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Doc#: 1215319062 Fee: \$116.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 08/01/2012 01:33 PM Pg: 1 of 40

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN: 17-10-305-001-0000**

Address:

Street: 177 North State Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60601

Lender: RGA Reinsurance Company

Borrower: State Lake LLC

Loan / Mortgage Amount: \$5,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 17/70 et seq. because it is commercial property.

Certificate number: 6F49DAC8-B251-4BE3-AA96-BCFAC376B84B

Execution date: 05/22/2012

CLEAR TITLE GROUP
1725 CLARKSON RD, STE 310
CHESTERFIELD, MO 63017

S	Y
P	41
S	N
M	N
SC	Y
E	Y
INTER	

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Title of Document: Mortgage, Security Agreement and Fixture Filing

Date of Document: May 22, 2012

**Permanent Tax:
Number** 17-10305-0101

Legal Description: LOTS 1, 2 AND 3 IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO (EXCEPT THE SOUTH 60 FEET OF EACH OF SAID LOTS) IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LOCATED IN COOK COUNTY, ILLINOIS.

Property Address: 177 North State St., Chicago, IL 60601

Grantee: RGA Reinsurance Company

Grantee(s)

Mailing Address: 1370 Timberlake Manor Parkway, Chesterfield, Missouri 63107

Return Address: Clear Title Group, 1795 Clarkson Road, Suite 310, Chesterfield, Missouri 63017

Note: 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.

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This Instrument Prepared By
 And After Recording Return To:
 Lisa C. Grimes
 Assistant General Counsel
 RGA Reinsurance Company
 1370 Timberlake Manor Parkway
 Chesterfield, Missouri 63017

**MORTGAGE, SECURITY AGREEMENT
 AND FIXTURE FILING
 (ILLINOIS)**

(Loan No. 73100157)

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage") made this 22nd day of May, 2012, between STATE LAKE LLC, an Illinois limited liability company, whose address is 55 East Jackson, Suite 500, Chicago, Illinois 60604 (hereinafter referred to as "Mortgagor") and RGA REINSURANCE COMPANY, a Missouri corporation, having an address 1370 Timberlake Manor Parkway, Chesterfield, Missouri 63107 (hereinafter referred to as "Mortgagee").

WHEREAS, Mortgagor is justly indebted to Mortgagee in the original principal amount of Five Million and No/100 Dollars (\$5,000,000.00) (the "Loan"), in lawful money of the United States, and pursuant to the terms of that certain Promissory Note dated as of the date hereof, Mortgagor has agreed to pay the same, with interest thereon at the rate of 4.5% per annum from date thereon on unpaid principal balance, in monthly installments with final payment being due on June 1, 2022 (the "Note") and by reference, being made a part hereof. The term of the Note shall include all other notes given in substitution, modification, increase, renewal or extension of the original Note, in whole or in part.

WHEREAS, Mortgagee, as a condition precedent to the extension of credit and the making of the Loan has required that Mortgagor provide Mortgagee with security for the repayment of the Loan as well as for the performance, observance and discharge by Mortgagor of various terms, covenants, conditions and agreements made by Mortgagor to, with, in favor of and for the benefit of Mortgagee with respect to the indebtedness evidenced by the Note and as provided in any and all other documents executed by Mortgagor in connection with and as security for the Note (collectively the "Loan Documents").

NOW THEREFORE, as consideration for the Loan, Mortgagor hereby grants, conveys and mortgages to Mortgagee, and its successors and assigns, the following described real estate, known and numbered as 177 North State Street and situated, lying and being in the City of Chicago, County of Cook and State of Illinois, to-wit:

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SEE EXHIBIT "A" ATTACHED HERETO AND
MADE A PART HEREOF FOR LEGAL DESCRIPTION

The street address of the above described property is: 177 North State Street, Chicago, Illinois; and the Permanent Tax Number thereof is 17-10305-0101;

together with all leases, rents, issues, profits, awards, royalties and other revenue thereof and all and singular the tenements, hereditaments and appurtenances to the above-described property belonging, or in anywise appertaining, including any after-acquired title, reversions, franchises, licenses, party walls, rights-of-ways, minerals, oil and gas rights and profits, water, water rights and profits thereof, easements, equipment or fixtures and also together with all right, title and interest of Mortgagor from time to time, in and to any and all buildings and improvements on the above described real estate or which may hereafter be placed thereon or attached thereto, including, but not limited to, any equity which may be acquired by Mortgagor in any such fixtures or equipment as a result of the making of installment payments on account of the purchase of the same, and all the interior improvements and fixtures, movable or immovable of every kind and description in and upon said property or which may hereafter be placed in or upon the same or used in connection therewith and other property now or hereafter owned by Mortgagor, or any successors in title, and attached to or used in connection with the real estate hereinabove described, all of which property, together with any and all replacements thereof, and all similar apparatus, equipment or articles placed in or upon the mortgaged premises, shall be deemed to be fixtures and an accession to the freehold, and a part of the realty as between the parties hereto and all persons claiming by, through or under them, and shall be deemed a portion of the security for the indebtedness herein mentioned and secured by this Mortgage and all of the property hereinbefore mentioned is hereinafter designated as "Real Estate";

AND Mortgagor does hereby irrevocably grant and convey unto Mortgagee a continuing security interest in all of Mortgagor's right, title and interest in and to each of the following, whether now owned or in existence or hereafter acquired or arising: (a) machinery, equipment, fixtures, fittings, appliances, furniture and articles of real, personal or mixed property of every kind and nature whatsoever, including, but not limited to, and to the extent not classified as fixtures for purposes of the definition of Real Estate set forth above, all heating, ventilating, air conditioning, plumbing and lighting systems and equipment, ranges, refrigerators, dishwashers, food and beverage appliances, shades, drapes, mirrors, carpeting, linoleum, tables, chairs, beds, dressers, sofas, sprinkling systems, fire prevention and/or fire-extinguishing apparatus, all electrical and communications systems and equipment, and all cleaning, laundry, lawn and other maintenance systems and equipment; (b) all accounts, contract rights, general intangibles, causes of action, commercial tort claims, payment intangibles, instruments, documents, chattel paper, accounts receivables, supporting obligations, deposits, fees, charges and other payments, income,

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and cash receipts; (c) all substitutes and replacements for, accessories, accessions, attachments, and other additions to, and all raw materials, supplies, work in process, tools, parts, and equipment of any nature and description used or which might be used in connection with any of the foregoing; (d) all products and proceeds of any of the foregoing, including, without limitation, all payments under any insurance policies and any indemnity, warranty or guaranty relating to any of the foregoing; (e) any management agreements, and related agreements and documents, and all general intangibles and other rights arising from or in connection with all such agreements (including any rights of first refusal, options to purchase or similar rights, and any right of first refusal arising under applicable bankruptcy law), and all products and proceeds thereof and additions thereto; and also, (f) all other personal property which Mortgagor may now own or hereinafter acquire, wherever located, used or usable in the operation of or relating to the Real Estate (all of said property being hereafter referred to as the "Personal Property"; all of the Real Estate and all of the Personal Property shall be hereafter referred to collectively as the "Property").

TO HAVE AND TO HOLD the Property, together with all and singular the privileges and appurtenances, tenements, hereditaments, easements, party walls and rights of way thereunto belonging or usually enjoyed with said Property or any part thereof, and the reversions, remainder and remainders, unto Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, free from all right and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, and all right to retain possession of the Property or any part thereof after any default in or breach of any of the covenants, agreements or provisions herein contained, which said rights and benefits Mortgagor hereby expressly releases and waives;

THIS MORTGAGE is made and intended to secure and enforce (a) the payment of all sums that are owed or become due pursuant to the terms of the Note, this Mortgage or any of the other Loan Documents or any other writing executed by Mortgagor relating to the Loan, including scheduled principal payments, scheduled interest payments, default interest, late charges, prepayment premiums, accelerated or matured principal balances, advances (including advances to pay taxes, assessments and insurance premiums on the Property, the costs of repairing, maintaining and preserving the Property, and the cost of completing any improvements on the Property), collection costs, reasonable attorneys' fees and costs in enforcing or protecting the Note, the Mortgage, or any of the other Loan Documents in any probate, bankruptcy or other proceeding, receivership costs, fees and all other financial obligations of Mortgagor incurred in connection with the Loan transaction, including those obligations under agreements executed and delivered by Mortgagor which specifically provide that such obligations are secured by this Mortgage (the "Indebtedness"), provided, however, that this Mortgage shall not secure any Loan Document or any particular person's liabilities or obligations under any Loan Document to the extent that such Loan Document expressly states that it or such particular person's liabilities or obligations are unsecured by this Mortgage; (b) any modifications, extensions or renewals of the

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Note, the Loan Documents or the Indebtedness; and (c) the performance of each and every stipulation, condition, covenant and agreement of the Mortgagor contained in the Loan Documents.

THIS Mortgage also constitutes a security agreement and fixture filing, as these terms are defined in the Uniform Commercial Code (as such Code now or hereafter exists) and in any state(s) in which the Personal Property and/or the Mortgagor is located, and, since some of the property is or is to become fixtures on the Real Estate, this Mortgage shall also be effective as a financing statement filed as a fixture filing with respect to all fixtures included in the Property, executed by Mortgagor (as "debtor") in favor of Mortgagee (as "secured party"); information relating to the security interest created hereby may be obtained from Mortgagee, the secured party hereunder, at the address of Mortgagee set forth above.

FOR THE CONSIDERATION AFORESAID, it is further covenanted and agreed by Mortgagor to and with Mortgagee that:

1. **Taxes.** Mortgagor will, while any of the indebtedness secured hereby remains unpaid, pay, before they become delinquent, all taxes (both general and special), assessments and governmental charges lawfully levied or assessed, or that become a lien, against the Property or any part thereof; will promptly furnish the Mortgagee the receipts, or such other evidence of payment as might be required by Mortgagee, showing such payments; and will allow no payment of any taxes, assessments or governmental charges by a third party with subrogation attaching, nor permit the Property, or any part thereof, to be sold or forfeited for any tax, assessment or governmental charge whatsoever. Any irregularities or defects in the levy or assessment of taxes, assessments, and governmental charges paid by the Mortgagee are hereby expressly waived and receipt by the proper officer shall be conclusive evidence both as to the amount and validity of such payments. Notwithstanding the foregoing, Mortgagor shall have the right, after prior notice to Mortgagee, to contest the amount and validity of any such tax or assessment by appropriate proceedings conducted in good faith and with due diligence and to postpone or defer payment thereof, if and so long as: (i) such proceedings shall operate to suspend the collection of the tax or assessment from the Mortgagor or the Property; and (ii) Mortgagor, prior to the date said tax or assessment would become delinquent, shall have furnished Mortgagee with security satisfactory to Mortgagee.

