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This instrument was prepared by and,  
after recording, return to:

Allen C. Balk  
MELTZER, PURTILL & STELLE LLC  
300 South Wacker Drive  
Suite 3500  
Chicago, IL 60606



Doc#: 0703231032 Fee: \$96.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/01/2007 10:34 AM Pg: 1 of 37

3 of 5

MD

Permanent Real Estate  
Tax Index No.:  
See **Exhibit A**

Address:  
See **Exhibit A**

## MORTGAGE AND SECURITY AGREEMENT

Re: **KENWOOD HOMES**

THIS INDENTURE is made as of January 30, 2007 is made by **GREENWOOD, BERKELEY, ELLIS, LLC**, an Illinois limited liability company ("Mortgagor"), in favor of **COLE TAYLOR BANK**, an Illinois banking corporation, its successors and assigns ("Mortgagee").

### RECITALS

Mortgagor is justly indebted to Mortgagee in the principal sum of not more than Five Million Nine Hundred Thousand and No/100 Dollars (\$5,900,000.00) outstanding at any one time and not to exceed Eight Million Four Hundred Ninety-Six Thousand Five Hundred Five Dollars (\$8,496,505.00) in cumulative aggregate disbursements, as evidenced by (i) a certain Promissory Note (A&D) in the principal amount of One Million One Hundred Fifty Thousand and No/100 Dollars (\$1,150,000.00) ("A&D Note"), made by Mortgagor of even date herewith and payable to the order of and delivered to Mortgagee, and (ii) a certain Promissory Note (Construction) in the principal amount of Four Million Seven Hundred Fifty Thousand and No/100 Dollars (\$4,750,000.00) ("Construction Note") made by Mortgagor of even date herewith and payable to the order of and delivered to Mortgagee (the A&D Note and the Construction Note are hereinafter collectively referred to as the "Notes"), in and by which said Notes the Mortgagor promises to pay the said principal sum and interest in the manner and at the rates as provided therein. The Notes evidence a revolving line of credit for which this Mortgage is given to secure and which constitutes a "revolving credit" as defined in 815

FS0000084

COLLINS

[THIS MORTGAGE SECURES AN ADJUSTABLE RATE LOAN]

Box 334

37 pg's

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ILCS 205/4.1 (1994), with all subsequent disbursements deemed to have the same priority as the initial disbursement.

The unpaid principal amount and all accrued and unpaid interest due under the loan ("Loan") as described in that certain Construction Loan Agreement of even date herewith by and among Mortgagor, Guarantor (as defined therein) and Mortgagee ("Loan Agreement"), as evidenced by the A&D Note, if not sooner paid, shall be due on January \_\_, 2009, and as evidenced by the Construction Note, if not sooner paid, shall be due on June \_\_, 2009. All such payments on account of the indebtedness evidenced by the Notes shall be first applied to interest on the unpaid principal balance and the remainder to principal and all of said principal and interest being made payable at such place as the holder of the Notes may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, at the address indicated above or at such other address as Mortgagee may from time to time designate in writing.

ACCORDINGLY, Mortgagor, to secure: (i) the payment of said principal sum of money and all interest, late charges and other indebtedness evidenced by the Notes and by any extensions, renewals or refinancings thereof; (ii) the performance and observance of the covenants, terms, conditions and agreements contained in the Notes, this Mortgage and the Loan Documents (as hereinafter defined); and (iii) the reimbursement of Mortgagee for any and all sums expended or disbursed by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the Loan Documents, with interest thereon as provided herein or therein; and also in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, ASSIGN, REMISE, RELEASE, WARRANT, AND CONVEY unto Mortgagee, its successors and assigns, the real estate and all of Mortgagor's estate, right, title and interest therein situate, legally described in **Exhibit A** attached hereto and made a part hereof (together with the property hereinafter described, is collectively referred to herein as the "Property");

TOGETHER with all buildings and improvements now or hereafter constructed upon or erected upon or located on the real estate legally described in **Exhibit A** attached hereto, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the real estate legally described in **Exhibit A** attached hereto, and all rents, issues, royalties, income, proceeds, profits, letter-of credit rights (as defined in the Code hereinafter defined) and other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, other than personal property owned by lessees of the Property, for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and, to the extent of Mortgagor's interest therein, all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, refrigerators, curtain and drapery fixtures, partitions, attached floor covering, now or hereafter therein or thereon, and all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting

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the foregoing): all fixtures, apparatus, equipment and articles, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned.

TOGETHER with all of Mortgagor's interests in "general intangibles" including "payment intangibles" and "software" (each as defined in the Code) now owned or hereafter acquired and related to the Property, including, without limitation, all of Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Mortgagor is or may become a party and which relate to the Property; (ii) all obligations and indebtedness owed to Mortgagor thereunder; (iii) all intellectual property related to the Property; and (iv) all choses in action and causes of action relating to the Property;

TOGETHER with all of Mortgagor's accounts now owned or hereafter created or acquired with respect to the Property, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) accounts, contract rights, health-care-insurance receivables, book debts, Notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Mortgagor); (v) "securities", "investment property," "financial assets," and "securities entitlements" (each as defined in the Code), and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Mortgagor with respect to the Property;

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the real estate or does not constitute a "fixture" (within the meaning of Section 9-102(41) of the Uniform Commercial Code of Illinois (the "Code"), as amended and in effect from time to time), this Mortgage is hereby deemed to also be a Security Agreement under the Code for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as Secured Party (as defined in the Code), as more particularly provided in Section 37 of this Mortgage.

TO HAVE AND TO HOLD the Property unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to possession of the Property after any Event of Default (as hereinafter defined); Mortgagor

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hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.**

Mortgagor represents and covenants that Mortgagor is the holder of the fee simple title to the Property, free and clear of all liens and encumbrances, except Permitted Encumbrances under the Loan Agreement, and (b) Mortgagor has legal power and authority to mortgage and convey the Property.

2. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.**

Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Property which may become damaged or be destroyed; (b) keep the Property in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right to contest by appropriate proceedings diligently prosecuted the validity or amount of any such lien if and only if Mortgagor shall within thirty (30) days after the filing thereof (1) place a bond with Mortgagee in an amount, form, content and issued by a surety reasonably acceptable to Mortgagee for the payment of any such lien or (2) cause the title company which has issued the loan policy of title insurance to Mortgagee insuring the lien of this Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien; (c) subject to the right to contest as set forth in (b) above, immediately pay when due any indebtedness which may be secured by a lien or charge on the Property superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; (d) complete within a reasonable time any buildings or any other improvements now or at any time in process of construction upon the Property; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Property and the use and development thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) except as otherwise expressly permitted or contemplated by the Loan Documents, make no structural or non-structural alterations to the Property or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Mortgagee; (g) suffer or permit no change in the general nature of the occupancy of the Property, without the prior written consent of Mortgagee; (h) initiate or acquiesce in no zoning reclassification without the prior written consent of Mortgagee; (i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Notes; and (j) duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Notes, the Loan Agreement or in the Loan Documents on the part of Mortgagor to be performed and observed. As used in this Section and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Notes, together with all interest thereon and all other amounts payable to Mortgagee thereunder, and all other sums at any time secured by this Mortgage.



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### 3. Payment of Taxes and Assessments.

Mortgagor shall pay before any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Property, or any interest therein, of any nature whatsoever when due, and shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid on or prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall have the right to protest any taxes assessed against the Property, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted and Mortgagor shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Mortgagee, insuring over any exception created by such protest.

### 4. Tax and Insurance Deposits.

Upon the occurrence of an Event of Default, Mortgagee shall have the right to require Mortgagor to deposit monthly with Mortgagee a sum equal to (a) one-twelfth (1/12<sup>th</sup>) of the annual taxes and assessments (general and special) on the Property, as reasonably determined by Mortgagee, and (b) one-twelfth (1/12<sup>th</sup>) of the annual premiums payable for the insurance required to be maintained in accordance with Section 6 hereof. In addition to the foregoing, if requested in writing by Mortgagee, Mortgagor shall deposit with Mortgagee an amount of money, which together with the aggregate of the monthly deposits to be made pursuant to (a) above as of one month prior to the date on which the total annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full the total annual taxes and assessments estimated by Mortgagee to become due and payable with respect to the Property for the current calendar year, and an amount of money, when together with the aggregate deposits to be made pursuant to (b) above as of one month prior to the date on which the next annual insurance premium becomes due, shall be sufficient to pay in full the total annual insurance premium estimated by Mortgagee to next become due and payable with respect to the Property. Such deposits are to be held without any advance of interest and are to be used for the payment of taxes and assessments (general and special) and insurance premiums, respectively, on the Property next due and payable when they become due. Mortgagee may, at its option, itself pay such taxes, assessments and insurance premiums when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for payment of such taxes, assessments and insurance premiums. If the funds so deposited are insufficient to pay any such taxes, assessments (general or special) and premiums for any year when the same shall become due and payable, Mortgagor shall within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such taxes, assessments (general and special) and premiums in full, subject to the right to contest as set forth in Section 9.5 of the Loan Agreement. If the funds so deposited exceed the amount required to pay such taxes, assessments (general and special) and premiums for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee.

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## 5. Mortgagee's Interest In and Use of Deposits.

If an Event of Default occurs pursuant to any of the provisions contained in this Mortgage or the Notes secured hereby, the Mortgagee may at its option, without being required so to do, and upon written notice to Mortgagor, apply any monies at the time on deposit pursuant to Section 4 hereof in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits not applied by Mortgagee under this Section 5 shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment of which they were deposited, accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of Mortgagor, any appropriate taxing authority or insurer.

## 6. Insurance.

(a) Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property owned by Mortgagor now or hereafter situated on the Property insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including without limitation: (a) all risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of all buildings, improvements, fixtures and articles of personal property owned by Mortgagor now or hereafter situated on the Property, with agreed upon amount and inflation guard endorsements; (b) rent and rental value or business loss insurance for the same periods described in (a) above payable at the rate per month and for the period specified from time to time by Mortgagee; (c) broad form boiler and sprinkler damage insurance in an amount reasonably satisfactory to Mortgagee, if and so long as the Property shall contain a boiler and sprinkler system, respectively; (d) if the Property is located in a flood hazard district, flood insurance in the maximum amount obtainable up to the amount of the indebtedness hereby secured; and (e) such other insurance as Mortgagee may from time to time reasonably require as specified in the Loan Agreement. Mortgagor also shall at all times maintain comprehensive public liability, property damage and workers' compensation insurance covering the Property and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, companies, amounts and deductibles reasonably satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee and, in the case of insurance about to expire, shall deliver

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renewal policies or certificates not less than thirty (30) days prior to their respective dates of expiration.

(b) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgage clause acceptable to Mortgagee. Mortgagor immediately shall notify Mortgagee whenever any such separate insurance is taken out and promptly shall deliver to Mortgagee the policy or policies of such insurance.

(c) Subject to Section 22 hereof, in the event of loss Mortgagor shall give immediate notice to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for any such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly. Any insurance proceeds so received by Mortgagee, or any part thereof, shall be applied by Mortgagee, after the payment of all of Mortgagee's expenses, including costs and reasonable attorneys' fees, to the restoration or repair of the property damaged as provided in Section 22 hereof. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. Mortgagor shall furnish Mortgagee, without cost to Mortgagee, at the request of Mortgagee, from time to time, evidence of the replacement value of the Property.

## 7. Condemnation.

If all or any part of the Property is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is, subject to Section 22 hereof, hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its reasonable expenses, including costs and attorneys' fees, to the restoration or repair of the Property damaged as provided in Section 22 hereof, if in the reasonable judgment of Mortgagee the Property can be restored or repaired to the condition existing immediately prior to the taking. If in the reasonable judgment of Mortgagee the Property cannot be restored or repaired to the condition existing immediately prior to the taking, then such award or monies received after the payment of expenses of Mortgagee as aforesaid shall be applied on account of the unpaid principal balance of the Notes, irrespective of whether such principal balance is then due and payable and, at any time from and after the taking, upon thirty (30) days prior written notice to Mortgagor, Mortgagee may declare the whole of the indebtedness hereby secured to be due and payable. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the Property and expenses of Mortgagee as aforesaid, then such excess monies shall be applied on account of the unpaid principal balance of the Notes, irrespective of whether such principal balance is then due and payable. Any application to the unpaid principal balance of the

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Notes pursuant to this Section 7 shall not extend the due date or reduce the amount of the principal and interest installments required to be paid under the Notes.

