for any default by Mortgagor existing at the time the earlier action was commenced.

12.4 Sale; Several Sales.

(a) Upon the completion of any sale or sales of the Mortgaged Property by virtue of this **Section 12**, Mortgagee or any officer of any court empowered to do so, shall execute and deliver to the accepted purchaser(s), good and sufficient instrument or instruments conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. In such event, Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact (which appointment is coupled with an interest) of Mortgagor, in its name and stead, to make all the necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold, and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer and may substitute one or more Persons with like power, Mortgagor hereby ratifying and confirming all that Mortgagor's said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Mortgagor shall, if so requested by Mortgagee, ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser(s) all such instruments as may be advisable, in the judgment of Mortgagee, for the purpose and as may be designated in such request.

(b) To the extent permitted by law, if any Event of Default shall have occurred and be continuing and the Debt shall have been declared due and payable, Mortgagee shall have the right to sell the Mortgaged Property in such order as it may determine, and the right of sale hereunder shall not be exhausted by one or more sales, but to the extent permitted by law successive sales may be had until all of the Mortgaged Property has been legally sold. To the extent permitted by law, in the event any sale hereunder is not completed or is defective in the opinion of Mortgagee, such sale shall not exhaust the power of sale hereunder, and Mortgagee shall have the right to cause a subsequent sale or sales.

12.5 Application of Sale Proceeds.

After deducting all costs, fees and expenses of Mortgagee (including reasonable attorney's fees) and of this Mortgage, including costs of evidence of title in connection with sale, the remaining proceeds of any sale made under or by virtue of this **Section 12**, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this section

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or otherwise, shall be applied by Mortgagee in the following priority, to payment of: (a) first, all sums expended by Mortgagee under the terms hereof, not then repaid, with accrued interest at the rates specified in the Loan Documents, (b) second, all Secured Obligations and (c) the remainder, if any, to Mortgagor or the other Person or Persons legally entitled thereto.

12.6 Purchase of Mortgaged Property by Mortgagee.

Mortgagee or any nominee or Affiliate of Mortgagee or any Lender may be a purchaser of the Mortgaged Property at any sale thereof permitted hereunder, and may apply to the purchase price all or any part of the Debt in lieu of payment in cash of the amount of such Debt applied. Any such purchaser shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the Lien of this Mortgage and free of all rights of redemption in Mortgagor.

12.7 Receipt a Sufficient Discharge to Purchaser.

Upon any sale of the Mortgaged Property in accordance with this Mortgage after the Debt has been declared due and payable, whether at maturity, by declaration of acceleration or by automatic acceleration after the occurrence and during the continuation of an Event of Default or otherwise, the receipt of Mortgagee or the receipt of the officer making the sale under judicial proceedings shall, to the full extent legally permitted, be sufficient discharge to the purchaser(s) for the purchase money, and such purchaser(s) shall not be obligated to see to the application thereof.

12.8 Waiver of Marshaling, Appraisal, Valuation, Statute of Limitations.

Mortgagor hereby waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to require upon foreclosure sales of assets in a particular order. Each successor and assign of Mortgagor, including a holder of a Lien subordinate to the Lien created hereby (without implying that Mortgagor has, except as expressly provided in the Loan Documents, a right to grant an interest in, or a subordinate Lien on, the Mortgaged Property), by acceptance of its interest or Lien agrees that it shall be bound by the above waiver, as if it gave the waiver itself. Mortgagor also hereby waives, to the full extent it may lawfully do so, the benefit of all laws providing for rights of appraisal, valuation, stay or extension or of redemption after foreclosure now or hereafter in force. Further, to the extent permitted by applicable law, Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment or performance of the Secured Obligations.

12.9 Sales Shall Be a Bar Against Mortgagor.

Each sale of the Mortgaged Property in connection with the exercise of Remedies after the Debt has been declared due and payable, whether at maturity, by declaration of acceleration or by automatic acceleration after the occurrence and during the continuation of an Event of Default or otherwise, shall, to the full extent legally permitted, operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties, interests and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all Persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

13. APPOINTMENT OF RECEIVER.

If an Event of Default shall have occurred and be continuing, Mortgagee, to the extent permitted by law and without notice and without regard for the adequacy of the security for the Secured

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Obligations and without regard for the Solvency of Mortgagor, any other Person liable for the payment of the Debt, or any Borrower Party, shall be entitled as a matter of right if it so elects to the appointment of a receiver, trustee, liquidator or conservator to enter upon and take possession of the Mortgaged Property and to collect all Rents and apply the same as the court may direct and any such receiver, trustee, liquidator or conservator shall be entitled to hold, occupy, store, use, operate, manage, market, lease and control the Mortgaged Property and conduct the business thereof as would Mortgagee pursuant to **Section 14**. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. Mortgagee shall be liable to account only for the Rents actually received by Mortgagee, whether received pursuant to this **Section 13** or **Section 14**. Notwithstanding the appointment of any receiver, trustee, liquidator, conservator or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time, pledged to, held by, or payable or deliverable under the terms of the Loan Documents to, Mortgagee.

