

# UNOFFICIAL COPY

4/8 CH

FIRST AMERICAN

File # 50118/51029



Doc#: 121881117 Fee: \$78.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/08/2012 01:02 PM Pg: 1 of 21

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, Illinois 60606  
Attention: David R. Neville

## CONSTRUCTION MORTGAGE

THIS CONSTRUCTION MORTGAGE (this "Mortgage") is made as of July 3, 2012, by ~~BRADFORD HARWOOD HEIGHTS 1 LLC~~, an Illinois limited liability company ("BHH 1"), and ~~BRADFORD HARWOOD HEIGHTS 2 LLC~~, an Illinois limited liability company ("BHH 2" and together with BHH 1, the "Mortgagor"), each having an address at c/o Bradford Real Estate Services Corporation, 10 South Wacker Drive, Suite 2935, Chicago, Illinois 60606, in favor of I.M. PROPERTIES (ILLINOIS 8) LLC, a Delaware limited liability company, and I.M. PROPERTY INVESTMENTS (USA) LLC, a Delaware limited liability company (collectively, the "Mortgagee"), having an address at 1215 Panther Lane, #340, Naples, Florida 34109.

WHEREAS, Mortgagor have executed and delivered to Mortgagee a Construction Note (as may be amended, modified, replaced or restated from time to time, the "Note") of even date herewith payable to the order of Mortgagee in the principal sum of \$22,112,441.00, bearing interest at a rate of 4.00% per annum, with a default interest rate of 7.40% per annum, and payable as set forth in the Note, and due on the earlier to occur of (i) January 29, 2014 and (ii) the date on which Mortgagee purchases the Premises (as hereinafter defined) from Mortgagor pursuant to a separate agreement. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in that certain Construction Loan Agreement dated as of April 16, 2012 by and among Mortgagor and Mortgagee (as amended, modified and supplemented from time to time, the "Loan Agreement").

NOW, THEREFORE, In order to secure the payment of the principal indebtedness under the Note and interest and premiums on the principal indebtedness under the Note (and all replacements, renewals and extensions thereof, in whole or in part) according to its tenor, and to secure the payment of all other sums which may be at any time due under the Note or this Mortgage (collectively sometimes referred to herein as "Indebtedness"); and to secure the performance and observance of all the provisions contained in this Mortgage, the Note, the Loan Agreement and the other Loan Documents; and to secure performance by Mortgagor and the Guarantor under the Loan Documents; and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of Mortgagor DOES HEREBY MORTGAGE AND CONVEY unto Mortgagee, its successors and assigns, forever, the following described property, rights and interests (which are referred to herein as the

M.G.R. TITLE

# UNOFFICIAL COPY

**“Premises”**), all of which property, rights and interests are hereby pledged primarily and on a parity with the Land (as hereinafter defined) and not secondarily:

THE LAND located in the County of Cook, State of Illinois and legally described in Exhibit “A” attached hereto (the **“Land”**);

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, or used or intended to be used in connection with the Land or the improvements, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf (the **“Improvements”**);

TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

TOGETHER WITH all income from the Premises to be applied against the Indebtedness, provided, however, that Mortgagor may, so long as no Default has occurred hereunder, collect income as it becomes due, but not more than one (1) month in advance thereof;

TOGETHER WITH all interest of Mortgagor in all leases now or hereafter on the Premises, including without limitation, the Ground Lease and the Landlord’s Lease, whether written or oral (each a **“Lease”**, and collectively, the **“Leases”**), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Leases;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Mortgagor, if any, and forming a part of or used in connection with the Land or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Land or the Improvements shall, so far as permitted by

# UNOFFICIAL COPY

law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Code (defined below)), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party and Mortgagor as Debtor, all in accordance with the Code as more particularly set forth in Section 12 hereof; and

TOGETHER WITH all proceeds of the foregoing, including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Mortgagor hereby appoints Mortgagee its attorney in fact and authorizes Mortgagee, at its option, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Indebtedness, notwithstanding the fact that the same may not then be due or that the Indebtedness is otherwise adequately secured.

