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## Illinois Anti-Predatory Lending Database Program



Doc#: 1035544028 Fee: \$96.00  
Eugene "Gene" Moore FHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 12/21/2010 12:15 PM Pg: 1 of 31

### Certificate of Exemption

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

The property identified as: **PIN: 17-09-408-009-0000**

**Address:**

**Street:** 353 N. Clark St.

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60654

**Lender:** German American Capital Corporation

**Borrower:** 353 N. Clark LP

**Loan / Mortgage Amount:** \$220,000,000.00

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

**Certificate number:** 0B444894-BE39-4B25-8E72-4AF91C9E7EB4

**Execution date:** 12/08/2010

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**353 N. CLARK, L.P.,**  
a Delaware limited partnership, as mortgagor

(Mortgagor)

to

**GERMAN AMERICAN CAPITAL CORPORATION,** as mortgagee

(Mortgagee)

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

**THIS INSTRUMENT IS A FINANCING STATEMENT FILED AS A FIXTURE FILING UNDER §9502 OF ILLINOIS UNIFORM COMMERCIAL CODE COVERING ALL GOODS AS PROVIDED IN GRANTING CLAUSES WHICH ARE OR SHALL BECOME FIXTURES RELATED TO THE PREMISES DESCRIBED IN EXHIBIT A AND IS TO BE RECORDED IN THE REAL ESTATE RECORDS AS A FIXTURE FILING.**

Dated: As of December 15, 2010

Location: 353 N. Clark Street, Chicago, IL

County: Cook County, IL

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Sidley Austin LLP  
One South Dearborn  
Chicago, Illinois 60603  
Attention: Charles E. Schrank, Esq.

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "*Mortgage*") is made as of this 15th day of December, 2010, by 353 N. CLARK, L.P., a Delaware limited partnership, having its principal place of business at c/o Tishman Speyer, 45 Rockefeller Plaza, New York, New York 10111, as mortgagor ("*Mortgagor*" or "*Borrower*"), for the benefit of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation, having an address at 60 Wall Street, 10th Floor, New York, New York 10005, as mortgagee (together with its successors and/or assigns, "*Mortgagee*").

### WITNESSETH:

A. This Mortgage is given to secure a loan (the "*Loan*") in the original principal sum of TWO HUNDRED TWENTY MILLION AND NO/100 DOLLARS (\$220,000,000) advanced pursuant to that certain Loan Agreement dated as of the date hereof between Mortgagor and Mortgagee (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "*Loan Agreement*"), and evidenced by that certain Promissory Note dated the date hereof made by Mortgagor to Mortgagee (such Note, together with all extensions, renewals, replacements, restatements or modifications thereof, being hereinafter referred to as the "*Note*"). The final maturity date of the Loan is no later than January 6, 2016. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

B. Mortgagor desires to secure the payment of the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon and all other sums (including the Prepayment Fee, if applicable) due to Mortgagee in respect of the Loan and the Loan Documents (the "*Debt*") and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents.

C. This Mortgage is given pursuant to the Loan Agreement, and payment, fulfillment and performance by Mortgagor of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents of even date herewith made by Mortgagor in favor of Mortgagee delivered in connection with this Mortgage (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "*Assignment of Leases*"), including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Mortgage.

NOW THEREFORE, in consideration of the making of the Loan by Mortgagee and the covenants, agreements, representations and warranties set forth in this Mortgage:

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## ARTICLE I.

### GRANTS OF SECURITY

**Section 1.01 Property Mortgaged.** Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Mortgagee and its successors and assigns, the following property, rights, interests and estates now owned or hereafter acquired by Mortgagor (collectively, the "**Property**"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Mortgage;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Mortgagor, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Mortgagor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants under Leases except to the extent that Mortgagor shall have any right or interest therein;

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Mortgagor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in

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which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dish washers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "**Fixtures**" shall not include any property which Tenants are entitled to remove pursuant to Leases except to the extent that Mortgagor shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code), other than Fixtures, which are now or hereafter owned by Mortgagor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (as amended from time to time, the "**Uniform Commercial Code**"), superior in lien to the lien of this Mortgage, and all proceeds and products of any of the above;

(h) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") (collectively, the "**Leases**"), and all right, title and interest of Mortgagor, its successors and assigns, therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the

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Improvements, whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**"), and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment and performance of the Obligations, including the payment of the Debt. Notwithstanding the foregoing, "Rents" shall not include amounts payable and paid to the applicable tenant pursuant to the terms of Section 4 of the Jenner Fifth Amendment;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in Taxes or Other Charges charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction (subject in each case to the rights of Tenants under the Leases);

(l) Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Mortgagee in the Property;

(m) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuance of an Event of Default, to receive and collect any sums payable to Mortgagor thereunder;

(n) Trademarks. 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;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Loan Agreement, the Cash Management Agreement, the Clearing Account Agreement or any other Loan Document, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

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(p) Uniform Commercial Code Property. All documents, instruments, chattel paper and intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and general intangibles relating to the Property;

(q) Minerals. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above Land;

(r) All Other Assets. All other accounts, general intangibles, instruments, investment property, documents, chattel paper, goods, moneys, letters of credit, letter of credit rights, certificates of deposit, deposit accounts, commercial tort claims, oil, gas and minerals, and all other property and interests in property of the Mortgagor, whether tangible or intangible;

(s) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash or in liquidation or other claims, or otherwise; and

(t) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (s) above.