14. POSSESSION AND MANAGEMENT UPON DEFAULT.

14.1 Possession; Self Help.

If an Event of Default shall have occurred and be continuing, Mortgagee, with such notice to Mortgagor as required by law (if any) or as Mortgagee considers reasonable and appropriate in the circumstances, and subject to the rights of Tenants and the provisions of applicable law, may, to the extent permitted by law, immediately enter upon and take possession of the Premises by self-help, summary proceedings, ejectment or otherwise, and may remove Mortgagor and all other Persons and any and all property therefrom, and may hold, occupy, store, use, operate, manage, market, lease and control the same and receive all Rents accruing with respect thereto. Mortgagee shall be under no liability for or by reason of any such action, except (a) for its gross negligence or willful misconduct or (b) to the extent required by applicable law, and except that any amounts so received by Mortgagee shall be applied as set forth in the Loan Documents.

14.2 Possession; Cooperation of Mortgagor.

At the request of Mortgagee, Mortgagor shall promptly execute and deliver to Mortgagee such deeds, instruments of assignment and other documents as Mortgagee may deem necessary or advisable to enable Mortgagee or any agent or representative designated by Mortgagee, at such time or times and place or places as Mortgagee may reasonably specify, to obtain possession of the Mortgaged Property to which Mortgagee shall at the time be entitled hereunder, subject to the rights of Tenants. If Mortgagor shall fail for any reason to execute and deliver such instrument or document after such request by Mortgagee, Mortgagee, to the fullest extent permitted by law, may (a) obtain a judgment conferring on Mortgagee the right to immediate possession and requiring Mortgagor to execute and deliver such instruments and documents to Mortgagee, which entry of judgment Mortgagor, to the extent it may lawfully do so, hereby specifically consents and (b) pursue the Mortgaged Property wherever it may be found and to the extent lawfully permitted, take possession of and remove the same, subject to the rights of Tenants.

14.3 Management.

Upon every taking of possession pursuant to this **Section 14**, Mortgagee may (but shall have no obligation to), from time to time, at the expense of Mortgagor and such expenses to constitute part of the Secured Obligations secured hereby, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Premises, as it deems necessary or desirable in its discretion. In such case, Mortgagee, to the fullest extent permitted by law,

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shall have the right to hold, manage, control, occupy, use, operate, store, maintain, market, lease or otherwise deal with the Mortgaged Property and to carry on the business and exercise all the rights and powers of Mortgagor relating thereto, as Mortgagee determines, including the right to enter into any and all such instruments and agreements with respect to same, as Mortgagee determines; and, to the fullest extent permitted by law, Mortgagee shall be entitled to collect and receive all Rents. Such Rents may be applied to pay the expenses of the management, control, occupancy, use, operation, storage, marketing, leasing of or otherwise dealing with the Premises and of conducting the business thereof, and of all maintenance, repairs, replacements, alterations, additions and improvements, and to make all payments which Mortgagee may be required or may elect to make, if any, for Taxes, Other Charges, assessments, insurance or other proper charges upon the Mortgaged Property (including the employment of engineers and accountants to examine, inspect and make reports), and all other payments which Mortgagee may be required or authorized to make under any provision of this Mortgage.

15. RIGHT OF MORTGAGEE TO PERFORM MORTGAGOR'S COVENANTS.

If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder or under any other Loan Document, Mortgagee, upon notice to Mortgagor and upon the expiration of any applicable grace or cure period, if any (except in cases of emergency that threatens bodily injury or material damage to property, in which case Mortgagee will allow such notice and grace or cure period, if any, as is reasonable under the circumstances) and subject to Mortgagor's Contest Right, but without waiving or releasing any obligation, Default or Event of Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and, to the extent permitted by applicable law, may enter upon the Premises for such purpose and take all such action thereon as, in the judgment of Mortgagee, may be necessary or appropriate therefor, subject to the rights of Tenants. All sums so paid by Mortgagee and all costs and expenses (including all reasonable attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment by Mortgagee until paid, shall constitute part of the Secured Obligations secured hereby and shall be paid by Mortgagor to Mortgagee upon demand therefor.

16. DISCONTINUANCE OF PROCEEDINGS.

If Mortgagee shall have proceeded to invoke any Remedy and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Debt, the Secured Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the Remedies of Mortgagee and Lenders shall continue as if the Remedy had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default that is continuing, unremedied or unwaived, or the right of Mortgagee thereafter to exercise any Remedy with respect to such Event of Default.

