



1034131157

Doc#: 1034131157 Fee: \$102.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/07/2010 04:33 PM Pg: 1 of 34

**Illinois Anti-Predatory  
Lending Database  
Program**

**Certificate of Exemption**

**Report Mortgage Fraud  
800-532-8785**

The property identified as: PIN: 14-18-325-006-0000

**Address:**

**Street:** 2216 W. Irving Park Rd.

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60618

**Lender:** Mike Shachar

**Borrower:** Maccabee Development, LLC

**Loan / Mortgage Amount:** \$295,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

**Certificate number:** 1522FBB3-5071-40C7-A992-E7D82354C0D6

**Execution date:** 12/03/2010

**UNOFFICIAL COPY****WHEN RECORDED MAIL TO**

MIKE SHACHAR  
207 WEST LAKE STREET  
CHICAGO, IL 60606

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**

THIS MORTGAGE (herein "Instrument") is made this 1st day of November, 2010, between the **Mortgagor/Grantor Maccabee Development, LLC**, organized and existing under the laws of whose address is 120 South State Street, Suite 200, Chicago, Illinois (herein "Borrower"), and the Mortgagee, **Mike Shachar** whose address is 207 West Lake Street, Chicago, Illinois 60606, together with its successors, assigns and transferees, (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of **two-hundred-ninety-five thousand dollars and zero cents (\$295,000.00)** Dollars, which indebtedness is evidenced by Borrower's note dated of even date herewith (herein "Note"), providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on **December 1, 2015 (the "Maturity Date")**.

TO SECURE TO LENDER (a) the repayment of the indebtedness evidenced by the Note with interest thereon, and all renewals, extensions and modifications thereof (herein the "Loan"); (b) the repayment of any future advances with interest thereon, made by Lender to Borrower pursuant to **paragraph 38** hereof (herein "Future Advances"); (c) the performance of the covenants and agreements of Borrower contained in an Environmental Indemnity Agreement (herein so-called) between Lender, Borrower and Principal (as defined in the Environmental Indemnity Agreement) dated of even date herewith; (d) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument; and (e) the performance of the covenants and agreements of Borrower herein contained, or contained in the Note, the Environmental Indemnity Agreement, the Assignment of Leases and Rents (herein so called), dated of even date herewith, and executed by Borrower to the Lender, and all other instruments and documents evidencing, securing or governing the terms of the indebtedness evidenced by the Note (collectively, the "Loan Documents"), Borrower does hereby mortgage, grant, convey and assign to Lender, its successors, assigns and transferees, with power of sale and right of entry and possession, the following described property located in Cook County, State of Illinois, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

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TOGETHER with all buildings, improvements, and tenements now or hereafter erected on the aforesaid property, and all heretofore or hereafter vacated alleys and streets abutting the aforesaid property, and all easements, rights, appurtenances, rents (subject however to the assignment of rents to Lender herein), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the aforesaid property, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the aforesaid property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, rugs, attached floor coverings, furniture, pictures, antennas, trees and plants, tax refunds, trade names, licenses, permits, Borrower's rights to insurance proceeds, unearned insurance premiums and choses in action; all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Instrument; and all of the foregoing, together with said property (or the leasehold estate in the event this Instrument is on a leasehold ) are herein referred to as the "Property".

TOGETHER with all right, title and interest in, to and under any and all leases now or hereinafter in existence (as amended or supplemented from time to time) and covering space in or applicable to the Property (hereinafter referred to collectively as the "Leases" and singularly as a "Lease"), together with all rents, earnings, income, profits, benefits and advantages arising from the Property and from said Leases and all other sums due or to become due under and pursuant thereto, and together with any and all guarantors, letter of credit rights, and other supporting obligations of or under any of said Leases, and together with all rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases, including, without limitation, the immediate and continuing right to receive and collect all rents, income, revenues, issues, profits, condemnation awards, insurance proceeds, moneys and security payable or receivable under the Leases or pursuant to any of the provisions thereof, whether as rent or otherwise, the right to accept or reject any offer made by any tenant pursuant to its Lease to purchase the Property and any other property subject to the Lease as therein provided and to perform all other necessary or appropriate acts with respect to such Leases as agent and attorney-in-fact for Borrower, and the right to make all waivers and agreements, to give and receive all notices, consents and releases, to take such action upon the happening of a default under any Lease, including the commencement, conduct and consummation of proceedings at law or in equity as shall be permitted under any provision of any Lease or by any law, and to do any and all other things whatsoever which the Borrower is or may become entitled to do under any such Lease together with all accounts, general intangibles, payment intangibles, contract rights, franchises, interests, estates or other claims, both at law and in equity, relating to the Property, to the extent not included in rent, earnings and income under any of the Leases;

TOGETHER with all right, title and interest in, to and under any and all investment property and other financial assets and any and all reserve, deposit or escrow accounts (the "Accounts") made pursuant to this Instrument or any other Loan Document, together with all income, profits, benefits and advantages arising therefrom, and together with all rights, powers,

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privileges, options and other benefits of Borrower under the Accounts or such investment property or other financial assets, and together with the right to do any and all other things whatsoever which the Borrower is or may become entitled to do under the Accounts or with respect to such investment property or other financial assets;

TOGETHER with all agreements, contracts, certificates, guaranties, supporting obligations, warranties, instruments, franchises, permits, licenses, plans, specifications and other records and documents, now or hereafter entered into, and all rights therein and thereto, pertaining to the use, occupancy, construction, management or operation of the Property and any part thereof and any improvements or respecting any business or activity conducted on the Property and any part thereof and all right, title and interest of Borrower therein, including the right to receive and collect any sums payable to Borrower thereunder and all deposits or other security or advance payments made by Borrower with respect to any of the services related to the Property or the operation thereof;

TOGETHER with all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property; and

TOGETHER with any and all proceeds resulting or arising from the foregoing (collectively, the "Collateral"), and Borrower hereby grants a first priority lien and security interest in favor of Lender in all of the Collateral which constitutes personal property.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Property (and, if this Instrument is on a leasehold, that the ground lease is in full force and effect without modification except as noted above and without default on the part of either lessor or lessee thereunder), that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property, provided that Borrower hereby represents and warrants to and for the benefit of Lender that such listed easements and restrictions do not materially and adversely affect the use of the Property for the use currently being made thereof, or the operation or value of the Property or the ability of the Borrower to pay in full the Loan or of the Property to generate revenues sufficient to pay all Property expenses together with the monthly installments of principal and interest under the Note and all other sums due under this Instrument and the other Loan Documents.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

**PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note and all other sums secured by this Instrument.



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**APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the following order of priority: (i) amounts payable to Lender by Borrower under **paragraph 2** hereof; (ii) interest payable on the Note; (iii) principal of the Note; (iv) interest payable on advances made pursuant to **paragraph 8** hereof; (v) principal of advances made pursuant to **paragraph 8** hereof; (vi) interest payable on any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the amounts of interest payable on the Future Advances in such order as Lender, in Lender's sole discretion, may determine; (vii) principal of any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the principal balances of the Future Advances in such order as Lender, in Lender's sole discretion, may determine; and (viii) any other sums secured by this Instrument in such order as Lender, at Lender's option, may determine: provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to **paragraph 8** hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this **paragraph 3**.