AND, without limiting any of the other provisions of this Mortgage, to the extent permitted by applicable law, Mortgagor expressly grants to Mortgagee, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Land or not, shall for the purposes of this Mortgage be deemed conclusively to be real estate and mortgaged hereby.

This Section 1.01 is intended, among other things, to grant in favor of the Mortgagee a first priority continuing lien and security interest in all of the Mortgagor's personal property. The Mortgagor authorizes the Mortgagee and its counsel to file UCC financing statements in form and substance reasonably satisfactory to the Mortgagee, describing the collateral as all assets of the Mortgagor, all personal property of the Mortgagor or using words with similar effect.

**Section 1.02 Assignment of Rents**. Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases, the Cash Management Agreement and Section 7.1(i) of this Mortgage, Mortgagee grants to Mortgagor a revocable license to (a) subject to Mortgagor's obligation under Section 6.1 of the Loan Agreement to cause all Rents to be deposited into the Clearing Account, collect, receive, use and enjoy the Rents, provided Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums, and (b) subject to the terms of this Mortgage and the other Loan Documents, do all other things which Mortgagor, or any lessor is or may be entitled to do under the Lease or Lease Guaranties (as defined in the Assignment of Leases), at all times prior to

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Lender's revocation of such license upon the occurrence and during the continuance of an Event of Default.

**Section 1.03 Security Agreement.** This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Mortgage, Mortgagor as debtor, hereby grants to Mortgagee, as secured party, as security for the Obligations, a security interest in the Fixtures, the Equipment, the Personal Property and the other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "*Collateral*"). If an Event of Default shall occur and be continuing, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee after the occurrence and during the continuance of an Event of Default, Mortgagor shall, at its expense, assemble the Collateral and make it available to Mortgagee at a convenient place (at the Land if tangible property) reasonably acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on written demand any and all expenses, including reasonable attorneys' fees and costs, actually incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. The principal place of business of Mortgagor (Debtor) is as set forth on page one hereof and the address of Mortgagee (Secured Party) is as set forth on page one hereof.

**Section 1.04 Fixture Filing.** Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Mortgage, and this Mortgage, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement naming Mortgagor as the Debtor and Mortgagee as the Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. For this purpose, the respective addresses of Mortgagor, as debtor, and of Mortgagee, as secured party, are as set forth in the Preambles of this Mortgage, Mortgagor is the record owner of the Land, and Mortgagor's organizational identification number is 27-3916308.



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## CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if (i) Mortgagor shall pay to Mortgagee the Debt at the time and in the manner provided in this Mortgage, the Note, the Loan Agreement and the other Loan Documents, and shall perform the Other Obligations as set forth in this Mortgage, the Note, the Loan Agreement and the other Loan Documents, and shall abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, or (ii) the Debt is defeased and transferred to a Successor Borrower or Borrower is otherwise released pursuant to, and in accordance with, Section 2.5 of the Loan Agreement, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Mortgagor's obligation to indemnify and hold harmless Mortgagee pursuant to the provisions hereof shall survive any such payment or release to the extent hereinafter provided.

## ARTICLE II.

### DEBT AND OBLIGATIONS SECURED

**Section 2.01 Obligations.** This Mortgage and the grants, assignments and transfers made in Article I are given for the purpose of securing the Obligations, including, but not limited to, the Debt.

**Section 2.02 Other Obligations.** This Mortgage and the grants, assignments and transfers made in Article I are also given for the purpose of securing the following (collectively, the "*Other Obligations*"):

(a) Payment to Mortgagee of all sums at any time owing under the Note, in the original principal amount of TWO HUNDRED TWENTY MILLION AND NO/100THS DOLLARS (\$220,000,000) executed by Mortgagor, as borrower, and payable to the order of Mortgagee, as lender, to the extent that the total of such sums which may be outstanding at any time and from time to time, exclusive of interest thereon, do not exceed the maximum amount of FOUR HUNDRED FORTY MILLION and No/100 Dollars (\$440,000,000);

(b) the performance of all other obligations of Mortgagor contained herein;

(c) the performance of each obligation of Mortgagor contained in the Loan Agreement and in each other Loan Document; and

(d) the performance of each obligation of Mortgagor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

**Section 2.03 Debt and Other Obligations.** Mortgagor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "*Obligations.*"

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**Section 2.04** Intentionally Omitted.

