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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



1217044025

Doc#: 1217044025 Fee: \$72.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/18/2012 11:13 AM Pg: 1 of 18

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 11-30-404-026-1001

Address:

Street: 1615 WEST HOWARD

Street line 2: UNITS R1 AND 4

City: CHICAGO

State: IL

ZIP Code: 60626

Lender: CONTINUUM CAPITAL FUNDING, LLC

Borrower: HOWARD THEATER LIMITED PARTNERSHIP

Loan / Mortgage Amount: \$1,700,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is not owner-occupied.

Certificate number: 16649A7B-9ADA-4CCC-83C5-B793B9941F4C

Execution date: 06/11/2012

Box 334

18

1-13
PK1
SA9324010
CN

Property of Cook County Clerk's Office

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After recording, please mail to:

Continuum Capital Funding, LLC
 Attn: Brian Lignelli
 520 W. Erie St. Ste., 300-S
 Chicago, IL 60654

**REVOLVING LINE OF CREDIT MORTGAGE, SECURITY AGREEMENT,
 ASSIGNMENT OF LEASES AND RENTS
 AND UCC FIXTURE FILING**

This Revolving Line of Credit Mortgage, Security Agreement, Assignment of Leases and Rents and UCC Fixture Filing (this "Mortgage") is made as of the 11th day of June, 2012, by Howard Theater Limited Partnership ("Mortgagor"), to and for the benefit of **CONTINUUM CAPITAL FUNDING, LLC**, an Illinois limited liability company ("Continuum" or "Lender").

Article 1
DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

- (a) Awards: All awards and payments made or hereafter to be made by any municipal, township, county, state, Federal or other governmental agencies, authorities or boards or any other entity having the power of eminent domain to Mortgagor, including, but not limited to, any awards and payments for any taking of all or a portion of the Mortgaged Property, as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain, or for any change or changes of grade of streets affecting the Mortgaged Property.
- (b) Borrower: Howard Theater Limited Partnership, and its successors and assigns.
- (c) Building: All buildings, improvements, alterations or appurtenances now, or at any time hereafter, constructed or located upon the Land or any part thereof.
- (d) Event(s) of Default: The happenings and occurrences described in Article 5 of this Mortgage.
- (e) Guaranty: The Guaranty dated of even date herewith executed by Mortgagor to and for the benefit of Mortgagee, together with any and all extensions, renewals, modifications and amendments.
- (f) Impositions: All real estate and personal property taxes and other taxes and assessments,

6/11/2012

Borrower's Initials 

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water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect thereto, which at any time prior to or after the execution of this Mortgage may be assessed, levied, or imposed upon the Mortgaged Property or the rent or income received therefrom or any use or occupancy thereof.

(g) Indebtedness: All amounts, payments and premiums due, payable or required to be paid to Mortgagee, under, relating to, or arising out of, the Note, Guaranty, this Mortgage, or the Loan Documents, or any amendments, modifications, renewals and extensions of any of the foregoing.

(h) Land: The real estate described in Exhibit A attached hereto and commonly known as Units R1 and 4P at 1625 West Howard Street, Chicago, IL 60626

(i) Leases: Any and all leases, subleases, licenses, concessions or grants of other possessory interests now or hereafter in force, oral or written, covering or affecting the Mortgaged Property, or any part thereof, together with all rights, powers, privileges, options and other benefits of Mortgagor thereunder.

(j) Loan Documents: The Note, this Mortgage, the Business Loan Agreement, the Guaranty, and all other related loan documents executed by, or entered into by Borrower or Guarantor with or for the benefit of Mortgagee, as may be amended from time to time, that relate to in any manner whatsoever, evidence, and/or secure the loan made by Lender to Borrower.

(k) Mortgaged Property: The Building and the Land, together with:

(i) all rights, privileges, permits, licenses, tenements, hereditaments, rights-of-way, easements, appurtenances and appurtenances of the Buildings belonging or in any way appertaining thereto and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof;

(ii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Land, the Building, the Leases and the Rents; and

(iii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Awards, or payments with respect to casualties

(iv) all accounts established by Borrower with Mortgagee, including but not necessarily limited to, the Costs Account (as defined and further set forth in paragraph five (5) of the Note).

(l) Mortgagee: Continuum Capital Funding, LLC and its successors and assigns and the holders, from time to time, of the Note.

(m) Mortgagee's Address: 520 W. Erie St., Ste. 300-S, Chicago, IL 60654.