17. PROTECTIVE ADVANCES.

Mortgagor agrees that, if Mortgagor shall default in any of its obligations hereunder or under the other Loan Documents, then Lenders shall have the right in Mortgagee's sole discretion to advance all or any part of amounts owing or to perform any or all required actions. No such advance or performance referred to in the preceding sentence (each, a "**Protective Advance**") shall be deemed to have cured any default by Mortgagor or any Event of Default with respect thereto. All Protective Advances and all expenses incurred by Mortgagee and Lenders in connection with the same, and all other sums advanced or expenses incurred by Mortgagee and Lenders hereunder or under applicable law (whether required or optional and whether indemnified hereunder or not) shall be part of the Secured Obligations, shall bear interest at the Default Rate and shall be secured by this Mortgage. Mortgagor

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hereby appoints Mortgagee its true and lawful attorney-in-fact to make the payments and effect the performance contemplated by this paragraph in the name and on behalf of Mortgagor. This appointment, being coupled with an interest and with full power of substitution, shall be irrevocable until all of the Secured Obligations shall be fully satisfied, paid and performed.

18. RELEASE.

The provisions of Section 13.27 of the Construction Loan Agreement shall apply with respect to the release, discharge and satisfaction of this Mortgage.

19. SECURITY AGREEMENT, ETC.

19.1 Grant of Security.

This Mortgage is a security agreement within the meaning of the Uniform Commercial Code with respect to all personal property now or hereafter located at the Premises and owned by Mortgagor as to which the creation and perfection of a security interest are subject to the Uniform Commercial Code (the "**Personal Property**"), and is also a mortgage as to those portions of the Mortgaged Property that are classified as real property. Mortgagor hereby grants to Mortgagee a security interest in and to the Personal Property to secure the payment and performance of the Secured Obligations. Any completely executed counterpart of this instrument may be filed as a mortgage on real property or fixtures, as a security agreement or financing statement on personal property or as both. The address of Mortgagor, as debtor, and the address of Mortgagee, as secured party, are shown in the preamble.

19.2 Financing Statements.

Mortgagor shall cause all financing and continuation statements and other instruments with respect to the Personal Property at all times to be kept recorded, filed or registered in such manner and in such places as may be required by law fully to evidence, perfect and secure the interests of Mortgagee in the Personal Property, and shall pay all filing and recording fees in connection therewith. Mortgagor hereby appoints Mortgagee as its attorney-in-fact to perform the obligations of Mortgagor under this Section, at the expense of Mortgagor, in the event Mortgagor fails to do so, and such appointment is coupled with an interest.

19.3 Multiple Remedies.

If an Event of Default shall have occurred and be continuing, Mortgagee shall have the option of proceeding, to the extent permitted under applicable law, as to both real and personal property in accordance with its rights and remedies in respect of the real property as an alternative to proceeding in accordance with the provisions of the Uniform Commercial Code; and Mortgagee may exercise any and all of the other rights and remedies of a secured party under the Uniform Commercial Code.

19.4 Waiver of Rights.

To the extent permitted under applicable law, Mortgagor waives all rights of redemption after foreclosure and all other rights and remedies of a debtor thereunder and all formalities prescribed by law relative to the sale or disposition of the Personal Property after the occurrence and during the continuance of an Event of Default and all other rights and remedies of Mortgagor with respect thereto. In exercising its right to take possession of the Personal Property upon the occurrence and during the continuance of an Event of Default hereunder, Mortgagee, personally or by its agents or attorneys, and

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subject to the rights of any Tenant may, to the extent permitted by law, enter upon the Mortgaged Property without being guilty of trespass or any wrongdoing, and without liability for damages thereby occasioned, except damages caused directly by Mortgagee's gross negligence or willful misconduct. To the extent any notice of sale or other disposition of the Personal Property is required and cannot be waived, in the event Mortgagee elects to proceed with respect to the Personal Property separately from the real property, Mortgagee shall give at least ten (10) days' notice of the sale of the Personal Property, which shall for all purposes be deemed to be commercially reasonable. All recitals in any instrument of assignment or any other instrument executed by Mortgagee incident to any sale, transfer, assignment, lease or other disposition or utilization of the Personal Property or any part thereof after the occurrence and continuation of an Event of Default shall be full proof of the matters stated therein and no other proof shall be required to establish full legal propriety of the sale or other action taken by Mortgagee or of any fact or condition incident thereto, all of which shall be deemed conclusively to have been performed or to have occurred.

19.5 Expenses of Disposition of Personal Property.

Mortgagor shall reimburse Mortgagee, within ten (10) Business Days after demand, for all expenses of retaking, holding, preparing for sale, lease or other use or disposition, selling, leasing or otherwise using or disposing of the Personal Property that are incurred by Mortgagee in connection with its exercise of available remedies under this **Section 19**, including all reasonable attorneys' fees and expenses, and all such expenses shall constitute a part of the Secured Obligations and shall be secured hereby.

