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## Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1217416058 Fee: \$78.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 06/22/2012 03:49 PM Pg: 1 of 21

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 16-06-229-017-0000

**Address:**

**Street:** 931 NORTH ELMWOOD

**Street line 2:**

**City:** OAK PARK

**State:** IL

**ZIP Code:** 60302

**Lender:** FIRST MIDWEST BANK

**Borrower:** EDWARD J. GARVEY, JR.

**Loan / Mortgage Amount:** \$862,500.00

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

**Certificate number:** 1300FF9B-A9DC-452D-802F-D8DB6C483FEF

**Execution date:** 06/19/2012

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This instrument was prepared by  
and after recording return to:

Katten Muchin Rosenman LLP  
525 West Monroe Street  
Suite 1900  
Chicago, Illinois 60661-3693  
Attn: Neil G. Shelton, Esq.

SPACE ABOVE THIS LINE FOR RECORDER'S USE.

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

MADE BY

EDWARD J. GARVEY, JR.,  
an individual,

as "Mortgagor"

to

FIRST MIDWEST BANK

as "Lender"

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**") is made as of June 19, 2012, by Edward J. Garvey, Jr., an individual ("**Mortgagor**"), whose address is 931 North Elmwood, Oak Park, Illinois 60302, in favor of First Midwest Bank ("**Lender**"), whose address is 8501 West Higgins Road, Suite 230, Chicago, Illinois 60631.

### RECITALS

A. Lender has agreed, subject to the terms and conditions of that certain Loan and Security Agreement of even date herewith, by and among Lender, Garvey Real Estate Ventures, L.L.C., a Delaware limited liability company ("**Borrower**") and certain of Borrower's affiliates (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), to make a term loan in the original principal amount not to exceed \$862,500 (the "**Loan**") to Borrower. Mortgagor, as an indirect owner of the equity interests of Borrower, has agreed to grant this Mortgage as collateral security for the Obligations owed by Borrower to Lender. The Loan Agreement provides for certain payments as set forth therein with the balances thereof due and payable on June 19, 2015 (such date, or any later date to which the maturity date may be extended in accordance with the Loan Agreement, hereinafter is referred to as the "**Maturity Date**"). Capitalized terms used herein but not defined herein shall have the respective meanings ascribed to such terms in the Loan Agreement.

B. This Mortgage is to secure: (i) the prompt payment of the Loan, together with all interest, and other amounts, if any, due in accordance with the terms of the Loan Agreement, as well as the prompt payment of any additional indebtedness of Mortgagor accruing to Lender on account of any future payments, advances or expenditures, including without limitation, the Future Advances (as hereinafter defined) made by Lender pursuant to the Loan Agreement, this Mortgage or any Other Agreement (collectively, the "**Loan Documents**"); (ii) the prompt performance of each and every covenant, condition, and agreement of Mortgagor contained in the Loan Documents; and (iii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and indebtedness of any kind or nature now or hereafter owing, arising, due or payable from Mortgagor to Lender in connection with the transactions contemplated by the Loan Documents. All such obligations, liabilities and indebtedness of every nature of Mortgagor to Lender are hereinafter sometimes collectively referred to as the "**Obligations**".

C. In as much as the Loan Agreement provides for advances to be made in the future ("**Future Advances**"), this Mortgage is given to, and shall, secure not only existing indebtedness, but also the payment of any and all Future Advances, whether such Future Advances are obligatory or are to be made at the option of Lender, or otherwise, which are to be made within ten (10) years from the date of the execution of this Mortgage. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed two (2) times the aggregate principal amount of the Loan, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Property (as hereinafter defined), if any, together with interest on such disbursements. Mortgagor hereby agrees that it shall not execute or file or record any notice limiting the maximum principal amount that may be so secured, and that no such notice shall be

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of any force and effect whatsoever unless Lender shall have consented thereto in writing signed by Lender and recorded in the public records of the county in which the Premises (as hereinafter defined) are situated.