(n) Mortgagor: Howard Theater Limited Partnership, and its heirs, administrators, executors, successors and assigns, and their successors in interest in and to the Mortgaged Property.

(o) Mortgagor's Address: 520 W. Erie Suite 300-N, Chicago, IL 60654

(p) Note: The Revolving Line of Credit Promissory Note dated of even date herewith executed by Borrower to the order of Mortgagee in the principal amount of One Million Seven Hundred Thousand and 00/100 dollars (\$1,700,000), with a maturity date of December 11, 2012 (and an Extended Maturity Date (if

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so extended by Lender in Lender's sole discretion), of June 11, 2013) and interest rate of 14%, together with any and all extensions, renewals, modifications and amendments.

(q) Obligations: Any and all of the covenants, promises and other obligations (other than the Indebtedness) made or owing by Mortgagor under this Mortgage and the Note, and any and all extensions, renewals, modifications and amendments of any of the foregoing.

(r) Permitted Encumbrances: The encumbrances affecting the Mortgaged Property described, with particularity, in Exhibit B attached hereto.

(s) Rents: All of the rents, revenues, income, profits, deposits, tenders and other benefits payable under the Leases and/or arising from the use and enjoyment of all or any portion of the Mortgaged Property.

Article 2 GRANT

2.1 Grant. To secure the payment of the Indebtedness and the performance and discharge of the Obligations, Mortgagor by these presents hereby grants, bargains, sells, assigns, mortgages, conveys, hypothecates and warrants unto Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances, to have and to hold the Mortgaged Property unto Mortgagee, its successors and assigns forever.

2.2 Condition of Grant. Provided always, that if Mortgagor promptly shall observe, perform and discharge the Obligations, then this Mortgage and the estate and rights hereby granted shall cease, terminate and become void, and shall be released by Mortgagee, at the cost and expense of Mortgagor, and, in case of failure of the Mortgagee to so release this Mortgage, all claims for statutory penalties are hereby waived.

2.3 Doctrine of Merger. Upon the foreclosure of this Mortgage, no assigned Lease shall be destroyed or terminated by application of the doctrine of merger or as a matter of law unless Mortgagee or any purchaser at such foreclosure sale so elects. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any assigned Lease unless Mortgagee or such purchaser gives written notice thereof to the applicable tenant or subtenant.

Article 3 GRANT OF SECURITY INTEREST IN ACCOUNTS

3.1 Grant. Mortgagor hereby grants to Mortgagee, a security interest in the Costs Account (as defined and further set forth in paragraph five (5) of the Note) and agrees that this Mortgage is also a security agreement in relation to and with regards to said Costs Account.

Article 4 ASSIGNMENT OF LEASES AND RENTS

In order to further secure payment of the Indebtedness and the observance, performance and discharge of the Obligations, Mortgagor hereby absolutely and irrevocably assigns and transfers to Mortgagee, all of Mortgagor's right, title and interest in and to any Leases and the Rents, whether now or hereafter existing, subject only to the Permitted Encumbrances. Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact, with the right, at Mortgagee's option at any time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in Mortgagor's or Mortgagee's name, for all Rents. Notwithstanding the foregoing assignment of Leases and Rents, so long as no Event of Default has occurred which remains uncured, Mortgagor shall

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have a license (such license to be deemed revoked upon the occurrence of an Event of Default) provided that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any subsequent assignment by Mortgagor shall be subject to the rights of the Mortgagee hereunder. This Assignment shall not be deemed or construed to constitute Mortgagee as a mortgagee in possession nor obligate Mortgagee to take any action or to incur expenses or perform or discharge any obligation, duty or liability. Exercise of any rights under this Article and the application of the Rents to the Indebtedness or the Obligations shall not cure or waive any Event of Default.

Article 5 COVENANTS

5. Covenants. Until the Indebtedness has been paid in full and all Obligations have been performed, Mortgagor hereby covenants and agrees as follows:

5.1 Compliance with Laws. Mortgagor will promptly and faithfully comply with, conform to and obey all present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency, whether or not such law, ordinance, rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

5.2 Payment of Impositions. Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions, such Impositions or installments thereof to be paid prior to the day before any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof; provided, however, that if, by law, any Imposition may be paid in installments, Mortgagor may pay the same in such installments.

5.3 Repair. Mortgagor will keep the Mortgaged Property in good order and condition and make all necessary or appropriate repairs, replacements and renewals thereof and will use its best efforts to prevent any act or thing which might impair the value or usefulness of the Mortgaged Property, and Mortgagor will obtain the written consent of Mortgagee prior to making any alterations or additions to the Mortgaged Property.

