



Doc#: 1227810077 Fee: \$104.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 10/04/2012 12:17 PM Pg: 1 of 34

Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

889400602824

The property identified as: **PIN:** 15-17-101-014-0000

Address:

Street: 4600 FRONTAGE ROAD

Street line 2:

City: HILLSIDE

State: IL

ZIP Code: 60162

Lender: HILLSIDE BF HOLDINGS, LLC

Borrower: ENCORE REALTY PARTNERS, LLC

Loan / Mortgage Amount: \$2,250,000.00

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

Box 400-CTCC

Certificate number: C79BD09C-8C9C-46A6-AE6D-831656F0C04D

Execution date: 09/28/2012

Property of Cook County Clerk's Office

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This Document Prepared by and
After Recording Return to:

Marilyn Dunn
55 W. Wacker
9th Floor
Chicago, Illinois 60601

This space reserved for Recorder's use only.

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

This **SECOND MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING** dated as of September 28, 2012 (this "**Mortgage**"), is executed by **ENCORE REALTY PARTNERS, LLC**, an Illinois limited liability company (the "**Mortgagor**"), whose address is 7257 North Lincoln Avenue, Lincolnwood, IL 60712, to and for the benefit of **HILLSIDE BF HOLDINGS, LLC** an Illinois limited liability company (the "**Lender**"), whose address is 6039 N. Bernard Street, Chicago, IL 60659.

RECITALS:

A. Pursuant to the terms and conditions of that certain Loan Agreement of even date herewith (the "**Loan Agreement**"), entered into between Mortgagor and Lender, the Lender has agreed to make a loan to the Mortgagor in the principal amount of Two Million Two Hundred Fifty Thousand and No/100 Dollars (\$2,250,000) (the "**Loan**"). The Loan shall be evidenced by a Promissory Note executed and delivered by Mortgagor to Lender of even date herewith (the "**Note**") and shall become due on September 28, 2014 (the "**Maturity Date**"), except as may be accelerated pursuant to the terms hereof or of the Loan Agreement, and will bear interest at a rate and all on and subject to the terms and conditions set forth in the Loan Agreement. Capitalized terms used but not specifically defined in this Mortgage shall have the meaning ascribed to them in the Loan Agreement.

B. A condition precedent to the Lender's extension of the Loan to the Mortgagor is the execution and delivery by the Mortgagor of this Mortgage.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness hereby secured, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor agrees as follows:

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AGREEMENTS:

The Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to the Lender, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as the "**Premises**"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily, and as to any portion of the Premises constituting property subject to the "**Code**" (as defined in Section 34 of this Mortgage), this Mortgage is intended to be a security agreement under the Code for the purpose of creating hereby a security interest in such portion of the Premises, which the Mortgagor hereby grants to the Lender as secured party, and with all terms used below with respect to such portions of the Premises which are defined in the Code to have the meanings provided in the Code:

(a) The real estate located in the County of Cook, State of Illinois, and legally described on **Exhibit A** attached hereto and made a part hereof (the "**Real Estate**");

(b) All improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by the Mortgagor and located on, or used in connection with the Real Estate or the improvements thereon, 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 the 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 the Mortgagor or on its behalf (the "**Improvements**");

(c) All easements, rights of way, gores of real estate, 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 Real Estate, 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 the Mortgagor of, in and to the same;

(d) All rents, revenues, issues, profits, proceeds, income, royalties, accounts, including receivables, escrows, letter-of-credit rights, security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by the Mortgagor thereon, to be applied against the Indebtedness (as hereinafter defined); provided, however, that the Mortgagor, so long as no "**Event of Default**" (as defined in Section 34 of this Mortgage) has occurred and is continuing hereunder, may collect rent as it becomes due, but not more than one month in advance thereof, except for security or similar deposits;

(e) All interest of the Mortgagor in all leases now or hereafter on the Premises, whether written or oral (each, a "**Lease**", and collectively, the "**Leases**"), together with all security therefor and all monies payable thereunder, subject, however, to

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the conditional permission herein given to the Mortgagor to collect the rentals under any such Lease;

(f) All fixtures and articles of personal property now or hereafter owned by the Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Premises, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, 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, stores, 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 Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by the Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness (as hereinafter defined); 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 such term is used in the Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in the Lender, as secured party, and the Mortgagor, as debtor, all in accordance with the Code;

(g) All of the Mortgagor's interests in general intangibles including payment intangibles and software now owned or hereafter acquired and related to the Premises, including, without limitation, all of the Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which the Mortgagor is or may become a party and which relate to the Premises; (ii) all obligations and indebtedness owed to the Mortgagor thereunder; (iii) all intellectual property related to the Premises; and (iv) all choses in action and causes of action relating to the Premises;

(h) All of the Mortgagor's accounts now owned or hereafter created or acquired which relate to the Premises or the businesses and operations conducted thereon, including, without limitation, all of the following now owned or hereafter created or acquired by the Mortgagor: (i) accounts, contract rights, health-care-insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the

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part of the Mortgagor); (v) securities, investment property, financial assets and securities entitlements; (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (vii) all warranties, guarantees, permits and licenses in favor of the Mortgagor with respect to the Premises; and

(i) 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.