TO HAVE AND TO HOLD the Premises, unto the Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Default as hereinafter defined; the Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

MORTGAGOR COVENANTS that it is lawfully seized of the Land, that the same is unencumbered, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend the Land and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

PROVIDED, NEVERTHELESS, that if Mortgagor shall pay in full when due the Indebtedness and shall timely perform and observe all of the provisions herein and in the Note and the Loan Agreement provided to be performed and observed by the Mortgagor then this Mortgage and the interest of Mortgagee in the Premises shall become void but shall otherwise remain in full force.

## MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. *Payment of Indebtedness and Performance of Covenants.* Mortgagor shall (a) pay the Indebtedness when due and (b) punctually perform and observe all of the requirements of the Note, this Mortgage, and the Loan Agreement. Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Note and the Loan Agreement, but not otherwise.

# UNOFFICIAL COPY

2. *Maintenance, Repair, Compliance with Law, Use, etc.* Mortgagor shall (or shall cause the following to occur in accordance with the terms of the Roundy's Lease) (a) promptly repair or restore, any portion of the Improvements which may become damaged whether or not proceeds of insurance are available or sufficient for that purpose; (b) keep the Premises in good condition and free from waste; (c) pay all operating costs of the Premises; (d) complete, within a reasonable time, any Improvements at any time in the process of erection upon the Premises; (e) comply with all requirements of law relating to the Premises or any part thereof by any governmental authority; (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; (g) comply with any restrictions of record with respect to the Premises and the use thereof; and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy; and (h) cause the Premises to be managed in a competent and professional manner. Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit any (i) material alterations of the Premises except as required by law or except as permitted or required to be made by the terms of the Roundy's Lease approved by Mortgagee; (ii) change in the intended use or occupancy of the Premises for which the Improvements were constructed, as provided in the Loan Agreement; (iii) change in the identity of the person or firm responsible for managing the Premises; (iv) zoning reclassification with respect to the Premises; (v) unlawful use of, or nuisance to exist upon, the Premises; or (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Premises, other than use restrictions contained or provided for in the Roundy's Lease approved by Mortgagee.

### 3. *Liens.*

3.1 *Prohibition.* Subject to the provisions of Section 4 hereof, Mortgagor shall not create or suffer or permit any encumbrance to attach to or be filed against the Premises or any part thereof, excepting only (i) the lien of real estate taxes and assessments not due, (ii) any liens and encumbrances of Mortgagee, and (iii) any other lien or encumbrance permitted by the terms of the Loan Agreement.

3.2 *Contest of Mechanic's liens Claims.* Notwithstanding the foregoing prohibition against encumbrances, Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any mechanic's lien and defer payment and discharge thereof during the pendency of such contest, provided that:

3.2.1 Such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such mechanic's lien;

3.2.2 Within ten (10) days after Mortgagor has been notified of the filing of such mechanic's lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such mechanic's lien; and

3.2.3 Mortgagor shall have either obtained a title insurance endorsement over such mechanic's liens insuring Mortgagee against loss by reason of the mechanic's liens or Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to

# UNOFFICIAL COPY

time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, a sum of money (the "Deposits") which shall be sufficient in the reasonable judgment of Mortgagee to pay in full such mechanic's lien and all interest which might become due thereon. Mortgagor shall increase the Deposits whenever, in the judgment of Mortgagee, such increase is advisable. The Deposits are to be held without any allowance of interest.

Mortgagee may, at its option, pay the Deposits, or any part thereof, to the mechanic's lien claimant if Mortgagor (i) fails to maintain sufficient Deposits or (ii) fails to act in good faith or with reasonable diligence in contesting the mechanic's liens claims. If the mechanic's lien contest is resolved in favor of the claimant and Mortgagor is not in Default hereunder, Mortgagee shall pay the Deposits, or any part thereof, to the claimant upon Mortgagee's receipt of evidence satisfactory to Mortgagee of the amount to be paid. Mortgagee shall pay any remaining Deposits to Mortgagor, provided Mortgagor is not in Default hereunder.