5.4 Insurance. Mortgagor will maintain insurance upon the Mortgaged Property against loss by fire and such other hazards, casualties and contingencies as are normally and usually covered by extended coverage policies in effect in the locality where the Mortgaged Property is situated and such other risks as may be specified by Mortgagee, from time to time, in amounts and with insurers reasonably acceptable to Mortgagee but not less the amount of the Indebtedness.

5.5 Performance of Leases and Other Agreements. Mortgagor will duly and punctually perform all covenants and agreements expressed as binding upon it under any Lease or Leases now or hereafter existing and other agreements to which it is a party with respect to the Mortgaged Property or any part thereof, and will use its best efforts to enforce or secure the performance of each and every obligation and undertaking of the respective lessees under the Lease, and will appear and defend, at its cost and expense, any action or proceeding arising under or in any manner connected with the Lease or the obligations and undertakings of the lessor thereunder. Mortgagor will immediately notify Mortgagee in writing of any notice of any material default received by Mortgagor from the Lessee thereunder.

5.6 Inspection. Mortgagor will permit Mortgagee, at all reasonable times, to inspect the Mortgaged Property.

5.7 Hold Harmless. Mortgagor will employ legal counsel acceptable to the Mortgagee, and will defend and hold Mortgagee harmless from any action, proceeding or claim affecting the Mortgaged Property or the validity of the Note. Mortgagor shall appear in and defend (or pay the reasonable expenses of Mortgagee to defend, if

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Mortgagor elects to allow Mortgagee to handle such defense) any action or proceeding purporting to affect the security of this Mortgage and/or the rights and/or powers of Mortgagee hereunder, and Mortgagor shall pay all costs and expenses (including costs of evidence of title and attorneys' fees) in any action or proceeding in which Mortgagee may so appear and/or any suit brought by Mortgagee to foreclose this Mortgage, to enforce any obligations secured by this Mortgage, and/or to prevent the breach hereof. Mortgagor's obligations under this Section 5.7 shall survive payment of the Indebtedness.

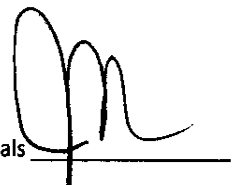
5.8 Existing and Additional Financing. Mortgagor shall not, without the prior written consent of Mortgagee, incur any additional indebtedness, or create or permit to be created or to remain any mortgage, pledge, lien, lease, encumbrance or charge on, or conditional sale or other title retention agreement, with respect to the Mortgaged Property or any part thereof or income therefrom, other than the Permitted Encumbrances. Mortgagor shall not, without the prior written consent of Mortgagee, modify the terms of any existing indebtedness which constitutes a Permitted Encumbrance hereunder.

5.9 Representations and Covenants of Mortgagor. Mortgagor hereby represents and covenants to Mortgagee that: (a) Mortgagor solely owns the Mortgaged Property and has good and marketable title in fee simple to the Mortgaged Property, free and clear of any prior assignment, mortgages, liens, charges, encumbrances, security interests and adverse claims whatsoever, except the Permitted Encumbrances; (b) to the best of Mortgagor's knowledge, no assignment, mortgages, liens, charges, encumbrances, security interests or adverse claims affect the Mortgaged Property as of the date of this Mortgage, other than the Permitted Encumbrances; (c) as of the date of this Mortgage, the outstanding principal balance of each of the Permitted Encumbrances is accurately reflected on Exhibit B attached hereto and made a part hereof; (d) Mortgagor agrees to execute a collateral assignment of any Leases which may exist today or in the future or of its right, title, interest therein; (e) there is no 1) pending or existing special tax (real estate or otherwise) or assessment levied or to be levied against or affecting the property, 2) condemnation or eminent domain proceedings, 3) (Other than as indicated on the title commitment issued to Lender dated May 31, 2012 (Order No. 9524010)) pending or threatened litigation, governmental proceeding or like proceeding respecting or affecting the property, nor is there any basis known for any of the aforementioned action(s); and (f) any information and/or documents provide by Borrower, Mortgagor, and all others, including Guarantors, in connection with this transaction are accurate and complete, and that Mortgagor has the authority to execute any and all documents executed by Mortgagor, including this Mortgage; (g) agrees that the Indebtedness, Guaranty, Note, Loan Documents, Obligations, Mortgage and any accompanying loan hereto, has been made in compliance with all applicable federal and state laws, rules, and/or regulations (including but not necessarily limited to, any predatory lending law(s)/statute(s), truth-in-lending, RESPA law(s)/statute(s), Regulation B, flood insurance law(s)/statute(s), private mortgage insurance law(s)/statute(s), appraisal and non-discriminatory lending law(s)/statute(s), practiced as from time to time and as amended). Breach of such representations and covenants shall constitute an Event of Default hereunder.