**Section 2.05** Intentionally Omitted.

**Section 2.06** Intentionally Omitted.

## ARTICLE III.

### MORTGAGOR COVENANTS

Mortgagor covenants and agrees that:

**Section 3.01** Payment of Debt. Mortgagor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Mortgage.

**Section 3.02** Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note, and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage to the Property, pay Taxes and Other Charges, and comply with Legal Requirements, in each case subject to and in accordance with the Loan Agreement, and (ii) agrees to obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Mortgagor and the Property as required by the Loan Agreement and that the Insurance Proceeds and Awards shall be settled, held, applied and/or disbursed in accordance with the Loan Agreement.

**Section 3.03** Performance of Other Agreements. Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by Mortgagor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property, and any amendments, modifications or changes thereto, in all material respects.

## ARTICLE IV.

### OBLIGATIONS AND RELIANCES

**Section 4.01** Relationship of Mortgagor and Mortgagee. The relationship between Mortgagor and Mortgagee is solely that of debtor and creditor, and Mortgagee has no fiduciary or other special relationship with Mortgagor, and no term or condition of any of the Loan Agreement, the Note, this Mortgage or the other Loan Documents shall be construed so as to deem the relationship between Mortgagor and Mortgagee to be other than that of debtor and creditor.

**Section 4.02** No Reliance on Mortgagee. The general partners, members, principals and (if Mortgagor is a trust) beneficial owners of Mortgagor, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Mortgagor and Mortgagee are relying solely upon such expertise and business plan in connection with the ownership and

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operation of the Property. Mortgagor is not relying on Mortgagee's expertise, business acumen or advice in connection with the Property.

## **Section 4.03 No Mortgagee Obligations.**

(a) Notwithstanding the provisions of Subsections 1.01(h) and (m) or Section 1.02, Mortgagee is not undertaking the performance of (i) any obligations under the Leases, or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee pursuant to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Mortgagee.

**Section 4.04 Reliance.** Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Mortgage and the other Loan Documents, Mortgagee is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 3 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Mortgagee; that such reliance existed on the part of Mortgagee prior to the date hereof; that the warranties and representations are a material inducement to Mortgagee in making the Loan; and that Mortgagee would not be willing to make the Loan and accept this Mortgage in the absence of the warranties and representations as set forth in Article 3 of the Loan Agreement.

## ARTICLE V.

### FURTHER ASSURANCES

**Section 5.01 Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of Mortgagee in, the Property. Mortgagor will pay all taxes, filing, registration or recording fees, and all reasonable expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Mortgage, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any deed of trust or mortgage supplemental hereto, any security instrument with

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respect to the Property or any instrument of further assurance, and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do.

**Section 5.02 Further Acts, Etc.** Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, or for complying with all Legal Requirements in all material respects. Mortgagor, if reasonably requested to do so by Mortgagee, will execute and deliver, and hereby authorizes Mortgagee, following ten (10) days notice to Mortgagor and Mortgagor's failure to comply within such ten (10) day period, to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements to evidence more effectively the security interest of Mortgagee in the Property. Upon the occurrence and during the continuance of an Event of Default, Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this Section 5.02.

**Section 5.03 Changes in Tax, Debt, Credit and Documentary Stamp Laws.**

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

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

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

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## ARTICLE VI.

### DUE ON SALE/ENCUMBRANCE

**Section 6.01 Mortgagee Reliance.** Mortgagor acknowledges that Mortgagee has examined and relied on the experience of Mortgagor and its general partners, members, principals and (if Mortgagor is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for the payment and performance of the Obligations, including the repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the payment and/or performance of the Obligations, including the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Property.

**Section 6.02 No Transfer.** Mortgagor shall not permit or suffer any Transfer to occur except in accordance with the terms of the Loan Agreement.

## ARTICLE VII.

### RIGHTS AND REMEDIES UPON DEFAULT

**Section 7.01 Remedies.** Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Mortgagee may take such action, without notice or demand (except for such notice or demand as may be expressly required under the Note, the Loan Agreement, this Mortgage or the other Loan Documents), as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(a) by written notice to Mortgagor, declare the entire unpaid Debt to be immediately due and payable;

(b) subject to the provisions of Article X, institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

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

(d) to the extent permitted by applicable law, sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more

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sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof, all as may be required or permitted by law; and, without limiting the foregoing:

(i) In connection with any sale or sales hereunder, Mortgagee shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Mortgagee shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;

(ii) Mortgagee shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Mortgagee so elects pursuant to applicable law, and to the extent permitted by law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Mortgagee and Mortgagee is hereby authorized and empowered to conduct any such sale of any Real Property, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to Real Property;

(iii) Should Mortgagee elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Mortgagee has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of the Real Property, Mortgagee shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property, each as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Mortgagor, Mortgagee at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Mortgagee may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale; and