TO HAVE AND TO HOLD the Premises, unto the Lender, 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 and during the continuance of any Event of Default under this Mortgage; the Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

FOR THE PURPOSE OF SECURING the following (but not exceeding \$4,500,000 in the aggregate at any time outstanding): (i) the payment of the Loan and all interest and other indebtedness evidenced by or owing under the Note and Loan Agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing, all of which the Mortgagor hereby covenants and agrees to pay; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Mortgagor or any other obligor to or benefiting the Lender which are evidenced or secured by or otherwise provided in the Loan Agreement, the Note or this Mortgage; (iii) the reimbursement to the Lender of any and all sums incurred, expended or advanced by the Lender pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, with interest thereon as provided herein or therein; (iv) future obligations of the Mortgagor to the Lender which they agree are to be secured by this Mortgage, and future advances made by the Lender to the Mortgagor in its sole and absolute discretion which they agree are to be secured by this Mortgage, in each case up to the maximum amount stated above and provided for in Section 32(k) hereof, to the same extent as if such future obligations and advances were made on the date of this Mortgage; and (v) future modifications, extensions and renewals of any of the foregoing (collectively, the "**Indebtedness**").

PROVIDED, HOWEVER, that if the Mortgagor shall pay the principal and all interest as provided in the Loan Agreement and the Note, and if the Mortgagor shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this conveyance shall be null and void and may be cancelled of record at the request and at the cost of the Mortgagor, otherwise to remain in full force and effect.

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IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Representations and Warranties.** The Mortgagor represents, warrants and covenants that:

(a) the Mortgagor is the owner and holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except for those liens and encumbrances in favor of the Lender and as otherwise described on Exhibit B attached hereto and made a part hereof (the "**Permitted Exceptions**"); and (b) the Mortgagor has legal power and authority to convey, mortgage and encumber the Premises.

(b) Mortgagor (i) is and shall be a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Illinois; (ii) has the power and authority to own its properties and to transact the business in which it is engaged or proposes to engage; and (iii) is in compliance with all laws applicable to it. The organizational documents of Mortgagor, copies of which have been furnished to Lender, are in full force and effect, have not been amended since the date of delivery to Lender, and are true, correct and complete copies of all documents relating to Mortgagor's creation and governance.

(c) Mortgagor has and at all times during the term hereof shall have full power, right, capacity and is duly authorized and empowered to enter into, execute, and deliver this Mortgage, and to perform its obligations hereunder and all such action has been duly and validly authorized by all necessary limited liability company proceedings on its part. Upon the execution and delivery hereof, this Mortgage will be valid, binding upon and enforceable against Mortgagor in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting creditor's rights generally and general principles of equity.

(d) Neither the execution and delivery of this Mortgage nor consummation of the transactions herein or therein contemplated, nor performance of or compliance with the terms and conditions hereof, does or will at any time during the term hereof:

- (i) violate or conflict with any federal, state, or local law or ordinance, or
- (ii) violate, conflict with or result in a breach of any term or condition of, or constitute a default under:
 1. the organizational documents of Mortgagor,
 2. any other agreement or instrument or arrangement to which Mortgagor or any guarantor is a party or by which it or any of its properties (now owned or hereafter acquired) may be subject or bound.

(e) There is no condition, event or circumstance existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending nor, to Mortgagor's knowledge, threatened affecting Mortgagor or the Premises which is likely to (i) materially and adversely affect Mortgagor's ability to perform its obligations under this Mortgage; (ii) materially and adversely affect any Mortgagor's ability to

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perform its obligations under the Loan Agreement; or (iii) impair the validity of the security interest in the Premises or in any other Collateral, and Mortgagor knows of no basis therefor.

(f) All financial information submitted to Lender relating to Mortgagor and/or the Premises is true and correct in all material respects and fairly presents the financial condition of the person or entity to which they pertain and the other information therein described; and do not contain any untrue statement of a material fact or omit to state a fact material to the financial statements submitted or this Mortgage.