**CHARGES; LIENS.** Borrower shall pay all rents, taxes, assessments, premiums, and Other Impositions attributable to the Property at Lender's option in the manner provided under **paragraph 2** hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof, or in such other manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this **paragraph 4**, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien, which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property.

**5. HAZARD INSURANCE.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender, and in any event having at all times a claims-paying and financial strength rating of at least A:IX from A.M. Best Company and as reported in Bests Insurance Reports, against loss by fire, hazards included within the term "extended coverage", rent loss and such other hazards, casualties, liabilities and contingencies as Lender (and, if this Instrument is on a leasehold, the ground lease) shall require and in such amounts and for such periods as Lender shall require. Borrower shall purchase policies of insurance with respect to the Property with such insurers, in such amounts and covering such risks as shall be satisfactory to Lender, including, but not limited to, (i) personal injury and death; (ii) loss or damage by fire, lightning, hail, windstorm, explosion, hurricane (to the extent available), earthquake (unless Lender agrees in writing that earthquake insurance is not necessary, or limited earthquake insurance is adequate) and such other hazards, casualties and contingencies (including at least twelve (12) months rent loss insurance in an amount equal to the gross rentals for such period and broad form boiler and machinery insurance) as are normally and usually covered by extended coverage policies in effect where the Property is located and comprehensive general liability or commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage for broad form property damage, contractual damages, personal injuries (including death resulting

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therefrom) and a liquor liability endorsement if liquor is sold on the Property, containing minimum limits of liability of not less than \$1,000,000.00 for both injury to or death of a person and for property damage per occurrence and containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the improvements or the use of the Property shall at any time constitute legal nonconforming structures or uses; provided, that each policy shall provide by way of endorsement, rider or otherwise that no such insurance policy shall be cancelled, endorsed, altered, or reissued to effect a change in coverage unless such insurer shall have first given Lender thirty (30) days prior written notice thereof, such policy shall be on a replacement cost basis, with a waiver of depreciation, in an amount not less than that necessary to comply with any coinsurance percentage stipulated in the policy, but not less than one hundred percent (100%) of the insurable value (based upon replacement cost) of the Property and the deductible clause, if any, of the fire and extended coverage policy may not exceed the lesser of one percent (1%) of the face amount of the policy or \$5,000.00; (iii) loss or damage by flood, if the Property is in an area designated by the Secretary of Housing and Urban Development as an area having special flood hazards, in an amount equal to the principal amount of the Note or the maximum amount available under the Flood Disaster Protection Act of 1973, and regulations issued pursuant thereto, as amended from time to time, whichever is less, in form complying with the "insurance purchase requirement" of that Act; and (iv) such other insurance and endorsements, if any, as Lender may require from time to time, or which is required by the Loan Documents. **The insurance policies required under subsection (ii) above shall be required to cover perils of terrorism and acts of terrorism so long as such insurance coverage is available at commercially reasonable rates (as determined by Lender in its sole discretion); provided however, if a Rating Agency in connection with a Secondary Market Transaction or in connection with its rating surveillance of the certificates issued pursuant to a Secondary Market Transaction would not provide or maintain a rating (including, without limitation, any so-called "shadow" rating) for any portion of such certificates or the Loan which would otherwise be available but for the failure to maintain terrorism insurance with respect to the Loan (or the Loan among other loans included in the Secondary Market Transaction), Borrower will so maintain such insurance if obtainable from any insurer or any governmental authority (for the maximum amount obtainable up to the amounts set forth in subsection (ii) above and with deductibles no greater than those provided in subsection (ii) above).** Borrower shall cause all insurance (except general public liability insurance) carried in accordance with this **paragraph 5** to be payable to Lender as a mortgagee and not as a coinsured, and, in the case of all policies of insurance carried by each lessee for the benefit of Borrower, if any, to cause all such policies to be payable to Lender as Lender's interest may appear. All premiums on insurance policies shall be paid, in the manner provided under **paragraph 2** hereof, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgagee clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty (30) days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender. If this Instrument is on a leasehold, Borrower shall furnish Lender a duplicate of all policies, renewal notices, renewal policies and receipts of paid premiums if, by virtue of the ground lease, the originals thereof may not be supplied by Borrower to Lender.

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In the event of any loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. In the event of a loss that does not exceed \$50,000.00, Borrower may settle and adjust any such claim without the consent of Lender and agree with the insurance company or companies on the amount to be paid upon the loss; provided that such adjustment is carried out in a competent and timely manner. In such case, Borrower is hereby authorized to collect any such insurance proceeds. Notwithstanding the foregoing, in the event that any loss equals or exceeds the lesser of \$50,000.00 or twenty-five percent (25%) of the original loan amount secured by this Instrument, Borrower hereby authorizes and empowers Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided however, that nothing contained in this **paragraph 5** shall require Lender to incur any expense or take any action hereunder. Borrower further authorizes Lender, at Lender's option, (a) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property or (b) subject to the immediately following paragraph, to apply such proceeds to the payment of the sums secured by this Instrument whether or not then due, in the order of application set forth in **paragraph 3** hereof (subject, however, to the rights of the lessor under the ground lease if this Instrument is on a leasehold).

Lender shall not exercise Lender's option to apply insurance proceeds to the payment of the sums secured by this Instrument if all of the following conditions are met: (i) Borrower is not in breach or default of any covenant or agreement of this Instrument, the Note or any other Loan Document; (ii) Lender determines that there will be sufficient funds to restore and repair the Property to the Pre-existing Condition (as hereinafter defined); (iii) Lender agrees in writing that the rental income of the Property, after restoration and repair of the Property to the Pre-existing Condition, will be sufficient to meet all operating costs and other expenses, payments for reserves and loan repayment obligations (including any obligations under any permitted subordinate financing) relating to the Property and maintain a debt service coverage ratio of at least 1.0 to 1.0; (iv) Lender determines that restoration and repair of the Property to the Pre-existing Condition will be completed within one year of the date of the loss or casualty to the Property, but in no event later than six months prior to the Maturity Date; (v) less than fifty percent (50%) of the total floor area of the improvements has been damaged, destroyed or rendered unusable as a result of such fire or other casualty; (vi) tenant leases denising in the aggregate at least fifty percent (50%) of the total rentable space in the Property and in effect as of the date of the occurrence of such fire or other casualty remain in full force and effect during and after the completion of the restoration and repair of the Property and Borrower furnishes to Lender evidence satisfactory to Lender that Maccabee Development, LLC shall continue to operate their respective stores or businesses at the Property notwithstanding the occurrence of any such fire or other casualty; and (vii) Lender is reasonably satisfied that the Property can be restored and repaired as nearly as possible to the condition it was in immediately prior to such casualty and in compliance with all applicable zoning, building and other laws and codes (the "Pre-existing Condition"). If Lender elects to make the insurance proceeds available for the restoration and repair of the Property, Borrower agrees that, if at any time during the restoration and repair, the cost of completing such restoration and repair, as determined by Lender, exceeds the undisbursed insurance proceeds, Borrower shall, immediately upon demand by Lender, deposit the amount of such excess with Lender, and Lender shall first disburse such deposit to



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pay for the costs of such restoration and repair on the same terms and conditions as the insurance proceeds are disbursed.