2. **Insurance.** A. Mortgagor will keep the Property insured against loss or damage by fire against loss or damage by fire, windstorm, lightning, explosion, tornado, acts or consequences of war and other hazards, casualties and contingencies as Mortgagee may from time to time require. All such insurance shall be in forms and in sums (not less than sufficient to avoid any claim on the part of the insurers for co-insurance) satisfactory to Mortgagee, and shall include, but not limited to the following:

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i. "Open Perils," "Special Form," or "Special Perils" property insurance coverage in an amount not less than one hundred percent (100%) of the replacement cost of all insurable elements of the Real Estate and of all tangible Personal Property, with coinsurance waived, or if a coinsurance clause is in effect, with an agreed amount endorsement acceptable to Mortgagee. Coverage shall extend to the Real Estate and to all tangible Personal Property.

ii. If any boiler or other machinery is located on or about the Real Estate, broad form boiler and machinery coverage, including a form of business income coverage.

iii. If the Property is located in a special flood hazard area (an area within the 100-year floodplain) according to the most current flood insurance rate map issued by the Federal Emergency Management Agency and if flood insurance is available, the flood insurance coverage on all insurable elements the Property.

iv. A form of business income coverage in the amount of eighty percent (80%) of one year's business income from the Property.

v. Commercial general liability coverage (which may be in the form of umbrella/excess liability insurance) with a One Million Dollar (\$1,000,000) combined single limit per occurrence and a minimum aggregate limit of Two Million Dollars (\$2,000,000).

vi. Terrorism coverage if such insurance is available at commercially reasonable rates and the subject hazards are commonly insured against at the time by prudent institutional lenders for real properties similar to the Property and located in and around the region in which the Property is located; provided, however, that if the premium for the terrorism coverage is no more than two hundred percent (200%) of the premiums for all other property insurance coverage required hereunder it will be deemed to be commercially reasonable.

vii. Such additional coverages appropriate to the property type and site location as Mortgagee may require. Additional coverages may include earthquake, windstorm, mine subsidence, sinkhole, personal property, supplemental liability, or coverages of other property-specific risks.

B. Each coverage required under this Section shall be primary rather than contributing or secondary to the coverage the Mortgagor may carry for other properties or risks; provided, however, that blanket coverage which otherwise complies with this Section shall be acceptable if (i) the policy includes limits by property location, and (ii) Mortgagee determines, in the exercise of its sole and absolute discretion, that the amount of such coverage is sufficient in light of the other risks and properties insured under the blanket policy. The maximum deductible on each required coverage or policy is One Hundred Thousand Dollars (\$100,000.00).

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C. On all property insurance policies and coverages required under this Section (including coverage against loss of business income), Mortgagee must be named as "first mortgagee" under a standard non-contributing mortgagee clause and the policies shall contain such other endorsements or provisions satisfactory to Mortgagee as required to make loss payable to Mortgagee as its interest may appear. On all liability policies and coverages, Mortgagee must be named as an "additional insured." The Mortgagee shall be referred to verbatim as follows: RGA Reinsurance company, a Missouri corporation, and its successors, assigns, and affiliates; as their interest may appear; c/o HFF, 9 Greenway Plaza, Suite 700, Houston, Texas 77046.

D. Each insurance carrier providing insurance required under this Section must have, independently of its parent's or any reinsurer's rating, a General Policyholder Rating of A, and a Financial Rating of X or better, as reported in the most current issue of Best's Insurance Guide, or as reported by Best on its internet web site. The insurance policies required hereunder shall not include exclusions for mold coverage.

E. All policies must require the insurance carrier to give Mortgagee a minimum of ten (10) days' notice in the event of modification, cancellation or termination for nonpayment of premium and a minimum of thirty (30) days' notice of nonrenewal. The Mortgagor shall report to Mortgagee immediately any facts known to the Mortgagor that may adversely affect the appropriateness or enforceability of any insurance contract, including, without limitation, changes in the ownership or occupancy of the Property, any hazard to the Property and any matters that may give rise to any claim. Prior to expiration of any policy required under this Section, the Mortgagor shall provide either (a) an original or certified copy of the renewed policy, or (b) a "binder," an Acord 28 (real property), Acord 27 (personal property) or Acord 25 (liability) certificate, or another document satisfactory to Mortgagee conferring on Mortgagee the rights and privileges of mortgagee. If the Mortgagor meets the foregoing requirement under clause (b), the Mortgagor shall supply an original or certified copy of the original policy within ninety (90) days. All binders, certificates, documents, and original or certified copies of policies must name the Mortgagor as a named insured, must include the complete and accurate property address and must bear the original signature of the issuing insurance agent.

F. Mortgagor promptly shall give notice by registered mail to Mortgagee of any loss or damage to said Property and shall not adjust or settle such loss without the written consent of Mortgagee; provided, however, that so long as no default exists under the Note or any of the other Loan Documents, Mortgagee shall permit Mortgagor to negotiate, adjust, settle and collect the proceeds of all insurance claims without obtaining the consent of Mortgagee if the amount of the proceeds paid pursuant to such claim is less than \$200,000.00. Should any loss occur to the Property or in the event the improvements on the Property are damaged or destroyed, in whole or in part, by fire or other casualty, the insurance company or companies are hereby directed by the Mortgagor to make payment for such loss to Mortgagee only, and not to the Mortgagor and Mortgagee jointly, if the amount of the insurance proceeds paid with respect to said loss or damage

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are in excess of \$200,000.00. Mortgagee is hereby appointed attorney in fact for the Mortgagor to make proof of loss if Mortgagor fails to do so promptly, and to receive any sums collected under said policies. Following the occurrence of fire or other casualty, Mortgagor, regardless of whether insurance proceeds are payable under the policies or, if paid, are made available to Mortgagor by Mortgagee, shall promptly proceed with the repair, alteration, restoration, replacement or rebuilding of the improvements as near as possible to their value, utility, condition and character prior to such damage or destruction and such repairs, alterations, restoration, replacement and rebuilding shall be satisfactory to Mortgagee. Except as expressly set forth herein, any insurance proceeds paid to Mortgagor or Mortgagee as result of any loss or damage to the Property shall, at the option of Mortgagee, applied as payment on the Indebtedness hereby secured, be used for the restoration or repair of the Property, or be released to Mortgagor, as Mortgagee may elect in its sole and absolute discretion. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. In the event of the foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policy then in force shall pass to the purchaser at the foreclosure sale, and Mortgagee is hereby appointed attorney in fact for the Mortgagor to assign and transfer said policies. Mortgagee shall not be responsible for any insurance upon the said Property or the collection of any insurance money or for the insolvency of any insurer.

G. Unless the Mortgagor provides Mortgagee with evidence of insurance coverage as required by this Mortgage, Mortgagee may purchase, at Mortgagor's expense, insurance to protect its interest. This insurance may, but need not, also protect the Mortgagor's interest. If the improvements become damaged, the coverage Mortgagee purchases may not pay any claim the Mortgagor makes or any claim made against the Mortgagor. The Mortgagor may later cancel this coverage by providing Mortgagee with evidence that it has obtained property coverage elsewhere. The cost of the insurance purchased by Mortgagee may be added to the Indebtedness and thereafter the Default Rate shall apply to this added amount. The effective date of coverage may be the date any prior coverage lapsed or the date Mortgagor failed to provide proof of coverage. The coverage Mortgagee obtains may be considerably more expensive than insurance the Mortgagor might have obtained on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law. It is further agreed that upon foreclosure sale the title to all insurance policies held by or for Mortgagee shall pass to the foreclosure purchaser, and Mortgagee is empowered in the name of Mortgagor to execute any instrument, which may be necessary to vest the title to such insurance in such foreclosure purchaser.

H. Mortgagor hereby assigns to Mortgagee all monies recoverable under each insurance policy required under this Section, provided, however, Mortgagee agrees that in the event of loss or damage to the Property or the improvements located thereon, the amount collected under any policy of insurance shall be made available for the restoration or repair of the Property under

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the following conditions: (a) such restoration or repair is completed in conformance with the provisions of any lease affected by the casualty (the "Lease") and provided that such Lease remains in full force and effect; (b) such restoration or repair commences within 90 days from the event necessitating the restoration or repair, or such earlier time required by said Lease, and is completed within the time required by said Lease, but no later than one (1) year from the date of the casualty and at least one (1) year prior to the Maturity Date (as such term is defined in the Note); (c) no default, which is continuing beyond the expiration of any notice and cure period, exists under the Note or any of the Loan Documents; (d) the insurance proceeds shall be held by Mortgagee and disbursed in accordance with such safeguards and funds disbursement arrangements as are reasonably satisfactory to Mortgagee, which may include, but not be limited to a retainage of ten percent (10%) and shall provide for the disbursement of required contractor progress payments; (e) Mortgagee is provided with reasonable assurance that the restoration will be completed and that no liens of mechanics and/or materialmen will be allowed to be filed against the Property for any such labor or materials; (f) if Mortgagee determines, in its sole discretion that the amount of insurance proceeds are not sufficient to pay the estimated cost of repair or restoration of the Property, Mortgagor shall deposit with Mortgagee sufficient funds as necessary to make up the deficiency between the amount of the insurance proceeds and the cost of the repair or restoration; and (g) the laws, ordinances and regulations applicable with respect to the Property permit the improvements located on the Property to be rebuilt to substantially identical size, condition and use as existed prior to the casualty and allow the improvement to occupy the same area as existed prior to the casualty.

3. **Tax and Insurance Escrows.** For the purpose of providing regularly for the prompt payment of all taxes, assessments and governmental charges levied or assessed against the Property and insurance premiums that will become due and payable to renew the insurance on the Property as may be required by Mortgagee under this Mortgage, Mortgagor will deposit with the Mortgagee on the dates installments of principal and interest are payable, an amount equal to the taxes, assessments, governmental charges and insurance premiums next due (as estimated by Mortgagee), less amounts already deposited therefor, divided by the number of months to elapse prior to the date when such taxes, assessments, governmental charges and insurance premiums will become due and payable. The monies thus deposited with the Mortgagee are to be held without interest and provided no default then exists beyond any applicable notice and cure period, such deposits shall be applied by Mortgagee to the payment of said taxes, assessments, governmental charges and insurance premiums as they become due and payable. If at any time Mortgagee deems the amounts deposited insufficient to pay said taxes, assessments, governmental charges and insurance premiums, Mortgagor will deposit with Mortgagee any amount necessary to make up the deficiency. Notwithstanding the foregoing, Mortgagee shall waive the requirement that Mortgagor escrow monthly deposits for taxes, assessments, governmental charges, or insurance premiums, but only so long as: (i) no default shall exist under the Note, this Mortgage or any of the other Loan Documents; (ii) the taxes and assessments

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upon the Real Estate are to be kept paid as called for under Section 1 of this Mortgage and the Mortgagee is to be promptly provided with receipts evidencing such payment; and (iii) the Property is to be kept insured as called for under Section 2 of this Mortgage and Mortgagee is furnished with rights-conferring evidence establishing such insurance coverage. Mortgagee reserves the right to require such monthly deposits as provided above in this Mortgage in the event that Mortgagor fails to satisfy any of the foregoing conditions (i), (ii), and/or (iii).