NOW THEREFORE, in consideration of the premises and in order to induce Lender to make the Loan, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby agrees with Lender as follows:

## 1. Grant and Obligations.

1.1 Grant. For the purpose of securing payment and performance of the Obligations, Mortgagor hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages, assigns, pledges, warrants and transfers to Lender with power of sale and with right of entry and possession, a security interest in and to all of the following property which Mortgagor now has an interest in or hereafter may acquire an interest in (all or any part of such property, or any interest in all or any part of it, as the context may require, the "**Property**"):

(a) The real property described in Exhibit A, together with all existing and future easements and rights affording access to it (the "**Premises**"); together with

(b) All buildings, structures, improvements and fixtures now or in the future located or to be constructed on the Premises (the "**Improvements**"); together with

(c) All existing and future appurtenances, privileges, rights-of-way, franchises and tenements of the Premises, including all mineral rights, oil, gas, and associated substances, and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future Leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("**Leases**") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such Leases and all rents, income, revenues, prepayments, security deposits, tax, insurance and replacement reserve deposits, receipts, termination, cancellation, and option payments, royalties, profits, issues, service reimbursements, fees, accounts receivable, and revenues from the Premises and/or Improvements from time to time accruing under the Leases (the "**Rents**"); together with

(e) All materials, supplies, work in process, chattels, furniture, fixtures, appliances, machinery and other personal property of any kind, now or later to be attached to, incorporated into, placed in, on or about, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage; together with

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(f) All claims, demands, judgments, insurance policies, insurance proceeds, refunds, reserves, accounts receivable, cost savings, deposits, rights of action, awards of damages, compensation, settlements and other rights to the payment of money hereafter made resulting from or relating to (i) the taking of the Premises or the Improvements or any part thereof under the power of eminent domain, (ii) any damage (whether caused by such taking, by casualty or otherwise) to the Premises, Improvements or appurtenances thereto or any part thereof, or (iii) the ownership or operation of the Property; together with

(g) To the extent assignable, all management contracts, permits, licenses, applications, approvals, plans, specifications and drawings, contracts, purchase and sale agreements, purchase options, entitlements, soil test reports, other reports of examination or analysis of the Premises or the Improvements, development rights and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation and use of the Premises, Improvements and/or Leases, including building permits, environmental certificates, certificates of operation, warranties and guaranties; together with

(h) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("**Books and Records**"); together with

(i) All proceeds and products and renewals of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above; and together with

(j) Any and all after-acquired right, title or interest of Mortgagor in and to any property of the types described in the preceding granting clauses.

The Recitals and Exhibits to this Mortgage are hereby incorporated in this Mortgage.

1.2 Notice. All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Obligations and each other agreement or instrument made or entered into in connection with each of the Obligations. Such terms include any provisions in the Loan Agreement which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Obligations may vary from time to time.

## 2. Assignment of Leases and Rents.

2.1 Assignment. Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Lender all Leases and Rents and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits. This is an absolute assignment, not an assignment for security only and shall continue in effect until the Obligations are paid and satisfied in full. Mortgagor hereby gives Lender the right to collect the Rents and apply them in payment of the principal, interest and all other sums payable under the Loan Documents.

2.2 Grant of License. Lender hereby confers upon Mortgagor a revocable license ("**License**") to enforce the Leases and collect and retain the Rents as they become due and

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payable so long as no Event of Default, as defined in Section 6.2 below, shall exist and be continuing. If Lender terminates the License as set forth in this Section 2.2, Mortgagor shall deliver such Rents to Lender as are necessary for the payment of principal, interest and other sums payable under the Loan Documents as such sums become due. If an Event of Default has occurred and is continuing, Lender shall have the right, which it may choose to exercise in its sole discretion and which it may exercise without taking possession of the Property, to terminate this License without notice to or demand upon Mortgagor, and without regard to the adequacy of Lender's security under this Mortgage.

2.3 Collection and Application of Rents. Subject to the License granted to Mortgagor under Section 2.2 above, Lender has the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Lender its attorney-in-fact to perform any and all of the following acts, if and at the times when Lender in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Mortgagor or in the name of Lender for any and all Rents.

Lender and Mortgagor agree that the mere recordation of the assignment granted herein entitles Lender immediately to collect and receive Rents upon the occurrence of an Event of Default, as defined in Section 6.2, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Mortgagor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Lender's right to the Rents does not depend on whether or not Lender takes possession of the Property as permitted under Section 6.3(c). In Lender's sole discretion, Lender may choose to collect Rents either with or without taking possession of the Property. Lender shall apply all Rents collected by it in the manner provided under Section 6.6. If an Event of Default occurs while Lender is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Lender and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity.