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and material men and such other evidence of costs, percentage completion of construction, application of payments; and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in **paragraphs 1 and 2** hereof or change the amounts of such installments. If the Property is sold pursuant to **paragraph 27** hereof or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

## **6. PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS.**

Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (f) shall provide for professional management of the Property by a property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing, (g) shall generally operate and maintain the Property in a manner to ensure maximum rentals, and (h) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

If this Instrument is on a leasehold, Borrower (i) shall comply with the provisions of the ground lease, (ii) shall give immediate written notice to Lender of any default by lessor under the ground lease or of any notice received by Borrower from such lessor of any default under the ground lease by Borrower, (iii) shall exercise any option to renew or extend the ground lease and give written confirmation thereof to Lender within thirty days after such option becomes exercisable, (iv) shall give immediate written notice to Lender of the commencement of any



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remedial proceedings under the ground lease by any party thereto and, if required by Lender, shall permit Lender as Borrower's attorney-in-fact to control and act for Borrower in any such remedial proceedings and (v) shall within thirty days after request by Lender obtain from the lessor under the ground lease and deliver to Lender the lessor's estoppel certificate required thereunder, if any. Borrower hereby expressly transfers and assigns to Lender the benefit of all covenants contained in the ground lease, whether or not such covenants run with the land, but Lender shall have no liability with respect to such covenants nor any other covenants contained in the ground lease.

Borrower shall not surrender the leasehold estate and interests herein conveyed nor terminate or cancel the ground lease creating said estate and interests, nor do, perform, fail to perform, suffer or permit any act or omission which could result in any termination or cancellation of the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. Borrower covenants and agrees that there shall not be a merger of the ground lease, or of the leasehold estate created thereby, with the fee estate covered by the ground lease by reason of said leasehold estate or said fee estate, or any part of either, coming into common ownership, unless Lender shall consent in writing to such merger. If Borrower shall acquire such fee estate, then this Instrument shall simultaneously and without further action be spread so as to become a lien on such fee estate.

**USE OF PROPERTY.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was used at the time this Instrument was executed. Borrower shall not subdivide the Property or initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

**PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code or statutory enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance as provided in **paragraph 5** hereof, (iv) if this Instrument is on a leasehold, exercise of any option to renew or extend the ground lease on behalf of Borrower and the curing of any default of Borrower in the terms and conditions of the ground lease, and (v) the payment of any taxes and/or assessments levied against the Property and then due and payable.

Any amounts disbursed by Lender pursuant to this **paragraph 8**, with interest thereon, shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Note unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Loan. Nothing

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contained in this **paragraph 8** shall require Lender to incur any expense or take any action hereunder.

**INSPECTION.** Lender may make or cause to be made at Borrower's expense reasonable entries upon and inspections of the Property including, but not limited to, phase I and/or phase II environmental audits and inspections which phase II inspections will not unreasonably disturb Borrower's use of the Property.

**FINANCIAL STATEMENTS.** (a) The financial statements heretofore furnished to Lender are, as of the dates specified therein, complete and correct and fairly present the financial condition of Borrower and any other persons or entities that are the subject of such financial statements, and are prepared in accordance with generally accepted accounting principles in the United States of America consistently applied (or such other accounting basis reasonably acceptable to Lender). Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Property or the operation thereof for its current use, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operation or business of Borrower or any other persons or entities that are the subject of such financial statements from that set forth in said financial statements.

Borrower will maintain full and accurate books of accounts and other records reflecting the results of the operations of the Property and will furnish to Lender the following items, each certified by Borrower as being true and correct and presented in such format as Lender or its designee may request, as follows:

Until the earlier to occur of (A) eighteen (18) months following the date hereof, or (B) a Secondary Market Transaction (hereinafter defined), Borrower shall furnish monthly each of the items listed in subsection (ii)(A), (ii)(B) and (ii)(C) below, but dated as of the last day of each such month (collectively, the "Pre-Securitization Financials") within twenty (20) days after the end of such month.

On or before forty-five (45) days after the end of each calendar quarter: (A) a written statement (rent roll) dated as of the last day of each such calendar quarter identifying each of the Leases by the term, renewal options (including rental base), space occupied, rental and other charges required to be paid, security deposit paid, real estate taxes paid by tenants, common area charges paid by tenants, tenant pass-throughs, any rental concessions or special provisions or inducements, tenant sales (if the tenant is required to report sales to Borrower), rent delinquencies, rent escalations, amounts taken in settlement of outstanding arrearages, collections of rent for more than one (1) month in advance, continuous operation obligations, cancellation or "go dark" provisions, "non-competition" provisions (restricting Borrower or any tenant), any defaults thereunder and any other information reasonably required by Lender; (B) monthly and year to date operating statements prepared for each calendar month during each such calendar quarter, each of which shall include an itemization of actual (not pro forma) capital expenditures during the applicable period; (C) a property balance sheet for such month; and (D) a comparison of the budgeted income and expenses with the actual income and expenses for

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such month and year to date, together with a detailed explanation of any variances between budgeted and actual amounts that are in excess of the greater of: (1) \$1,000.00, or (2) five percent (5%) or more for each line item therein.

Within ninety (90) days following the end of each calendar year: (A) a written statement (rent roll) dated as of the last day of each such calendar year identifying each of the Leases by the term, space occupied, rental required to be paid, security deposit paid, any rental concessions, and identifying any defaults or payment delinquencies thereunder; (B) annual operating statements prepared for such calendar year, which shall include an itemization of actual (not pro forma) capital expenditures during the applicable period, total revenues received, total expenses incurred, total debt service and total cash flow; and (C) an annual balance sheet and profit and loss statement of Borrower, each general partner, managing member or principal shareholder of Borrower, and any guarantors in the form required by Lender, prepared and certified by the respective Borrower, general partner, member or principal shareholder of Borrower and/or guarantors. In addition, if Lender requires from time to time, Borrower shall provide audited financial statements prepared by an independent certified public accountant acceptable to Lender.

On or before December 1 of the year preceding the year to which such budget pertains, Borrower shall furnish an annual budget of the operation of the Property.

In the event that Borrower fails to provide to Lender or its designee any of the financial statements, certificates, reports or information (the "Required Records") required by this Section 10 within thirty (30) days after the date upon which such Required Record is due, Borrower shall pay to Lender, at Lender's option and in its sole discretion, an amount equal to \$100.00 in each instance that the Required Records are not so delivered; provided that, Lender has given at least ten (10) days prior written notice to Borrower of such failure by Borrower to timely submit the applicable Required Records. Notwithstanding the foregoing, (i) in the event that Borrower fails to provide Lender with Pre-Securitization Financials on or before the date they are due, Borrower shall pay to Lender, at Lender's option and in its sole discretion, an amount equal to \$100.00 in each instance that the Pre-Securitization Financials are not so delivered, and (ii) in the event that Borrower fails to provide to Lender Pre-Securitization Financials or any other Required Records on or before the date they are due, Lender, its servicers and agents, and its and their accountants and consultants shall have the right, in addition to and without limiting its other rights and remedies hereunder or under the other Loan Documents, to enter and inspect the Property and Borrower's place of business, including without limitation the Borrower's and the Property's financial and accounting books and records, and to make copies and take extracts therefrom, and to audit such books and records and prepare financial statements for the Borrower and the Property and other Required Records and Pre-Securitization Financials (or approximations thereof). The costs, expenses and fees of such inspections, examinations and audits shall be paid by Borrower, including the cost of all follow up or additional investigations or inquiries deemed necessary by Lender, shall be paid by Borrower upon demand, and if not so paid when due, shall constitute additional indebtedness secured hereby and shall bear interest until paid at the same rate payable on the Loan under the Note after default in the payment of principal and interest on the Loan when due.