(iv) If the Property consists of several lots, parcels or items of property, Mortgagee shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Mortgagee designates. Any Person, including Mortgagor or Mortgagee, may purchase at any sale hereunder. Should Mortgagee desire that more than one sale or other disposition of the Property be conducted, Mortgagee shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Mortgagee may designate, and no such sale shall terminate or otherwise affect the Lien of this Mortgage on any part of the Property not sold until all the Obligations have been satisfied in full. In the event Mortgagee elects to dispose of the Property through

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more than one sale, except as otherwise provided by applicable law, Mortgagor agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(e) subject to the provisions of Article X, institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, in the Loan Agreement or in the other Loan Documents;

(f) subject to the provisions of Article X, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, any guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof, to the extent permitted under applicable law;

(h) the license granted to Mortgagor under Section 1.2 hereof shall automatically be revoked and, to the extent permitted under applicable law, Mortgagee may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment and performance of the Obligations (including, without limitation, the payment of the Debt), in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees and costs) actually incurred in connection with the aforesaid operations and all amounts reasonably necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

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(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and/or the Personal Property, or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Mortgagor, at its sole cost and expense, to assemble the Fixtures, the Equipment and/or the Personal Property and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Fixtures, the Equipment and/or the Personal Property sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Mortgagee in accordance with the terms of the Loan Agreement, this Mortgage or any other Loan Document to the payment of the following items in any order in its sole discretion, subject to the requirements of applicable law:

(i) Taxes and Other Charges;

(ii) Insurance Premiums;

(iii) Interest on the unpaid principal balance of the Note;

(iv) Amortization of the unpaid principal balance of the Note; and/or

(v) All other sums payable pursuant to the Note, the Loan Agreement, this Mortgage and the other Loan Documents, including, without limitation, the Prepayment Fee, if applicable, and advances made by Mortgagee pursuant to the terms of this Mortgage;

(k) pursue such other remedies as may be available at law or in equity; and/or

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Mortgagee shall deem to be appropriate in its sole discretion.

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

**Section 7.02 Application of Proceeds.** To the extent consistent with applicable law and the Loan Agreement, the purchase money proceeds and avails of any disposition of the Property or any part thereof, or any other sums collected by Mortgagee pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

**Section 7.03 Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make



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any payment or do any act required of Mortgagor hereunder in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. To the extent permitted by applicable law, Mortgagee is authorized to enter upon the Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt, and the actual cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

## **Section 7.04 Other Rights, Etc.**

(a) The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Mortgagee to comply with any request of Mortgagor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Mortgagee's possession.

(c) Mortgagee may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Debt) to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may, subject to the provisions of Article X, take action to recover the Debt, or any portion thereof, or to enforce the Other Obligations or any covenant hereof, without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to, subject to the provisions of Article X, every right and remedy now or hereafter afforded at law or in equity.

**Section 7.05 Right to Release Any Portion of the Property.** Mortgagee may release any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the Lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any,

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received by Mortgagee for such release, and Mortgagee may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a Lien and security interest in the remaining portion of the Property.

**Section 7.06 Violation of Laws.** Subject to the terms of the Loan Agreement, if the Property is not in material compliance with all Legal Requirements, Mortgagee may impose additional reasonable requirements upon Mortgagor as Lender may reasonably determine to be required in order to cure such non-compliance, including, without limitation, monetary reserves or financial equivalents.

**Section 7.07 Right of Entry.** Upon reasonable advance notice to Mortgagor, Mortgagee and its agents shall have the right to enter and inspect the Property at all reasonable times and during normal business hours (subject to the rights of Tenants under Leases).

## ARTICLE VIII.

### INDEMNIFICATION

**Section 8.01 Mortgage and/or Intangible Tax.** Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses actually incurred by or asserted against any Indemnified Party and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Mortgage, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes. For purposes of this Mortgage, the term "**Indemnified Parties**" means Lender and any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by this Mortgage is or will have been recorded, Persons who may hold or acquire or will have held a full or partial interest in the Loan secured hereby (including, but not limited to, investors or prospective investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan secured hereby for the benefit of third parties, as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, but not limited to, any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

**Section 8.02 Duty to Defend; Attorneys' Fees and Other Fees and Expenses.** Upon written request by any Indemnified Party, Mortgagor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Without the prior written consent of Lender (which consent shall not be unreasonably withheld or delayed), Mortgagor shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Party is an actual or potential party to such claim, action, suit or proceeding) unless Mortgagor shall have given Lender reasonable prior written notice thereof

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and shall have obtained an unconditional release of each Indemnified Party hereunder from all liability arising out of such claim, action, suit or proceedings. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Mortgagor and any Indemnified Party and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or in addition to those available to Mortgagor, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party. Within ten (10) Business Days of demand, Mortgagor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of the reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

## ARTICLE IX.

### WAIVERS

**Section 9.01 Waiver of Counterclaim.** To the extent permitted by applicable law, Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee arising out of or in any way connected with this Mortgage, the Loan Agreement, the Note, any of the other Loan Documents or the Obligations.