20. FINANCING STATEMENT; FIXTURE FILING.

This Mortgage shall be deemed to be and may be enforced from time to time as a mortgage, chattel mortgage, assignment, contract, security agreement, financing statement, or Lien on the Equipment and fixtures situated on the Premises, and from time to time as any one or more thereof, and shall constitute a "fixture filing" for the purposes of Article 9 of the Uniform Commercial Code.

21. EXPENSES OF MORTGAGEE.

21.1 Expenses of Defending the Mortgage.

If any action, suit or other proceeding affecting the Mortgaged Property shall be commenced in which action, suit or proceeding Mortgagee is made a party or participates or in which the right to use the Mortgaged Property is threatened, or in which it becomes necessary in the reasonable judgment of Mortgagee to defend or uphold the interest of Mortgagee or Lenders under this Mortgage (including any action, suit or proceeding to establish or uphold the compliance of the Improvements with any Legal Requirement), then all Loss incurred by Mortgagee for the expense of any such action, suit or other proceeding or to protect its rights therein (whether or not Mortgagee is made or becomes a party thereto) or otherwise to enforce or defend the rights and Lien created by this Mortgage (including all reasonable attorneys' fees and expenses of Mortgagee, including all such fees and expenses incurred by Mortgagee in connection with litigation, mediation, arbitration, other alternative dispute processes, administrative proceedings and bankruptcy proceedings, and any and all appeals from any of the foregoing), shall be paid by Mortgagor upon demand and, if not paid within ten (10) days of the giving of such demand, shall bear interest at the Default Rate from the date of the payment or incurring thereof, and any such amount and the interest thereon shall be a Lien on the Mortgaged Property, prior to any right, or right to, interest in, or claim upon the Mortgaged Property attaching or accruing subsequent to or otherwise subordinate to the Lien of this Mortgage, and the same shall be deemed to be a part of the Secured Obligations secured hereby.

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21.2 Expenses of Collection.

In the event this Mortgage or any Loan Document is placed in the hands of counsel for collection of any amount payable hereunder or thereunder or for the enforcement of any of the provisions hereof or thereof and if an Event of Default shall have occurred and shall then be continuing, Mortgagor agrees to pay all Loss associated therewith incurred by Mortgagee, either with or without the institution of an action, suit or other proceeding, in addition to all Loss, disbursements and allowances provided by law, all such Loss to be paid upon demand, together with interest thereon at the Default Rate from the date of notice or incurring thereof, and the same shall be deemed to be part of the Secured Obligations secured hereby.

22. NON-MERGER.

It is the intention and agreement of Mortgagor and Mortgagee there shall be no merger of this Mortgage and any estate in the Premises, by reason of the fact that the same Person may own or hold the Premises and/or this Mortgage.

23. ASSIGNMENT OF LEASES, RENTS AND REVENUES.

Reference is made to that certain Assignment of Leases, Rents and Revenues dated as of the date hereof by and from Mortgagor to Mortgagee, which Assignment of Leases, Rents and Revenues will be recorded at the same time as this Mortgage. The terms and provisions of such Assignment of Leases, Rents and Revenues are hereby made a part of this Mortgage to the same extent and with the same force as if they were set forth fully herein.

24. TERMINATION; BINDING EFFECT.

This Mortgage may be discharged or terminated only by an instrument in writing signed by the party against which enforcement of such discharge or termination is sought. This Mortgage shall be binding upon Mortgagor and its successors and permitted assigns and all Persons claiming under or through Mortgagor or any such successors or permitted assigns, and shall inure to the benefit of and be enforceable by Mortgagee and its successors and permitted assigns.

25. SEVERABILITY.

Any provision of this Mortgage, which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Each such invalid or unenforceable provision will be ineffective only to the extent of such invalidity or unenforceability, and this Mortgage otherwise construed to the greatest extent possible to accomplish fairly the purposes and intentions of the parties hereto.

26. NOTICES.

All notices, consents, communications, approvals and requests required or permitted hereunder shall be given in accordance with Section 13.5 of the Construction Loan Agreement.

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27. GOVERNING LAW.

The provisions of this Mortgage regarding the creation, perfection and enforcement of the Liens and security interests herein granted shall be governed by and construed under the laws of the state in which the Premises are located. All other provisions of this Mortgage shall be governed by the laws of the State of New York (including Section 5-1401 of the General Obligations Law of the State of New York).