5.10 Mechanics Lien. Mortgagor shall not permit or suffer any mechanics lien claims to be filed or otherwise asserted against the Mortgaged Property and Mortgagor shall promptly, and in any event within thirty (30) days after filing, discharge or cause to be discharged the same in case of the filing of any claims for lien or proceedings for the enforcement thereof; provided, however, that in connection with any such lien or claim which Mortgagor may in good faith desire to contest, Mortgagor may contest the same by appropriate legal proceedings diligently prosecuted, but only if Mortgagor shall provide such security and indemnification to Mortgagee in a form and amount deemed adequate by Mortgagee.

Article 6 EVENTS OF DEFAULT

6. Events of Default



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The term "Event(s) of Default", as used herein, shall mean the occurrence or happening, from time to time, of any one or more of the following:

6.1 Default by Borrower. If Borrower shall default (after notice and expiration of any applicable cure period) in its payment or performance obligations under the Note or other Loan Documents.

6.2 Payment of Indebtedness. If Mortgagor shall default in the payment of any Indebtedness due under the Note, Guaranty or this Mortgage.

6.3 Performance of Obligations. If Mortgagor or Borrower shall default in the due observance or performance of any of the Obligations or any obligations under the Loan Documents.

6.4 Bankruptcy, Receivership, Insolvency, Etc. If voluntary or involuntary proceedings under the Federal Bankruptcy Code, as amended, shall be commenced by or against Mortgagor or bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings shall be instituted by or against the Mortgagor with respect to all or any part of Mortgagor's property under the Federal Bankruptcy Code, as amended, or other law of the United States or of any state or other competent jurisdiction, and if such proceedings are instituted against Mortgagor it shall consent thereto or shall fail to cause the same to be discharged within sixty (60) days of filing.

6.5 Laws Affecting Obligations and Indebtedness. If subsequent to the date of this Mortgage, any governmental entity in which the Mortgaged Property is located passes any law (i) which renders payment of the Indebtedness and/or performance of the Obligations by Mortgagor unlawful, or (ii) which prohibits Mortgagee from exercising any of its material rights and remedies in this Mortgage

6.6 False Representation. If any representation or warranty made by Mortgagor in, under or pursuant to this Mortgage, shall prove to have been false or misleading in any material respect as of the date on which such representation or warranty was made.

6.7 Default Under Other Mortgage / Cross Collateralization / Cross Default. If the holder of any other mortgage or any other lien on the Mortgaged Property (without hereby implying Mortgagee's consent to any such other mortgage or lien other than the Permitted Encumbrances) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder, or if a default exists under any other mortgage or lien on the Mortgaged Property. Furthermore, if a default or event of default occurs under or pursuant to any other mortgage granted by Borrower or Mortgagor (or any affiliate of Borrower or Mortgagor) to Lender, or if a default or event of default occurs in any of the loan documents related to any such mortgage, or in the event that a default occurs under any mortgage granted to Lender by an affiliate of Borrower or Mortgagor or any related loan document, then such default shall be deemed a default under this Mortgage and/or Loan Documents. All collateral granted to Lender pursuant to the Note is cross-collateralized and cross-defaulted.

6.8 Due On Sale. If without the prior written consent of Mortgagee, there is (i) sale, transfer, agreement for deed, conveyance, assignment, hypothecation or encumbrance, whether voluntary or involuntary, of: 1) all or part of the Mortgaged Property or any interest therein,; 2) a portion of the beneficial interest of Mortgagor or change in the power of direction, if Mortgagor is a trustee; (3) all or a portion of the stock of any corporate Mortgagor or corporate beneficiary of a trustee Mortgagor, that results or could result in a material change in the identity of the person(s) or entities previously in control of such corporation; or (4) all or a portion of a partnership, or joint venture interest of a joint venturer in the joint venture, if Mortgagor or Mortgagor's beneficiary, in the event Mortgagor is a trustee, consists of or includes a partnership or joint venture, that results or could result in a material change in the identity of the person(s) in control of such partnership or joint venture; (ii) any sale, assignment, pledge, encumbrance or transfer to a third party of all or any part of the membership interests in the Mortgagor, or (iii) the seizure of the Mortgaged Property or attachment of any lien thereon, whether voluntary or involuntary, which has not been

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removed or bonded over, to Mortgagee's satisfaction, within ten (10) days of such attachment, (iv) obtaining by Mortgagor, of any ownership, via purchase, sale, transfer or otherwise, in whole or in part, over any other real property other than the Mortgaged Property, or (v) execution/incurrence of any other note(s), mortgage(s), debt(s), and/or liability(ies) in relation to the Mortgaged Property or any other property, whether real property or personal property, other than the Indebtedness.