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**CONDEMNATION.** Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender subject, if this Instrument is on a leasehold, to the rights of lessor under the ground lease.

Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Property or to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in **paragraph 3** hereof, with the balance, if any, to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in **paragraphs 1 and 2** hereof or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

**BORROWER AND LIEN NOT RELEASED.** From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this **paragraph 12** shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the Loan, and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

**FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment



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of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under **paragraphs 5 and 11** hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

## ESTOPPEL CERTIFICATES.

Borrower shall within ten (10) days of a written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument and attaching true, correct and complete copies of the Note, this Instrument and any other Loan Documents and any and all modifications, amendments and substitutions thereof.

Upon receipt of a written request from Lender, Borrower shall use its best efforts to obtain tenant estoppel certificates from any or all of the tenants (as requested by Lender) at the Property in form and substance reasonably satisfactory to Lender.

**UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in **paragraph 27** of this Instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in **paragraph 27** of this Instrument.

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**LEASES OF THE PROPERTY.** As used in this paragraph 16, the word "lease" shall mean "sublease" if this Instrument is on a leasehold. Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the Property or any part thereof. Borrower will not lease any portion of the Property for liquor use except with the prior written approval of Lender. Borrower may execute or modify, without Lender's prior written consent, any lease of space at the Property now existing or hereafter made which affects the lesser of 50% of the gross leasable area of the Property or 3000 square feet [and provided the term of such lease is less than 3 years] (an "Exempt Lease"), provided such lease:

is on a standard lease form pre-approved by Lender;

is at a net effective rent (after taking into account any free rent, construction allowances or other concessions granted by landlord) no less than the current actual rent or fair market rent then prevailing for similar properties and leases in the market area;

contains rent or other concessions which are customary and reasonable for similar properties and leases in the market area;

represents a bona fide arm's length transaction;

does not permit any use which would violate any provision of any existing lease or is otherwise inconsistent with the uses and quality of existing tenants;

is provided to Lender within ten (10) days after execution;

as modified or amended does not become a lease which fails to satisfy the criteria for an Exempt Lease pursuant to this **paragraph 16**;

as modified or amended does not materially modify the financial terms of Borrower's standard form of lease or materially reduce the rights and remedies of the Borrower or Lender under said standard lease;

is subordinate by its terms to this Instrument; provides that the tenant hereunder is required to attorn to Lender, such attornment to be effective upon Lender's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; that in no event shall Lender, as holder of this Instrument or as successor landlord, be liable to the tenant for any act or omission of any prior landlord or for any liability or obligation of any prior landlord occurring prior to the date that Lender or any subsequent owner acquire title to the Property; and that Lender may, at Lender's option, accept or reject such attornment.

Borrower shall be required to obtain Lender's consent, which shall not be unreasonably withheld, for any lease and subleases at the Property other than an Exempt Lease. The request for approval of each such proposed lease shall be made to Lender in writing and Borrower shall furnish to Lender (and any loan servicer specified from time to time by Lender): (i) such biographical and financial information about the proposed tenant as Lender may require in conjunction with its review, (ii) a copy of the proposed form of lease, and (iii) a summary of the

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material terms of such proposed lease (including, without limitation, rental terms and the term of the proposed lease and any options).

Borrower, at Lender's request, shall furnish Lender with executed copies of all leases hereafter made of all or any part of the Property, and all leases hereafter entered into will be in form and substance subject to the approval of Lender. All leases of the Property or a separate agreement in recordable form and substance satisfactory to Lender shall specifically provide that such leases are subordinate to this Instrument; that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; that in no event shall Lender, as holder of this Instrument or as successor landlord, be liable to the tenant for any act or omission of any prior landlord or for any liability or obligation of any prior landlord occurring prior to the date that Lender or any subsequent owner acquire title to the Property; and that Lender may, at Lender's option, accept or reject such attornments. Except as otherwise provided in this **paragraph 16**, Borrower shall not, without Lender's written consent, execute, modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter made of all or any part of the Property, permit an assignment or sublease of a lease without Lender's written consent, or request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Instrument. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) notify Lender thereof and of the amount of said set-offs, and (iii) within ten (10) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

Upon Lender's request, Borrower shall absolutely assign to Lender, by written instrument satisfactory to Lender, all leases now existing or hereafter made of all or any part of the Property and all security deposits made by tenants in connection with such leases of the Property. Upon assignment by Borrower to Lender of any leases of the Property, Lender shall have all of the rights and powers possessed by Borrower prior to such assignment and Lender shall have the right to modify, extend or terminate such existing leases and to execute new leases, in Lender's sole discretion.

**REMEDIES CUMULATIVE.** Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

**ACCELERATION IN CASE OF BORROWER'S INSOLVENCY.** If Borrower shall voluntarily file a petition under Title 11 of the U.S. Code (the "Act"), as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in any involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, within sixty (60) days of the filing of such involuntary proceeding, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver

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shall be appointed for Borrower or Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten (10) days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by **paragraph 27** of this Instrument. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to **paragraph 8** hereof

## TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER.

Except as provided in **subparagraph (c)** of this paragraph 19, upon the sale or transfer of (i) all or any part of the Property, or any interest therein, or (ii) beneficial interests in Borrower (if Borrower is not a natural person or persons but is a corporation, partnership, trust or other legal entity), Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by **paragraph 27** of this Instrument.

For purposes of this **paragraph 19**, a sale or transfer of a beneficial interest in Borrower shall be deemed to include, but is not limited to

if Borrower or any general partner of Borrower is a corporation or limited liability company, either (A) the voluntary or involuntary sale, conveyance, transfer or pledge of such corporation's or limited liability company's stock or membership interests (or the stock or membership interests of any corporation, limited liability company or partnership directly or indirectly controlling such corporation or limited liability company by operation of law or otherwise) or the profits or proceeds therefrom, or (B) the creation or issuance of new stock or membership interests, which in either the case of (A) or (B) above, or as a result of a combination of the events set forth in (A) and (B) above, results in an aggregate of more than 49% of such corporation's or limited liability company's stock or membership interests (or the interest in the profits or proceeds therefrom) being held directly or indirectly by a party or parties who are not now holders of more than 49% of such corporation's or limited liability company's stock or membership interests;

if Borrower is a limited liability company, the change, removal or resignation of a managing member;

if Borrower, or any general partner of Borrower, is a limited or general partnership, the change, removal or resignation of a general partner or managing partner or the transfer or pledge of the partnership interest of any general partner or managing partner or any profits or proceeds relating to such partnership interest;

if Borrower is a limited partnership, the transfer or pledge of limited partnership interests which in the aggregate constitute more than a 49% interest in Borrower or result in more than



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49% of the interests in Borrower being held by a party or parties which are not now holders of more than 49% of the interests in Borrower, or the transfer or pledge of any profits or proceeds relating to such limited partnership interests.