2.4 Lender Not Responsible. Under no circumstances shall Lender have any duty to produce Rents from the Property. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Premises and Improvements, unless Lender agrees in writing to the contrary, Lender is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for the control, care, management, or repair of the property or any personal property or for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or (except to the extent of Lender's own gross negligence or willful misconduct) any negligence in the management, upkeep, repair or control of the Property;

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(d) In the absence of Lender's own gross negligence or willful misconduct, liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it; or

(e) In the absence of Lender's own gross negligence or willful misconduct, liable in any way for any injury or damage to any person or property sustained by any person or persons, firm, or corporation in or about the Property.

2.5 Leasing. Mortgagor shall comply with and observe Mortgagor's obligations as landlord under all Leases and shall remain liable under the Leases. Mortgagor shall not, without Lender's prior written consent, which shall not be unreasonably withheld or delayed, execute, modify, amend, surrender or terminate any Lease.

### 3. Grant of Security Interest.

3.1 Security Agreement. The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Lender. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, Mortgagor, as debtor, hereby grants to Lender, as secured party, a security interest in all such Property (including, any replacement or substituted property) and Rents, to secure payment and performance of the Obligations. This Mortgage constitutes a security agreement under the Uniform Commercial Code of the State in which the Property is located, covering all such Property and Rents. Lender shall have all of the rights and remedies of a secured party under the UCC, as well as all other rights and remedies available at law or in equity.

3.2 Financing Statements. Mortgagor hereby authorizes and, to the extent necessary, shall execute one or more financing statements and such other documents as Lender may from time to time require to perfect or continue the perfection of Lender's security interest in any Property or Rents. As provided in Section 5.7 below, Mortgagor shall pay all fees and costs that Lender may incur in filing this Mortgage (including any extensions, renewals and amendments thereof and reproductions of this Mortgage) and such other documents in public offices and in obtaining such record searches as Lender may reasonably require. In case Mortgagor fails to execute any financing statements or other documents for the perfection or continuation of any security interest or in the event Lender chooses to execute such financing statement on Mortgagor's behalf, Mortgagor hereby authorizes and empowers Lender and irrevocably appoints Lender as Mortgagor's agent and attorney-in-fact to execute and file, on Mortgagor's behalf, all financing statements, refilings, amendments, renewals and continuations thereof as Lender deems necessary or advisable to create, preserve and protect such lien. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

### 4. Fixture Filing.

This Mortgage constitutes a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code in the State in which the Property is located, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of

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Mortgagor, as debtor, and Lender, as secured party, are as set forth in the preambles of this Mortgage.

## 5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Mortgagor represents and warrants that:

(a) Mortgagor has the full and unlimited power, right and authority to encumber the Property and assign the Leases and Rents; and

(b) This Mortgage creates a first and prior lien on the Property, subject to Permitted Liens existing as of the date hereof.

5.2 Performance of Obligations. Mortgagor shall promptly pay and perform each Obligation in accordance with its terms.

5.3 Liens, Charges and Encumbrances. Mortgagor shall immediately discharge or secure title insurance in favor of Lender against any lien on the Property which does not constitute a Permitted Lien, except to the extent the subject of a lien being contested in accordance with the provisions of the Loan Agreement.

5.4 Damages and Insurance and Condemnation Proceeds. In the event of any loss or damage to any portion of the Property due to fire or other casualty, or any taking of any portion of the Property by condemnation or under power of eminent domain, Lender shall have the right, but not the obligation, to settle insurance claims and condemnation claims or awards. Notwithstanding the foregoing but subject to the terms of the Loan Agreement, if the loss or damage is less than \$100,000 in the aggregate per Fiscal Year, and the following additional conditions are met: (i) no uncured Event of Default exists, (ii) the insurance or condemnation proceeds, together with any additional funds deposited with Lender by Mortgagor, are sufficient either to restore the Property to its condition before the casualty or to restore the Property to an architectural unit following the condemnation, and (iii) following such restoration, the Property may continue to be used and operated consistent with past practice in accordance with all applicable laws, ordinances and regulations; Mortgagor shall be entitled to use the insurance or condemnation proceeds to rebuild the Property or to remedy the effect of the condemnation, as the case may be. Any request by Mortgagor for a disbursement by Lender of fire or casualty insurance proceeds, condemnation claims or awards, and funds deposited by Mortgagor pursuant to this Section 5.4, and the disbursement thereof, shall be conditioned upon Mortgagor's compliance with reasonable procedures required by Lender in connection therewith, including approval of plans and specifications, submittal of evidence of completion, updated title insurance, lien waivers, and other customary procedures.