4. Maintenance and Inspections. Mortgagor will maintain the Property free from waste or nuisance of any kind and in good condition, and make all repairs, replacements, improvements and additions which may be necessary to preserve and maintain the Property and the value thereof, will not alter, destroy or remove any of the buildings, improvements or other property covered by this Mortgage, or permit the same to be altered, destroyed or removed, or used for any purpose other than that for which it is now used, without first obtaining the written consent of Mortgagee. Mortgagor will do any and all acts all in a timely and proper manner, requested by Mortgagee to protect and preserve the security interests granted hereunder including, without limitation, the authentication, execution, communication and delivery of one or more financing statements and continuation statements pursuant to the Uniform Commercial Code of the State(s) where the Property and/or the Mortgagor is located (as such Code now or hereafter exists), in a form satisfactory to Mortgagee, and the payment of the cost of filing said statements in all public offices requested by Mortgagee and any and all acts as shall hereafter be reasonably requested by Mortgagee to effectuate the intent hereof and to render all of the Property available for the security and satisfaction of the Indebtedness and to enable Mortgagee to sell and/or convey the Property pursuant to the terms hereof. Mortgagor expressly authorizes Mortgagee to file and/or record one or more financing statements and continuation statements in jurisdictions deemed appropriate by Mortgagee in its reasonable judgment in order to create, perfect and preserve the security interest of Mortgagee in the Personal Property and fixtures. Mortgagor will permit Mortgagee, its agents or representatives, to inspect the Property at any reasonable time, and will comply with any requirements made by Mortgagee with respect to the Property or the management thereof.

5. No Liens. Mortgagor will complete in a good, workmanlike manner any building which is being or may be constructed or repaired thereon; will pay when due all claims for labor performed and material furnished, and will not permit any lien of mechanics or materialmen to attach to the Property. No lien provided for by the Statutes of the State of Illinois in favor of any one furnishing labor or materials in the erection or repair of any building and improvements, now or hereafter, on the Property shall attach to said Property, building or improvements, except as subject and subordinate to the lien of this Mortgage, and any one dealing with said Property after the recording of this Mortgage is hereby charged with notice of and consent to this stipulation, and with a waiver of any lien except as subject and subordinate hereto. Mortgagor will promptly pay all charges or debts and interest thereon which constitute charges or liens of equal rank with

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or have any preference or priority over the lien of this Mortgage and all costs, fees and expenses, including cost of evidence of title, court costs, reasonable attorney's fees (not exceeding amount permitted by law) incurred by Mortgagee in enforcing the provisions of this Mortgage, or in defending or intervening in any action affecting or purporting to affect any of the Property, or the priority or validity of this Mortgage, whether brought by or against Mortgagor or Mortgagee, and Mortgagor shall settle or cause to be removed any claim and appear in and defend any action affecting or purporting to affect the security of this Mortgage or the interests of Mortgagee hereunder. Notwithstanding the foregoing, Mortgagor shall have the right, after prior notice to Mortgagee, to contest the amount and validity of any such lien by appropriate proceedings conducted in good faith and with due diligence and to postpone or defer payment thereof, if and so long as: (i) such proceedings shall operate to suspend the collection of the contested amount from the Mortgagor or the Property; and (ii) Mortgagor shall have furnished Mortgagee with security satisfactory to Mortgagee.

6. **Compliance with Law and Agreements.** Mortgagor will keep and comply with all laws, ordinances, regulations, rules, orders and directions of any legislative, executive, administrative or judicial body governing the Property or its use. Mortgagor shall pay promptly and keep, observe, perform and comply with all covenants, terms and provisions of operating agreements, leases, instruments and documents relating to the Property.

7. **Repayment of Advances and Note.** Mortgagor will repay to Mortgagee, upon demand, in lawful money, at such place as Mortgagee in writing may direct: (i) all sums due pursuant to the Note, payable at the times and under the terms therein provided; and (ii) all sums advanced or expended by Mortgagee pursuant to this Mortgage or the other Loan Documents to protect or preserve the Property covered by this Mortgage, or to protect or preserve the lien of this Mortgage or the priority thereof, or to enforce its rights hereunder (except attorneys' fees), with interest thereon from the date of the advance until repaid at the Default Rate (as defined in the Note), which sums shall also be secured hereby and shall be repayable immediately.

8. **Claims against Property.** Mortgagor promptly will pay and settle or cause to be removed all claims against any of the Property which affect the rights of Mortgagee hereunder and will appear in and defend any action or proceeding purporting to affect the lien of this Mortgage or the rights or powers of Mortgagee hereunder, and Mortgagor will pay all expenses incident thereto.

9. **Books of Account.** Mortgagor will maintain complete books of account and records pertaining to the Property; will allow Mortgagee to inspect at any reasonable time all such books and records; and will furnish promptly and fully at any time, upon written request as Mortgagee may require, copies of Mortgagor's books of account with respect to said Property and

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any and all additional information concerning said Property and Mortgagor's business, past operations and prospects.

10. **Condemnation.** All judgments, decrees and awards for injury or damage to the Property and all awards pursuant to proceedings for condemnation thereof, or any part thereof, as rent or otherwise and whether for a temporary taking or otherwise, are hereby assigned in their entirety to Mortgagee who may apply the same to all reasonable charges in connection with the collection thereof and to the indebtedness secured hereby in such manner as it may elect, and Mortgagee is hereby authorized in the name of Mortgagor to execute and deliver valid acquittances for and to appeal from, any such award, judgment or decree. Settlement shall be made pursuant to any proceedings for condemnation only with the consent of Mortgagee. Provided, however, Mortgagee shall not be held responsible for any failure to collect awards.

11. **Indulgences or Forbearances.** Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of the any Indebtedness secured hereby or for the performance of any obligation contained herein or in the other Loan Documents, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing or the priority of the lien of this Mortgage, Mortgagee may, at any time and from time to time, either before or after the Maturity Date (as defined in the Note), and without notice or consent: (i) release any person liable for payment of all or any part of the indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Mortgagee may have; (iv) accept additional security of any kind; and (v) release and/or terminate or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the Property.

12. **Cumulative Remedies; No Waiver.** Every right and remedy provided in this Mortgage shall be cumulative of every other right or remedy of Mortgagee, whether herein or by law conferred, and may be enforced concurrently therewith; and no acceptance of the performance of any obligations as to which Mortgagor shall be in default or failure to exercise any rights or remedy upon a particular default or breach shall be construed as a waiver of the same or any other default then, theretofore or thereafter existing.

13. **Assignment of Leases and Rents.** Mortgagor does hereby assign, transfer and set over unto the Mortgagee all leases (whether written or oral), rents, revenues and income on and from the Property covered by this Mortgage. This assignment is intended by Mortgagor to create, and shall be construed to create, a present and absolute assignment to Mortgagee subject only to the terms and provisions hereof, and not as an assignment as security for the performance of the obligations evidenced by the Note or any instrument given as security for said Note, or any

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other indebtedness of Mortgagor. Mortgagor shall have a revocable license to collect and receive the rents (but not more than one month prior to accrual), income and profits arising under said leases or from the Property and to retain, use and enjoy said rents, income and profits. Such license may be revoked by Mortgagee, without notice to Mortgagor, upon the occurrence of a default by the Mortgagor in payment of the principal sum, interest and indebtedness secured hereby and by said Note or in the performance of any obligation, covenants or agreement herein or in said Note or other documents executed in connection therewith or in said leases contained on the part of the Mortgagor to be performed, which has continued beyond any applicable notice and cure period. Unless and until the license is so revoked, Mortgagor shall hold all rents, income and profits in trust for Mortgagee and agrees to apply said rents, income and profits to the payment of principal, interest and other amounts due and payable to Mortgagee under the Loan Documents at the time of collection of the rents, income and profits and to the payment of taxes, assessments, water rates, sewer rents, lien claims, and to operation and maintenance charges relating to the Property which are due and payable at the time of collection of the rents, income and profits, except to the extent that funds for such items were placed and remain in escrow with Mortgagee, before using the rents, income or profits for any other purpose. It being understood and agreed by Mortgagee that Mortgagor shall have the right to use and enjoy the rents, income and profits for any purpose, including distributions to members or partners of Mortgagor, provided Mortgagor has complied with the payment obligations set forth in the foregoing sentence. Upon default in the payment of any installment of principal or interest of the Note secured hereby or upon default in the performance of any of the conditions, covenants or agreements herein contained or in any other instrument executed in connection with Note beyond any applicable notice and cure period, the Mortgagee, itself, or through its duly authorized agent, shall be entitled to immediate possession of the Property and shall have the right to control, manage and operate the same and collect the rents and revenue therefrom, and rent, lease or let all or any part of the Property to any party or parties, at such rental and upon such terms as Mortgagee shall, in its discretion, determine, and after the deduction of the expenses incidental thereto including reasonable attorney's fees, shall apply the rents and revenue derived from the Property to the payment of any indebtedness then due and secured hereby or incurred hereunder, in such manner as Mortgagee may elect, and after all causes of default shall have been remedied and after making such provisions for the next maturing obligations as the Mortgagee shall deem advisable, said Property and any surplus remaining in the hands of Mortgagee shall be turned over to the Mortgagor or to the party entitled thereto. Mortgagor waives any rights of set-off against any person in possession of any part of the Property and agrees that it will not assign any of the rents or profits from the Property except with the consent of Mortgagee. This assignment of leases, rents, revenues and income shall be irrevocable and in addition to other remedies herein provided for in the event of default, but the Mortgagee shall be under no liability by reason of its failure or inability to collect any rents, revenues or income herein assigned. This assignment shall apply to all rents, revenues and income hereinafter accruing from present leases and tenants and from all leases and rentals hereinafter made by the present or any future owners

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of the Property. The power of entry and the powers incident thereto as in this paragraph provided for may be exercised as often as occasion therefor shall arise, and their exercise shall not suspend or modify any other right or remedy hereunder. Mortgagor further agrees that upon or after default under this Mortgage or the Note secured hereby, or in any other instrument executed in connection with the Note, which continues beyond any applicable notice and cure period, that Mortgagee may cause this assignment to be enforced, without regard to the adequacy of the security or the solvency of the Mortgagor, by any one or more of the following methods or by any remedy provided in this Mortgage: (1) Collecting such monies directly from the parties obligated for payment, and/or (2) Injunction. Mortgagee's non-enforcement of this assignment shall not be deemed a waiver of default.