28. WAIVER OF TRIAL BY JURY; WAIVER OF CLAIMS.

28.1 Trial by Jury.

MORTGAGOR AND MORTGAGEE (BY ITS ACCEPTANCE HEREOF) HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS (INCLUDING THIS THIS MORTGAGE), OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH OF MORTGAGOR AND MORTGAGEE AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF MORTGAGOR AND MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

28.2 Claims.

Mortgagor hereby waives any and all right to assert any setoff or counterclaim of any nature whatsoever with respect to the Secured Obligations in any action or proceeding by Mortgagee to collect the same, or any portion thereof, or to enforce and realize upon the Lien and security interest created by this Mortgage or any other Loan Documents; *provided, however*, that Mortgagor expressly reserves the right to assert any such claim in a separate proceeding; and *provided further* that Mortgagor expressly reserves the right to assert any claim in the same action commenced by Mortgagee if such claim is of a mandatory or compulsory nature and would be barred if not asserted in the action commenced by Mortgagee.

29. NO WAIVER.

No failure by Mortgagee to insist upon the strict performance of any term hereof or to exercise any Remedy consequent upon a breach thereof shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect, or shall affect or alter the Remedies of Mortgagee or Lenders with respect to any other then-existing or subsequent breach. Neither Mortgagor nor any other Person now or hereafter obligated to pay or perform any part of the Secured Obligations shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor, or of any other Person so obligated, to take action to foreclose on this Mortgage or otherwise to enforce any provisions of this Mortgage or any other Loan Document or by reason of the release, regardless of consideration, of all or any part of the security held for the Secured Obligations, or by reason of any agreement or stipulation between any subsequent owner of any of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of this Mortgage or any other Loan Document, without first having obtained the

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consent of Mortgagor or such other Persons; and in the latter event Mortgagor and all such other Persons shall continue to be liable to make payments according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

30. LIMITATIONS ON RECOURSE AGAINST MORTGAGOR.

Recourse against Mortgagor under this Mortgage is subject to the terms of Section 13.26 of the Construction Loan Agreement which are hereby incorporated herein by reference and shall have the same force and effect as if set forth in full herein.

31. LIMITATION ON MORTGAGEE AND LENDER RESPONSIBILITY.

(a) No provision of this Mortgage shall operate to place any obligation or liability for the control, care, management or repair of the Mortgaged Property upon Mortgagee or any Lender, nor shall it operate to make Mortgagee or any Lender responsible or liable for any waste committed on the Premises by the Tenants or any other Person, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any Tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Mortgagee or any Lender a "mortgagee in possession." The risk of loss or damage to the Mortgaged Property is on Mortgagor, and Mortgagee and Lenders shall have no liability whatsoever for decline in value of the Mortgaged Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Mortgagee's possession.

(b) Nothing contained in this Mortgage or in any other Loan Document shall constitute any consent or request by Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property, nor as giving Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Mortgagee in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the interest of Mortgagee under this Mortgage.

(c) The general partners, members, principals and (if Mortgagor is a trust) beneficial owners of Mortgagor are experienced in the ownership and operation of properties similar to the Premises, and Mortgagor, Mortgagee and Lenders are relying solely upon such expertise and business plan in connection with the Premises. Mortgagor is not relying on Mortgagee's or any Lender's expertise, business acumen or advice in connection with the Premises.

32. INCONSISTENCIES.

In the event of any inconsistency between this Mortgage and the Construction Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid and perfected security interest upon the Mortgaged Property, otherwise the provisions of the Construction Loan Agreement shall be controlling.

33. LOCAL LAW PROVISIONS.

33.1 Principle of Construction.

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In the event of any inconsistencies between the terms and conditions of this **Section 33** and the other terms and conditions of this Mortgage, the terms and provisions of this **Section 33** shall control and be binding.

33.2 Maximum Principal Sum.

Notwithstanding anything herein to the contrary, it is agreed that the maximum amount of Indebtedness secured by this Mortgage, including all advancements, at any one time shall not exceed Six Hundred Forty Million and No/100 Dollars (\$640,000,000.00).

33.3 In Rem Proceedings.

Mortgage foreclosures and other *In Rem* proceedings against Mortgagor may be brought in County in Illinois in which the Mortgaged Property is located or any federal court of competent jurisdiction in Illinois.

33.4 Future Advances.

Mortgagee or the other holders of the Secured Obligations are obligated under the terms of the Loan Documents to make advances as provided therein, and Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the IMFL. That portion of the Secured Obligations which comprises the principal amount then outstanding of the revolving loans, if any, constitutes revolving credit indebtedness secured by a mortgage on real property, pursuant to the terms and conditions of 205 ILCS 5/5(d), Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made pursuant to the terms and provisions of the Loan Documents, whether such loans and advances are made as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of Mortgagee or the holders of the Secured Obligations or otherwise (but not advances or loans made more than twenty (20) years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and although there may be no advances made at the time of the execution of this Mortgage and although there may be no other indebtedness outstanding at the time an advance is made. The lien of this Mortgage shall be valid as to all Secured Obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Mortgaged Property is located. The total amount of the Secured Obligations may increase or decrease from time to time, but the total unpaid principal balance of the Secured Obligations (including disbursements which Mortgagee may make under this Mortgage or any other document or instrument evidencing or securing the Secured Obligations) at any time outstanding shall not exceed the amount referred to in **Section 33.2** of this Mortgage. This Mortgage shall be valid and shall have priority over all subsequent liens and encumbrances, including a statutory liens except taxes and assessments levied on the Mortgaged Property, to the extent of the maximum amount secured hereby.