## **8. Stamp Tax.**

If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage or the issuance of the Notes hereby secured, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may extend by reason of the imposition of any tax on the issuance of the Notes secured hereby. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

## **9. Observance of Lease Assignment.**

(a) As additional security for the payment of the Notes and for the faithful performance of the terms and conditions contained herein, Mortgagor, as lessor, has assigned to Mortgagee the entire lessor's right, title and interest in and to all leases and subleases, which now or hereafter affect all or any portion of the Property and in and to all rents, issues, income and profits of or from all or any portion of the Property pursuant to the Assignment of Rents and Leases of even date herewith. In the event of any conflict between the terms of Section 9(b) and (c) hereof and the Assignment of Rents and Leases, then the Assignment of Rents and Leases shall govern with respect to such conflict.

(b) Mortgagor shall not, without Mortgagee's prior written consent, (x) execute an assignment or pledge of any rents and/or any leases affecting all or any portion of the Property; or (y) accept any prepayment of any installment of any rents more than sixty (60) days before the due date of such installment, other than security and other deposits.

(c) Mortgagor at its sole cost and expense shall (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases affecting all or any portion of the Property, on the part of the lessor thereunder to be kept and performed, (ii) use its commercially reasonable efforts to enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the lessees to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the lessor or of the lessees thereunder; (iv) as additional security for the payment of the Notes and for the faithful performance of the terms and conditions contained herein, transfer and assign to Mortgagee any lease or leases of any portion of the Property heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) give written notice to Mortgagee within five (5) days of the occurrence of any default under any lease; and (vi) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the lessee under any lease affecting all or any portion of the Property a certificate with respect to the status thereof.



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(d) Nothing in this Mortgage or in any other documents relating to the Loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as lessor under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the lessor, each and all of which covenants and payments Mortgagor agrees to perform and pay.

(e) In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each lease affecting all or any portion of the Property shall, at the option of Mortgagee, attorn to any person succeeding to the interest of Mortgagor as a result of such enforcement and shall recognize such successor in interest as lessor under such lease without change in the terms or other provisions thereof; provided, however, that such successor in interest shall not be bound by any payment of rent or additional rent for more than one (1) month in advance or any amendment or modification to any lease made without the consent of Mortgagee or such successor in interest. Each lessee, upon request by such successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

## 10. Effect of Extensions of Time.

If the payment of said indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the indebtedness be released, all persons now or at any time hereafter liable therefor, or interested in the Property or having an interest in Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

## 11. Effect of Changes In Laws Regarding Taxation.

In the event of the enactment after this date of any law of the state in which the Property are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Property, or the manner of collection of taxes, so as to adversely affect this Mortgage or the indebtedness secured hereby or the holders thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall indemnify and hold Mortgagee harmless from and against any and all losses and costs resulting from such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

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## 12. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee.

Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Property or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Property. Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of any uncompleted buildings or other improvements now or at any time hereafter on the Property, and rent, operate and manage the Property and such buildings and improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Property and such buildings and improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized and all reasonable expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies disbursed by Mortgagee in regard to any tax referred to in Section 8 above or to protect the Property or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become due and payable within ten (10) days written notice from Mortgagee and with interest thereon at the Default Rate (as defined in the Notes) then in effect under the Notes. In addition to the foregoing, any costs, expenses and fees reasonably incurred, including reasonable attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting and enforcing any of Mortgagee's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Notes, this Mortgage, the Property or any guarantor or co-maker of the Notes or this Mortgage, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable after ten (10) days written notice and with interest thereon at the Default Rate. The interest accruing under this Section 12 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Notes and secured by this Mortgage. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Notes or any part thereof, or any amount paid out or disbursed by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the loan evidenced by the Notes, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Property or any part thereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment. Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to Eleven Million Eight Hundred Thousand and No/100 Dollars (\$11,800,000.00).

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## 13. Mortgagee's Reliance on Tax Bills and Claims for Liens.

Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, provided that if no Event of Default then exists hereunder Mortgagee shall give to Mortgagor ten (10) days' prior written notice thereof.

## 14. Acceleration of Indebtedness in Event of Default.

Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) Mortgagor fails to pay (i) within five (5) days of the date when due, any installment of principal or interest payable pursuant to the Notes, or (ii) within ten (10) days after written notice, any other amount payable pursuant to the Notes, this Mortgage, the Loan Agreement or any of the other Loan Documents;

(b) Failure by Mortgagor to promptly perform or cause to be performed any obligation, other than those set forth in Section 14(a) above, or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under this Mortgage, the Loan Agreement, the Notes or any other Loan Document, other than those set forth in Section 14(a) above, within thirty (30) days after written notice; provided, however, that if such condition, covenant, term, agreement or provision is such that it cannot with the exercise of reasonable diligence be performed within said thirty (30) days and Mortgagor diligently undertakes said performance within said thirty (30) day period, and thereafter diligently pursues such performance, the time to so perform shall be extended for an additional period, not to exceed sixty (60) days total, to effect such performance, unless the continued operation or safety of the Property, or the priority, validity or enforceability of the lien created by this Mortgage, the Loan Agreement or any other Loan Document or the value of the Property is materially impaired, threatened or jeopardized;

(c) The existence of any material inaccuracy or untruth in any representation, covenant or warranty contained in this Mortgage, the Loan Agreement or any of the other Loan Documents, or in any statement or certification as to facts delivered to Mortgagee by Mortgagor, any co-maker or guarantor of the Notes, or any applicant for the loan evidenced by the Notes.