Article 7 DEFAULT AND FORECLOSURE

7.1 Remedies. If an Event of Default shall occur, Mortgagee may, at its option, exercise one or more or all of the following remedies:

7.1.1 Acceleration. Declare the unpaid portion of the Indebtedness to be immediately due and payable, without further notice or demand, whereupon the same shall become immediately due and payable.

7.1.2 Entry on Mortgaged Property. Enter upon the Mortgaged Property, take possession thereof, and exercise any and all remedies set forth in this Mortgage.

7.1.3 Operation of Mortgaged Property. Hold, lease, operate or otherwise use or permit the use of the Mortgaged Property, or any portion thereof, in such manner, for such time and upon such terms as Mortgagee may deem to be in its best interest (making such repairs, alterations, additions and improvements thereto, from time to time, as Mortgagee shall deem necessary or desirable) and collect and retain all earnings, rents, profits or other amounts payable in connection therewith.

7.1.4 Enforcement of Mortgage. Mortgagee, with or without entry, personally or by their agents or attorneys, insofar as applicable may: (a) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, to the extent permitted by and pursuant to the procedures provided by law, at one or more sales, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; (b) institute proceedings for the complete or partial foreclosure of this Mortgage; or (c) take such steps to protect and enforce their rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, Guaranty or in this Mortgage (without being required to foreclose this Mortgage) or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

7.1.5 Foreclosure and Private Sale. Sell the Mortgaged Property, in whole or in part, (a) under the judgment or decree of a court of competent jurisdiction, or (b) at public auction (if permitted by the laws of the jurisdiction in which the Mortgaged Property is situated) in such manner, at such time or times and upon such terms as Mortgagee may determine, or as provided by law; at one or more public or private sales, in such manner, at such time or times and upon such terms as Mortgagee may determine, or as provided by law.

7.1.6 Receiver. Mortgagee shall be entitled, as a matter of strict right, and without regard to the value or occupancy of the security, or the solvency of the Mortgagor, or the adequacy of the Mortgaged Property as security for the payment of the Indebtedness and the performance of Mortgagor's Obligations, to have a receiver appointed to enter upon and take possession of the Mortgaged Property, collect the Rents and profits therefrom and apply the same as the court may direct such receiver to have all the rights and powers permitted under the laws of the State where the Mortgaged Property is located. Mortgagor hereby waives any requirements on the receiver or Mortgagee to post any surety or other bond. The expense

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(including the receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured by this Mortgage. Mortgagee shall (after payment of all costs and expenses incurred) apply such Rents, issues and profits received by it to the costs of the Indebtedness. The right to enter and take possession of the Mortgaged Property, to manage and operate the same, and to collect the Rents, issues and profits thereof, whether by 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.

7.1.7 Deed in Lieu of Foreclosure Pursuant to 735 ILCS 15-1401. Upon an Event of Default by Mortgagor, as set forth herein, Mortgagee and Mortgagor may agree to termination of Mortgagee's interest hereunder in the Mortgaged Property, via deed in lieu of foreclosure pursuant to 735 ILCS 15-1401, subject to any other claims or liens affecting the Mortgaged Property. Execution, tender or recordation of a deed in lieu of foreclosure by Mortgagor shall not constitute acceptance by the Mortgagee of said deed in lieu of foreclosure. Acceptance of a deed in lieu of foreclosure by Mortgagee shall only be effectuated by the execution, by both Mortgagor and Mortgagee, of an agreement for deed in lieu of foreclosure.

7.1.8 Additional Rights and Remedies. With notice, and without releasing Mortgagor from any Indebtedness or Obligations, and without becoming a mortgagee in possession, Mortgagee shall have the right to cure any breach or default of Mortgagor and, in connection therewith, to enter upon the Mortgaged Property and to do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof including, but without limitation, to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of Mortgagee, is prior or superior hereto, the judgment of Mortgagee being conclusive as between the parties hereto; to obtain insurance to pay any premiums or charges with respect to insurance required to be carried hereunder; and to employ counsel, accountants, contractors and other appropriate persons to assist them.