Notwithstanding the foregoing, the following shall not be deemed a sale or transfer of a beneficial interest in Borrower for purposes of this **paragraph 19**:

a transfer of less than a 49% interest in Borrower, or any partner, shareholder or member of Borrower, by devise, descent or by operation of law upon the death of a partner, member or stockholder of Borrower, provided that the same does not result in more than 49% of the interests in Borrower being held by a party or parties which are not now holders of more than 49% of the interests in Borrower;

a transfer of a limited partner, shareholder or non-managing member interest in Borrower for estate planning purposes to an immediate family member of such limited partner, shareholder or member, or a trust for the benefit of an immediate family member (for purposes hereof, an "immediate family member" of a person shall consist of a father, mother, spouse, child or sibling of such person); or

a transfer of a general partner or managing member interest in Borrower for estate planning purposes to an immediate family member of such partner or member, or a trust for the benefit of an immediate family member, subject to obtaining Lender's prior written consent, which consent shall not be unreasonably withheld subject to the criteria set forth in **subparagraph (b) of paragraph 35** of this Instrument.

See **paragraph 35** of this Instrument.

**NOTICE.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Instrument or in the Note shall be given by mailing such notice by certified mail addressed to Borrower at Borrower's address stated above or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Instrument or in the Note shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of **paragraph 19** hereof. All covenants and agreements of Borrower shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

**UNIFORM INSTRUMENT; GOVERNING LAW; SEVERABILITY.** This form of instrument combines uniform covenants for national use and non-uniform covenants with limited

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variations by jurisdiction to constitute a uniform security instrument covering real property and related fixtures and personal property. This Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Instrument and the Note are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in this Instrument or in the Note, whether considered separately or together with other charges levied in connection with this Instrument and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Lender in excess of the amounts payable to Lender pursuant to such charges as reduced shall be applied by Lender to reduce the principal of the indebtedness evidenced by the Note. For the purposes of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all indebtedness which is secured by this Instrument or evidenced by the Note and which constitutes interest, as well as all other charges levied in connection with such indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

**WAIVER OF STATUTE OF LIMITATIONS.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

**WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interest in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

**SINGLE PURPOSE ENTITY/SEPARATENESS REQUIREMENTS.** Borrower represents, warrants and covenants as follows:

(a) Borrower has not and shall not own any asset or property other than (i) the Property, and (ii) incidental personal property necessary for the ownership or operation of the Property.

(b) Borrower has not and shall not engage in any business or activity other than the ownership, management and operation of the Property and Borrower will conduct and operate its business as presently conducted and operated.

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(c) Borrower has not and shall not enter into or be a party to any transaction, contract or agreement with any guarantor of the Debt or any part thereof (a "Guarantor") or any party which is directly or indirectly controlling, controlled by or under common control with Borrower or Guarantor (an "Affiliate"), except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any Guarantor or Affiliate.

(d) Borrower has not incurred and shall not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Debt and (ii) trade and operational debt incurred in the ordinary course of business with trade creditors in connection with owning, operating and maintaining the Property, in such amounts as are normal and reasonable under the circumstances, provided such debt is not evidenced by a promissory note or other security instrument and is not at any time in an aggregate amount in excess of the lesser of two percent (2%) of the original loan amount evidenced by the Note or \$6,000.00, and further provided that all such trade debts are paid within thirty (30) days after the same are incurred. No indebtedness other than the Debt may be secured (senior, subordinate or pari passu) by the Property.

(e) Borrower has not made and shall not make any loans or advances to any third party, nor to Guarantor, any Affiliate or any constituent party of Borrower.

(f) Borrower is and will remain solvent and Borrower will pay its debts from its assets as the same shall become due.

(g) Borrower has done or caused to be done and shall do all things necessary, to preserve its existence, and Borrower will not, nor will Borrower permit Guarantor to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Borrower or Guarantor in a manner which would adversely affect the Borrower's existence as a single-purpose entity, without the prior written consent of Lender.

(h) Borrower has maintained and shall maintain financial statements, accounting records, books and records, bank accounts and other entity documents separate from those of its Affiliates and any constituent party of Borrower or any other person or entity, and Borrower has filed and shall file its own tax returns. Borrower has maintained and shall maintain its books, records, resolutions and agreements as official records.

(i) Borrower has been and will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate, any constituent party of Borrower or any Guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its Affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks. Borrower has allocated and shall allocate fairly and reasonably any overhead for shared office space.

(j) Borrower has preserved and kept and shall preserve and keep in full force and effect its existence, good standing and qualification to do business in the state in which the

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Property is located and Borrower has observed and will observe all partnership, corporate or limited liability company formalities, as applicable.

(k) Borrower has maintained and shall maintain adequate capital and a sufficient number of employees for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations. Borrower will pay the salaries of its own employees.

(l) Neither Borrower nor any constituent party of Borrower has or shall seek or consent to the dissolution or winding up, in whole or in part, of Borrower, nor will Borrower merge with or be consolidated into any other entity or acquire by purchase or otherwise all or substantially all of the business assets of, or any stock of beneficial ownership of, any entity.

(m) Borrower has not and shall not commingle the funds and other assets of Borrower with those of any Affiliate, any Guarantor, any constituent party of Borrower or any other person, and Borrower will pay its own liabilities out of its own funds and assets.

(n) Borrower has maintained and shall maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any constituent party of Borrower, Affiliate, Guarantor or any other person.

(o) Borrower has not and shall not assume, guarantee, become obligated for or hold itself out to be responsible for the debts or obligations of any other person (provided, that the foregoing shall not prevent Borrower from being and holding itself responsible for expenses incurred or obligations undertaken by the property manager of the Property in respect of its duties regarding the Property).

(p) Borrower shall obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage.

(q) Borrower does not and shall not own any subsidiary, or make any investment in any person or entity.

(r) Borrower has not and shall not without the unanimous consent of all its general partners, directors or members, as applicable, file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors.

(s) If Borrower is a limited partnership with more than one general partner, its limited partnership agreement requires the remaining partners to continue the partnership as long as one solvent general partner exists.

[(t) If Borrower is a limited partnership or a limited liability company, each general partner or managing member (each, an "SPC Party") shall be a corporation whose sole asset is its interest in Borrower and each such SPC Party will at all times comply, and will cause Borrower to comply, with each of the representations, warranties, and covenants contained in



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this **paragraph 25** as if such representation, warranty or covenant was made directly by such SPC Party. The articles of incorporation and the bylaws, or the articles of formation and the operating agreement, as may be applicable, of each such SPC Party shall require that the directors or managers of such SPC Party consider the interests of the creditors of such SPC Party in connection with all corporate decisions and actions.

(u) Borrower shall at all times cause there to be at least two (2) duly appointed members of the board of directors (each an "Independent Director") of each SPC Party in Borrower reasonably satisfactory to Lender who shall not have been at the time of such individual's appointment, and may not have been at any time during the preceding five years, a shareholder of, or an officer, director, partner, paid consultant or employee of, Borrower or any of its shareholders, subsidiaries or affiliates, a customer of, or supplier to, Borrower or any of its shareholders, subsidiaries or affiliates, a person or other entity controlling or under common control with any such shareholder, partner, supplier or customer, or a member of the immediate family of any such shareholder, officer, director, partner, employee, supplier or customer of Borrower. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

(v) Borrower shall not cause or permit the board of directors of each SPC Party in Borrower to take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock, requires the vote of the board of directors of Borrower and/or any SPC Party in Borrower unless at the time of such action there shall be at least two (2) members who are each an Independent Director.

**ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** As part of the consideration for the indebtedness evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Borrower hereby authorizes Lender or Lender's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that prior to written notice given by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument or any other Loan Document, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower, to apply the rents and revenues so collected to the sums secured by this Instrument in the order provided in **paragraph 3** hereof with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this **paragraph 26** as the same become due and payable, including, but not limited to, rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of

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Lender only; provided, however, that the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such rents. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each tenant's premises, without any liability on the part of said tenant to inquire further as to the existence of a default by Borrower.

Borrower hereby covenants that Borrower has not executed any prior assignment of said rents, that Borrower has not performed, and will not perform, any acts or has not executed, and will not execute any instrument which would prevent Lender from exercising its rights under this **paragraph 26**, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents of the Property for more than one month prior to the due dates of such rents. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents of the Property more than one month prior to the due dates of such rents. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, or upon Borrower's breach of any material covenant of Borrower as landlord or lessor under any lease, Lender shall be entitled to the appointment of a receiver for the Property, without notice to Borrower or any other person or entity and Lender may in person, by agent or by a court appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the enforcement or fulfillment of any terms, condition or provision of any lease, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this **paragraph 26**.

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If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument pursuant to **paragraph 8** hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**ACCELERATION; REMEDIES.** Upon Borrower's breach of any representation, covenant or agreement of Borrower in this Instrument, the Note, the Environmental Indemnity Agreement or any other Loan Document, including, but not limited to, the covenants to pay when due any sums secured by this Instrument, Lender, at Lender's option, may declare all of the sums secured by this Instrument to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided herein. Borrower acknowledges that the power of sale herein granted may be exercised by Lender without prior judicial hearing. Borrower has the right to bring an action to assert the non-existence of a breach or any other defense of Borrower to acceleration and sale. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees and costs of documentary evidence, abstracts and title reports.

Notwithstanding the foregoing, Lender shall not invoke any remedy provided hereunder, under the Loan Documents, at law or in equity upon Borrower's breach of a non-monetary representation, covenant, or agreement of Borrower in this Instrument, the Note, the Environmental Indemnity Agreement or any other Loan Document, other than a breach of **paragraphs 5, 19, 25, 32(k), 32(l) or 32(n)** of this Instrument, or **paragraph 2** of the Environmental Indemnity Agreement, provided Borrower shall have, on or before the date that is ten (10) days after Borrower's receipt of notice thereof, cured such default or, if such default cannot be cured within such ten (10) day period, Borrower shall have commenced to cure within such ten (10) day period and is taking all actions required to diligently cure such default and such default is cured on or before the date that is thirty (30) days after Borrower's receipt of a notice to cure such default.

See **paragraph 34** of this Instrument.

**RELEASE.** Upon payment of all sums secured by this Instrument, Lender shall release this Instrument. Borrower shall pay Lender's cost for the release of this Instrument.

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**ATTORNEY'S FEES.** As used in this Instrument and in the Note, "attorney's fees" shall include attorney's fees, if any, which may be awarded by an appellate court.

**LIMITATIONS ON RECOURSE.** The provisions of Section 9 of the Note, regarding the personal liability of the Borrower for payment and performance of all of the obligations, covenants and agreements of the Borrower under the Note, this Instrument and the other Loan Documents, are incorporated herein by this reference.

**REPRESENTATIONS OF BORROWER.** The Borrower hereby represents and warrants to Lender the following:

Borrower is a Limited Liability Corporation duly organized, validly existing and in good standing under the laws of the State of Illinois. Borrower is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations). There are no proceedings or actions pending, threatened or contemplated for the liquidation, termination or dissolution of Borrower.

Attached to that certain Rent Schedule Certification (herein so called) dated September 21, 2010 is a true, correct, and complete list of each and every lease affecting the Property, together with all extensions and amendments thereof (the "Existing Leases"); Borrower has delivered to Lender a true, correct, and complete copy of each of the Existing Leases; and there are no other leases, assignments, modifications, extensions, renewals, or other agreements of any kind whatsoever (written or oral) outstanding with respect to the leases or the Property.

Unless otherwise specified in the Rent Schedule Certification:

the Existing Leases are in full force and effect;

Borrower has not given any notice of default to any tenant under an Existing Lease (an "Existing Tenant") which remains uncured;

no Existing Tenant has any set off, claim or defense to the enforcement of any Existing Lease;

no Existing Tenant is in arrears in the payment of rent, additional rent or any other charges whatsoever due under any Existing Lease; or, to the knowledge of Borrower, is materially in default in the performance of any other obligations of such Existing Tenant under the applicable Existing Lease;

Borrower has completed all work or alterations required of the landlord or lessor under each Existing Lease; and all of the other obligations of landlord or lessor under the Existing Leases have been performed;

no Lease contains any option to purchase, right of first refusal to lease or purchase, any right to terminate or vacate the Property prior to the expiration of the term of such Lease (other than due to an event of condemnation or casualty) or any other similar provisions which adversely affect the Property or which might adversely affect the rights of any holder of the Loan; and



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all leasing commissions and other compensation payable to any broker in connection with any Existing Lease have been paid.

Borrower has delivered to Lender a true, correct, and complete rent roll (the "Rent Roll") of annual and monthly rents payable by all Existing Tenants, including all percentage rents, if any, expiration dates of the Existing Leases, and the amount of security deposit being held by Borrower under each Existing Lease, if any; and Borrower has not granted any Existing Tenant any rent concessions (whether in form of cash contributions, work agreements, assumption of an Existing Tenant's other obligations, or otherwise) or extensions of time whatsoever not reflected in such Rent Roll.

There are no legal proceedings commenced (or, to the best of the knowledge of the Borrower, threatened) against Borrower by any Existing Tenant; no rental in excess of one month's rent has been prepaid under any of the Existing Leases; each of the Leases is valid and binding on the parties thereto in accordance with its terms; and the execution of this Instrument and the other Loan Documents will not constitute an event of default under any of the Existing Leases.

Borrower currently holds the security deposits (if any) specified in the Existing Leases and has not given any credit, refund, or set off against such security deposits to any person.

There are no residential units in the Property, and no portion of the Property is an apartment or other unit subject to any form or rent control, stabilization or regulation; and no person presently occupies any part of the Property for dwelling purposes.

Except for Borrower, there are no persons or entities occupying space in the Property as tenants other than the persons or entities specifically named in the Existing Leases.

Except as specifically listed in the schedule of exceptions to coverage in the title policy insuring Lender's interest in the Property, Borrower is now in possession of the Property; Borrower's possession of the Property is peaceable and undisturbed; Borrower does not know any facts by reason of which any claim to the Property, or any part thereof, might arise or be set up adverse to Borrower; and the Property is free and clear of (i) any lien for taxes (except real property taxes not yet due and payable for the calendar year in which this Instrument is being executed), and (ii) any easements, rights-of-way, restrictions, encumbrances, liens or other exceptions to title by mortgage, decree, judgment, agreement, instrument, or, to the knowledge of Borrower, proceeding in any court.

All charges for labor, materials or other work of any kind furnished in connection with the construction, improvement, renovation or rehabilitation of the Property or any portion thereof have been paid in full, and no unreleased affidavit claiming a lien against the Property, or any portion thereof, for the supplying of labor, materials or services for the construction of improvements on the Property has been executed or recorded in the mechanic's lien or other appropriate records in the county or other locality in which the Property is located.