**Section 9.02 Marshalling and Other Matters.** To the extent permitted by applicable law, Mortgagor hereby waives the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Mortgage.

**Section 9.03 Waiver of Notice.** To the extent permitted by applicable law, Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee, except with respect to matters for which this Mortgage or the Loan Documents specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor, and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

**Section 9.04 Waiver of Statute of Limitations.** To the extent permitted by applicable law, Mortgagor hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment and performance of the Obligations (including, without limitation, the payment of the Debt).

**Section 9.05 Waiver of Jury Trial. MORTGAGOR AND MORTGAGEE (BY ITS ACCEPTANCE OF THIS MORTGAGE) EACH HEREBY AGREES NOT TO ELECT A**

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**TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THIS MORTGAGE, THE NOTE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGEE AND MORTGAGOR AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY..**

**Section 9.06 Survival.** The indemnifications made pursuant to Article 8 herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by (a) any satisfaction, release or other termination of this Mortgage or any other Loan Document, (b) any assignment or other transfer of all or any portion of this Mortgage or any other Loan Document or Mortgagee's interest in the Property (but, in such case, such indemnifications shall benefit both the Indemnified Parties and any such assignee or transferee), (c) any exercise of Mortgagee's rights and remedies pursuant hereto, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Mortgagor or by Mortgagee following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), (d) any amendment to this Mortgage, the Loan Agreement, the Note or any other Loan Document, and/or (e) any act or omission that might otherwise be construed as a release or discharge of Mortgagor from the Obligations or any portion thereof.

## ARTICLE X.

### EXCULPATION

Notwithstanding anything to the contrary contained in this Mortgage, the liability of Mortgagor to pay the Debt and for the performance of the other agreements, covenants and obligations contained herein and in the Note, the Loan Agreement, and the other Loan Documents shall be limited as set forth in Section 11.22 of the Loan Agreement and the provisions of Section 11.22 of the Loan Agreement are hereby incorporated by reference into this Mortgage to the same extent and with the same force as if fully set forth herein.

## ARTICLE XI.

### NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 11.6 of the Loan Agreement.

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## ARTICLE XII.

### APPLICABLE LAW

**Section 12.01 Governing Law; Jurisdiction; Service of Process.** THIS MORTGAGE WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY MORTGAGEE AND ACCEPTED BY MORTGAGOR IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS MORTGAGE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAW OF THE STATE, COMMONWEALTH OR DISTRICT, AS APPLICABLE, IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, COMMONWEALTH OR DISTRICT, AS APPLICABLE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS MORTGAGE AND THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

**Section 12.02 Usury Laws.** Notwithstanding anything to the contrary, (a) all agreements and communications between Mortgagor and Mortgagee are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Mortgagee shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Mortgagor to Mortgagee, and (c) if through any contingency or event, Mortgagee receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Mortgagor to Mortgagee, or if there is no such indebtedness, shall immediately be returned to Mortgagor.

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**Section 12.03 Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

## ARTICLE XIII.

### DEFINITIONS

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in the singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels, incurred or paid by Mortgagee in protecting its interest in the Property, the Leases and/or the Rents and/or in enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

## ARTICLE XIV.

### MISCELLANEOUS PROVISIONS

**Section 14.01 No Oral Change.** This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**Section 14.02 Successors and Assigns.** This Mortgage shall be binding upon, and shall inure to the benefit of, Mortgagor and Mortgagee and their respective successors and permitted assigns, as set forth in the Loan Agreement.

**Section 14.03 Inapplicable Provisions.** If any provision of this Mortgage is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Mortgage, such provision shall be fully severable and this Mortgage shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Mortgage, and the remaining provisions of this Mortgage shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Mortgage.

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unless such continued effectiveness of this Mortgage, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

**Section 14.04 Headings, Etc.** The headings and captions of the various Sections of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 14.05 Subrogation.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens, titles and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles and interests, if any, are not waived, but rather are continued in full force and effect in favor of Mortgagee, subject, however, to the provisions of Article X, and are merged with the Lien and security interest created herein as cumulative security for the payment, performance and discharge of the Obligations (including, but not limited to, the payment of the Debt).

**Section 14.06 Entire Agreement.** The Note, the Loan Agreement, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect thereto. Mortgagor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Mortgage and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Mortgagee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Mortgage and the other Loan Documents.

**Section 14.07 Limitation on Mortgagee's Responsibility.** No provision of this Mortgage shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Mortgagee, nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Property by the Tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Mortgagee a "mortgagee in possession."

**Section 14.08 Recitals.** The recitals hereof are a part hereof, form a basis for this Mortgage and shall be considered prima facie evidence of the facts and documents referred to therein.