33.5 Illinois Mortgage Foreclosure Law.

It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the IMFL, and with respect to the IMFL, Mortgagor agrees and covenants that:

(a) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the IMFL, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMFL which is specifically referred to herein may

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be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

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

(c) All advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage, the Notes or the other Loan Documents or by the IMFL (collectively "**IMFL Protective Advances**"), shall have the benefit of all applicable provisions of the IMFL. All IMFL Protective Advances shall be additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Loan Documents. This Mortgage shall be a lien for all IMFL Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the IMFL;

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

(e) Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the IMFL or residential real estate as defined in Section 15-1219 of the IMFL. Pursuant to Section 15-1601(b) of the IMFL, Mortgagor hereby waives any and all right of redemption.

33.6 Variable Rate; Additional Interest.

This Mortgage secures the full and timely payment and performance of the Secured Obligations, including, among other things, the obligation to pay interest on the unpaid principal balance at a variable rate of interest as provided in the Construction Loan Agreement.

33.7 Insurance Default.

In the event Mortgagor, at any time, fails to provide Mortgagee with evidence of the insurance coverage as required by this Mortgage, Mortgagee may purchase the insurance coverage at Mortgagor's expense to protect Mortgagee's interests in the Mortgaged Property. Pursuant to 815 ILCS 180/10, such insurance may, but need not, protect Mortgagor's interests, and Mortgagee shall be under no obligation to so protect Mortgagor's interests. The insurance coverage that Mortgagee purchases on behalf of Mortgagor may not pay any claim that Mortgagor makes or any claim that is made against

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Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance coverage purchased by Mortgagee, but only after providing Mortgagee with evidence that insurance coverage has been obtained as provided for in this Mortgagee. In the event Mortgagee purchases all or any portion of the insurance coverage for the Mortgaged Property or as otherwise required hereunder, Mortgagor will be responsible for all costs and expenses of such insurance coverage, including, but not limited to, interest and any other charges imposed by Mortgagee in connection with the purchase of the insurance coverage, until the effective date of the cancellation or expiration of the insurance coverage. The costs and expenses of any insurance coverage purchased by Mortgagee shall be added to Secured Obligations secured hereby. Mortgagor acknowledges that the cost of the insurance coverage purchased by Mortgagee pursuant hereto may be more than the cost of insurance such Mortgagor may be able to obtain on its own.

34. TRADENAME.

Notwithstanding anything herein or in any of the other Loan Documents to the contrary, the grant by Mortgagor to Mortgagee of rights in and to the tradename "Trump" (the "**Tradename**") (a) shall become effective only after the occurrence of an Event of Default, and (b) shall constitute an irrevocable, non-exclusive license to use the Tradename, subject to the terms and conditions of this **Section 34**. Mortgagee covenants to Donald J. Trump and Mortgagor that Mortgagee will use the Tradename solely in connection with (i) identifying the name of the Improvements, and (ii) the sale of Units or other portions of the Mortgaged Property, and such use shall be permitted only as long as (v) the Hotel Portion is operated and maintained in a manner consistent with a "five star" rating by Mobil's Travel Guide (or its successor publication), (w) the Residential Portion is operated and maintained in a manner consistent with that of the Hotel Portion, (x) the Retail Portion is operated and maintained in a manner consistent with standards of retail space in a Class A building, (y) the exterior design of the Improvements is not altered in any material respect (other than alterations approved by Donald J. Trump in his sole discretion), and (z) the interior design of the Improvements is not altered in any material respect in a manner that diminishes the quality of the finishes thereof (other than alterations approved by Donald J. Trump in his sole discretion). The covenants set forth in clauses (v), (w), (x), (y) and (z) above shall constitute a real property encumbrance that shall run with the Land and shall survive any foreclosure of the Mortgaged Property pursuant to this Mortgage or the other Loan Documents, and any sale of the Mortgaged Property following such foreclosure by Mortgagee. In the event Mortgagee or any such subsequent purchaser of the Mortgaged Property breaches the covenants set forth in clauses (v), (w), (x), (y) or (z) above and continues to use the Tradename, Donald J. Trump and/or Mortgagor shall have the right to seek injunctive relief (without the posting of a bond) with a court of competent jurisdiction to prevent Mortgagee or such subsequent purchaser from continuing to use the Tradename. The foregoing license of Mortgagee to use the Tradename shall terminate upon the repayment in full of the Secured Obligations and the termination of the Lenders' Commitments. This **Section 34** shall control all uses by Mortgagee or any subsequent purchaser of the Tradename, notwithstanding any other provision in the Loan Documents to the contrary.