14. **Representations and Warranties.** Mortgagor hereby represents and warrants to Mortgagee that:

a. Mortgagor has good and marketable title to the Real Estate in fee simple absolute, subject only to those exceptions specifically approved by Mortgagee as shown on the mortgagee's policy of title insurance for the Loan (the "Permitted Exceptions").

b. This Mortgage is a valid and enforceable first lien and security interest in the Property, subject only to the Permitted Exceptions specifically approved by Mortgagee on said title insurance policy.

c. Mortgagor, for itself and its successors and assigns, hereby agrees to warrant and forever defend, all and singular, all of the Property and property interests granted and conveyed pursuant to this Mortgage, against every person whatsoever lawfully claiming, or to claim, the same or any part thereof.

The representations, warranties and covenants above shall survive foreclosure of this Mortgage, and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property pursuant to any such foreclosure or deed in lieu of foreclosure.

15. **Additional Representations and Warranties.** Mortgagor further represents, warrants and covenants, as and when applicable, to Mortgagee, now and for the full term of the Note, as follows:

a. There is no pending or, to the best of Mortgagor's knowledge, threatened, litigation, action, proceeding or investigation, including, without limitation, any condemnation proceeding, against Mortgagor, or any person(s) or entities comprising Mortgagor, or the Property before any court, governmental or quasi-governmental, arbitrator or other authority.

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b. Access to and egress from the Property are available and provided by public streets, and Mortgagor has no knowledge of any federal, state, county, municipal or other governmental plans to change the highway or road system adjacent to the Property or to restrict or change access from any such highway or road to the Property.

c. Mortgagor is duly organized, validly existing and in good standing in its state of origination, as applicable, and is duly authorized to transact business in and is in good standing in the State of Illinois.

d. The execution, delivery and performance by Mortgagor of this Mortgage, the Note, and any documents executed in connection with such Note are within Mortgagor's power and authority and have been duly authorized by all necessary action.

e. Adequate utilities services exist for the full and beneficial development, ownership, use, occupancy, operation and maintenance of the Property, and Mortgagor is not in default of any obligation to any utility service provider.

f. The Property is appropriately zoned to permit the development, use and operation of the Property as a non-conforming use, and the Property complies in all respects with all requirements, conditions, restrictions, zoning ordinances and regulations applicable to the Property.

g. Mortgagor is, or, to the extent this Mortgage states that the Personal Property is to be acquired after this date hereof, will be, the absolute owner and in possession of the Personal Property, such Personal Property is free from any adverse liens, encumbrances or security interest, and this Mortgage will remain a first lien upon all of the Personal Property, subject only to the Permitted Exceptions.

h. Mortgagor and the Property is and shall remain under the "Legal Control" of Gerald L. Nudo and Laurence H. Weiner and the Property shall be managed at all times by the Mortgagor, Marc Realty LLC or by a financially sound, professional property management company, experienced in managing properties similar in type and quality to the Property acceptable to Mortgagee. As used herein "Legal Control" means the power, either directly or indirectly, to exercise the authority of the Mortgagor, both as an entity and as owner of the Property, either as the majority shareholder of the common stock of a corporation, as the sole general partner of a limited partnership, as the managing general partner of a general partnership, or as the manager or managing member of a limited liability company, provided the person or entity exercising such authority cannot be divested of such authority, except for cause.

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i. The Property shall be used for commercial rather than residential, personal, family, household or agricultural purposes and shall not become homestead property of the Mortgagor or any other person.

j. The Mortgagor shall operate and maintain the Property independently from other land and improvements not included within or located on the Real Estate. In fulfilling this covenant, the Mortgagor shall neither take any action which would make it necessary to own or control any property other than the Property in order to meet the obligations of the landlord under any lease of the Real Estate, or in order to comply with any applicable laws, regulations or ordinances, nor take any action which would cause any land or improvements other than the Real Estate and the improvements located thereon to rely upon the Real Estate or said improvements for those purposes.

k. The Mortgagor shall perform its obligations as landlord under any leases affecting the Property and shall neither take any action, nor fail to take any action, if the action or failure would be inconsistent with the commercially reasonable management of the Property for the purpose of enhancing its long-term performance and value.

l. In the event of a default under any of the Loan Documents which continues beyond the expiration of any applicable notice and cure period, Mortgagor shall not pay any dividend or make any partnership, trust or other distribution, and shall not make any payment or transfer any property in order to purchase, redeem or retire any interest in its beneficial interests or ownership.

m. All fees and assessments due and payable pursuant to all declarations, covenants, conditions, restrictions and easements of record affecting the Property (the "Record Documents") are, as of the date hereof, paid in full and all actions required of Mortgagor pursuant to any such Record Documents have been performed by Mortgagor as of the date hereof (i.e., there are no outstanding duties or obligations under any such Record Documents requiring performance by Mortgagor). Mortgagor shall pay all future fees and assessments required by such Record Documents (or cause all such future fees and assessments to be paid) prior to delinquency and shall perform all obligations of Mortgagor (or cause all obligations to be performed) as and when required pursuant to the Record Documents.

16. **Separateness.** A. Mortgagor by execution of this Mortgage represents, warrants and covenants that it (i) has been and shall continue to be organized solely for the limited purpose of acquiring, owning, improving, leasing, managing, operating, holding for investment and selling or otherwise disposing of the Property and doing only those things necessary in connection therewith, (ii) shall not engage in any business other than the ownership, operation and maintenance of the Property, and activities incidental thereto, (iii) shall not own or

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acquire any real property other than the real estate included in the Property or any personal (tangible or intangible) property other than the Personal Property included in the Property or in furtherance of the purposes of Mortgagor as stated herein, (iv) shall not merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Mortgagee's consent; (v) shall not amend or recommend the amendment of any formation or organizational document of Mortgagor unless Mortgagee consents to such amendment; (vi) shall not fail to preserve its existence as an entity duly organized, validly existing and in good standing (if required) under the applicable laws of the jurisdiction of its organization or formation; (vii) shall not terminate or fail to comply with the provisions of its organizational documents; and (v) shall not incur, create, or assume any indebtedness or liabilities, secured or unsecured, direct or contingent, other than (a) the Loan, and (b) unsecured indebtedness that represents trade payables or accrued expenses occurring in the normal course of business of owning and operating the Property that is not evidenced by a promissory note and is due and payable within thirty (30) days after the date incurred and which in no event exceeds two percent (2%) of the original principal amount of the Note.

B. Mortgagor by execution of this Mortgage represents, warrants, and covenants that it has not taken and shall not take any "Bankruptcy Action", which shall include, without limitation, (i) taking any action that might cause Mortgagor to become insolvent; (ii) commencing any case, proceeding or other action on behalf of Mortgagor or under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors; (iii) instituting proceedings to have Mortgagor adjudicated as bankrupt or insolvent; (iv) consenting to the institution of bankruptcy or insolvency proceedings against Mortgagor; (v) filing a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of Mortgagor of its debts under any federal or state law relating to bankruptcy; (vi) seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Mortgagor or a substantial portion of its properties; (vii) admitting in writing Mortgagor's inability to pay debts generally as they become due; (viii) making any assignment for the benefit of Mortgagor's creditors; or (ix) taking any action in furtherance of the foregoing.

C. Except as otherwise expressly required by any instrument evidencing or securing the Loan, Mortgagor by execution of this Mortgage further represents, warrants, and covenants that it has not and shall not: (i) commingle its assets with the assets of any of its members, general partners, affiliates, principals or of any other person or entity; (ii) fail to maintain its records, books of account and bank accounts separate and apart from those of the members, partners, principals and affiliates of Mortgagor, the affiliates of a member, partner or principal of Mortgagor, and any other person or entity; (iii) enter into any contract or agreement with any member, general partner, principal or affiliate of Mortgagor, or any member, general partner, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and

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substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or affiliate of Mortgagor, or any member, general partner, principal or affiliate thereof; (iv) fail to correct any known misunderstandings regarding the separate identity of Mortgagor; (v) hold itself out to be responsible for the debts of another person; (vi) make any loans or advances to any third party, including any member, general partner, affiliate of Mortgagor, or any member, general partner, principal or affiliate thereof; (vii) fail to file its own tax returns; (viii) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (a) to mislead others as to the identity with which such other party is transacting business, or (b) to suggest that Mortgagor is responsible for the debts of any third party (including any member, general partner, principal or affiliate of Mortgagor, or any member, general partner, principal or affiliate thereof); (ix) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; (x) share any common logo with or hold itself out as or be considered as a department or division of (a) any general partner, principal, member or affiliate of Mortgagor, or (b) any affiliate of a general partner, principal or member of Mortgagor; (xi) fail to maintain its bank accounts, books, records and financial statements in accordance with generally accepted accounting principles, keep such bank accounts, books, records and financial statements separate from those of any other person or entity, and not permit the listing of its assets on the financial statement of any other person or entity; and (xii) fail to observe the single purpose entity and separateness covenants and requirements set forth herein.

D. Mortgagor by execution of this Mortgage acknowledges and agrees with Mortgagee that Mortgagee would be irreparably damaged if any of the covenants of this Section 16 are breached or not performed in accordance with their specific terms and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which Mortgagee may be entitled, at law or in equity, Mortgagee shall be entitled to injunctive relief to prevent or remedy breaches of the provisions of this Section 16 and specifically to enforce the terms and provisions of this Section 16 in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction thereof.