**Section 14.09 Release of Mortgage.** Notwithstanding anything contained herein or in any of the other Loan Documents to the contrary, upon payment in full of the Debt, or Mortgagor's defeasance of the Loan in accordance with Section 2.5 of the Loan Agreement, Mortgagee shall execute and deliver, at Mortgagor's sole cost and expense, such instrument or instruments effective to evidence the termination of this Mortgage and the release of the liens and security interests created hereby in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender containing standard provisions, if any,

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protecting the rights of the releasing lender and in accordance with the other provisions of the Loan Agreement.

## ARTICLE XV.

### STATE-SPECIFIC PROVISIONS

**Section 15.01** The terms and provisions set forth below in this Article 15 shall be construed, to the greatest extent possible, consistently with those set forth elsewhere in this Mortgage as being in addition to and supplementing such other terms and provisions set forth elsewhere in this Mortgage; however, notwithstanding anything to the contrary set forth elsewhere in this Mortgage, in the event of any conflict or inconsistency between the terms and provisions of this Article 15 and the terms and provisions set forth elsewhere in this Mortgage, the following terms and provisions of this Article 15 shall govern and control:

(a) Mortgagor represents and warrants to Mortgagee that the proceeds of the Loan secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured by this Mortgage constitutes (i) a “business loan” as that term is defined in, and for all purposes of, 815 ILCS 205/4(c) and (ii) a “loan secured by a mortgage on real estate” within the purview and operation of 815 ILCS 205/4(l).

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

(c) It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the “*Act*”), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Mortgagor agrees and covenants that:

(i) Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision



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in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver, any powers, rights or remedies prior to or upon the occurrence and during the continuance of an Default, which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Obligations and shall have the benefit of all applicable provisions of the Act.

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

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

(iv) Mortgagor acknowledges that the Property does not constitute either agricultural real estate (as defined in the Act) or residential real estate as defined in Section 15-1219 of the Act.

(v) Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.

(d) Protective Advances. All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings authorized by this Mortgage or by the Act (collectively, "**Protective Advances**"), shall have the benefit of all applicable provisions of the Act. All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and

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payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after an Event of Default under the terms of the Note. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(i) determination of the amount of indebtedness secured by this Mortgage at any time;

(ii) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) if right of redemption has not been waived by the Mortgagor in this Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;

(iv) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(v) application of income in the hands of any receiver or Mortgagee in possession; and

(vi) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

(e) Upon payment of all sums secured by this Mortgage, Mortgagee shall cancel this Mortgage. Mortgagor shall pay Mortgagee's reasonable costs incurred in canceling this Mortgage.

(f) Upon request of Mortgagor, Mortgagee, at Mortgagee's sole option within twenty (20) years from the date of this Mortgage, may make future advances to Mortgagor ("**Future Advances**"). 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 Mortgage, not including Protective Advances as above defined, exceed one hundred percent (100%) of the original amount of the Note plus interest thereon and any disbursements made for the payment of taxes, levies or insurance on the property encumbered by this Mortgage with interest on such disbursements at the Default Rate; and in no event shall the aggregate amount of the indebtedness secured hereby exceed two hundred percent (200%) of the original amount of the Note.

(g) Mortgagor covenants and agrees that all agreements to pay leasing commissions (a) shall provide that the obligation to pay such commissions will not be enforceable against any party other than the party who entered into such agreement, (b) shall be

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subordinate to the lien of this Mortgage, and (c) shall not be enforceable against Mortgagee. Mortgagor shall furnish Mortgagee with evidence of the foregoing which is in all respects satisfactory to Mortgagee. Mortgagor further covenants and agrees that any property management agreement and property operating agreement for the Property, whether now in effect or entered into hereafter by Mortgagor, with a property manager or property operator, shall contain a "no lien" provision whereby, to the maximum extent permitted by law, the property manager or property operator waives and releases, and to the extent that the above is not permitted by applicable law, subordinates to the lien hereof, any and all mechanics' lien rights that it or anyone claiming through or under it may have pursuant to 770 ILCS 60/1. In addition, Mortgagor shall cause the property manager or property operator to enter into a subordination agreement with Mortgagee, in recordable form, whereby the property manager subordinates its present and future lien rights and those of any party claiming by, through or under it, to the lien of this Mortgage. Mortgagor's failure to require the "no lien" provision or the subordination agreement described herein shall constitute a default under this Mortgage.

[NO FURTHER TEXT ON THIS PAGE]

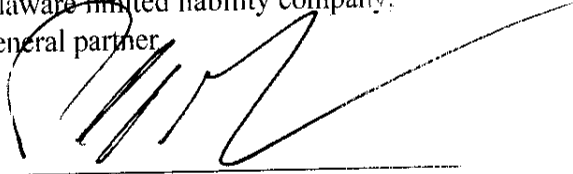
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IN WITNESS WHEREOF, THIS MORTGAGE has been executed by Mortgagor as of the day and year first above written.