4. *Taxes.* Mortgagor shall pay, or cause to be paid, when due, all taxes, assessments and charges of every kind levied or assessed against the Premises or any interest therein or any obligation or instrument secured hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Mortgagor, and Mortgagor shall furnish to Mortgagee receipts therefor on or before the date the same are due; and shall discharge any claim or lien relating to taxes upon the Premises, other than matters expressly permitted by the terms of the Loan Agreement.

5. *Change in Tax Laws.* If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Premises, or the manner of collection of taxes, so as to affect this Mortgage, the Indebtedness of Mortgagee, then, and Mortgagor, upon demand by Mortgagee, shall pay such taxes, or reimburse Mortgagee therefor on demand, unless Mortgagee determines, in Mortgagee's exclusive judgment, that such payment or reimbursement by Mortgagor is unlawful; in which event the Indebtedness shall be due within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this Section 5 shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against the income of Mortgagee as a complete or partial substitute for taxes required to be paid by Mortgagor pursuant hereto.

6. *Insurance Coverage.* Mortgagor will insure the Premises (or cause the Premises to be insured) against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require pursuant to the terms of the Loan Agreement.

7. *Proceeds of Insurance.* Mortgagor will give Mortgagee prompt notice of any loss or damage to the Premises, and the proceeds shall be paid as provided in the Loan Agreement.:

# UNOFFICIAL COPY

7.1 In case of loss or damage covered by any of the insurance policies, Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) may at its option either (i) settle and adjust any claim under such insurance policies without the consent of Mortgagor, or (ii) allow Mortgagor to settle and adjust such claim without the consent of Mortgagee; provided that in either case Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to Mortgagee upon demand or may be deducted by Mortgagee from said insurance proceeds prior to any other application thereof. Each insurance company which has issued an insurance policy is hereby authorized and directed to make payment for all losses covered by any insurance policy to Mortgagee alone, and not to Mortgagor and Mortgagee jointly.

7.2 Mortgagee shall, apply the proceeds of insurance policies consequent upon any casualty as required by the Loan Agreement.

8. *Disbursement of Insurance Proceeds.* Insurance proceeds held by Mortgagee for restoration or repairing of the Premises shall be disbursed from time to time upon Mortgagee being furnished with (i) evidence satisfactory to it of the estimated cost of the restoration or repair, (ii) funds sufficient in addition to the proceeds of insurance, to fully pay for the restoration or repair, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Mortgagee may require and approve. No payment made prior to the final completion of the restoration or repair shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Mortgagee in its sole judgment; funds other than insurance proceeds shall be disbursed prior to disbursement of such proceeds, except as may otherwise be provided in the Loan Agreement; and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited or irrevocably committed, to the satisfaction of Mortgagee, by or on behalf of Mortgagor to pay the cost of such repair or restoration, shall be sufficient in the reasonable judgment of Mortgagee to pay the entire unpaid cost of the restoration or repair, free of all liens or claims for lien. Any surplus remaining out of insurance proceeds held by Mortgagee after payment of such costs of restoration or repair shall be paid to Mortgagor, provided Mortgagor is not in Default hereunder. No interest shall be allowed to Mortgagor on account of any proceeds of insurance or other funds held by Mortgagee.