17. **Default.** A. A default, for which no notice and cure period shall be given, shall exist hereunder upon the occurrence of any of the following events:

i. The Mortgagor's failure to pay, or to cause to be paid, (a) any regular monthly payment of principal and interest under the Note, together with any required monthly escrow payment, on or before the tenth (10th) day of the month in which it is due, and (b) all amounts due and owing under the Note and other Loan Documents on the Maturity Date (as defined in the Note);

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ii. The Mortgagor's failure to pay, or to cause to be paid, the Indebtedness due under the Note upon maturity as a result of acceleration under Section 18(i);

iii. The Mortgagor's failure to pay, or to cause to be paid, within five (5) business days of Mortgagee's demand, any other amount required under the Note, this Mortgage or any of the other Loan Documents;

iv. Mortgagee's discovery that any representation made by the Mortgagor in any Loan Document was materially untrue or misleading when made, if the misrepresentation either was intentional or is not capable of being cured as described in Subsection 17.B below;

v. The occurrence of any sale, conveyance, transfer or vesting in violation of the provisions of Section 22 hereof;

vi. Mortgagor or any party liable for the payment of the Indebtedness, or any part thereof, files a voluntary petition in bankruptcy, makes an assignment for the benefit of any creditor, or is declared bankrupt or insolvent, or if a creditor's or debtor's petition affecting said Property, filed pursuant to the provisions of the Bankruptcy Act, as amended, is approved, or if the Property, or any part thereof, is placed under the control or in the custody of any court, or if Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Property or the title thereto or the interest of Mortgagee under this Mortgage;

vii. The existence of any default hereunder or under any of the Loan Documents which continues beyond the expiration of the applicable notice and cure period, if any;

viii. The failure of Mortgagor to fully protect, insure, preserve and cause continued performance and fulfillment of the terms, covenants or provisions in the lease(s) in effect with respect to the Property required to be performed or fulfilled by the landlord under said lease, which breach, default or failure continues beyond the applicable notice and cure period, if any, under the relevant lease.

B. Except as expressly set forth in Section 17.A above or elsewhere in the Loan Documents, a default shall exist hereunder or under the Loan Documents, in the event Mortgagor should fail or refuse to do any act which Mortgagor is obligated to make or do hereunder or under the terms of the other Loan Documents, at the time and in the manner herein provided, or in the event of any violation of the terms or provisions of any of the Loan Documents, and such failure, refusal or violation continues for more than thirty (30) days after Mortgagee provides Mortgagor written notice thereof (or, if such default is of such a nature that it cannot be cured with due

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diligence within thirty (30) days, Mortgagor shall fail or refuse to commence such cure within said thirty (30) day period and thereafter diligently in good faith pursue the same to completion. During the cure period, the Mortgagor has the obligation to provide on a monthly basis satisfactory documentation of its effort to cure, and, upon completion, evidence that the cure has been achieved. All notice and cure periods provided in this Mortgage shall run concurrently with any notice or cure periods provided by law.

Notwithstanding anything to the contrary in this Mortgage, Mortgagee shall have no obligation to provide Mortgagor written notice of any failure or refusal by Mortgagor to do any act, which he is obligated hereunder to make or do, if Mortgagor is in default for substantially the same non-monetary default more than twice within any twelve (12) month period; in such event, solely at Mortgagee's election, and without further notice, Mortgagor shall not have any right to cure such repeated non-monetary default during said twelve (12) month period, and Mortgagee shall have all rights and remedies as provided herein.

18. **Remedies.** Mortgagor covenants and agrees that in the event of a default under the terms of this Mortgage or under any of the other Loan Documents, which default continues beyond any applicable notice and cure period, Mortgagee may, at Mortgagee's option, without necessity of notice or demand upon Mortgagor, and without releasing Mortgagor from any obligation hereunder, pursue all rights and remedies available provided herein, or at law or in equity, including, without limitation, the following:

i. Declare the unpaid principal balance of the Note, together with all accrued interest on thereon, all costs of collection (including reasonable attorneys' fees and expenses) and all other charges due and payable by the Mortgagor under the Note or any other Loan Document, to be immediately due and payable, provided, however, if the default has arisen from a failure by the Mortgagor to make a regular monthly payment of principal and interest, Mortgagee shall not accelerate the unpaid principal balance due under the Note unless Mortgagee shall have given the Mortgagor a cure period of at least three (3) business days following notice of its intent to do so. Except as expressly described in this subsection, no notice of acceleration shall be required in order for Mortgagee to exercise its option to accelerate the Indebtedness in the event of a default;

ii. Enter upon the Property or any other location where property mortgaged hereunder is located to inspect, repair, protect or care for the property, and perform any such defaulted covenant or agreement to such extent as Mortgagee shall determine and do and perform such other acts with respect to the Property as Mortgagee shall deem necessary and advance such sums as Mortgagee shall deem advisable for any of the aforesaid purposes, and all monies so advanced by Mortgagee (except attorneys' fees), with interest thereon from date advanced until repaid at the Default Rate, shall be secured hereby, and shall be repaid promptly upon demand,

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but nothing herein contained shall be construed as requiring Mortgagee to advance money or to take any affirmative action for any of the aforesaid purposes;

iii. Pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which adversely affects the Property covered by this Mortgage or the lien or validity of this Mortgage;

iv. Foreclose upon this Mortgage with all rights and remedies afforded by the laws of the State of Illinois and Mortgagor shall pay all costs, charges and expenses thereof, including a reasonable attorney's fee. Mortgagee shall be subrogated to all right, title, lien, or equity of all persons to whom it may have paid money in settlement of liens, charges, or in acquisition of title of or for its benefit hereunder, or for the benefit and account of Mortgagor at the time of making the Loan, or subsequently under any of the provisions herein.

v. Enter upon and take possession of the Property or any part thereof, to perform any acts Mortgagee deems necessary or proper to conserve the security and to collect and receive all rents, issues and profits thereof, including those past due as well as those accruing thereafter, and as a matter of strict right, upon ex parte application, if appropriate, and without notice to Mortgagor or any party claiming under him, and without Mortgagee giving bond (such notice and bond being hereby expressly waived), and also without regard to the value of the Property, to the use or occupancy of the Property, or to the solvency or insolvency of any person liable for any of the Indebtedness, or other grounds for extraordinary relief, have a receiver appointed for the benefit of Mortgagee, with power to take immediate possession of the Property, manage, rent and collect the rents, issues and profits thereof and, and apply the same as the court may direct, including toward the payment of any Indebtedness then due and secured hereby, and the costs, taxes, insurance or other items necessary for the protection and preservation of the Property, and the expenses of such receivership (including receiver's fees, counsel fees, costs and agent's compensation), with the receiver having all the rights and powers permitted under the laws of Illinois. The right to enter and take possession of the Property, to manage and operate the same, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such rents, issues and profits actually received by Mortgagee.

vi. Exercise the remedies of a secured party under the Uniform Commercial Code of the State(s) in which the Personal Property or the Mortgagor is located, as applicable (as such Code now or hereafter exists and regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted), take possession of the Personal Property and enter the Property on which the Personal Property or any part thereof may be situated and remove the same therefrom, the right to resell the Personal Property at any place Mortgagee elects, the

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rights to require Mortgagor to make the Personal Property available to Mortgagee at a place designated by Mortgagee and reasonably convenient to both parties, and without removal, the right to render the Personal Property unusable and to dispose of the Personal Property on the Real Estate; provided Mortgagee shall send Mortgagor at least five days' prior written notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or any other intended disposition is to be made, by United States mail, postage prepaid, to the address set forth above, and Mortgagee may bid and purchase the Personal Property at public or private sale.

vii. Commence, appear in or defend any action or proceeding affecting or purporting to affect the Property covered by this Mortgage, or the lien or validity of this Mortgage, whether brought by or against Mortgagor or Mortgagee and Mortgagor will pay, in addition to costs and disbursements allowed by law, the reasonable costs of bringing, intervening in or defending any such action, including reasonable attorneys' fees, all of which shall be added to the Indebtedness secured hereby.

No right or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right or remedy but every right and remedy herein provided shall be cumulative, shall be in addition to every other right or remedy given hereunder or now or hereafter existing at law or in equity, and may be exercised concurrently with any such right or remedy or independently thereof.

19. **Foreclosure Expenses.** In case of foreclosure of this Mortgage in any court of law or equity whether or not any order or decree shall have been entered therein, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, guarantee policies, Torrens Certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the Default Rate, when paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which Mortgagee shall be a party either as plaintiff, claimant or defendant, by reason of this Mortgage or the Indebtedness; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any

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threatened suit or proceeding which might affect the Property or the security hereof, whether or not actually commenced.

20. **Change in Law.** In the event of the passage, after the date of this Mortgage, of any law of the State of Illinois, deducting from the value of real estate for the purpose of taxation, any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust or debt secured thereby, for state or local purposes, or the manner of the collection of any such taxes, so as to affect the interest of the Mortgagee hereunder, or imposing upon Mortgagee the payment of the whole or any part thereof, the whole of the principal sum secured by this Mortgage together with interest accrued thereon, shall at the option of Mortgagee, after ninety (90) days' notice to the Mortgagor or the then record owner of said Property, become immediately due and payable, and Mortgagor shall, in any such event, pay such taxes, liens or impositions. In the event that the Indebtedness secured hereby becomes due as a result of Mortgagee's exercise of the option granted pursuant to this Section 20, no prepayment premium shall be charged in connection with the repayment of the Loan.

21. **Waivers by Mortgagor.** Mortgagor hereby waives, to the extent permitted by law, the benefits of all homestead, valuation, appraisal, exemption, stay, redemption and moratorium laws, now in force or which may hereafter become laws and all rights of marshalling in the event of or in connection with the sale hereunder of the Property or any part thereof or any interest therein. Mortgagor, on behalf of itself and each and every person, except its decree or judgment creditors hereafter acquiring any interest in or title to the Property, hereby waives any and all rights of reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage. Mortgagor acknowledges that the Real Estate does not constitute agricultural real estate or residential real estate as defined in 735 ILC 5/15-1201 and 5/15-1219. Mortgagor irrevocably and unconditionally further WAIVES and RELEASES, to the maximum extent permitted by law, any present or future rights or benefits (i) of reinstatement or rights of redemption pursuant to 735 ILC 5/15-1601(b), (ii) that may exempt the Property from any civil process, (iii) to appraisal or valuation of the Property, (iv) to extension of time for payment, (e) that may subject Mortgagee's exercise of its remedies to the administration of any decedent's estate or to any partition or liquidation action, (v) to any homestead exemption, dower, curtesy, exemption, stay and moratorium laws, now in force or which may hereafter become laws in the State of Illinois or as provided by the Constitution and laws of the United States, (vi) to notice of acceleration or notice of intent to accelerate (other than as expressly stated herein), and (vii) that in any way would delay or defeat the right of Mortgagee to cause the sale of the Real Estate for the purpose of satisfying the Indebtedness. Mortgagor agrees that the price paid at a lawful foreclosure sale, whether by Mortgagee or by a third party, and whether paid through cancellation of all or a portion of the Indebtedness or in cash, shall conclusively establish the value of the Real Estate. The foregoing waivers shall apply to and bind any party assuming the obligations of Mortgagor under this Mortgage.

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22. **Due-on-Sale.** Upon the voluntary or involuntary sale, exchange, conveyance, encumbrance, transfer, alienation, assignment, removal or other disposition of (i) the Property, or any part thereof, or any interest therein, or (ii) all or part of the legal or beneficial ownership interest (whether direct or indirect) in Mortgagor, or if the title to the Property shall become vested in any party other than Mortgagor in any manner whatsoever, the Note and obligations secured by this Mortgage, irrespective of the maturity dates expressed therein, at the option of Mortgagee, and without demand or notice, shall immediately become due and payable, and the Mortgagee shall be entitled to any remedies available to it under the Note, this Mortgage, or any of the other Loan Documents, at law or in equity.