**MORTGAGOR:**

**353 N. CLARK, L.P.,**  
a Delaware limited partnership

By: 353 N. Clark GP, L.L.C.,  
a Delaware limited liability company,  
its general partner

By:   
Name: Paul A. Callahan  
Title: General Partner

Property of Cook County Clerk's Office

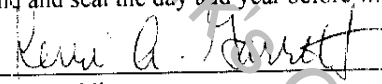
**ACKNOWLEDGMENT**

STATE OF ~~ILLINOIS~~ New York §  
COUNTY OF New York §

I Kerri A. Garrett, a Notary Public in and for and residing in said County and State, do hereby certify that on the 8 day of December 2010, Paul A. Callahan personally appeared before me and being first duly sworn by me severally acknowledged that he/she signed the foregoing document in his/her capacity as therein set forth and declared that the statements therein contained are true.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.

[SEAL]

  
Notary Public  
My Commission Expires: \_\_\_\_\_

KERRI A. GARRETT  
Notary Public, State of New York  
No. 01GA6022001  
Qualified in Queens County  
Certificate Filed in New York County  
Commission Expires March 23, 2011

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## EXHIBIT A

### LEGAL DESCRIPTION

Real property in the City of Chicago, County of Cook, State of Illinois, described as follows:

#### PARCEL 1:

THAT PART OF BLOCK 2 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF NORTH CLARK STREET (ALSO BEING THE WEST LINE OF LOT 5 IN SAID BLOCK 2) AND THE SOUTH LINE OF WEST KINZIE STREET (ALSO BEING THE NORTH LINE OF LOTS 5 THRU 8, BOTH INCLUSIVE, IN SAID BLOCK 2); THENCE EAST ALONG THE SOUTH LINE OF SAID WEST KINZIE STREET A DISTANCE OF 321.47 FEET TO THE WEST LINE OF NORTH DEARBORN STREET; THENCE SOUTH ALONG THE WEST LINE OF SAID NORTH DEARBORN STREET (ALSO BEING THE EAST LINE OF LOT 8 IN SAID BLOCK 2) A DISTANCE OF 178.60 FEET TO A POINT 711.60 FEET NORTH (AS MEASURED ALONG SAID WEST LINE OF NORTH DEARBORN STREET) OF THE CHICAGO RIVER, AS OCCUPIED; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 321.47 FEET TO A POINT ON THE EAST LINE OF SAID NORTH CLARK STREET 300.43 FEET NORTH (AS MEASURED ALONG SAID EAST LINE OF NORTH CLARK STREET) OF SAID CHICAGO RIVER, AS OCCUPIED; THENCE NORTH ALONG THE EAST LINE OF SAID NORTH CLARK STREET A DISTANCE OF 177.86 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY FIRST AMENDMENT TO EASEMENT AND OPERATING AGREEMENT DATED AUGUST 23, 1988 AND RECORDED AUGUST 24, 1988 AS DOCUMENT NUMBER 88384561 FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS ON, OVER, THROUGH AND ACROSS THE "HOTEL ROAD EASEMENT AREA" AND THE "PROJECT ROAD EASEMENT AREA" DESCRIBED AS FOLLOWS:

#### HOTEL ROAD EASEMENT AREA:

PART OF BLOCK 2 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF WEST KINZIE STREET (ALSO BEING THE NORTH LINE OF LOTS 5, 6, 7 AND 8 IN SAID BLOCK 2) AND THE EAST LINE OF NORTH CLARK STREET (ALSO BEING THE EAST LINE OF LOTS 4 AND 5 IN SAID BLOCK 2); THENCE SOUTH 0 DEGREES WEST ALONG SAID EAST LINE OF NORTH CLARK STREET A DISTANCE OF 177.86 FEET TO AN INTERSECTION WITH THE NORTH LINE OF