5.5 Releases, Extensions, Modifications and Additional Security. From time to time, Lender may perform any of the following acts without affecting the liability of Mortgagor or any other person liable for the payment of the Obligations, and without affecting the lien or charge of the Mortgage as security for the payment of the Obligations, incurring any liability or giving notice to any person:

(a) Release any person liable for payment and performance of any Obligation;



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(b) Waive or modify any provision of this Mortgage or the other Loan Documents or grant other indulgences, including, extending the time for payment, or otherwise altering the terms of payment, of any Obligation;

(c) Accept additional real or personal property of any kind as security for any Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

(d) Alter, substitute or release any property securing the Obligations;

(e) Consent to the making of any plat or map of the Property or any part of it (provided that, in the absence of an Event of Default, Mortgagor has requested such consent or given Mortgagor's own consent thereto);

(f) Join in granting any easement or creating any restriction affecting the Property (provided that, in the absence of an Event of Default, Mortgagor has requested Lender's joinder therein or given Mortgagor's own consent thereto);

(g) Join in any subordination or other agreement affecting this Mortgage or the lien of it; or

(h) Release the Property or any part of it.

5.6 Release. When all of the Obligations have been paid and satisfied in full and all fees and other sums owed by Mortgagor under Section 5.7 of this Mortgage and the other Loan Documents have been received, Lender shall release this Mortgage, the lien created thereby, and all notes and instruments evidencing the Obligations. Mortgagor shall pay any costs of preparation and recordation of such release.

## 5.7 Compensation, Exculpation, Indemnification

(a) Mortgagor agrees to pay reasonable fees as may be charged by Lender for any services that Lender may render in connection with this Mortgage, including Lender's providing a statement of the Obligations or providing the release pursuant to Section 5.6 above. Mortgagor shall also pay or reimburse all of Lender's reasonable out-of-pocket costs and expenses which may be incurred in rendering any such services. Mortgagor further agrees to pay or reimburse Lender for all reasonable costs, expenses and other advances which may be incurred or made by Lender or its agents or representatives in any efforts to enforce any terms of this Mortgage or to protect the rights under this Mortgage or the other Loan Documents, including any rights or remedies afforded to Lender under Section 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including reasonable attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Section 6.3(i) below) and any cost of evidence of title. If Lender chooses to dispose of Property through more than one Foreclosure Sale, Mortgagor shall pay all costs, expenses or other advances that may be incurred or made by Lender in each of such Foreclosure Sales.

(b) Neither Lender shall be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

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(i) Lender's exercise of or failure to exercise any rights, remedies or powers granted to Lender in this Mortgage;

(ii) Lender's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) Any loss sustained by Mortgagor or any third party resulting from Lender's failure to lease the Property, or from any other act or omission of Lender in managing the Property, after an Event of Default, unless and to the extent the loss is caused by the willful misconduct and bad faith of Lender.

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Lender.

(c) Mortgagor agrees (except in each case to the extent arising from Lender's own gross negligence or willful misconduct) to indemnify, defend and hold Lender harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it may suffer or incur:

(i) In performing any act required or permitted by this Mortgage or any of the other Loan Documents or by law;

(ii) Because of any failure of Mortgagor to perform any of its obligations; or

(iii) Because of any alleged obligation of or undertaking by Lender to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Mortgagor to indemnify Lender shall survive the release and cancellation of any or all of the Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 5.7 promptly upon demand by Lender. Each such obligation shall be added to, and considered to be part of, the Obligations, and shall bear interest from the date the obligation arises at the default rate specified in Section 3.01 of the Loan Agreement (the "**Default Rate**").