(d) At any time, Mortgagor or any guarantor or co-maker of the Notes for itself or himself a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent, or institutes (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future Federal, state or other statute or law, or admits in writing its or his inability to pay its or his debts as they mature, or makes an

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assignment for the benefit of its or his creditors, or seeks or consents to the appointment of any receiver, trustee or similar officer for all or substantially all of its or his property;

(e) The commencement of any involuntary petition in bankruptcy against Mortgagor or any guarantor or co-maker of the Notes, or the institution against Mortgagor or any guarantor or co-maker of the Notes of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or substantially all of the property of Mortgagor or any guarantor or co-maker of the Notes, which shall remain undismissed or undischarged for a period of sixty (60) days;

(f) Any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of Section 27 of this Mortgage;

(g) There shall exist or be continuing an "Event of Default" (after the expiration of any applicable cure period) under: (i) the Notes, (ii) the Loan Agreement, and (iii) any other document or instrument evidencing or securing the Notes or delivered to induce Mortgagee to disburse the proceeds thereof (the documents described in sections (ii) through (iii) above, both inclusive, together with this Mortgage, being hereinafter collectively referred to as the "Loan Documents"); or

(h) The death or legal incompetence of any guarantor of the Notes who is a natural person, unless within the sixty (60) day period immediately following such death or declaration of legal incompetency (i) Mortgagor provides Mortgagee with a substitute guarantor whose creditworthiness and real estate experience and skills are comparable to those of such original guarantor and who is otherwise acceptable to Mortgagee in Mortgagee's sole discretion, and (ii) such substitute guarantor executes a guaranty in favor of Mortgagee in form and substance substantially similar to the existing guaranty and otherwise satisfactory to Mortgagee.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable as provided in this Section 14, with interest thereon from the date of such Event of Default at the Default Rate. If while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Property, as set forth in Section 22 hereof, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

## 15. Foreclosure; Expense of Litigation.

If the indebtedness hereby secured, or any part thereof, is not paid when due (subject to any applicable grace period), whether by acceleration or otherwise, Mortgagee shall have the



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right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. It is further agreed that if default be made in the payment of any part of the secured indebtedness as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part of this Mortgage, the lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness without exhausting the power to foreclose and to sell the Property pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

In any suit to foreclose or partially foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be reasonably paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Notes, or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

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## 16. Application of Proceeds of Foreclosure Sale.

The proceeds of any foreclosure (or partial foreclosure) sale of the Property shall be distributed and applied in accordance with the Act (as hereinafter defined) and, unless otherwise specified therein or in the Loan Documents, in such order as the Lender may determine in its sole and absolute discretion.

## 17. Appointment of Receiver.

Upon, or at any time after the filing of a complaint to foreclose (or partially foreclose) this Mortgage, the court in which such complaint is filed may appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Notes may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his, her or its hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

## 18. Mortgagee's Right of Possession in Case of Default.

In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall forthwith and upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of the Property or any part thereof personally, or by its agents or attorneys, as for condition broken. Mortgagee's rights and remedies under this Section 18 shall be effective whether before or after the whole principal sum secured hereby is declared to be immediately due and payable hereunder, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder. In the event Mortgagee is entitled to take possession of the Property, Mortgagee in its discretion may, with applicable process of law, enter upon and take and maintain possession of all or any part of said Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property relating thereto, and may exclude Mortgagor or its employees, agents or servants, wholly therefrom. In such case Mortgagee, under the powers herein granted, may hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or

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equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, actions, in forcible detainer and actions in distress for rent, Mortgagee shall have full power:

(a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;

(b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

(c) to extend or modify any then existing leases and to enter new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) to make any repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property as to it may seem judicious;

(e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and

(f) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease. To the extent provided by law, Mortgagor shall and does hereby agree to protect, indemnify, defend and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases except for such claims and demands as result directly from the negligent or willful actions of Mortgagee. Should Mortgagee incur any such liability, loss or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable on demand.

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## 19. Application of Income Received by Mortgagee.

Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the Property, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases, established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Property;

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Property, including the cost from time to time of installing or replacing refrigeration and gas or electric stoves therein, and of placing the Property in such condition as will, in the judgment of Mortgagee, make them readily rentable; and

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

## 20. Rights Cumulative.

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

## 21. Mortgagee's Right of Inspection.

Mortgagee and/or its representative shall have the right to inspect the Property at all reasonable times on reasonable prior notice, and access thereto shall be permitted for that purpose.



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## 22. Disbursement of Insurance or Eminent Domain Proceeds.

(a) In the event of any loss, whether by fire or other casualty or by a taking under the power of eminent domain, Mortgagor shall give prompt notice thereof to Mortgagee, who, if such loss exceeds Fifty Thousand and 00/100 Dollars (\$50,000.00) (the “Threshold”), shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i) and (ii) of the immediately succeeding grammatical sentence are not satisfied, then Mortgagee, solely and directly shall receive payment of the insurance proceeds or a condemnation or eminent domain award, which shall be applied in accordance with the terms of this Section 22. If and only if (i) such loss is equal to or less than the Threshold, and (ii) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, the Mortgagor may collect such payment of insurance proceeds or a condemnation or eminent domain award directly, and the Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Property so that the condition and value of the Property are substantially the same as the condition and value of the Property prior to being damaged or destroyed..

(b) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Property, whether by fire or other casualty or by a taking under the power of eminent domain, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, which approval shall not be unreasonably withheld, provided, however, that Mortgagee’s approval shall not be required for any repair, restoration or rebuilding performed in accordance with the Plans and Specifications (as defined in the Loan Agreement).

(c) Prior to the payment or application of insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Property as provided in Sections 6 and 7 above, Mortgagee shall be entitled to evidence of the following:

- (i) That there is not then a default in any of the terms, covenants and conditions of the Notes, this Mortgage or any of the Loan Documents which has not been, or will not be, cured to the reasonable satisfaction of Mortgagee, in Mortgagee’s sole and absolute judgment;
- (ii) Not less than ninety percent (90%) of the then existing contracts for the sale of Units shall continue in full force and effect;
- (iii) In the reasonable judgment of the Mortgagee (whose judgment shall be controlling unless manifestly unreasonable) the Loan is and will continue to be In-Balance in accordance with the requirements of the Loan Agreement during the period required to repair and restore the Property.