23. **Permitted Transfers.** Notwithstanding anything to the contrary set forth herein, Mortgagor shall have the right, on two (2) occasions during the term of the Note, to sell or transfer the Property. Mortgagee agrees to approve the transfer upon the satisfaction of the following conditions:

i. At the time of such transfer Mortgagor is not in default under this Mortgage, the Note or any other Loan Document beyond any applicable notice and cure period;

ii. Mortgagee shall receive a written request for its approval of the transfer at least ninety (90) days prior to the proposed transfer. The request shall specify the identity of the proposed transferee, the purchase price and the other terms of the transaction and shall be accompanied by a copy of the sale contract and financial statements, tax returns and organizational documents of the proposed transferee and its principals;

iii. The proposed transferee shall fully and unconditionally assume the Mortgagor's obligations and liabilities under the Note, this Mortgage and other Loan Documents, without modification, and shall execute an assumption agreement and such additional documentation as is satisfactory to Mortgagee in form and substance. Under the assumption agreement the transferee shall provide a representation of the purchase price paid for the Property;

iv. A replacement guarantor having a net worth that equals or exceeds the net worth of the Guarantor as of the date hereof and is otherwise acceptable to Mortgagee, shall execute an assumption agreement, or such other documents as Mortgagee deems appropriate, in form and substance, whereby the replacement guarantor shall, from and after the date of the assumption and transfer, expressly, unconditionally and fully assume the obligations and liabilities of the Indemnitor under the Environmental Indemnity Agreement and the Guarantor under the Separate Guaranty of Carveout Obligations or any other Loan Documents executed in connection with the Note;

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v. Mortgagor and Guarantor shall retain liability under the Note and Loan Documents for matters arising before or in connection with the transfer;

vi. The proposed transferee shall execute any loan applications as required by Mortgagee and furnish to Mortgagee such other information and data required by Mortgagee;

vii. The credit history, reputation, financial strength, ownership structure, and management expertise of the proposed transferee and its principals shall be satisfactory to Mortgagee in its sole and absolute discretion. Mortgagee expressly reserves the right to withhold its approval of the proposed transferee if the proposed transferee or any of its principals is or has been the subject of any bankruptcy, insolvency or similar proceeding;

viii. Mortgagee shall receive an assumption fee equal to one percent (1%) of the unpaid principal balance of the Note outstanding at the time of the transfer and Mortgagor pays all of Mortgagee's costs and expenses incurred in connection with the proposed transfer (whether or not consummated), including but not limited to, title updates, endorsement charges, recording fees, applicable taxes and attorneys fees processing expenses and reasonable attorney's fees and expenses (as determined by Mortgagee);

ix. Mortgagee is provided with a true copy of the as-recorded deed or other instrument by which such transfer is made;

x. Mortgagee is furnished with a satisfactory endorsement to Mortgagee's mortgagee's policy of title insurance insuring the continued validity and priority of this Mortgage following the assumption;

xi. Mortgagee is furnished a letter from the Mortgagor authorizing transfer to the transferee of any tax or insurance escrow funds then on deposit with Mortgagee in connection with this Loan;

xii. Mortgagee is to be furnished with satisfactory evidence of appropriate fire and extended coverage insurance on the Property showing the proposed transferee as the named insured;

xiii. Mortgagee determines that the unpaid principal balance of the Note secured hereby does not exceed sixty-five percent (65%) of the appraised value of the Property at the time of transfer as determined by a then current and satisfactory MAI appraisal prepared, at the Mortgagor's expense, by an appraiser selected by Mortgagee;

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xiv. Mortgagee determines that the annual net operating income generated by Property at the time of the transfer equals or exceeds the product reached by multiplying 1.50 times the annual debt service payment due under the Note.

B. Notwithstanding anything set forth herein to the contrary, Mortgagee shall permit transfers of the direct or indirect beneficial interests in Mortgagor (a) by and among those persons or entities that are members, shareholders or partners of Mortgagor as of the date hereof (the "Current Owners"); (b) from the Current Owners to the members of the Current Owners immediate families, or trusts created for the benefit of said immediate family members, for the purpose of facilitating the bona fide estate planning of Current Owners and, (c) to a trustee of an estate upon the death of a Current Owner, provided that Mortgagor satisfies the following conditions:

i. Mortgagor shall deliver advance notice of the proposed transfer, together with evidence reasonably satisfactory to Mortgagee that the proposed transfer would meet the requirements of this Section 23.B. Such evidence shall include a narrative description and detailed pre- and post- transfer organizational charts of Mortgagor;

ii. No default or event of default continuing beyond the expiration of any applicable notice and cure period shall exist at the time of the transfer;

iii. The proposed transfer shall not result in any violation of the covenants of the Loan Documents relating to the management of the Property and Legal Control of Mortgagor.

iv. Mortgagee determines, in its reasonable discretion, that the proposed transfer shall not have an adverse effect on the Property or Mortgagee's interest therein.

v. Mortgagor pays all out-of-pocket expenses incurred by Mortgagee in the review and processing of a proposed transfer.

24. Successors and Assigns. The covenants and agreements herein contained shall bind and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto and the term "Mortgagee" shall also include any lawful owner, holder or pledgee of any indebtedness secured hereby. Except as specifically set forth herein, Mortgagor has no right to assign any of its rights or obligations hereunder, under the Note or under any of the other documents securing the Note, without the prior written consent of Mortgagee.

25. Satisfaction of Mortgage. The condition of this Mortgage is such that if Mortgagor shall well and truly make all payments called for herein and in said Note in

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accordance with its terms, and shall perform and comply with each and all of the covenants, conditions and agreements either in said Note or in this Mortgage contained, then this Mortgage and the security interest granted hereunder shall be null and void, but otherwise the same shall remain in full force and virtue in law. When this Mortgage shall have been fully paid in accordance with its terms, Mortgagee shall execute due satisfaction thereof and cause the same to be entered onto the appropriate public record, and all legal fees and expenses pertaining to such satisfaction shall be paid by Mortgagor.

26. **Indemnification and Release.** The Mortgagor shall indemnify, defend and hold Mortgagee harmless against: (i) any and all claims for brokerage, leasing, finder's or similar fees which may be made relating to the Property or the Indebtedness and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits costs and expenses (including Mortgagee's reasonable attorneys' fees, together with reasonable appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Mortgagee in connection with the Indebtedness, this Mortgage, the Property or any part thereof, or the operation, maintenance and/or use thereof, or the exercise by Mortgagee of any rights or remedies granted to it under this Mortgage or pursuant to applicable law; provided, however, that nothing herein shall be construed to obligate the Mortgagor to indemnify, defend and hold harmless Mortgagee from and against any of the foregoing which is imposed on or incurred by Mortgagee by reason of Mortgagee's willful misconduct or gross negligence. Mortgagor shall pay or reimburse Mortgagee, upon demand, for all costs and expenses, including appraisal and reappraisal costs of the Property and reasonable attorneys' fees, which Mortgagee may incur in connection with enforcing or interpreting the Note, this Mortgage, or any of the other Loan Documents (including all fees and costs incurred in enforcing or protecting the Note, this Mortgage, or any of the other Loan Documents in any bankruptcy proceeding), and attorneys' fees incurred by Mortgagee in any suit, action, legal proceeding or dispute of any kind in which Mortgagee is made a party or appears as party plaintiff or defendant, affecting the Indebtedness, the Note, this Mortgage, any of the other Loan Documents, or the Property, or required to protect or sustain this Mortgage. No liability shall be enforced or asserted against Mortgagee in the exercise of the powers herein granted to it and Mortgagor expressly waives and releases any such liability.

27. **Miscellaneous.** The unenforceability or invalidity of any one or more provisions, clauses, sentences and/or paragraphs hereof shall not render any other provisions, clauses, sentences and/or paragraphs herein contained unenforceable or invalid. Whenever the context hereof requires, reference herein made to the singular number shall be understood as including the plural, and likewise the plural shall be understood as denoting the singular; words denoting gender shall be construed to include the masculine, feminine and neuter, when such construction is appropriate; and specific enumeration shall not exclude the general but shall be considered as cumulative. Time is of the essence as to each and every obligation and/or payment hereunder.

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Every covenant and agreement herein of Mortgagor shall run with the land, is a condition upon which the loan secured was made, and is of the essence of this Mortgage, and breach of any thereof shall be deemed a material breach going to the substance hereof. This Mortgage shall be governed and construed in accordance with the laws of the State of Illinois. The headings of the paragraphs hereof are for convenience only, and shall not limit or affect any of the terms of this Mortgage.

28. Operating Statements. Mortgagor will furnish to Mortgagee, its successors and assigns or authorized servicer, on or before May 15 of each year during the term of the Loan, the following information: (i) income and expense statements with respect to the Property; (ii) rent rolls with respect to the Property, showing areas leased, monthly rents, expense contributions and lease expiration dates; and (iii) current financial statements with respect to Mortgagor, its successors and assigns and any Guarantors of Mortgagor's obligations to Mortgagee. Such information shall be certified by Mortgagor as true and accurate and be based upon records compiled in conformity with recognized accounting practices. Mortgagee may, solely at its option, require Mortgagor to furnish to Mortgagee income and expense statements certified by Mortgagor for the Property on a quarterly basis together with the annual summary required above. In the event of a default under this Mortgage or any of the other Loan Documents, or if Mortgagee, in good faith, believes that any previously provided financial information may have been misleading or inaccurate, Mortgagee may require that such statements be prepared by an independent certified public accountant prepared in accordance with generally accepted accounting principles, consistently applied.

In the event Mortgagor or any Guarantor fails to timely provide the required financial statements and property reports, a fee of \$1,000.00 shall be added to each monthly payment until the required reports have been provided. This fee is designed to compensate Mortgagee for (i) the increased risk to Mortgagee resulting from the inability to monitor and service the Loan using up-to-date information and (ii) the reduced value and liquidity of the Loan as a financial asset.