9. *Condemnation and Eminent Domain.* All awards (the "Awards") made to the present, or any subsequent, owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises, are hereby assigned by Mortgagor to Mortgagee. Mortgagee may collect the Awards from the condemnation authorities, and may give appropriate acquittances therefor. Mortgagor shall immediately notify Mortgagee of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Premises and shall deliver to Mortgagee copies of all papers served in connection with any such proceedings. Mortgagor shall make, execute, and deliver to Mortgagee, at any time upon request, free of any encumbrance, any further assignments and other instruments deemed necessary by Mortgagee for the purpose of assigning the Awards to Mortgagee. If any portion of or interest in the Premises is taken by

# UNOFFICIAL COPY

condemnation or eminent domain, and the remaining portion of the Premises is not, in the judgment of Mortgagee, a complete economic unit having equivalent value to the Premises as it existed prior to the taking, then, at the option of Mortgagee, the entire Indebtedness shall immediately become due. After deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including attorneys' fees, Mortgagee shall be entitled to apply the net proceeds toward repayment of such portion of the Indebtedness as it deems appropriate without affecting the lien of this Mortgage. In the event of any partial taking of the Premises or any interest in the Premises, which, in the judgment of Mortgagee, leaves the Premises as a complete economic unit having equivalent value to the Premises as it existed prior to the taking, and provided Mortgagor is not in Default hereunder, the Award shall be applied to reimburse Mortgagor for the cost of restoration and rebuilding the Premises in accordance with plans, specifications and procedures approved in advance by Mortgagee, and such Award shall be disbursed in the same manner as is hereinabove provided above for the application of insurance proceeds, provided that any surplus after payment of such costs shall be applied on account of the Indebtedness. If the Award is not applied for reimbursement of such restoration costs, the Award shall be applied against the Indebtedness, in such order or manner as Mortgagee shall elect. In the event of a conflict between the Loan Agreement and this Mortgage for the disbursement of the proceeds of Awards the Loan Agreement shall apply.

10. *Assignment of Rents, Leases and Profits from Mortgagor to Mortgagee.* To further secure the Indebtedness, Mortgagor hereby assigns unto Mortgagee all of the rents, leases and income now or hereafter due under any Leases agreed to by Mortgagor or the agents of Mortgagor or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases, rents and income thereunder, to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its attorney in fact (this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Mortgagee), with or without taking possession of the Premises as provided in Section 15 hereof, to lease any portion of the Premises to any party upon such terms as Mortgagee shall determine, and to collect all rents due under each of the Leases, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Section 15 hereof. Mortgagor represents that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by Mortgagor. Mortgagor waives any rights of set off against any person in possession of any portion of the Premises. Mortgagor agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to Section 15 hereof. Mortgagor expressly waives all liability of Mortgagee in the exercise of the powers herein granted Mortgagee. Mortgagor shall assign to Mortgagee all future Leases upon any part of the Premises and shall execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Premises as Mortgagee shall from time to time require. Although the assignment contained in this Section is a present assignment, Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section until a Default shall exist under this Mortgage. Within thirty (30) days of Mortgagee's written demand,

# UNOFFICIAL COPY

Mortgagor will furnish Mortgagee with executed copies of each of the Leases and with estoppel letters from each tenant in a form satisfactory to Mortgagee. If Mortgagee requires that Mortgagor execute and record a separate collateral assignment of rents or separate assignments of any of the Leases to Mortgagee, the terms of those assignments shall control in the event of a conflict with the terms of this Mortgage.

11. *Observance of Lease Assignment From Mortgagor.* Mortgagor agrees that if any lessee under any of the Leases shall fail to pay its rent on a timely basis or to fulfill any material provision in said Lease or if Mortgagor shall terminate or modify any of the Leases without Mortgagee's prior written consent; or if Mortgagor shall suffer any default under the provisions of any assignment of any Lease given as additional security for the payment of the Indebtedness and such default shall not be cured within the applicable grace period provided therein; then such default shall constitute a Default hereunder and at the option of Mortgagee, and without notice to Mortgagor, the Indebtedness shall become due as in the case of other Defaults.