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- (iv) That Mortgagee shall be given reasonably satisfactory proof that either (A) such improvements have been fully restored, as reasonably determined by Mortgagee, or (B) the expenditure of money as may be received from such insurance proceeds or condemnation award, plus any additional funds provided by Mortgagor, will be sufficient to repair, restore or rebuild the Property, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the lien of the Loan;
- (v) That in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore or rebuild the said improvements, Mortgagor or its lessee(s) shall deposit with Mortgagee funds equaling such deficiency, which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Property; and
- (vi) That prior to the disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Section 22 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of Mortgagor's architect, certifying the extent of the repair and restoration completed to the date thereof, and such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Property; and Mortgagee shall be furnished with appropriate evidence of payment for labor performed or materials furnished to the Property, and total or partial lien waivers substantiating such payments.
- (d) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Property as provided in Sections 6 and 7 above there shall have been delivered to Mortgagee the following:
- (i) A waiver of subrogation from any insurer who claims that no liability exists as to Mortgagor or the then owner or other insured under the policy of insurance in question; and
- (ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are reasonably required by Mortgagee.
- (e) In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Property within a reasonable time, then Mortgagee, at its option, and upon not less than thirty (30) days' written notice to Mortgagor, may commence to restore,

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repair or rebuild the said improvements for or on behalf of Mortgagor, and for such purpose, may perform all necessary acts to accomplish such restoration, repair or rebuilding. In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Property, such excess shall be applied on account of the unpaid principal balance of the Notes irrespective of whether such balance is then due and payable.

(f) In the event Mortgagor commences the repair or rebuilding of the improvements located on the Property, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Section 22; or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Property within a reasonable time, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above; then Mortgagee may, at its option, accelerate the indebtedness evidenced by the Notes and apply all or any part of the insurance proceeds or condemnation award against the indebtedness secured hereby.

## 23. Release Upon Payment and Discharge of Mortgagor's Obligations.

Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of reasonable expenses incurred by Mortgagee in connection with the execution of such release. Mortgagee shall also issue partial releases of the lien of this Mortgage in accordance with and subject to the terms and conditions contained in the Loan Agreement. Such partial release shall not impair in any manner the validity or priority of this Mortgage on the portion of the Property or the security remaining, nor release the personal liability of any person, persons or entity obligated to pay any indebtedness secured hereby, for the full amount of the indebtedness remaining unpaid.

## 24. Notices.

Any notice, request, demand, statement, authorization, approval, consent or acceptance made hereunder shall be in writing and shall be (a) hand delivered or (b) sent by overnight delivery via United Parcel Service or other reputable overnight courier service, or (c) sent by registered or certified mail, postage prepaid with return receipt requested, or (d) sent by facsimile (with a confirmatory duplicate copy sent by Federal Express or any other reputable overnight courier service for overnight delivery) and shall be deemed given (i) upon delivery, if delivered in person, (ii) one (1) business day after being deposited with United Parcel Service or any other reputable overnight courier service for overnight delivery, or (iii) three (3) business days after being postmarked if sent by registered or certified mail, return receipt requested, or (iv) upon receipt if sent by facsimile, in each case addressed as follows:

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To Mortgagee:: COLE TAYLOR BANK  
5501 West 79<sup>th</sup> Street  
Burbank, IL 60459  
Attention: Karyn Duffy

With copy to: Meltzer, Purtill & Stelle LLC  
300 South Wacker Drive  
Suite 3500  
Chicago, IL 60606  
Attention: Allen C. Balk

To Mortgagor: Greenwood, Berkeley, Ellis, LLC  
c/o Mr. Michael A. Mitchell  
4341 South Martin Luther King Drive  
Chicago, Illinois 60653

With a copy to: Tracie R. Porter, Esq.  
1507 East 53<sup>rd</sup> Street, Box 113  
Chicago, Illinois 60615

Kimball Hill Urban Centers, LLC  
350 West Ontario, 7<sup>th</sup> Floor  
Chicago, Illinois 60610  
Attention: Mr. Douglas Guthrie

Kimball Hill, Inc.  
5999 New Wilke Road, Suite 504  
Rolling Meadows, Illinois 60008  
Attention: General Counsel

Neal, Gerber & Eisenberg LLP  
Two North LaSalle Street  
Chicago, Illinois 60602  
Attention: Robert G. Gerber, Esq.

Each party may designate a change of address or facsimile number by notice to the other party sent pursuant to this Section 24, given at least fifteen (15) days before such change of address is to become effective.

25. **Waiver of Defenses.**

No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Notes hereby secured.



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## 26. Waiver of Rights.

Mortgagor hereby covenants and agrees that to the extent permitted by law, Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety.

## 27. Transfer of Property; Further Encumbrance.

In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor, Guarantor, Mortgagor's members and any co-maker of the Notes (if applicable), found it acceptable and relied and continues to rely upon same as the means of repayment of the Notes. Mortgagee also evaluated the background and experience of Mortgagor, Mortgagor's members and the Guarantor and any co-maker of the Notes (if applicable) in owning and operating property such as the Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Property which is Mortgagee's security for the Notes. Mortgagor, Mortgagor's members, Guarantor and co-maker of the Notes (if applicable) are well-experienced in borrowing money and owning and operating property such as the Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary, mezzanine or junior financing placed upon the Property, other than as contemplated by the Loan Agreement, (a) may divert funds which would otherwise be used to pay the Notes secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Property should Mortgagee come into possession thereof with the intention of selling same; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Property.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment and of value of the Property; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and collect assumption fees; and (iv) keeping the Property or any interest in the Property free of subordinate financing liens, Mortgagor, Mortgagor's members, Guarantor and any other guarantor or co-maker of the Notes agree that if this paragraph be deemed a

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restraint on alienation, that it is a reasonable one, and that, any sale, conveyance, assignment, further encumbrance or other transfer of title to the Property, or any interest in the Property (other than as contemplated by the Loan Agreement), including without limitation, the entering into of an installment agreement for the sale of the Property, the placement or granting of liens on all or any part of the Property or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create a lien on the personal property utilized in the operation of the Property, or the placement or granting of a mortgage commonly known as a “wrap around” mortgage or an improvement loan, without Mortgagee’s prior written consent shall be an Event of Default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events, without the prior written consent of Mortgagee shall be deemed to be an unpermitted transfer of title to the Property and therefore an Event of Default hereunder:

(a) except for the sale of the Units (as said terms are defined in the Loan Agreement) pursuant to the terms of the Loan Agreement, and in the ordinary course of business, any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Property; or

(b) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any interest in the Mortgagor which results in the Mortgagor not being controlled or managed by Michael A. Mitchell and/or which results in the encumbrance of any membership interest in Mortgagor (except as otherwise expressly permitted by the Loan Agreement); or

(c) any transfer or the occurrence of any other event which results in a breach under the terms of the Loan Agreement; or

(d) Any direct membership interest in the Mortgagor shall be transferred or assigned, or any security interest or other lien or encumbrance shall be created on any direct membership interest in the Mortgagor or on the proceeds of or distribution rights with respect to any such direct membership interest, except that the creation of such a security interest in favor of the Lender shall not constitute an Event of Default; or

(e) Any ownership interest in any entity that directly owns a membership interest in the Mortgagor shall be transferred or assigned, or any security interest or other lien or encumbrance shall be created on any ownership interest in any such entity or on the proceeds of or distribution rights with respect to any ownership interest in any such entity.