The Property and the current and contemplated uses of the Property are in compliance with all applicable federal, state, county and municipal laws, rules, regulations and ordinances, applicable restrictions, zoning ordinances, building codes and regulations, building lines and

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easements, including, without limitation, federal and state environmental protection law and the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws or ordinances related to handicapped access, and any statute, rule, regulation, ordinance, or order of governmental bodies or regulatory agencies, or any order or decree of any court adopted or enacted with respect thereto (collectively, "Applicable Laws") and the Property is not relied upon by, and does not rely upon, any building or improvement not part of the Property to fulfill any Applicable Law except to the extent of any valid and existing reciprocal easement agreements specifically listed in the title policy insuring Lender's interest in the Property; no governmental authority having jurisdiction over any aspect of the Property has made a claim or determination that there is any such violation; the Property is not included in any area identified by the Secretary of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973, as amended, as an area having special flood hazards; and all permits, licenses and the like which are necessary for the operation of the Property have been issued and are in full force and effect.

There have been no material adverse changes, financial or otherwise, in the condition of Borrower from that disclosed to Lender in the loan application submitted to Lender by Borrower, or in any supporting data submitted in connection with the Loan, and all of the information contained therein was true and correct when submitted and is now substantially and materially true and correct on the date hereof.

There is no claim, litigation or condemnation proceeding pending, or, to the knowledge of the Borrower, threatened, against the Property or Borrower, which would affect the Property or Borrower's ability to perform its obligations in the connection with the Loan.

The Property is a contiguous parcel and separate tax parcel.

No proceedings in bankruptcy or insolvency has ever been instituted by or against Borrower or any affiliate thereof, and no such proceeding is now pending or contemplated.

Borrower is, and if there are any general partners or members of Borrower, such partners or members are, solvent pursuant to the laws of the United States, as reflected by the entries in Borrower's books and records and as reflected by the actual facts.

The Loan Documents have been duly authorized, executed and delivered by Borrower and constitute valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms. No approval, consent, order or authorization of any governmental authority and no designation, registration, declaration or filing with any governmental authority is required in connection with the execution and delivery of the Note, this Instrument or any other Loan Document.

The execution and delivery of the Loan Documents will not violate or contravene in any way the articles of incorporation or bylaws or partnership agreement, articles of organization or operating agreement as the case may be, of Borrower or any indenture, agreement or instrument to which Borrower is a party or by which it or its property may be bound, or be in conflict with, result in a breach of or constitute a default under any such indenture, agreement or other instrument, result in the creation or imposition of any lien, charge or encumbrance of any nature

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whatsoever upon any of the property or assets of Borrower, except as contemplated by the provisions of such Loan Documents, and no action or approval with respect thereto by any third person is required.

No part of the Property is all or a part of Borrower's homestead.

The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

The Property is serviced by public water and sewer systems.

The Property is free from damage caused by fire or other casualty.

All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

All service and maintenance agreements affecting the Property may be terminated upon the giving of thirty (30) days or less prior written notice.

The Loan is for business and commercial use and is not for personal, family or household purposes. Substantially all of the proceeds of the Loan are being used to acquire or improve or protect an interest in real property (as that term is defined in the United States Treasury regulations section 1.860G-2(a)(4)) which interest in real property is the only security for the Loan or the fair market value of such interest in real property is at least equal to eighty percent (80%) of the principal amount of the Loan.

**BORROWER'S ADDITIONAL COVENANTS.** Borrower hereby covenants, agrees and undertakes to:

fulfill and perform all of Borrower's obligations as landlord or lessor under any lease; will promptly send Lender copies of any notices of default received from the tenant under any lease; and will enforce (short of terminating such lease) the performance by the tenant of the tenant's obligations under any lease;

not make, enter into, execute, cancel, amend or modify any lease without the prior written consent of Lender (other than an Exempt Lease);

not approve any assignment of a lease, of any sublease or underlease, without the prior written consent of Lender (other than an Exempt Lease);

not cancel or modify any guaranty of a lease, or release any security deposit or letter of credit constituting security under a lease, without the prior written consent of Lender;

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not accept prepayment of any installment of rent from any tenants of the Property for a period of more than one (1) month in advance;

not further assign the whole (or any part of) the leases or the rents;

not undertake or commence any alterations of any improvements on the Property the cost of which is in excess of five percent (5%) of the then original principal amount of the Note, without the prior written consent of Lender;

continuously maintain Borrower's existence in the State of Illinois and right to do business in the state in which the Property is located;

at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Instrument, or upon any rights, titles, liens or security interests created hereby, or upon the obligations secured hereby or any part thereof, immediately pay all such taxes; provided that, if such law as enacted makes it unlawful for Borrower to pay such tax, Borrower shall not pay nor be obligated to pay such tax, and in the alternative, Borrower may, in the event of the enactment of such a law, and must, if it is unlawful for Borrower to pay such taxes, prepay the obligations secured hereby in full within sixty (60) days after demand therefor by Lender;

not execute or deliver any deed of trust, mortgage or pledge of any type covering all or any portion of the Property;

not acquire any real property or assets (other than the Property) or operate any business other than the management and operation of the Property during the term of the Loan;

not permit any drilling or exploration for or extraction, removal or production of any mineral, natural element, compound or substance from the surface or subsurface of the Property regardless of the depth thereof or the method of mining or extraction thereof;

not change its name, identity, structure or employer identification number during the term of the Loan;

pay on demand all reasonable and bona fide out-of-pocket costs, fees and expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by Lender incident to this Instrument or any other Loan Document (including, but not limited to, reasonable attorneys' fees and expenses in connection with the negotiation, preparation and execution hereof and of any other Loan Document and any amendment hereto or thereto, any release hereof, any consent, approval or waiver hereunder or under any other Loan Document, the making of any advance under the Note, and any suit to which Lender is a party involving this Instrument or the Property) or incident to the enforcement of the obligations secured hereby or the exercise of any right or remedy of Lender under any Loan Document; and

maintain and keep the Property in compliance with all Applicable Laws.



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## ASSUMABILITY.

So long as (i) Borrower is not in default under any of the terms of the Note, this Instrument or any other Loan Document, and (ii) no situation exists which with the passage of time or the giving of notice or both would constitute a default under the Note, this Instrument or any other Loan Document, in the event Borrower desires to transfer all of the Property to another party (the "Transferee") and have the Transferee assume all of Borrower's obligations under the Note, this Instrument and all of the other Loan Documents (collectively, the "Transfer and Assumption"), Borrower, subject to the terms of this paragraph, may make a written application to Lender for Lender's consent to the Transfer and Assumption, subject to the conditions set forth in **subparagraph (b) of this paragraph 35**. Together with such written application (and afterwards if requested by Lender), Borrower will submit to Lender true, correct and complete copies of any and all information and documents of any kind requested by Lender concerning the Property, Transferee and/or Borrower, together with any review fee required by Lender, in Lender's sole discretion.