12. *Security Agreement.* Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of the Mortgage or the Loan Agreement and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of the Code), (which property is hereinafter referred to as "Personal Property") and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

12.1 Each of Mortgagor (being the "debtor" as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the Loan Agreement.

12.2 The Collateral is to be used by Mortgagor solely for business purposes.

12.3 The Collateral will be kept at the Land, and, except for Obsolete Collateral (as defined in the Loan Agreement), will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Land but will not be affixed to any other real estate.



# UNOFFICIAL COPY

12.4 The only persons having any interest in the Premises are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted by the Loan Agreement.

12.5 No Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted by the Loan Agreement) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and each of Mortgagor will at its own cost and expense, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted by the Loan Agreement; and each of Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable.

12.6 Upon Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least twenty (20) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least twenty (20) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Mortgagee so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorney's fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

# UNOFFICIAL COPY

12.7 The terms and provisions contained in this Section 12 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

12.8 This Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinabove set forth. This Mortgage is to be filed for record with the Recorder of Deeds of the County where the Premises are located. Mortgagor is the record owner of the Premises.

12.9 To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

13. *Defaults.* If one or more of the following events (herein each called a "Default") shall occur:

13.1 If Mortgagor shall, after the expiration of any applicable grace periods, fail to make payments when due of amounts owed under the Note, the Loan Agreement or this Mortgage; or

13.2 The occurrence of a Default (as such term is defined under the Loan Agreement);

then Mortgagee may, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Mortgagee hereunder, declare, without further notice, all Indebtedness immediately due with interest thereon at the Default Rate, whether or not such Default be thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage and to exercise any right provided by this Mortgage, the Note, the Loan Agreement or otherwise.

14. *Foreclosure.* When the Indebtedness shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof in accordance with the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, et seq. (the "Act") and to exercise any other remedies of Mortgagee provided in the Note, this Mortgage, the Loan Agreement, or which Mortgagee may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises, and any

# UNOFFICIAL COPY

other expenses and expenditures which may be paid or incurred by or on behalf of Mortgagee and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this Section, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid.

15. *Right of Possession.* When the Indebtedness shall become due, whether by acceleration or otherwise, or if Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to be placed in possession of the Premises as provided in the Act, and Mortgagee, in its discretion and pursuant to court order, may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Premises relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

15.1 hold, operate, manage, and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as Mortgagee may deem necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor,

15.2 cancel or terminate any Lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;

15.3 elect to disaffirm any Lease or sublease of all or any part of the Premises made subsequent to this Mortgage without Mortgagee's prior written consent;

15.4 extend or modify any then existing Leases and make new Leases of all or any part of the Premises, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed to a purchaser at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser at any foreclosure sale, notwithstanding any redemption from sale, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

# UNOFFICIAL COPY

15.5 make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Mortgagee, to insure and reinsure the Property and all risks incidental to Mortgagee's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

15.6 apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, insurance premiums and other charges applicable to the Premises, or in reduction of the Indebtedness in such order and manner as Mortgagee shall select.

Without limiting the generality of the foregoing, Mortgagee shall have all power, authority and duties as provided in the Act. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises.

16. *Receiver.* Upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint upon petition of Mortgagee, and at Mortgagee's sole option, a receiver of the Premises pursuant to the Act. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act, including the power to make leases to be binding upon all parties, including the mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure, all as provided in the Act. In addition, such receiver shall also have the power to extend or modify any then existing Leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other provisions to be contained therein, shall be binding upon Mortgagor and all the persons whose interest in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in payment in whole or in part of: (a) the Indebtedness or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

# UNOFFICIAL COPY

17. *Foreclosure Sale.* Except to the extent otherwise required by the Act, the proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, all items which under the terms hereof constitute Indebtedness additional to the principal and interest evidenced by the Note in such order as Mortgagee shall elect with interest thereon as herein provided; and Second, all principal and interest remaining unpaid on the Note in such order as Mortgagee shall elect; and lastly any surplus to Mortgagor and its successors and assigns, as their rights may appear.