Any consent by Mortgagee, or any waiver by Mortgagee of an Event of Default under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent Event of Default under this Section 27. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Section 27 shall be void and of no force or effect.

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## 28. Expenses Relating to Notes and Mortgage.

Mortgagor will pay all reasonable expenses, charges, costs and fees incurred by Mortgagee relating to the Loan secured by this Mortgage or necessitated by the terms of the Notes, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing, enforcement and closing of the Notes, this Mortgage and the other Loan Documents, all filing, registration or recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Notes and this Mortgage. Mortgagor recognizes that, during the term of the Mortgage, Mortgagee:

(a) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Property are involved directly or indirectly;

(b) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(c) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Property, which event may or may not actually occur;

(d) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(e) May enter into negotiations with Mortgagor, any member, guarantor or co-maker of the Notes, or any of their respective agents, employees or attorneys, in connection with the existence or curing of any Event of Default hereunder, the sale of the Property, the assumption of liability for any of the indebtedness represented by the Notes or the transfer of the Property in lieu of foreclosure; or

(f) May enter into negotiations with Mortgagor, any member of Mortgagor or guarantor or co-maker of the Notes, or any of their respective agents, employees or attorneys, pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor, any member of Mortgagor, or any guarantor or co-maker of the Notes, which approval is required by the terms of this Mortgage.

All reasonable expenses, charges, costs and fees described in this Section 28 shall be so much additional indebtedness secured hereby, shall bear interest from the date so incurred

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until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

29. **Business Purpose.**

Mortgagor covenants that the proceeds of the loan evidenced by the Notes and secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4 (1994), as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said paragraph.

30. **Financial Statements.**

Mortgagor shall cause to be delivered to Mortgagee such financial statements and other financial reports as required pursuant to the Loan Agreement.

31. **Statement of Indebtedness.**

Mortgagor, within seven (7) days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against the Mortgage debt or, if such offsets or defenses are alleged to exist, the nature thereof.

32. **Further Instruments.**

Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

33. **Indemnity.**

Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: the making of the loan evidenced by the Notes and secured by this Mortgage; any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; the offer for sale or sale of all or any portion of the Property; and/or the ownership, leasing, use, operation or maintenance of the Property. All costs provided for herein and paid for by Mortgagee shall be so much

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additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

## 34. Waiver of Right of Redemption.

To the fullest extent permitted by applicable law, Mortgagor hereby releases and waives any and all rights to retain possession of the Property after the occurrence of an Event of Default hereunder and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Mortgagor and each and every person acquiring any interest in, or title to, the Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of 735 ILCS 5/15-1601) of the Illinois Compiled Statutes or other applicable law or replacement statutes.

## 35. Miscellaneous.

### (a) Successors and Assigns.

This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its successors and permitted assigns, any subsequent owner or owners of the Property who acquire the Property subject to this Mortgage and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Notes or this Mortgage. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Notes.

### (b) Invalidity of Provisions.

In the event one or more of the provisions contained in this Mortgage or the Notes or in any security documents given to secure the payment of the Notes secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage and the Notes it secures are to be construed and governed by the substantive laws of the State of Illinois.

### (c) Municipal and Zoning Requirements.

Mortgagor shall not by act or omission permit any building or other improvement on Property which are not subject to the lien of this Mortgage to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Property or any interest therein to be so used. Similarly, no building or other improvement on the Property shall rely on any Property not subject to the lien of this



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Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Property as a single zoning lot separate and apart from all other Property. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) Rights of Tenants.

Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Property having an interest in the Property prior to that of Mortgagee. The failure to join any such tenant or tenants of the Property as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) Option of Mortgagee to Subordinate.

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

(f) Use of Proceeds.

Mortgagor warrants that the proceeds evidenced by the Notes secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

(g) Mortgagee in Possession.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Property by Mortgagee pursuant to this Mortgage.

(h) Relationship of Mortgagee and Mortgagor.

Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any beneficiary, lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a Mortgagee in possession or

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exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

(i) Time of the Essence.

Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Notes and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage.

(j) No Merger.

It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(k) Value for Purposes of Insurance.

Upon request by Mortgagee, Mortgagor agrees to furnish evidence of replacement value, without cost to Mortgagee of the type which is regularly and ordinarily made for insurance companies, with respect to the buildings and improvements on the Property.

(l) Late Charges.

The Notes requires the payment of a late charge in the event any installment of principal and/or interest due thereunder and/or any escrow fund payment for taxes and insurance due hereunder shall become overdue for a period in excess of ten (10) days. The Notes requires the payment to Mortgagee of a late charge of five cents (5¢) for each dollar so overdue to defray part of the cost of collection. Said late charge shall be secured hereby as indebtedness as that term is defined in Section 2 hereof.

36. **Subordination of Commercial Broker's and Property Manager's Lien.**

Any commercial broker or property management agreement for the Property entered into hereafter by Mortgagor with a property manager, shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have pursuant to 770 ILCS 60.01 (1994), as amended, of the Illinois Compiled Statutes. In addition, Mortgagor shall cause the property manager to enter into a Subordination of Management Agreement with Mortgagee, in recordable form, whereby the property manager subordinates present and future lien rights and those of any party claiming by, through or under the property manager, to the lien of this Mortgage.

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## 37. Security Agreement and Financing Statement.