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TRACTS I AND II IN SAID BLOCK 2; THENCE SOUTH 90 DEGREES EAST ALONG SAID NORTH LINE OF TRACTS I AND II A DISTANCE OF 134.10 FEET TO AN INTERSECTION WITH THE LINE BETWEEN PARCELS 1 (BELOW +50.00 FEET CHICAGO CITY DATUM) OF SAID TRACTS I AND II AND THE POINT OF BEGINNING. THENCE CONTINUING SOUTH 90 DEGREES EAST ALONG SAID NORTH LINE OF TRACTS I AND II A DISTANCE OF 187.57 FEET TO A POINT IN THE WEST LINE OF NORTH DEARBORN STREET (ALSO BEING THE EAST LINE OF LOTS 1 AND 8 IN SAID BLOCK 2) SAID POINT BEING 178.60 FEET SOUTH OF SAID SOUTH LINE OF WEST KINZIE STREET AS MEASURED ALONG THE WEST LINE OF NORTH DEARBORN STREET; THENCE SOUTH 0 DEGREES WEST ALONG SAID WEST LINE OF NORTH DEARBORN STREET A DISTANCE OF 26.32 FEET TO THE BACK OF A CURB OF AN ELEVATED DRIVEWAY; THENCE SOUTH 89 DEGREES 59 MINUTES 22 SECONDS WEST ALONG SAID BACK OF CURB A DISTANCE OF 68.78 FEET; THENCE NORTH 89 DEGREES 34 MINUTES 27 SECONDS WEST A DISTANCE OF 47.20 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 22 SECONDS WEST A DISTANCE OF 29.31 FEET; THENCE NORTH 75 DEGREES 07 MINUTES 03 SECONDS WEST A DISTANCE OF 43.45 FEET TO A POINT WHERE THE SAID LINE BETWEEN PARCEL 1 INTERSECTS THE BACK OF CURB OF SAID ELEVATED DRIVEWAY; THENCE NORTH 0 DEGREES EAST ALONG SAID LINE BETWEEN PARCEL 1 A DISTANCE OF 14.83 FEET TO THE POINT OF BEGINNING.

#### PROJECT ROAD EASEMENT AREA:

PART OF BLOCK 2 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF WEST KINZIE STREET (ALSO BEING THE NORTH LINE OF LOTS 5, 6, 7 AND 8 IN SAID BLOCK 2) AND THE EAST LINE OF NORTH CLARK STREET (ALSO BEING THE WEST LINE OF LOTS 4 AND 5 IN SAID BLOCK 2); THENCE SOUTH 0 DEGREES WEST ALONG THE EAST LINE OF NORTH CLARK STREET A DISTANCE OF 177.86 FEET TO AN INTERSECTION WITH THE NORTH LINE OF TRACTS I AND II IN SAID BLOCK 2 AND THE POINT OF BEGINNING; THENCE SOUTH 90 DEGREES EAST ALONG SAID NORTH LINE OF TRACTS I AND II A DISTANCE OF 134.10 FEET TO AN INTERSECTION WITH THE LINE BETWEEN PARCEL 1 (BELOW +50.00 FEET CHICAGO CITY DATUM) OF SAID TRACT I AND II; THENCE SOUTH 0 DEGREES WEST ALONG SAID LINE BETWEEN PARCEL 1 A DISTANCE OF 14.83 FEET TO A POINT OF INTERSECTION, NOT TANGENT WITH A CURVED LINE, SAID CURVED LINE BEING THE BACK OF A CURB OF AN ELEVATED DRIVEWAY; THENCE WESTERLY ALONG THE BACK OF CURB OF SAID DRIVEWAY BEING THE ARC OF A CIRCLE CONVEX NORTHERLY AND HAVING A RADIUS OF 15.00 FEET A DISTANCE OF 5.08 FEET TO A POINT OF TANGENCY; THENCE SOUTH 89 DEGREES 59 MINUTES 39 SECONDS WEST ALONG THE BACK OF CURB OF SAID DRIVEWAY AND TANGENT TO THE LAST DESCRIBED CURVED LINE A DISTANCE OF 129.11 FEET TO SAID EAST LINE OF NORTH CLARK STREET; THENCE NORTH 0 DEGREES EAST ALONG SAID EAST LINE OF NORTH CLARK STREET A DISTANCE OF 13.99 FEET TO THE POINT OF BEGINNING.

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PARCEL 3:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY AMENDMENT TO GRANT OF AUTOMOBILE ACCESS DATED MAY 18, 2009 AND RECORDED JULY 27, 2009 AS DOCUMENT NUMBER 0920833001 ("LOWER CARROLL ACCESS EASEMENT AGREEMENT") FOR VEHICULAR INGRESS AND EGRESS ON, OVER, THROUGH AND ACROSS THE "LOWER CARROLL EASEMENT AREA" (AS DEFINED IN THE AMENDMENT TO GRANT OF AUTOMOBILE ACCESS EASEMENT AND AS DEPICTED ON EXHIBIT C ATTACHED THERETO).

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY AMENDMENT TO PARKING AGREEMENT DATED MAY 18, 2009 AND RECORDED JULY 27, 2009 AS DOCUMENT NUMBER 0920833002 ("THE "AMENDMENT TO PARKING AGREEMENT") FOR USE OF THE "LOWER CARROLL PARKING SPACES AREA" (AS DEFINED IN THE AMENDMENT TO PARKING AGREEMENT AND AS DEPICTED ON EXHIBIT C ATTACHED THERETO AND AS SHOWN ON THE SURVEY) IN CONNECTION WITH THE REPAIR AND MAINTENANCE OF THE BUILDING LOCATED ON PARCEL 1.

Address: 353 North Clark Street, Chicago, IL  
PINs: 17-09-408-009-0000 and 17-09-408-010-0000