**5.8 Defense and Notice of Claims and Actions.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Lender created under it, against all adverse claims. Mortgagor shall give Lender prompt notice in writing if any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim. Lender may, at the expense of Mortgagor, appear in and defend any such claim, action or proceeding and any claim, action or

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other proceeding asserted or brought against Lender in connection with or relating to any part of the Property or this Mortgage.

5.9 Subrogation. Lender shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Lender in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

## 6. Default and Remedies.

6.1 Reserved.

6.2 Events of Default. The occurrence of an Event of Default under the Loan Agreement or any other Loan Document shall constitute an "Event of Default" under this Mortgage.

6.3 Remedies. At any time after an Event of Default, Lender shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Lender at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Lender may declare any or all of the Obligations to be due and payable immediately.

(b) Receiver. Lender shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Lender would have, upon entering and taking possession of the Property under subsection (c) below.

(c) Entry. Lender, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, may exclude Mortgagor and its agents and employees wholly therefrom, and may also do any and all other things in connection with those actions that Lender may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Mortgagor's or the then owner's Books and Records and accounts; entering into, enforcing, modifying or canceling leases on such terms and conditions as Lender may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Lender; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Lender so requests, Mortgagor shall assemble all of the Property that has been removed from the Premises and make all of it available to Lender at the site of the Premises. Mortgagor hereby irrevocably constitutes and appoints Lender

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as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Lender in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments. If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Lender, Lender or such receiver may obtain a judgment or decree conferring on Lender or such receiver, the right to immediate possession of the Property or requiring the delivery of the Property to Lender or such receiver, and Mortgagor specifically consents to the entry of such judgment or decree.

(d) Cure; Protection of Security. Lender may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure or with respect to preventing a loss to Lender's interest in the Property, Lender may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Lender under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien against the Property; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; repairing, restoring or otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Lender. Lender may take any of the actions permitted under this Section 6.3(d) either with or without giving notice to any person. Any amounts disbursed by Lender under this Section 6.3(d) together with interest thereon at the Default Rate from the date of disbursement, shall be secured by this Mortgage and shall be due and payable on demand. Nothing contained in the Loan Documents shall require Lender to incur any expense or take any action hereunder.

(e) Uniform Commercial Code Remedies. Lender may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code in the State in which the Property is located.

(f) Foreclosure; Lawsuits. Should Lender elect to foreclose by exercise of the power of sale contained herein:

(i) Lender shall cause to be recorded and delivered to Mortgagor such notice of default as may then be required by law and by this Mortgage. Lender shall, without demand on Mortgagor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale has been given as required by law, sell the Property at the time and place of sale fixed by it in said notice of sale, either as a whole or in separate lots or parcels or items as Lender shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Lender shall deliver to the purchaser or purchasers at such sale its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such mortgage of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Mortgagor or Lender, may purchase at such sale, and Mortgagor hereby covenants to warrant and defend the title of such purchaser or purchasers.

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(ii) Lender may continue the sale of all or any portion of the Property from time to time in accordance with the laws of the State in which the Premises is located.

(iii) To the fullest extent allowed by law, Mortgagor hereby expressly waives any right which it may have to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant to this Mortgage.

(iv) Lender may from time to time rescind any notice of default or notice of sale before any sale as provided above in accordance with the laws of the State in which the Property is located. The exercise by Lender of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Lender to execute and deliver other declarations or notices of default to satisfy the obligations of this Mortgage, or otherwise affect any provision, covenant or condition of any Loan Document or any of the rights, obligations or remedies of Lender hereunder or thereunder.

(v) Notwithstanding any statute or rule of law to the contrary, the failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect (i) the Obligations, or any part thereof or (ii) any deficiency remaining unpaid after foreclosure and sale of the Property.

(g) Other Remedies. Lender may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Lender in connection with the Obligations or any part thereof, without prejudice to the right of Lender thereafter to enforce any appropriate remedy against Mortgagor. Lender shall have the right to pursue all remedies afforded to a mortgagee under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(h) Sale of Personal Property. Lender shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) For purposes of this power of sale, Lender may elect to treat as personal property any Property which is intangible or which can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Lender may dispose of any personal property, in any manner permitted by Article 9 of the Uniform Commercial Code of the State in which the Property is located, including any public or private sale, or in any manner permitted by any other applicable law.