(a) Mortgagor and Mortgagee agree: (a) that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to all sums on deposit with Mortgagee pursuant hereto (“Deposits”) and with respect to any property included in the definition herein of the word “Property” which property may not be deemed to form a part of the real estate described in Exhibit A attached hereto or may not constitute a “fixture” (within the meaning of Section 9-102(41) of the Code), and all replacements of such property, substitutions for such property, additions to such property, books and records relating to the Property and operation thereof and the proceeds thereof and the “supporting obligations” (as defined in the Code) (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the “Collateral”); and (b) that a security interest in and to the Collateral and the Deposits is hereby granted to Mortgagee; and (c) that the Deposits and all of Mortgagor’s right, title and interest therein are hereby collaterally assigned to Mortgagee; all to secure payment of the indebtedness hereby secured and to secure performance by Mortgagor of the terms, covenants and provisions hereof.

(b) Upon an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor’s right of redemption in satisfaction of Mortgagor’s obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Property. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days’ notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If Mortgagee so elects, the Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys’ fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

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(c) Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Property any of the Collateral except that so long as Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Property, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby.

(d) Mortgagor shall, from time to time, upon written request of Mortgagee and at Mortgagor's sole cost, deliver to Mortgagee: (i) such further security documents and assurances as Mortgagee may reasonably require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. Mortgagor represents and covenants that all Collateral now is, and that all replacements thereof, substitutions thereof or additions thereof, unless Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others, except as permitted hereunder and/or as referenced in the Loan Agreement. If the Collateral is sold in connection with a sale of the Property, Mortgagor shall notify Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser specifically agree to assume Mortgagor's obligations as to the security interests herein granted and to execute whatever agreements and filings are deemed necessary by Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral and the Deposits.

(e) This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth herein. This Mortgage is to be filed for recording with the Recorder of Deeds of the county where the Property are located. Mortgagor is the record owner of the Property and has rights in and the power to transfer the Collateral.

(f) Mortgagor hereby irrevocably authorizes Mortgagee at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the

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sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the date of this Mortgage.

(g) Mortgagor represents and warrants that: (i) Mortgagor is the record owner of the Property; (ii) Mortgagor's chief executive office is located in the State of Illinois; (iii) Mortgagor's state of formation as a limited liability company is the State of Illinois; (iv) Mortgagor's exact legal name is as set forth herein; and (v) Mortgagor's organizational identification number in the State of Illinois is 01700499.

(h) Mortgagor agrees that:

(i) Where Collateral is in possession of a third party, Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;

(ii) Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iii) Until the indebtedness secured hereby is paid in full, Mortgagor will not change the state where it is located or change its limited liability company name without giving the Mortgagee at least thirty (30) days' prior written notice in each instance.

## 38. Compliance with Environmental Laws.

Concurrently herewith the Mortgagor and the Guarantors have executed and delivered to the Mortgagee that certain Environmental Indemnity Agreement dated as of the date hereof (the "Indemnity") pursuant to which the Mortgagor and the Guarantors have indemnified the Mortgagee for environmental matters concerning the Property, as more particularly described therein. The provisions of the Indemnity are hereby incorporated herein and this Mortgage shall secure the obligations of the Mortgagor thereunder.

## 39. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law 735 ILCS 5/15-1101 *et seq.* (1994), as amended (herein called the "Act"), the provisions of the Act shall take precedence



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over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under any Section of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Sections 12 or 15 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

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

#### 40. Construction Loan.

The Notes evidence a debt created by one or more disbursements made by Mortgagee to Mortgagor to finance the cost of the construction of certain improvements upon the Property in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-313(1)(c) of the Code. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the holder of the Notes may at its option declare the indebtedness secured by this Mortgage immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional indebtedness secured hereby and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage.

#### 41. Revolving Loan.

This Mortgage is given to secure a revolving credit loan and shall secure not only presently existing indebtedness under the Notes, the Loan Agreement or any other Loan Documents but also future disbursements, whether such disbursements are obligatory or to be made at the option of the Mortgagee, or otherwise, as are made within 20 years from the date hereof to the same extent as if such future disbursements were made on the date of the execution of this Mortgage, although there may be no disbursement made at the time of execution of this Mortgage and although there may be no indebtedness secured hereby outstanding at the time any disbursement is made. The lien of this Mortgage shall be valid as to all indebtedness including future disbursements, from the time of its filing for record in the recorder's or registrar's office of the county in which the real estate is located. This Mortgage secures, among other indebtedness, a "revolving credit" arrangement within the meaning of 815 ILCS 205/4.1 and 205 ILCS 5/5d. The total amount of indebtedness secured

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hereby may increase or decrease from time to time, as provided in the Notes, and any disbursements which Mortgagee may make under this Mortgage, the Notes or the Loan Agreement or any other document with respect hereto (e.g., for payment of taxes, insurance premiums or other disbursements to protect Mortgagee's liens and security interests, as permitted hereby) shall be additional indebtedness secured hereby. This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby.

42. **Consent to Jurisdiction.**

**TO INDUCE MORTGAGEE TO ACCEPT THE NOTES, MORTGAGOR AND MORTGAGEE IRREVOCABLY AGREE THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTES AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS.**

43. **Waiver of Jury Trial**

**MORTGAGOR AND MORTGAGEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.**

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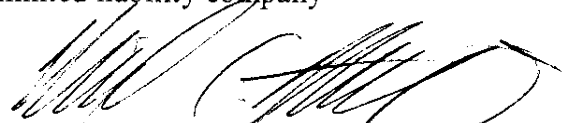
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Mortgagor has executed this instrument the day and year first above written.

**MORTGAGOR:**

**GREENWOOD, BERKELEY, ELLIS, LLC**, an  
Illinois limited liability company

By:

  
Michael A. Mitchell, its Manager

Property of Cook County Clerk's Office

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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that MICHAEL A. MITCHELL, the Manager of GREENWOOD, BERKELEY, ELLIS, LLC, an Illinois limited liability company ("Mortgagor"), and who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 20<sup>th</sup> day of January, 2007.