29. Exculpatory Provisions. Except as to the Carveout Obligations, liability otherwise under this Mortgage shall be limited to the Property given as security hereunder, and the Mortgagor (including any and all general or limited partners, members or joint venturers of such Mortgagor) shall not be personally liable, whether by way of election of remedy, deficiency judgment, or otherwise for any monies due hereunder, whether principal, interest, attorney's fees, or other. Nothing in this paragraph, however, shall be deemed or construed to affect the validity of this Mortgage or any of the other Loan Documents. Provided, however, Mortgagor shall be personally liable, jointly and severally, to Mortgagee for all amounts due or arising from or in connection with the following obligations (the "Carveout Obligations"): (a) the obligation to pay all amounts advanced or expenses incurred by Mortgagee with respect to any of those matters set forth in (i) through (x) below (the "Carveouts"), (b) the obligation to indemnify Mortgagee with respect to any costs, damages, losses, including attorney's fees, suffered or incurred by

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Mortgagee in connection with or arising from any of the Carveouts, (c) the obligation to defend and hold Mortgagee harmless from and against any claims, judgments, causes of action or proceedings arising from any of the Carveouts; and (d) the obligation to repay the entire Indebtedness, if Mortgagee's exculpation of Mortgagor from personal liability has become void as set forth below. The Carveouts are:

- i. material written misrepresentation by the Mortgagor with respect to the Loan;
- ii. waste of the Property (which shall include damage, destruction or disrepair of the Property caused by a willful act or grossly negligent omission of the Mortgagor, but shall exclude ordinary wear and tear in the absence of gross negligence);
- iii. misappropriation of tenant security deposits (including proceeds of tenant letters of credit), insurance proceeds or condemnation proceeds with regard to the Property;
- iv. failure to pay ground rent, property taxes, assessments or other lienable impositions with regard to the Property, except to the extent funds for payment of such items were placed and remain in escrow with Mortgagee;
- v. failure to pay to Mortgagee (a) all rents, income and profits collected more than one month in advance with regard to the Property, and (b) all rents, income and profits (including any rent for the last month of the lease term under any lease in force at the time of default), received with regard to the Property during any period when there exists a default under the Note or any of the Loan Documents, net of amounts used to pay the reasonable and customary operating and maintenance expenses of the Property;
- vi. removal from the Property of fixtures or Personal Property, unless replaced in a commercially reasonable manner;
- vii. any amounts expended by Mortgagee in connection with the foreclosure of this Mortgage or expenses incurred by Mortgagee in connection with any proceeding brought to enforce the terms of the other Loan Documents following default, provided, however, the amount due under this provision shall be limited to \$10,000.00 so long as neither Mortgagor, Guarantors, nor any person or entity comprising Mortgagor takes any action to contest, impede or delay such foreclosure or any proceeding to enforce the Loan Documents;
- viii. terminating or amending a lease of the Property in violation of the Loan Documents;

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ix. failure to maintain all insurance as required by this Mortgage, except to the extent funds for payment of said insurance premiums were placed and remain in escrow with Mortgagee; and

x. liability of Mortgagor under the Environmental Indemnity Agreement dated as of the date hereof or the provisions set forth in this Mortgage pertaining to hazardous materials or toxic substances found in, on or under the Property.

Notwithstanding anything herein to the contrary, Mortgagee's exculpation of Mortgagor from personal liability for the repayment of the Indebtedness shall be void without notice in the event of (a) any fraud or intentional misrepresentation by the Mortgagor, (b) a voluntary transfer or encumbrance of the Property, or any direct or indirect beneficial ownership interest therein, in violation of the Loan Documents, or (c) Mortgagor's filing of a voluntary petition for reorganization under Title 11 of the United States Code (or under any other present or future law, domestic or foreign, relating to bankruptcy, insolvency, reorganization proceedings or otherwise similarly affecting the rights of creditors), unless, prior to filing, Mortgagor offers to enter into Mortgagee's choice of either an agreement to permit an uncontested foreclosure, or an agreement to deliver a deed in lieu of foreclosure. Mortgagee accepts Mortgagor's offer and the agreement is consummated within sixty (60) days of Mortgagee's acceptance of the offer. After the Mortgagee accepts such an offer, default by the Mortgagor in fulfilling the terms of the accepted offer shall trigger personal liability for the entire Indebtedness. No such offer shall be conditioned on any payment by the Mortgagee, or the release of Mortgagor or any Guarantor from any obligation or liability under the Loan Documents, or on any other concession. Mortgagor's liability for the Carveout Obligations shall survive foreclosure of this Mortgage (or the acquisition of the Property by Mortgagee by a deed in lieu of foreclosure).

30. **Environmental Matters.** Mortgagor represents that it, and the holders of easements, leases, licenses, occupancy agreements and any other rights relating to the use of all or any portion of the Property (herein jointly called "Persons Responsible"), are currently in compliance with, and covenants and agrees that it will manage and operate the Property and will cause each Person Responsible to occupy and use its demised portion of the Property in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, treatment and removal, handling or disposal of hazardous or toxic substances (including, but not limited to mold) or other materials, including, without limitation, raw materials, products, building components, supplies or wastes and including but not limited to, the Illinois environmental protection Act 415 ILCS 5/1 et. seq. ("Environmental Laws"). Mortgagor further covenants and agrees that it shall not install or permit to be installed in the Property asbestos or any substance containing asbestos and deemed hazardous or toxic by or in violation of such federal, state or local laws, rules, regulations or orders respecting such material. Mortgagor shall

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send to Mortgagee, within five (5) days of receipt or completion thereof, any report, citation, notice or other writing including, without limitation, hazardous waste disposal manifests, by, to or from any governmental or quasi-governmental authority empowered to regulate or oversee any of the activities discussed in this paragraph, whether demonstrating compliance with applicable law, noticing noncompliance, requesting or requiring notice or action, commencing investigation or requesting Mortgagor to show cause why action is not required. After reasonable inquiry and investigation, Mortgagor is not aware of any hazardous or toxic substances on or in the Property whether contained in tanks or other containers, in structures or equipment, or incorporated in buildings. In the event that, through whatever means, Mortgagor or a third party discovers hazardous or toxic substances on the Property, Mortgagor shall remedy, rectify, rehabilitate, correct and remove from the Property and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances. Mortgagor shall take any and all action necessary, including but not limited to, bringing legal suit against, those Persons Responsible for the presence of the substance on site, or otherwise obligated by law to bear the cost of such remedy. Mortgagee shall be subrogated to Mortgagor's rights against any and all Persons Responsible; provided, however, Mortgagee shall in no event be obligated to remedy, rectify, rehabilitate, correct or remove and dispose of any such substances nor shall Mortgagee be obligated to take any action against Persons Responsible for the foregoing activities. Mortgagor agrees to indemnify, defend with counsel acceptable to Mortgagee (at Mortgagor's sole cost), and hold Mortgagee harmless against any claim, response or other costs, damages, liability, loss or demand (including without limitation reasonable attorney fees and costs incurred by Mortgagor or Mortgagee, or both) arising out of any claimed violation by Mortgagor or any Person Responsible for any of the foregoing laws, regulations or ordinances or breach of any of the foregoing representations, covenants or agreements. Mortgagor further agrees to provide to Mortgagee (at Mortgagor's sole cost) and upon Mortgagee's reasonable request, an environmental site assessment, and if Mortgagor fails to provide such environmental site assessment, Mortgagee may, at its option, have such environmental site assessment performed; and Mortgagor hereby grants to Mortgagee a non-exclusive and irrevocable license to enter onto the Property for purposes of environmental matters and to perform any obligation of Mortgagor which Mortgagor has failed to perform after reasonable request. If Mortgagee expends any funds in conjunction with such environmental site assessment, Mortgagor shall reimburse Mortgagee for such funds within fifteen (15) days from the date Mortgagee makes demand on Mortgagor for reimbursement. Mortgagor specifically agrees that, notwithstanding any provision to the contrary in this Mortgage this indemnification shall survive the reconveyance or release of this Mortgage, whether pursuant to payment in full of the Note or judicial or non-judicial foreclosure by Mortgagee under this Mortgage and that, if requested by Mortgagee, Mortgagor at any time shall execute a separate writing setting forth such indemnification.

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31. **Joint Liability.** If Mortgagor is comprised of more than one person or entity, then all such persons or entities shall be jointly and severally liable for all obligations arising under the Note, this Mortgage and any other documents executed in connection with the Note.

32. **ERISA.** Mortgagor hereby represents, warrants and agrees that: (i) it is acting on its own behalf and that it is not 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 1 of ERISA, nor a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the "Code"; each of the foregoing hereinafter referred to collectively as a "Plan"); (ii) Mortgagor's assets do not constitute "plan assets" of one or more such Plans within the meaning of Department of Labor Regulation Section 2510.3-101; and (iii) it will not be reconstituted as a Plan or as an entity whose assets constitute "plan assets". Further, Mortgagor will not enter into any lease or occupancy agreement affecting any portion of the Property unless the tenant thereunder represents that it is not a plan or any entity where assets constitute such "plan assets."

33. **Servicing Fees.** Mortgagor shall be solely responsible for any reasonable legal and/or processing fees and costs incurred or charged by Mortgagee in the event Mortgagor request or requires Mortgagee to take action in connection with any loan servicing related matter arising during the term of the Loan. Mortgagor agrees to immediately reimburse Mortgagee upon Mortgagee's request for any such legal and/or processing fees and costs.

34. **Advances.** Upon the occurrence of a default hereunder, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient. By way of illustration and not in limitation of the foregoing, Mortgagee may (but need not) do all or any of the following: make payments of principal or interest or other amounts on any lien, encumbrance or charge on any part of the Property; complete construction; make repairs; collect rents; prosecute collection of any sums due with respect to the Mortgaged Property; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the Property. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Property and the lien hereon, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at Default Rate. In making any payment or securing any performance relating to any obligation of Mortgagor hereunder, Mortgagee shall (as long as it acts in good faith) be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee, and no inaction of Mortgagee hereunder, shall ever be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. All sums

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paid by Mortgagee for the purposes herein authorized, or authorized by any loan document shall be considered additional advances made under the Note and pursuant to this Mortgage and shall be secured by this Mortgage, WITH THE PROVISIO THAT THE AGGREGATE AMOUNT OF THE INDEBTEDNESS SECURED HEREBY TOGETHER WITH ALL SUCH ADDITIONAL SUMS ADVANCED SHALL NOT EXCEED TWO HUNDRED PERCENT (200%) OF THE AMOUNT OF THE ORIGINAL INDEBTEDNESS SECURED HEREBY.