18. *Insurance During Foreclosure.* In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors. The foreclosure decree may further provide that in the case of one or more redemptions under said decree, each successive redeemer may cause the preceding loss clause attached to each casualty insurance policy to be cancelled and a new loss payable clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee may, without the consent of Mortgagor, assign any insurance policies to the purchaser at the sale, or take such other steps as Mortgagee may deem advisable to protect the interest of such purchaser.

19. *Waiver of Right of Redemption and Other Rights.* To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagee and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons are, and shall be deemed to be, hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor acknowledges that the Premises do not

# UNOFFICIAL COPY

constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

20. *Mortgagee's Performance of Mortgagor's Obligations.* In case of Default, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof and during any period of redemption, Mortgagee may, but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any manner deemed expedient to Mortgagee. Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs, including management fees, of every kind in connection therewith, so that the Premises shall be useable for their intended purposes. All such monies paid and expenses incurred, including attorneys' fees, shall be so much additional Indebtedness, whether or not the Indebtedness, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due with interest thereon at the Default Rate specified in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Default nor shall the provisions of this Section or any exercise by Mortgagee of its rights hereunder prevent any default from constituting a Default. Mortgagee, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate. Nothing contained herein shall be construed to require Mortgagee to advance monies for any purpose.

21. *Rights Cumulative.* Each right herein conferred upon Mortgagee is cumulative and in addition to every other right provided by law or in equity, and Mortgagee may exercise each such right in any manner deemed expedient to Mortgagee. Mortgagee's exercise or failure to exercise any right shall not be deemed a waiver of that right or any other right or a waiver of any Default. Except as otherwise specifically required herein, Mortgagee is not required to give notice of its exercise of any right given to it by this Mortgage.

22. *Covenants Run with Land; Successor Owners.* All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. If the ownership of Premises or any portion thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such person with reference to this Mortgage and the Indebtedness in the same manner as with Mortgagor without in any way releasing Mortgagor from its obligations hereunder. Mortgagor will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Section shall vary the provisions of Section 15 hereof.

23. *Subordination.* Each Mortgagor acknowledges and agrees that all Leases of the Premises, including the Ground Lease and Roundy's Lease, shall be subject and subordinate to the lien of this Mortgage.

# UNOFFICIAL COPY

24. *Effect of Extensions and Amendments.* If the payment of the Indebtedness, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Mortgagee to amend, modify, extend or release the Note, this Mortgage or any other document or instrument evidencing, securing or guarantying the Indebtedness, in each case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

25. *Construction Loan.* Mortgagor has executed and delivered to Mortgagee the Loan Agreement relating to the construction of certain improvements upon the Premises and the disbursement of all or part of the Indebtedness for the purpose of financing a portion of the costs thereof. The Loan Agreement is hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length. This Mortgage secures all funds advanced pursuant to the Loan Agreement (which advances shall constitute part of the Indebtedness, whether more or less than the principal amount stated in the Note) and the punctual performance, observance and payment by Mortgagor of all of the requirements of the Loan Agreement to be performed, observed or paid by Mortgagor. In the event of express and direct contradiction between any of the provisions of the Loan Agreement and any of the provisions contained herein, then the provisions contained in the Loan Agreement shall control. Any warranties, representations and agreements made in the Loan Agreement by Mortgagor shall survive the execution and recording of this Mortgage and shall not merge herein.

26. *Environmental Matters.* Mortgagor represents that it is currently in compliance with, and covenants and agrees that it will manage and operate the Premises and will cause each tenant to occupy its demised portion of the Premises in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes). Mortgagor further covenants and agrees that it shall not install or permit to be installed in the Premises asbestos or any substance containing asbestos and deemed hazardous by or in violation of federal, state or local laws, rules, regulations or orders respecting such material. Mortgagor shall remove from the Premises and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances and shall take any and all other action to remedy, rectify, rehabilitate and correct any violation of any applicable law, rule, regulation or ordinance concerning toxic or hazardous substances or any violation of any agreement entered into between Mortgagor, Mortgagee and/or any third party with respect to hazardous or toxic materials. Mortgagor shall send to Mortgagee within five (5) days of receipt thereof, any citation, notice of violation or other notice of potential liability from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities. Mortgagor agrees to indemnify, defend with counsel reasonably acceptable to Mortgagee (at Mortgagor's sole cost), and hold Mortgagee harmless against any claim, response or other costs, damages, liability or