(g) Mortgagor (i) is now and at all times during the term hereof shall be generally paying its debts as they mature; (ii) now owns, and at all times during the term hereof shall own, property which, at a fair valuation, is greater than the sum of its debts, and (iii) now has and at all times during the term hereof shall have capital sufficient to carry on its business and transactions and all business transactions in which it is about to engage.

(h) All tax and informational returns required to be filed by or on behalf of Mortgagor have been properly prepared, executed and filed. All taxes, assessments, fees and other charges upon Mortgagor, or upon any of its properties, incomes, sales or franchises which are due and payable have been paid other than those not yet delinquent and payable without premium or penalty, and *except* for those being diligently contested in good faith by appropriate proceedings, and in each case adequate reserves and provisions for taxes have been made on the books of the appropriate entity.

(i) Mortgagor has no liability or obligation of any nature whatsoever (whether absolute, accrued, contingent, or otherwise, whether or not due), except (i) as disclosed in the financial statements heretofore delivered to Lender; and (ii) since the date of the most recent financial statements delivered by Mortgagor to Lender, liabilities, obligations, and commitments incurred by Mortgagor in the ordinary course of business and consistent with past practices.

(j) Mortgagor is not in default beyond the expiration of any applicable cure periods with respect to any indenture, loan agreement, mortgage, deed or other similar agreement relating to the borrowing of monies to which it is a party, and by which it is bound, which would have materially and adversely affect Mortgagor's ability to perform its obligations under this Mortgage or the Loan Agreement.

(k) There are no defaults by Mortgagor under any leases or contracts affecting the Premises and, to Mortgagor's knowledge, there are no defaults by tenants under any leases. Mortgagor will promptly notify Lender of any default under any lease or contract affecting the Premises.

2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** The Mortgagor covenants that, so long as any portion of the Indebtedness remains unpaid, the Mortgagor will:

(a) Promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction;

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(b) Keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien (subject to the Mortgagor's right to contest liens as permitted by the terms of Section 24 hereof);

(c) Pay when due the Loan in accordance with the terms of the Loan Agreement and duly perform and observe all of the terms, covenants and conditions to be observed and performed by the Mortgagor under the Loan Agreement and this Mortgage;

(d) Pay when due any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to this Mortgage, and upon request exhibit satisfactory evidence of the discharge of such lien to the Lender (subject to the Mortgagor's right to contest liens as permitted by the terms of Section 24 hereof);

(e) Complete within a reasonable time any improvements at any time in the process of erection upon the Premises;

(f) Comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof and Mortgagor shall not record or permit to be recorded any document, instrument, agreement or other writing against the Real Estate other than Permitted Exceptions without Lender's approval, such approval not to be unreasonably withheld, delayed or conditioned;

(g) Obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of the Mortgagor's obligations under this Mortgage;

(h) Make no material alterations in the Premises or demolish any portion of the Premises without the Lender's prior written consent, except as required by law or municipal ordinance;

(i) Suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Lender's prior written consent;

(j) Pay when due all operating costs of the Premises;

(k) Not initiate or acquiesce in any zoning reclassification with respect to the Premises, without the Lender's prior written consent;

(l) Provide and thereafter maintain adequate parking areas within the Premises as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right of way to and from the adjacent public thoroughfares necessary or desirable for the use thereof;

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(m) Comply with, and cause the Premises at all times to be operated in compliance with, all applicable federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations; and

(n) not own any asset or property other than the Premises and property related thereto, and shall not at any time engage in any business other than the ownership, development, construction, leasing and operation of the Premises.

3. **Payment of Taxes and Assessments.** The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "**Taxes**"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to the Mortgagor's right to contest the same, as provided by the terms hereof; and the Mortgagor will, upon written request, furnish to the Lender duplicate receipts therefor within 10 days after the Lender's request.

4. **Insurance.**

(a) The Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by the Lender. Insurance against loss or damage to the Real Estate by fire and other risks shall be written on an "all risk" special perils, 100% full replacement cost basis, without deduction for foundations and footings, and without co-insurance, and with commercially reasonable deductibles. The policies for such insurance shall have attached thereto standard mortgagee clauses in favor of and permitting Lender to collect any and all proceeds payable thereunder and shall include a 30 day (except for nonpayment of premium, in which case, a 10 day) notice of cancellation clause in favor of Lender. All policies or certificates of insurance shall be delivered to and held by Lender as further security for the payment of the Loan, with evidence of renewal coverage delivered to Lender prior to at least 30 days before the expiration date of any policy or such shorter period of time as is commercially reasonable, provided that Lender has not received such 30- or 10-day notice.