(ii) In connection with any sale or other disposition of such Property, Mortgagor agrees that the following procedures constitute a commercially reasonable sale: Lender shall mail written notice of the sale to Mortgagor not later than fifteen (15) days prior to such sale. Lender will publish notice of the sale in

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a local daily newspaper of general circulation. Upon receipt of any written request, Lender will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding the foregoing, Lender shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(i) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Lender may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Lender may deem to be in its best interests (any such sale or disposition, a "**Foreclosure Sale**", and any two or more, "**Foreclosure Sales**").

If Lender chooses to have more than one Foreclosure Sale, Lender at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Lender may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Mortgage on any part of the Property which has not been sold, until all of the Obligations have been paid in full.

Lender and any receiver, or any of their agents or representatives, shall have no liability for any loss, damage, injury, cost or expenses resulting from any action or omission that was taken or omitted in good faith.

It is specifically covenanted and agreed that Lender may proceed, at the same or different times, to foreclose this Mortgage or any of the other security documents as shall have been executed and delivered in connection with the extension of the Loan (the "**Other Security Documents**") or resort to any of their remedies thereunder, by any proceedings appropriate in the state where any of the land lies, and that no enforcement taking place in any state, including, without limiting the generality of the foregoing, any pending foreclosure, judgment or decree of foreclosure, foreclosure sale, rents received, possession taken, deficiency judgment or decrees, or judgment taken on any of the Loan Documents, shall in any way stay, preclude or bar enforcement of this Mortgage or any of the Other Security Documents or any of them in any other state, and that Lender may pursue any or all of its remedies to the maximum extent permitted by state laws until all Obligations have been paid or discharged in full.

6.4 Credit Bids. At any Foreclosure Sale, any person, including Mortgagor or Lender, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Lender may settle for the purchase price by crediting the sales price of the property against the following obligations:

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(a) First, the portion of the Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to pay or reimburse Lender under Section 5.7 of this Mortgage; and

(b) Second, all other Obligations in any order and proportions as Lender in its sole discretion may choose.

6.5 Application of Foreclosure Sale Proceeds. Lender shall apply the proceeds of any Foreclosure Sale in the following manner to the extent permitted by then applicable law:

(a) First, to pay the portion of the Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Lender under Section 5.7 of this Mortgage;

(b) Second, to pay the portion of the Obligations attributable to any sums expended or advanced by Lender under the terms of this Mortgage which then remain unpaid;

(c) Third, to pay all other Obligations in any order and proportions as Lender in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

6.6 Application of Rents and Other Sums. Lender shall apply to the extent permitted by then applicable law any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Lender may receive or collect under Section 6.3 above, in the following manner:

(a) First, to pay the portion of the Obligations attributable to the costs and expenses of operation and collection that may be incurred by Lender or any receiver;

(b) Second, to pay all other Obligations in any order and proportions as Lender in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Lender shall have no liability for any funds which it does not actually receive. To the extent permitted by applicable law, and to the extent not arising from Lender's own gross negligence or willful misconduct, Mortgagor waives all claims, damages and demands against Lender arising out of the disposition, repossession or retention of the Property.

## 7. Miscellaneous Provisions.

7.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Loan Documents also grant further rights to Lender and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

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7.2 No Waiver or Cure. If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Mortgage; or prejudice Lender or any receiver in the exercise of any other right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Lender of any tenancy, lease or option, or a subordination of the lien of this Mortgage.

(a) Lender, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Section 6.3(c).

(b) Lender collects and applies Rents as permitted under Sections 2.3 and 6.6 above, either with or without taking possession of all or any part of the Property.

(c) Lender receives and applies to any Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Lender under Section 5.4 above.

(d) Lender makes a site visit, observes the Property and/or conducts tests as permitted under the Loan Agreement.

(e) Lender receives any sums under this Mortgage or any proceeds of any collateral held for any of the Obligations, and applies them to one or more Obligations.

(f) Lender or any receiver invokes any right or remedy provided under this Mortgage.