# UNOFFICIAL COPY

demand (including, without limitation, reasonable attorneys' fees and costs incurred by Mortgagee) arising out of any claimed violation by Mortgagor of any of the foregoing laws, regulations or ordinances or breach of any of the foregoing covenants or agreements. The foregoing indemnity shall survive repayment of the Indebtedness.

27. *Future Advances.* At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the Indebtedness the payment of all loan commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by Mortgagee in connection with the Indebtedness, all in accordance with the Note, this Mortgage, and the Loan Agreement, provided, however, that in no event shall the total amount of the Indebtedness, including loan proceeds disbursed plus any additional charges, exceed two hundred percent (200%) of the face amount of the Note. Mortgagor acknowledges that Mortgagee has bound itself to make advances pursuant to the Loan Agreement and that all such future advances shall be a lien from the time this Mortgage is recorded, as provided in the Act.

28. *Execution of Separate Security Agreements, Financing Statements, etc.; Estoppel Letter.* Mortgagor will do, execute, acknowledge and deliver all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Mortgagee shall require for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired. Without limitation of the foregoing, Mortgagor will assign to Mortgagee, upon request, as further security for the Indebtedness, its interests in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments satisfactory to Mortgagee, but no such assignment shall be construed as a consent by the Mortgagee to any agreement, contract, license or permit or to impose upon Mortgagee any obligations with respect thereto. From time to time, Mortgagor will furnish within five (5) days after Mortgagee's request a written and duly acknowledged statement of the amount due under the Note and under this Mortgage and whether any alleged offsets or defenses exist against the Indebtedness.

29. *Subrogation.* If any part of the Indebtedness is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

30. *Option to Subordinate.* At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all Leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county wherein the Premises are situated, of a unilateral declaration to that effect.

31. *Governing Law.* The place of negotiation, execution, and delivery of this Mortgage and the location of the Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of



# UNOFFICIAL COPY

law principles of that State. If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon Default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

32. *Business Loan.* The proceeds of the Note will be used for the purposes specified in 815 ILCS 205/4(1)(c), and the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.

33. *Inspection of Premises and Records.* Mortgagor shall keep full and correct books and records showing in detail the income and expenses of the Premises. Mortgagee and its agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times.

34. *No Joint Ventures.* Mortgagor acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor. Mortgagee shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or any other of the Loan Documents.

35. *Time of the Essence.* Time is of the essence of the Note, this Mortgage, and any other document or instrument evidencing or securing the indebtedness.

36. *Captions and Pronouns.* The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

37. *Severability.* If all or any portion of any provision of this Mortgage or the other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

38. *Notices.* Any notice or other communication which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given (i) when personally delivered, (ii) upon receipt if sent by a nationally recognized overnight courier addressed to a party at its address set forth above, or (iii) on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth above, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith. Except as otherwise

# UNOFFICIAL COPY

specifically required herein, notice of the exercise of any right, power or option granted to Mortgagee by this Mortgage is not required to be given.

[signature page follows]

**COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_**


Property © Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed and delivered as of the day and year first above written.