Lender shall not unreasonably withhold its consent to a Transfer and Assumption provided and upon the condition that:

Lender receives an opinion from counsel acceptable to Lender that (x) such Transfer and Assumption shall not affect, in any way, the enforceability of the Loan Documents or the lien status, and (y) that the Transferee complies in all respects with the provisions of **paragraph 25** of this Instrument and such other conditions concerning the organizational structure of the Transferee as were required by Lender at the time of the making of the Loan;

Borrower has submitted to Lender true, correct and complete copies of any and all information and documents of any kind requested by Lender concerning the Property, Transferee and/or Borrower;

the Transferee, in Lender's sole judgment, has sufficient experience in managing assets similar in size and type to the Property;

in Lender's sole judgment, the Transferee and the partners, members or shareholders of the Transferee are financially sound or have sufficient financial resources to manage the Property for the term of the Loan;

the Loan has been placed, or Lender plans to place the Loan, in an offering of Securities (as defined in **paragraph 37**) and Lender receives written confirmation from the Rating Agencies (as defined below) that the Transfer and Assumption will not result in any downgrade, qualification or withdrawal of the ratings assigned to the pool and assets in which the Loan has been placed; and

Borrower has paid any and all review fees required by Lender and any Rating Agencies.

If Lender consents to the Transfer and Assumption, the Transferee and/or Borrower as the case may be, shall deliver the following to Lender:

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Borrower shall deliver to Lender an assumption fee in the amount of one percent (1%) of the then unpaid principal balance of the Loan;

Borrower and Transferee shall execute and deliver to Lender any and all documents required by Lender, in form and substance required by Lender, in Lender's sole discretion (the "Assumption Documents");

Borrower shall cause to be delivered to Lender, an endorsement to the mortgagee policy of title insurance then insuring the lien created by this Instrument in form and substance acceptable to Lender, in Lender's sole discretion (the "Endorsement"); and

Borrower shall deliver to Lender a payment in the amount of all costs incurred by Lender in connection with the Transfer and Assumption, including but not limited to, Lender's attorneys fees and expenses, all recording fees for the Assumption Documents, and all fees payable to the title company for the delivery to Lender of the Endorsement.

Notwithstanding anything contained in this paragraph to the contrary, (x) under no circumstances may the Property and Loan be transferred and assumed by any party under the terms of this paragraph more than once during the entire term of the Loan and (y) except based on Lender's written agreement to the Transfer and Assumption and Borrower's and Transferee's compliance with all of the terms and provisions of this paragraph, the terms and provisions of this paragraph shall in no way amend or modify the terms and provisions contained in **paragraph 19** of this Instrument.

**WAIVER OF JURY TRIAL.** BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THE BORROWER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THE NOTE, THIS INSTRUMENT, ANY OTHER LOAN DOCUMENT, ANY OTHER AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

**FURTHER ASSURANCES; TRANSFER OF LOAN.** (a) Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Lender shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Instrument or for filing, registering or recording this Instrument or for facilitating the sale of the Loan and the Loan Documents as described in **subparagraph 37(b)** below. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to

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evidence more effectively the security interest of Lender in the Property. Upon foreclosure, the appointment of a receiver or any other relevant action, Borrower will, at the cost of Borrower and without expense to Lender, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this paragraph.

(b) Borrower acknowledges that Lender and its successors and assigns may (i) sell this Instrument, the Note and other Loan Documents to one or more investors as a whole loan, (ii) participate the Loan secured by this Instrument to one or more investors, (iii) deposit this Instrument, the Note and other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets, or (iv) otherwise sell the Loan or interest therein to investors (the transactions referred to in clauses (i) through (iv) are hereinafter each referred to as a "Secondary Market Transaction"). Borrower shall cooperate with Lender in effecting any such Secondary Market Transaction and shall cooperate to implement all requirements imposed by any Rating Agency involved in any Secondary Market Transaction, including but not limited to, (a) providing Lender an estoppel certificate and such information, legal opinions and documents relating to Borrower, any guarantor, the Property and any tenants of the Property as Lender or the Rating Agencies may reasonably request in connection with such Secondary Market Transaction, (b) amending the Loan Documents and organizational documents of Borrower, and updating and/or restating officer's certificates, title insurance and other closing items, as may be required by the Rating Agencies, and (c) upon Lenders' request amending the Loan Documents (and updating and/or restating officer's certificates, title insurance and other closing items in connection therewith) to divide the Loan into two or more separate or component notes, which notes may be included in separate transactions (and thus may have separate REMIC "start up dates") and have different interest rates and amortization schedules (but with aggregated financial terms which are equivalent to that of the Loan prior to such separation). In addition, Borrower shall make available to Lender all information concerning its business and operations that Lender may reasonably request. Lender shall be permitted to share all such information with the investment banking firms, Rating Agencies, accounting firms, law firms and other third-party advisory firms and investors involved with the Loan and the Loan Documents or the applicable Secondary Market Transaction. Lender and all of the aforesaid third-party advisors and professional firms shall be entitled to rely on the information supplied by, or on behalf of, Borrower and Borrower indemnifies Lender, its successors, assigns and their respective shareholders, employees, directors, officers, and agents (each an "Indemnified Party" and, collectively, the "Indemnified Parties") as to any losses, claims, damages or liabilities that arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in such information or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information, or in light of the circumstances under which they were made, not misleading. Lender may publicize the existence of the Loan in connection with its marketing for a Secondary Market Transaction or otherwise as part of its business development. The term "Rating Agency" as used herein shall mean each of Standard & Poor's Ratings Services, a division of McGraw-

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Hill Companies, Inc., Moody's Investors Service, Inc., and Fitch, Inc., or any other nationally-recognized statistical rating agency which has been approved by Lender.

**FUTURE ADVANCES.** Upon request of Borrower, Lender, at Lender's option so long as this Instrument secures indebtedness held by Lender, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Instrument exceed the original amount of the Note (US \$295,000.00) nor shall the maturity of Future Advances secured hereby extend beyond the time of repayment of the Note.

## ERISA.

As of the date hereof and throughout the term of the Loan, (i) Borrower represents that it is not and will not be an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA, and (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA.

As of the date hereof and throughout the term of the Loan (i) Borrower represents that it is not and will not be a "governmental plan" within the meaning of Section 3(3) of ERISA and (ii) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Instrument, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or

Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e) or an investment company registered under The Investment Company Act of 1940.

**AMENDMENTS AND WAIVERS.** No amendment, modification, termination or waiver of any provision of this Mortgage, the Note or any other Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by Lender and any other party to be charged. Each amendment, modification, termination or waiver shall be effective only in the specific instance and for the specific purpose for which it



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was given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

This Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original.

IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed by its representatives therunto duly authorized.

Maccabee Development, LLC

*Maccabee Development LLC*

(Seal)

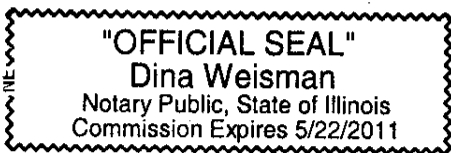
**Borrower's Address:**

**120 South State Street, Suite 200  
Chicago, Illinois 60603**

State of Illinois     )  
                                  )  
County of Cook     )

I, Dina Weisman, a notary public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Maccabee Development, LLC is known to me to be the same company whose name is subscribed to the foregoing instrument, appeared before me this day by its representative and acknowledged that he signed, sealed and delivered the same instrument as its free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 1st day of December, 2010.



*Dina Weisman*  
\_\_\_\_\_  
Notary Public

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## Exhibit A

### Property Description

Lot 25 in Sam Brown Jr.'s Subdivision of Lots 2 and 3 in Block 9 in W.B. Ogden's Subdivision of the Southwest 1/4 of Section 18, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Commonly known as: 2216 W. Irving Park Road, Chicago, IL 60618

P. I. N. # 14-118-325-006-0000

Property of Cook County Clerk's Office