7.1.9 Other. Exercise any other remedy now or hereafter existing in equity, at law, by virtue of statute or otherwise.

7.2 Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in the Note, Guaranty and this Mortgage shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor or against other obligors or against the Mortgaged Property, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof, nor shall the choice of one remedy be deemed an election of remedies to the exclusion of other remedies.

7.3 No Cure or Waiver. Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Mortgaged Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Indebtedness and Obligations, nor the exercise of any other right or remedy by Mortgagee or any receiver shall impair the status of the security, or cure or waive any default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of this Mortgage.

7.4 Payment of Costs, Expenses and Attorneys' Fees. Mortgagor agrees to pay to Mortgagee within ten (10) days of written demand all costs and expenses incurred by Mortgagee in exercising the remedies under the Note, Guaranty and/or this Mortgage (including but without limit, court costs and reasonable attorneys' fees, whether

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incurred in litigation or not) with interest at the applicable rate being charged under the Note from the date of expenditure until said sums have been paid. Mortgagee shall be entitled to bid, at the sale of the Mortgaged Property held pursuant to a power of sale, if, then in force granted herein or pursuant to any judicial foreclosure of this instrument, the amount of said costs, expenses and interest in addition to the amount of the other Indebtedness and Obligations as a credit bid, the equivalent of cash.

7.5 Waiver of Redemption, Notice and Marshaling. To the extent permitted by law, Mortgagor hereby waives and releases (a) any and all statutory or equitable rights of redemption whether arising before or after the entry of a Judgment for Foreclosure and Sale, (b) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process, moratorium, redemption or extension of time for payment; (c) any right to have the liens against Mortgaged Property marshaled; and (d) the right to plead or assert any statute of limitations as a defense or bar to the enforcement of the Note, this Mortgage or the Guaranty.

7.6 Application of Proceeds. The proceeds of any sale of all or any portion of the Mortgaged Property and the amounts generated by any holding, leasing, operation or other use of the Mortgaged Property shall be applied by Mortgagee in the following order: (a) First, to the payment of reasonable costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same (including, without limitation, payment of any Impositions or other taxes); (b) Second, to the extent allowed by law, to the payment of attorneys' fees and other legal expenses, including expenses and fees incurred on appeals and legal expenses and fees of a receiver; (c) Third, to the payment of accrued and unpaid interest on the Indebtedness; and (d) Fourth, to the payment of the balance of the Indebtedness. The balance, if any, shall be paid to the parties entitled to receive it.

7.7 Strict Performance. Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of the Note, this Mortgage or the Guaranty shall not be deemed to be a waiver of any of the terms or provisions thereof, and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor.

7.8 No Conditions Precedent to Exercise of Remedies. Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the Indebtedness or performance of the Obligations shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage, or by reason of the release, regardless of consideration, of all or any part of the security held for the Indebtedness, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of this Mortgage without first having obtained the consent of Mortgagor or such other person; and in the latter event Mortgagor and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

7.9 Release of Collateral. Mortgagee may release, regardless of consideration, any part of the security held for the Indebtedness or Obligations without, as to the remainder of the security, in any way impairing or affecting the liens of this Mortgage or their priority over any subordinate lien. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any Indebtedness secured hereby or for performance of any Obligations contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after maturity of the Note, and with notice but without consent: (a) release any person liable for payment of all or any part of the Indebtedness or for performance of any Obligations; (b) make any agreement extending the time or otherwise altering terms of payment of all or any part of the Indebtedness, or modifying or

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With a copy to:

Law Offices of Ian B. Hoffenberg LLC
221 N. LaSalle, Ste. 1300
Chicago, Illinois 60601

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking date immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the fifth (5th) day following the day sent or when actually received.