**BRADFORD HARWOOD HEIGHTS 1 LLC,**  
an Illinois limited liability company

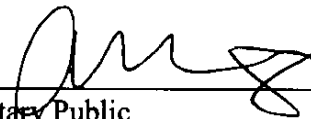
By: Bradford Real Estate Services Corp., its  
Manager

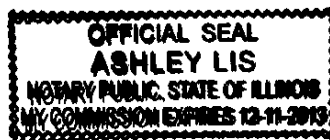
By:   
Name: CHAD W. JONES  
Its: TREASURER

STATE OF ILLINOIS     )  
  ) ss.  
COUNTY OF COOK     )

I, Ashley Lis, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that CHAD JONES, the TREASURER of Bradford Real Estate Services Corp., an Illinois corporation, and the Manager of Bradford Harwood Heights 1 LLC, an Illinois limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument and as such, \_\_\_\_\_, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 2<sup>nd</sup> day of July 2012.


  
\_\_\_\_\_  
Notary Public



# UNOFFICIAL COPY

**BRADFORD HARWOOD HEIGHTS 2 LLC,**  
an Illinois limited liability company

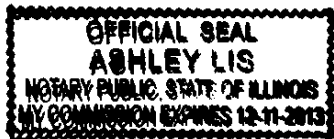
By: Bradford Real Estate Services Corp., its  
Manager


By:   
Name: CHAD W. JONES  
Its: TREASURER

STATE OF ILLINOIS     )  
  ) ss.  
COUNTY OF COOK     )

I, ASHLEY LIS, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that CHAD JONES, the TREASURER of Bradford Real Estate Services Corp., an Illinois corporation, and the Manager of Bradford Harwood Heights 2 LLC, an Illinois limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument and as such, \_\_\_\_\_, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 2<sup>nd</sup> day of JULY 2012.



  
Notary Public

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF THE LAND

#### PARCEL 1:

LOTS 6, 7 AND THE NORTH HALF OF LOT 8 IN KLEFSTAD'S INDUSTRIAL ADDITION TO HARWOOD HEIGHTS, A SUBDIVISION IN THE NORTH EAST QUARTER OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN,

#### PARCEL 2:

LOTS 13 AND 14 IN BLOCK 1 AND THAT PART OF LOTS 15 TO 18 IN SAID BLOCK 1, LYING NORTH OF A LINE DRAWN FROM A POINT IN THE EAST LINE OF SAID LOT 15, WHICH IS 47.80 FEET SOUTH OF THE NORTH EAST CORNER OF SAID LOT 15 TO A POINT IN THE WEST LINE OF SAID LOT 18, WHICH IS 42.60 FEET SOUTH OF THE NORTH WEST CORNER OF SAID LOT 18, TOGETHER WITH THE EAST AND WEST VACATED 20 FOOT PUBLIC ALLEY IN SAID BLOCK 1 LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF SAID LOT 14 AND THE SOUTH LINE OF SAID LOT 14, EXTENDED EAST TO THE EAST LINE OF SAID BLOCK 1 AND LYING NORTH OF AND ADJOINING THE NORTH LINE OF SAID LOTS 15 TO 18 AND THAT PART OF THE VACATED NORTH AND SOUTH PUBLIC ALLEY IN SAID BLOCK 1, LYING EAST OF AND ADJOINING THE EAST LINE OF LOTS 13 AND 14 AFORESAID ALL IN LAWRENCE LAWN'S ADDITION, BEING A SUBDIVISION OF THE SOUTH HALF OF THE NORTH HALF OF THE EAST HALF OF THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER AND OF THE NORTH HALF OF THE WEST 10 ACRES OF THE EAST HALF OF THE WEST HALF OF THE NORTH EAST QUARTER OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3

THE SOUTH HALF OF LOT 8 AND THE NORTH 112 FEET OF LOT 9 IN KLEFSTAD'S INDUSTRIAL ADDITION TO HARWOOD HEIGHTS, BEING A SUBDIVISION IN THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 4

EASEMENT FOR THE BENEFIT OF PARCEL 3 AS CREATED BY DECLARATION OF ACCESS AND PARKING EASEMENTS DATED JANUARY 23, 2008 AND RECORDED FEBRUARY 21, 2008 AS DOCUMENT NO. 0803205139.