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IN WITNESS WHEREOF, the undersigned is deemed to have executed this Mortgage as of the day first set forth above although actually executed on the date set forth in the acknowledgment below.

MORTGAGOR:

401 NORTH WABASH VENTURE LLC,
a Delaware limited liability company

By: _____

Name: Donald J. Trump

Title: President

Property of Cook County Clerk's Office

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State of New York

County New York

I, Linda Bohdan, a Notary Public in and for said County and State, DO HEREBY CERTIFY, that Donald J. Trump, President of 401 North Wabash Venture LLC, a Delaware limited liability company, whose name is subscribed to the within instrument, appeared before me this day in person and severally acknowledged that as such manager he signed and delivered the said instruments as manager of said limited liability company as his free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 18th day of January, A.D. 2005.

Linda Bohdan
Notary Public

[NOTARIAL SEAL]

My Commission expires: _____

LINDA BOHDAN
Notary Public, State of New York
No. 41-4903546
Qualified in Queens County
Commission Expires August 24, 2011

UNOFFICIAL COPY**EXHIBIT A****Description of Land**

Tax I.D. Number(s): 17-10-175-025-0000
17-10-136-008-0000

Address
401 N. Wabash
Chicago, IL

PARCEL 1:

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH, 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF SAID PARCEL 17, AS DESCRIBED IN SAID ORDINANCE, A DISTANCE OF 272.18 FEET;

THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF PARCEL 17 AFORESAID, A DISTANCE OF 22.62 FEET TO A POINT;

THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 3.97 FEET TO A POINT;

THENCE CONTINUING SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST, A DISTANCE OF 43.72 FEET;

THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST, A DISTANCE OF 43.85 FEET;

THENCE SOUTH 52 DEGREES 21 MINUTES 58 SECONDS WEST; A DISTANCE OF 32.82 FEET;

THENCE SOUTH 49 DEGREES 32 MINUTES 01 SECOND WEST, A DISTANCE OF 32.53 FEET;

THENCE SOUTH 47 DEGREES 37 MINUTES 29 SECONDS WEST, A DISTANCE OF 51.47 FEET;

THENCE SOUTH 47 DEGREES 01 MINUTE 53 SECONDS WEST, A DISTANCE OF 2.033 FEET;

THENCE SOUTH 47 DEGREES 48 MINUTES 32 SECONDS WEST, A DISTANCE OF 42.61 FEET;

THENCE SOUTH 49 DEGREES 17 MINUTES 23 SECONDS WEST, A DISTANCE OF 44.057 FEET;

THENCE SOUTH 53 DEGREES 26 MINUTES 39 SECONDS WEST, A DISTANCE OF 24.308 FEET;

THENCE SOUTH 00 DEGREES 09 MINUTES 40 SECONDS WEST, A DISTANCE OF 116.60 FEET;

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THENCE SOUTH 22 DEGREES 24 MINUTES 30 SECONDS EAST, A DISTANCE OF 34.47 FEET;

THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, A DISTANCE OF 105.06 FEET;

THENCE SOUTH 39 DEGREES 30 MINUTES 25 SECONDS EAST, A DISTANCE OF 46.62 FEET TO A POINT ON THE NORTHERLY DOCK LINE OF THE CHICAGO RIVER;

THENCE NORTH 48 DEGREES 44 MINUTES 55 SECONDS EAST, A DISTANCE OF 401.26 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO AN ANGLE POINT IN SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER;

THENCE NORTH 62 DEGREES 25 MINUTES 37 SECONDS EAST, A DISTANCE OF 100.55 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO A POINT ON THE WEST LINE OF NORTH RUSH STREET;

THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST, A DISTANCE OF 104.51 FEET ALONG THE WEST LINE OF NORTH RUSH STREET TO THE POINT OF BEGINNING, ALL IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS.

PARCEL 2:

ALL THE LAND, PROPERTY AND SPACE LYING ABOVE A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND BELOW A HORIZONTAL PLANE WHICH IS 150 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF EAST NORTH WATER STREET, EAST KINZIE STREET AND NORTH WABASH AVENUE BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, SAID SOUTH LINE OF EAST NORTH WATER STREET BEING ALSO THE NORTH LINE OF A PARCEL OF LAND DENOTED AS PARCEL 17 IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO THE POINT OF BEGINNING FOR THE PARCEL OF LAND HEREINAFTER DESCRIBED;

THENCE CONTINUING SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 58.74 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL 17, SAID POINT BEING ALSO THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE;

THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE, SAID SOUTHEASTERLY RIGHT OF WAY LINE BEING ALSO THE NORTHWESTERLY LINE OF AFORESAID PARCEL 17, A DISTANCE OF 22.62 FEET TO A POINT;