\_\_\_\_\_  
NOTARY PUBLIC (SEAL)

My Commission expires: 04/2009

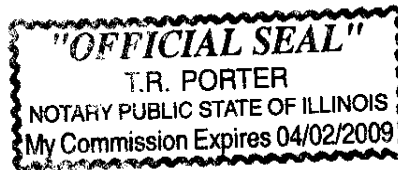


Exhibit "A"  
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STREET ADDRESS: 4326 S. BERKELEY

CITY: CHICAGO

COUNTY: COOK

**LEGAL DESCRIPTION:**

## PARCEL 1:

LOT 4 OF SUBDIVISION OF LOTS 1 TO 8 INCLUSIVE IN BLOCK 2 IN SUBDIVISION OF THE SOUTH 412.5 FEET OF LOT 2 IN ABELL'S SUBDIVISION OF THE SOUTH 412.5 FEET OF LOT 2 OF THE SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 2:

LOT 5 IN OTIS SUBDIVISION OF LOTS 27 TO 30 INCLUSIVE IN BLOCK 1 IN ABELL'S SUBDIVISION OF THE SOUTH 412.5 FEET OF LOT 2 OF THE SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

## PARCEL 3:

LOT 3 IN ABELL'S SUBDIVISION OF THE SOUTH 412.5 FEET OF LOT 2 OF THE SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 4:

LOT 4 (EXCEPT THE NORTH 10.34 FEET THEREOF) IN OTIS SUBDIVISION OF LOTS 27 TO 30, INCLUSIVE, IN BLOCK 1 IN ABELL'S SUBDIVISION OF THE SOUTH 412.5 FEET OF LOT 2 OF THE SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 5:

LOTS 25, 26, 27 AND 28 IN BLOCK 2 IN ABELL'S SUBDIVISION OF THE SOUTH 412.5 FEET OF LOT 2 OF THE SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 6:

SUB LOT 6 OF SUBDIVISION OF LOTS 1 TO 8 INCLUSIVE IN BLOCK 2 IN SUBDIVISION OF THE SOUTH 412.5 FEET OF LOT 2 IN ABELL'S SUBDIVISION OF THE SOUTH 412.5 FEET OF LOT 2 OF THE SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 7:

LOT 21 IN BLOCK 2 IN ABELL'S SUBDIVISION OF THE SOUTH 412.5 FEET OF LOT 2 OF THE SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 8:

LOT 10 IN BLOCK 2 IN ABELL'S SUBDIVISION OF THE SOUTH 412.5 FEET OF LOT 2 OF THE SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 9:

LOT 5 IN THE SUBDIVISION OF LOTS 10, 11, 12 AND 13 IN SUBDIVISION OF THE NORTH 3.79

CLEGALD



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CHAINS OF BLOCK 2 IN THE SUBDIVISION BY THE EXECUTORS OF E. K. HUBBARD OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 10:

LOT 19 IN BLOCK 1 IN CHARLES C. ABELL'S SUBDIVISION OF THE SOUTH 412.5 FEET OF LOT 2 OF THE SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 11:

LOT 1 IN OTIS' SUBDIVISION OF THE SOUTH 2 FEET OF LOT 4 AND LOTS 5 TO 8 IN THE SUBDIVISION OF THE NORTH 3.79 CHAINS OF BLOCK 2 IN THE SUBDIVISION BY THE EXECUTORS OF E. K. HUBBARD OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 12:

LOT 2 IN OTIS' SUBDIVISION OF THE SOUTH 2 FEET OF THE LOT 4 AND LOTS 5 TO 8 IN THE SUBDIVISION OF THE NORTH 3.79 CHAINS OF BLOCK 2 IN THE SUBDIVISION BY THE EXECUTORS OF E. K. HUBBARD OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 13:

LOT 3 IN OTIS' SUBDIVISION OF THE SOUTH 2 FEET OF LOT 4 AND LOTS 5 TO 8 IN THE SUBDIVISION OF THE NORTH 3.79 CHAINS OF BLOCK 2 IN THE SUBDIVISION BY EXECUTORS OF E. K. HUBBARD OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 14:

LOT 4 IN OTIS' SUBDIVISION OF THE SOUTH 2 FEET OF LOT 4 AND LOTS 5 TO 8 IN THE SUBDIVISION OF THE NORTH 3.79 CHAINS OF BLOCK 2 IN THE SUBDIVISION BY THE EXECUTORS OF E. K. HUBBARD OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 15:

LOT 5 IN OTIS' SUBDIVISION OF THE SOUTH 2 FEET OF LOT 4 AND LOTS 5 TO 8 IN THE SUBDIVISION OF THE NORTH 3.79 CHAINS OF BLOCK 2 IN THE SUBDIVISION BY EXECUTORS OF E. K. HUBBARD OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 16:

LOT 1 IN MORRISON'S SUBDIVISION OF LOT 9 OF PATTERSON'S SUBDIVISION OF THE NORTH 3.79 CHAINS OF BLOCK 2 AND OF THE NORTH 25 1/2 FEET OF LOT 1 IN BLOCK 1 IN CHARLES C. ABELL'S SUBDIVISION OF THE SOUTH 412.5 FEET TOGETHER WITH A STRIP OF LYING BETWEEN THE AFORESAID LOTS, ALL IN BLOCK 2 IN THE SUBDIVISION BY THE EXECUTORS OF E. X. HUBBARD OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 17:

LOT 2 IN MORRISON'S SUBDIVISION OF LOT 9 OF PATTERSON'S SUBDIVISION OF THE NORTH 3.79 CHAINS OF BLOCK 2 AND OF THE NORTH 25 1/2 FEET OF LOT 1 IN BLOCK 1 IN CHARLES C. ABELL'S SUBDIVISION OF THE SOUTH 412.5 FEET TOGETHER WITH A STRIP OF LYING BETWEEN THE AFORESAID

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LOTS, ALL IN BLOCK 2 IN THE SUBDIVISION BY THE EXECUTORS OF E. X. HUBBARD OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 18:

LOT 3 IN MORRISON'S SUBDIVISION OF LOT 9 OF PATTERSON'S SUBDIVISION OF THE NORTH 3.79 CHAINS OF BLOCK 2 AND OF THE NORTH 25 1/2 FEET OF LOT 1 IN BLOCK 1 IN CHARLES C. ABELL'S SUBDIVISION OF THE SOUTH 412.5 FEET TOGETHER WITH A STRIP OF LYING BETWEEN THE AFORESAID LOTS, ALL IN BLOCK 2 IN THE SUBDIVISION BY THE EXECUTORS OF E. X. HUBBARD OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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