## 7.3 Powers of Lender.

(a) If Lender performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.5 or Section 6.3(d) of this Mortgage, that act alone shall not release or change the personal liability of any person for the payment and performance of the Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Obligations. The liability of the original Mortgagor shall not be released or changed if Lender grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Obligation. Lender shall not be required to comply with any demand by the original Mortgagor that Lender refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Lender may take any of the actions permitted under Sections 6.3(b) and/or 6.3(c) regardless of the adequacy of the security for the Obligations, or whether any or all of the Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

(c) From time to time, Lender may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Mortgage. Lender may from time to time obtain orders or decrees



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directing, confirming or approving acts in executing and enforcing these rights and remedies.

7.4 Merger. No merger shall occur as a result of Lender's acquiring any other estate in or any other lien on the Property unless Lender consents to a merger in writing.

7.5 Joint and Several Liability. If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Mortgage and the other Loan Documents.

7.6 Applicable Law. The creation, perfection and enforcement of the lien of this Mortgage shall be governed by the law of the State in which the property is located. Subject to the foregoing, in all other respects, this Mortgage shall be governed by the substantive laws of the State of Illinois.

7.7 Waiver of Homestead and Redemption. Mortgagor hereby waives all right of homestead exemption in the Property. Mortgagor hereby waives all right of redemption on behalf of Mortgagor and on behalf of all other persons acquiring any interest or title in the Property subsequent to the date of this Mortgage, except decree or judgment creditors of Mortgagor.

7.8 Waiver of Statutory Rights. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "**Moratorium Laws**," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

7.9 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Lender may, at its option, declare all Obligations immediately due and payable.

7.10 Notice. Notices shall be given under this Mortgage in conformity with the terms and conditions of the Loan Agreement and in conformity with applicable law.

7.11 Reserved.

7.12 WAIVER OF TRIAL BY JURY. MORTGAGOR AND LENDER (BY ITS ACCEPTANCE HEREOF) EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY CLAIM, CONTROVERSY, DISPUTE, ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS (INCLUDING WITHOUT

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LIMITATION ANY ACTIONS OR PROCEEDINGS FOR ENFORCEMENT OF THE LOAN DOCUMENTS) AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AND LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH OF THEM HAVE RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THAT EACH OF THEM WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. MORTGAGOR AND LENDER WARRANT AND REPRESENT THAT EACH HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

7.13 Inconsistencies. In the event of any inconsistency between this Mortgage and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling. The terms of the Loan Agreement are hereby incorporated herein and expressly made a part hereof by this reference.

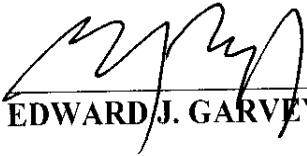
7.14 Further Assurances. Mortgagor agrees to execute any further documents, and to take any further actions reasonably requested by Lender to evidence or perfect the security interests granted herein, to maintain the first priority of the security interests, and to effectuate the rights granted to Lender hereunder.

*[Signature Pages Follow]*

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first above written.

**MORTGAGOR:**

  
EDWARD J. GARVEY, JR.

Property of Cook County Clerk's Office

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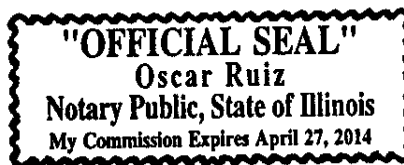
STATE OF IL )  
 ) SS  
COUNTY OF Cook )

I, Oscar Ruiz, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Edward J. Garvey, Jr., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 19th day of June, 2012.

Oscar Ruiz  
Notary Public

My Commission Expires:  
April 27, 2014



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## EXHIBIT A

### Description of Premises

Common Address:

931 North Elmwood  
Oak Park, Illinois 60302

PIN 16-06-229-017-0000

Legal Description:

THE NORTH  $\frac{1}{2}$  OF LOT 3 IN NORTH EAST AVENUE ADDITION TO OAK PARK, BEING A SUBDIVISION OF THE EAST 23.43 ACRES OF THE WEST 40 ACRES OF THE SOUTH 50 ACRES OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN; ALSO, THAT PART OF THE LOT 12 LYING WEST OF THE WEST LINE OF NORTH ELMWOOD AVENUE PRODUCED NORTH IN THE SUPERIOR COURT COMMISSIONER'S PARTITION OF THE WEST  $\frac{1}{2}$  OF THE SOUTH 85 ACRES OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 5 AND THE EAST 17 ACRES OF THE SOUTH 85 ACRES OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.