8.4 Mortgagee's Right to Perform the Obligations. If Mortgagor shall fail to make any payment or perform any act required by this Mortgage, then, at any time thereafter, upon reasonable prior notice to or demand upon Mortgagor and without waiving or releasing any obligation or default, Mortgagee may make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter the Mortgaged Property for such purpose and to take all such action thereon and with respect to the Mortgaged Property as may be necessary or appropriate for such purpose (including but not limited to, payment of any and all taxes, fines, invoices, assessments, loan commissions, service charges, liquidated damages, reasonable attorneys' fees and costs). All sums so paid by Mortgagee, and all costs and expenses (including, without limitation, reasonable attorneys' fees, processing fees, and expenses) so incurred by Mortgagee, together with interest thereon at the applicable rate being charged under the Note, from the date of payment or incurring, shall constitute additions to (and hence become a part of and included in) the Indebtedness secured by this Mortgage, and shall be paid by Mortgagor to Mortgagee, on demand. If Mortgagee shall elect to pay any Imposition, Mortgagee may do so in reliance on any bill, statement or assessment procured from the appropriate public office, without inquiring into the accuracy thereof or into the validity of such Imposition. Mortgagor shall indemnify Mortgagee for all losses and expenses, including reasonable attorneys' fees, incurred by reason of any acts performed by Mortgagee pursuant to the provisions of this Section 8.4.

8.5 Covenants Running with the Land. All covenants contained in this Mortgage shall run with the Mortgaged Property.

8.6 Severability. In case any one or more of the Obligations, or any other provision herein, shall be invalid, illegal or unenforceable in any respect, the validity of the Note and this Mortgage and the remaining Obligations and/or provisions shall be in no way affected, prejudiced or disturbed thereby.

8.7 Modification. This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

8.8 Maximum Rate of Interest. Notwithstanding any provision in this Mortgage, or in any instrument now or hereafter relating to or securing the Indebtedness evidenced by the Note, the Guaranty or this Mortgage, the total liability for payments of interest and payments in the nature of interest, including, without limitation, all charges, fees, exactions, or other sums which may at any time be deemed to be interest, shall not exceed the limit imposed by applicable usury laws. In the event the total liability for payments of interest and payments in the nature of interest, including without limitation, all charges, fees, exactions or other sums which may at any time be deemed to be interest, shall, for any reason whatsoever, result in an effective rate of interest, which for any month or other interest payment period exceeds the limit imposed by the applicable usury laws, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice by, between, or to any party hereto, be applied to the reduction of the Indebtedness immediately upon receipt of such sums by Mortgagee, with the same force and effect as though Mortgagor had specifically designated such excess sums to be so applied to the reduction of the Indebtedness and Mortgagee had agreed to accept such sums as a premium-free payment of the Indebtedness, provided, however, that Mortgagee may, at any time and from time to time, elect, by notice in writing to Mortgagor,

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to waive, reduce, or limit the collection of any sums (or refund to Mortgagor any sums collected) in excess of those lawfully collectible as interest rather than accept such sums as a prepayment of the Indebtedness. Notwithstanding the foregoing, Borrower agrees and acknowledges that the Loan constitutes a business loan as defined by the Illinois Interest Act, 815 ILCS 205/4, and agrees that the Loan is a transaction exempted from the Illinois Interest Act, pursuant to 815 ILCS 205/4.

8.9 Survival of Warranties and Covenants. The warranties, representations, covenants and agreements set forth in the Note, this Mortgage, the Guaranty, the Business Loan Agreement, and the Loan Documents, shall survive the execution and delivery of the Loan Documents, and shall continue in full force and effect until the Indebtedness is paid in full and the Obligations have been fully performed.

8.10 Applicable Law. This Mortgage shall be governed by and construed according to the laws of the State of Illinois.

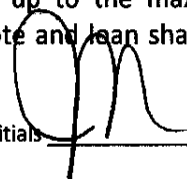
8.11 No Representations by Mortgagee. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee pursuant to this Mortgage, including (but not limited to) any officer's certificate, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

8.12 Future Advances. This Mortgage shall secure, as part of the Indebtedness secured, any and all future and additional loan advances to Mortgagor from Mortgagee made pursuant to this Mortgage, the Note or Loan Documents. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage also secures as part of the Indebtedness secured, the payment of any and all taxes, fines, invoices, assessments, loan commissions, service charges, liquidated damages, reasonable attorneys' fees and costs, expenses and/or advances due to or incurred by Mortgagee in connection with or in relation to this Mortgage, the Note or Loan Documents.

8.13 Headings. The article headings and the section and subsection captions are inserted for convenience or reference only and shall in no way alter or modify the text of such articles, sections and subsections.

8.14 Compliance with Illinois Mortgage Foreclosure Law. If any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*, as amended (the "Act"), the provisions of the Act shall take precedence over the Mortgage provisions, but shall not invalidate or render unenforceable any other Mortgage provision that can be construed in a manner consistent with the Act. If any Mortgage provision shall grant to Lender any rights or remedies upon Mortgagor's default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of such provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 19 of this Mortgage, shall be added to the Secured Indebtedness secured by this Mortgage or by the judgment of foreclosure.