Unless the Mortgagor provides the Lender evidence of the insurance coverages required hereunder, the Lender may purchase insurance at the Mortgagor's expense to cover the Lender's interest in the Premises. The insurance may, but need not, protect the Mortgagor's interest. The coverages that the Lender purchases may not pay any claim that the Mortgagor makes or any claim that is made against the Mortgagor in connection with the Premises. The Mortgagor may later cancel any insurance purchased by the Lender, but only after providing the Lender with evidence that the Mortgagor has obtained insurance as required by this Mortgage. If the Lender purchases insurance for the Premises, the Mortgagor will be responsible for the costs of such insurance, including, without limitation, interest and any other charges which the Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance the Mortgagor may be able to obtain on its own.

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(b) The Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless the Lender is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to the Lender and such separate insurance is otherwise acceptable to the Lender.

(c) In the event of loss, the Mortgagor shall give prompt notice thereof to the Lender. If such loss exceeds \$100,000.00 (the "Threshold"), Lender shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i), (ii), (iii) and (iv) of the immediately succeeding sentence are not satisfied, then the Lender, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) such loss is equal to or less than the Threshold, (ii) no "Default" (as defined in Section 34 of this Mortgage) or Event of Default then exists, (iii) the Lender determines that the work required to complete the repair or restoration of the Premises necessitated by such loss can be completed no later than six (6) months prior to the Maturity Date, and (iv) the total of the insurance proceeds and such additional amounts placed on deposit with the Lender by the Mortgagor for the specific purpose of rebuilding or restoring the Improvements equals or exceeds, in the sole and absolute discretion of the Lender, the reasonable costs of such rebuilding or restoration, then the Lender shall endorse to the Mortgagor any such payment and the Mortgagor may collect such payment directly. The Lender shall have the right, at its option and in its sole discretion, to apply any insurance proceeds arising from such loss, after the payment of all of the Lender's expenses, either (i) on account of the Indebtedness, irrespective of whether such principal balance is then due and payable, whereupon the Lender may declare the whole of the balance of Indebtedness to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in paragraph (d) of this Section; provided, however, that the Lender hereby agrees to permit the application of such proceeds to the restoration or repair of the damaged property, subject to the provisions of subsection (d) below, if (x) the Lender has received satisfactory evidence that such restoration or repair shall be completed no later than the date that is six (6) months prior to the Maturity Date, and (y) no Default or Event of Default then exists. If insurance proceeds are made available to the Mortgagor by the Lender as hereinafter provided, the Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. Any insurance proceeds applied on account of the unpaid principal balance of the Note shall not be subject to the prepayment provisions contained in the Loan Agreement and the Notes. In the event of foreclosure of this Mortgage, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

(d) If Lender, in its sole discretion, agrees or is obligated to make insurance proceeds available to the Mortgagor for restoration, the following provisions shall apply:

(i) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Improvements, whether by fire or other casualty, the Mortgagor shall obtain from the Lender its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, which approval shall not be unreasonably withheld, delayed or conditioned.

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(ii) Prior to each payment or application of any insurance proceeds to the repair or restoration of such Improvements (which payment or application may be made, at the Lender's option, through an escrow, the terms and conditions of which are satisfactory to the Lender in its reasonable discretion and the cost of which is to be borne by the Mortgagor), the Lender shall be satisfied as to the following:

(A) No "**Default**" (as defined in Section 34 of this Mortgage) or Event of Default under this Mortgage has occurred and is continuing;

(B) Either such Improvements have been fully restored, or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Exceptions, or, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Premises, the Mortgagor has deposited with the Lender such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Premises; and

(C) Prior to each disbursement of any such proceeds, the Lender shall be furnished with a statement of the Lender's architect (the cost of which shall be borne by the Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by the Lender and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises or in substantially the same form as AIA document G702; and the Lender shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(iii) If the Mortgagor shall fail to restore, repair or rebuild such Improvements within a time reasonably deemed satisfactory by the Lender, then the Lender, at its option, may (A) commence and perform all necessary acts to restore, repair or rebuild such Improvements for or on behalf of the Mortgagor, or (B) declare an Event of Default under this Mortgage. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of such Improvements, such excess shall be applied on account of the Indebtedness, irrespective of whether such Indebtedness is then due and payable without payment of any premium or penalty.