35. **Enforcement and Waiver by Mortgagee.** Mortgagee's delay or forbearance in pursuing or exercising one or more of its remedies shall not be deemed or construed to constitute a waiver of any default or any remedy, and no waiver by Mortgagee of any default, right or remedy on one occasion shall be construed as a waiver of that right or remedy on any subsequent occasion or as a waiver of any right or remedy thereafter existing. Mortgagee shall have the right at all times to enforce the provisions of the Note, Mortgage or any of the other Loan Documents in strict accordance with the terms thereof. No failure by Mortgagee to pursue or exercise any of its rights or remedies, or insist upon strict compliance with any term or provision of the Note, Mortgage or any other Loan Document, and no custom or practice at variance with the terms of the Note, Mortgage or any other Loan Document, shall constitute a waiver by Mortgagee of the right to demand strict compliance with the terms and provisions of the Note, Mortgage or any other Loan Document. Any consent or approval given by Mortgagee hereunder shall not be deemed to waive or render unnecessary the consent or approval to, or of, any subsequent similar act.

36. **Compliance with Illinois Mortgage Foreclosure Law.** If any provision of this Mortgage shall be inconsistent with any provision of the statutes or common law of the State of Illinois governing the foreclosure of this Mortgage (collectively, "Foreclosure Laws"), the provisions of the Foreclosure Laws 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 Foreclosure Laws. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon an event of default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Foreclosure Laws in the absence of said provision, Mortgagee shall be vested with rights granted in the Foreclosure Laws to the full extent permitted by law.

37. **Improper Financial Transactions.** A. Mortgagor is, and shall remain at all times, in full compliance with all applicable laws and regulations of the United States of America that prohibit, regulate or restrict financial transactions, and any amendments or successors thereto and any applicable regulations promulgated thereunder (collectively, the "Financial Control Laws"), including but not limited to those related to money laundering offenses and related compliance and reporting requirements (including any money laundering offenses prohibited under the Money Laundering Control Act, 18 U.S.C. Sections 1956, 1957 and the Bank Secrecy

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Act, 31 U.S.C. Sections 5311 *et seq.*) and the Foreign Assets Control Regulations, 31 C.F.R. Section 500 *et seq.*

B. Mortgagor represents and warrants that: (i) Mortgagor is not a Barred Person (hereinafter defined); (ii) Mortgagor is not owned or controlled, directly or indirectly, by any Barred Person; (iii) Mortgagor is not acting, directly or indirectly, for or on behalf of any Barred Person; and (iv) Mortgagor has been advised by legal counsel on the requirements of the Financial Control Laws.

C. Under any provision of this Mortgage or any of the other Loan Documents where the Mortgagee shall have the right to approve or consent to any particular action, including without limitation any (i) sale, transfer, assignment of the Property or of any direct or indirect ownership interest in Mortgagor, (ii) leasing of the Property, or any portion thereof, or (iii) incurring of additional financing secured by Property, or any portion thereof or by any direct or indirect ownership interest in the Mortgagor, Mortgagee shall have the right to withhold such approval or consent, in its sole discretion, if the granting of such approval or consent could be construed as a violation of any of the Financial Control Laws.

D. Mortgagor covenants and agrees that it will upon request provide Mortgagee with (or cooperate with Mortgagee in obtaining) information required by Mortgagee for purposes of complying with any Financial Control Laws.

As used in this Mortgage, the term "Barred Person" shall mean (i) any person, group or entity named as a "Specially Designated National and Blocked Person" or as a person who commits, threatens to commit, supports, or is associated with terrorism as designated by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), (ii) any person, group or entity named in the lists maintained by the United States Department of Commerce (Denied Persons and Entities), (iii) any government or citizen of any country that is subject to a United States Embargo identified in regulations promulgated by OFAC and (iv) any person, group or entity named as a denied or blocked person or terrorist in any other list maintained by any agency of the United States government.

38. **Estoppel Certificates.** A. Mortgagor, within ten (10) business days after request by Mortgagee, shall furnish Mortgagee from time to time with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest in the Note, (iv) the date through which all installments of interest, commitment fees and/or principal have been paid, (v) any offsets or defenses to the payment of the amount outstanding under the Note, if any, (vi) that the Note and this Mortgage have not been modified or if modified, giving particulars of such modification and (vii) such other information as shall be requested by Mortgagee.

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B. Mortgagor, after request by Mortgagee, will obtain and furnish (within the time periods, if any, provided in the applicable leases or if no time period is so specified, within ten (10) business days after request) Mortgagee from time to time with estoppel certificates from any tenants under then existing leases, which certificates shall be in form and substance as required by such leases, or if not required, then in form and substance reasonably satisfactory to Mortgagee

39. **Notice.** All notices hereunder shall be in writing. All notices to be given hereunder (including, without limitation, notices of sale or default) may be given by any of the following means: i) personal service, ii) overnight delivery by a nationally-recognized overnight courier, iii) U.S. Mail, postage thereon prepaid, return receipt requested, or iv) facsimile transmission, followed by U.S. Mail. Written notice shall be deemed effective as follows: i) if by personal service or overnight delivery, upon delivery or first attempted delivery, ii) if by U.S. Mail, three (3) days after deposit in the U.S. Mail, and iii) if by facsimile transmission, followed by U.S. Mail, upon electronic confirmation of receipt in the recipient's office prior to 5:00 p.m. local time at the recipient's office. Notices to Mortgagor or Mortgagee shall be addressed to the mailing address for the applicable party shown in the caption hereof, and notice to the Mortgagee shall also include the reference "Attention: Global Legal Services." Each of the parties may hereafter designate a different address for notices hereunder by providing notice of such designation to the other parties pursuant to the procedures set forth above.

40. **Merger.** There shall be no merger of this Mortgage or any other instrument securing the Note with the fee estate of the Property by reason of the fact that the same party holds or acquires, directly or indirectly, the Note secured hereby, this Mortgage or any other instrument securing the Note and is simultaneously the owner of the fee estate of the Real Estate or thereafter acquires the fee estate of the Real Estate, or by reason of the fact that the same party may hold or acquire, directly or indirectly, the fee estate of the Property and at the same time be the owner and holder of the Note, this Mortgage or any other instruments securing the Note or thereafter acquire the Note, this Mortgage or any other instrument securing the Note. Without limiting the foregoing provisions, there shall be no merger of any lease of leasehold estate with the fee estate in the Property unless and until all persons then having an interest in such fee estate and all persons, including Mortgagee, then having an interest in any lease or leasehold estate or any improvements located on the Property, shall join in a written instrument effecting such merger and shall duly record the same.

41. **Future Advance.** This Mortgage is given to secure not only the existing indebtedness but also any loan of money from Mortgagee to Mortgagor within twenty (20) years from the date hereof in accordance with the provisions of Section 205 ILCS 5/5d ("Future Advances"), whether made prior to or after the maturity date of the Note. The total amount of the

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indebtedness that may be secured by this Mortgage may decrease or increase from time to time, but the total unpaid aggregate balance secured hereby at any one time shall not exceed the maximum amount of Ten Million and No/100 Dollars (\$10,000,000.00), plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Property, or other monies expended to protect the security of this Mortgage, with interest on such disbursements (all such indebtedness being hereafter referred to as the maximum amount secured hereby). This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby to the same extent as if all such amounts were made on the date of the execution of this Mortgage. Nothing herein shall in anyway be construed to obligate Mortgagee to make any Future Advances.

42. Not later than thirty (30) days from the date hereof, Mortgagor shall deliver to Mortgagee a copy of an Asbestos Operations and Maintenance Plan developed for the owners, employees and occupants of the Property ("O&M Plan"). Mortgagor agrees that it will take all steps necessary and proper to comply with and implement the O&M Plan in accordance with the terms thereof and shall provide Mortgagee with evidence, upon request, of all actions taken to comply with and implement said plan. Mortgagor further agrees that any costs, losses, damages, liabilities, expenses and attorney's fees incurred or suffered by Mortgagee due to Mortgagor's failure to comply with the O&M Plan shall be deemed a "Loss" for which Mortgagee is indemnified under the terms of the Environmental Indemnity Agreement dated of even date herewith. In furtherance of the foregoing, Mortgagor hereby agrees to cause all program managers and maintenance workers to be properly trained to insure that "best practices" are utilized in the implementation of the O&M Plan and acknowledge that Mortgagee has the right to verify the successful completion of such training of managers and workers and the implementation and integration of the O&M Plan into the operation of the Property. In the event that the undersigned fails to comply with any of the obligations set forth above and such non-compliance is not remedied to Mortgagee's satisfaction within thirty (30) days from the date of Mortgagee sending Mortgagor notice of non-compliance, at Mortgagee's election, it shall be deemed a default hereunder and under the Loan Documents.

43. **Waiver of Jury Trial. MORTGAGOR HEREBY WAIVES TO THE FULLEST EXTENT ALLOWED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION OR MORTGAGE LOAN COMMITMENT FOR THE LOAN EVIDENCED BY THE NOTE, THIS MORTGAGE, OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF MORTGAGEE, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

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IN WITNESS WHEREOF, the Mortgagor has executed these presents the day and year first above written.

STATE LAKE LLC
an Illinois limited liability company

By: 

Gerald L. Nudo, Manager

By: 

Laurence H. Weiner, Manager

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 17 of MAY, 2012, before me JORGE SALAMANCA, a Notary Public in and for said County personally appeared Gerald L. Nudo, known to me to be the person whose name is subscribed to the foregoing instrument, and who acknowledged the same to be the act of said State Lake LLC, an Illinois limited liability company, and that he executed the same for the purposes and consideration therein expressed.

WITNESS my hand and official seal.

"OFFICIAL SEAL"
JORGE SALAMANCA
Notary Public, State of Illinois
My Commission Expires 06/09/12



Notary Public in and for said County and State.

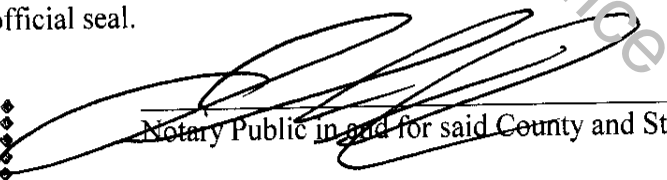
(Notarial Seal)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 17 of MAY, 2012, before me JORGE SALAMANCA, a Notary Public in and for said County personally appeared Laurence H. Weiner, known to me to be the person whose name is subscribed to the foregoing instrument, and who acknowledged the same to be the act of said State Lake LLC, an Illinois limited liability company, and that he executed the same for the purposes and consideration therein expressed.

WITNESS my hand and official seal.

"OFFICIAL SEAL"
JORGE SALAMANCA
Notary Public, State of Illinois
My Commission Expires 06/09/12



Notary Public in and for said County and State.

UNOFFICIAL COPY

EXHIBIT "A"

Legal Description

TRACT I:

Lots 1, 2 and 3 in Block 9 in Fort Dearborn Addition to Chicago (except the South 60 feet of each of said lots) in Section 10, Township 39 North, Range 14 East of the Third Principal Meridian located in Cook County, Illinois.

Permanent Index No. 17-10305-0101

Property of Cook County Clerk's Office