8.15 Revolving Credit Arrangement. The parties acknowledge and agree that the Note and accompanying loan represents a revolving line of credit and the principal amount outstanding under the Note may increase or decrease from time to time as Borrower draws and repays loan funds thereunder. Subject to the terms and conditions of the Note and the Loan Documents, Lender shall advance funds to Borrower such that Borrower may borrow, partially or wholly repay, and reborrow, on a revolving basis, up to the maximum aggregate amount set forth in the Note. Borrower agrees and acknowledges that the Note and loan shall be a



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revolving credit arrangement pursuant to 735 ILCS 5/15-1302(b)(3). Borrower agrees that this Mortgage secures monies advanced or applied in accordance with a revolving credit arrangement, and that the exception set forth by 735 ILCS 5/15-1302(b)(3) shall apply to this Mortgage, the Note and the Loan Documents.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage, Security Agreement, Assignment of Leases and Rents and UCC Fixture Filing as of the date first above written.

MORTGAGOR:

Howard Theater Limited Partnership,

By: Howard Theater, Inc., General Partner of Howard Theater Limited Partnership,

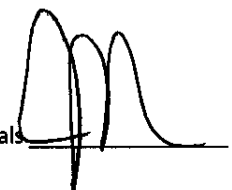
By:  _____

Name: Jay L. Johnson

Title: President

Date: June 11, 2012

Property of Cook County Clerk's Office



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ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, Ming Mac, Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jay Johnson, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her own free and voluntary act, for the uses and purpose therein set forth.

GIVEN, under my hand and Notarial Seal this 11th day of June, 2012



Ming Mac
 Notary Public in and for the State of Illinois
 My commission expires: 4/28/13

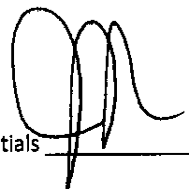
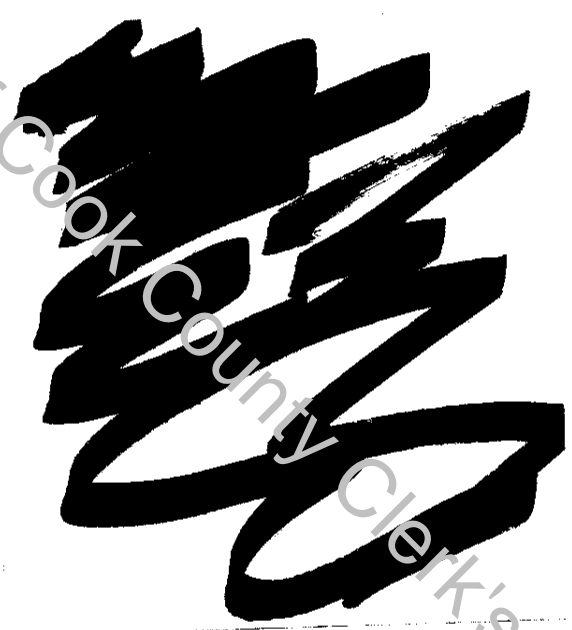
Borrower's Initials

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EXHIBIT A

LEGAL DESCRIPTION
(SEE ATTACHED)

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UNOFFICIAL COPY**CHICAGO TITLE INSURANCE COMPANY**

TAX NUMBER: 11-30-404-026-1001 9 - 1004

LEGAL DESCRIPTION:

PARCEL 1:

UNITS R1, AND 4B IN THE HOWARD THEATER CONDOMINIUM, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

LOTS 1, 2 AND THE NORTH 96.27 FEET OF LOTS 3 TO 10, BOTH INCLUSIVE IN BLOCK 1 IN FERGUSON'S BIRCHWOOD ADDITION TO ROGERS PARK, A SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, NORTHEASTERLY OF THE NORTHWESTERN ELEVATED RAILROAD RIGHT OF WAY AND THE NORTH INDIAN BOUNDARY LINE, AND PART OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE INDIAN BOUNDARY LINE, AS PER PLAT THEREOF RECORDED APRIL 6, 1911 AS DOCUMENT 4735388; WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT 99808160, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

Proprietor of Cook County Clerk's Office

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EXHIBIT B

PERMITTED ENCUMBRANCES

1. GENERAL REAL ESTATE TAXES NOT YET DUE AND PAYABLE.

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