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THENCE SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 18.45 FEET TO A POINT;

THENCE NORTHERLY, NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF A CIRCLE WHICH HAS A RADIUS OF 50.00 FEET, A CHORD OF 94.53 FEET AND A CHORD BEARING OF NORTH 64 DEGREES 20 MINUTES 45 SECONDS EAST, AN ARC DISTANCE OF 123.85 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

NON-EXCLUSIVE EASEMENTS IN FAVOR OF PARCELS 1 AND 2, AS GRANTED IN THAT CERTAIN ORDINANCE BY THE CITY OF CHICAGO APPROVED SEPTEMBER 1, 2004 AS PUBLISHED IN JOURNAL PAGES 30411 TO 30458, BOTH INCLUSIVE, FOR THE IMPROVEMENT, USE AND MAINTENANCE OF PUBLIC WAYS, TO IMPROVE, MAINTAIN, REPAIR, REPLACE, USE AND OCCUPY FOR PEDESTRIAN PURPOSES, AND NOT VEHICULAR PURPOSES, THE FOLLOWING TRACTS OF LAND:

(A) NORTH WATER STREET PEDESTRIAN EASEMENT

ALL THE LAND, SPACE AND IMPROVEMENTS, AS DESCRIBED IN SAID ORDINANCE, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COMPRISING PARTS OF WATER LOTS 16 AND 17 AND A PORTION OF EAST NORTH WATER STREET, NORTH RUSH STREET, ORIGINAL EAST KINZIE STREET AND PART OF LOT 14 IN BLOCK 2 IN KINZIE'S ADDITION, WHICH TRACT OF LAND IS MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF PARCEL 17 AS ESTABLISHED IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO A POINT; THENCE NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE NORTH, HAVING A RADIUS OF 50.00 FEET, A CHORD DISTANCE OF 94.53 FEET AND A CHORD BEARING OF SOUTH 64 DEGREES 20 MINUTES 45 SECONDS WEST, AN ARC DISTANCE OF 123.85 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 29.24 FEET TO A POINT; THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 24.79 FEET TO A POINT; THENCE NORTH 32 DEGREES 10 MINUTES 50 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 16.87 FEET TO A POINT; THENCE NORTHERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE EAST, HAVING A RADIUS OF 240.67 FEET, WITH A CHORD DISTANCE OF 70.72 FEET AND A CHORD BEARING OF NORTH 23 DEGREES 43 MINUTES 54 SECONDS EAST, AN ARC DISTANCE OF 70.98 FEET TO A POINT; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE PARALLEL WITH THE NORTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 94.61 FEET TO A POINT; THENCE NORTHEASTERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE SOUTHEAST, HAVING A RADIUS OF 52.64 FEET, WITH A CHORD DISTANCE OF 46.28 FEET AND A CHORD BEARING OF NORTH 51 DEGREES 59 MINUTES 36 SECONDS EAST, AN ARC DISTANCE OF

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47.92 FEET TO A POINT; THENCE NORTH 25 DEGREES 34 MINUTES 12 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 5.53 FEET TO A POINT ON THE NORTH LINE OF EAST NORTH WATER STREET; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG THE NORTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 242.76 FEET TO A POINT; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 55.18 FEET TO A POINT ON THE SOUTH LINE OF SAID EAST NORTH WATER STREET; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG SAID SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 14.61 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 67.16 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 13.93 FEET TO A POINT ON THE EAST LINE OF NORTH RUSH STREET; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG SAID EAST LINE OF NORTH RUSH STREET, A DISTANCE OF 23.40 FEET TO A POINT; THENCE SOUTH 67 DEGREES 58 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 59.14 FEET TO A POINT; THENCE SOUTH 62 DEGREES 22 MINUTES 39 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 12.73 FEET TO A POINT ON THE WEST LINE OF SAID NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF NORTH RUSH STREET, A DISTANCE OF 108.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

(B) NORTH RUSH STREET PEDESTRIAN EASEMENT

ALL THE LAND, SPACE AND IMPROVEMENTS, AS DESCRIBED IN SAID ORDINANCE, LYING BELOW A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF NORTH RUSH STREET BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET EXTENDED, A DISTANCE OF 52.84 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 67.16 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 13.93 FEET TO A POINT ON THE EAST LINE OF NORTH RUSH STREET; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG SAID EAST LINE OF NORTH RUSH STREET, A DISTANCE OF 23.40 FEET TO A POINT; THENCE SOUTH 67 DEGREES 58 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 59.14 FEET TO A POINT; THENCE SOUTH 62 DEGREES 22 MINUTES 39 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 12.78 FEET TO A POINT ON THE WEST LINE OF SAID NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF NORTH RUSH STREET, A DISTANCE OF 108.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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