5. **Condemnation.** If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking acquisition or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to the Lender, who is empowered to collect and receive the same and to give proper receipts therefor in the name of the Mortgagor and the same shall be paid forthwith to the Lender. Mortgagee shall take into reasonable consideration the separate interest of Mortgagor in taking any of the actions permitted by Mortgagee under this Section 5. Such award or monies shall be applied on account of the Indebtedness, irrespective of

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whether such Indebtedness is then due and payable and, at any time from and after the taking of a substantial portion of the Premises the Lender may declare the whole of the balance of the Indebtedness to be due and payable upon thirty (30) days advance notice to Mortgagor. Notwithstanding the provisions of this Section 5 to the contrary, if any condemnation or taking of less than the entire Premises occurs, and provided that no Default or Event of Default then exists, and if such partial condemnation, in the reasonable discretion of the Lender, has no material adverse effect on the operation or value of the Premises, then the award or payment for such taking or consideration for damages resulting therefrom may be collected and received by the Mortgagor, and the Lender hereby agrees that in such event it shall not declare the Indebtedness to be due and payable, if it is not otherwise then due and payable.

6. **Facility Licensure.** Mortgagor represents and warrants to Lender, and covenants and agrees with Lender as follows:

(a) The Premises are currently utilized as an assisted living facility (the "Facility") licensed by the Illinois Department of Public Health ("IDPH") and certified for participation in the Medicaid and Medicare reimbursement programs.

(b) Mortgagor shall deliver or mail to Lender within five (5) days of receipt thereof copies of all notices: (i) from the Illinois Department of Health Services ("DHS"), Center for Medicare and Medicaid Services ("CMS"), Illinois Health Care Cost Containment System ("AHCCCS/ALTCS"), or managed care contract providers, relating to or arising from any violation, breaches or defaults, and/or the U.S. Department of Health and Human Services threatening denial of payment, civil money penalties or termination under the Medicaid and/or Medicare programs; and (ii) from any governmental agency terminating, suspending or threatening termination or suspension of any license or provider agreement relating to the Premises or the assisted living facility operated thereon.

7. **Restrictions on Transfer.**

(a) Mortgagor shall not effect, suffer or permit any Prohibited Transfer. Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any of the following properties or interests shall constitute a "**Prohibited Transfer**":

(i) The Premises or any part thereof or interest therein, excepting only sales or other dispositions of Personal Property no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such collateral has been replaced by collateral of at least equal value and utility and which is subject to the lien of the Mortgage with the same priority as with respect to the original collateral ("**Obsolete Collateral**");

(ii) Any shares of capital stock of a corporate Mortgagor, or a corporation which is a direct or indirect owner of an ownership interest in Mortgagor (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System);

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(iii) All or any part of the membership interests in a limited liability company Mortgagor;

(iv) All or any part of the general partner or the limited partner interest, as the case may be, of a partnership or limited partnership Mortgagor; or

(v) If there shall be any change in Control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or shareholder, as applicable, which directly or indirectly Controls the day to day operations and management of Mortgagor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement) voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section shall not apply to (i) liens securing obligations to Lender, (ii) the lien of current taxes and assessments not in default, (iii) any transfers of shares of stock or partnership or limited liability company interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives; (iv) a transfer of a membership interest in Mortgagor to the other members of Mortgagor, (v) a transfer of a membership interest in Mortgagor permitted under the Loan Agreement, (vi) a taking of the Premises or portion thereof by condemnation or the power of eminent domain, which shall be governed by other terms of this Mortgage; (vii) Permitted Leases, or (viii) Permitted Exceptions.

(b) In determining whether or not to make the Loan, Lender evaluated the background and experience of Mortgagor and its members in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises. Mortgagor and its members are well experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor further recognizes that any further junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Loan; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Lender to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Lender come into possession thereof with the intention of selling same; and (d) would impair Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by Lender would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (i) protecting Lender's security, both of repayment and of value of the Premises; (ii) giving Lender the full benefit of its bargain and contract with Mortgagor; and (iii) keeping the Premises free of subordinate financing liens, Mortgagor agrees that if this Section is deemed a restraint on alienation, that it is a reasonable one.

8. **Lease and Rent Assignment.** Mortgagor does hereby sell, assign, and transfer unto Lender all of the rents, leases and profits from the Premises, it being the intention of this Mortgage to establish an absolute transfer and assignment of all such rents, leases and profits

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from and on the Premises unto Lender and Mortgagor does hereby appoint irrevocably Lender its true and lawful attorney, in its name and stead, which appointment is coupled with an interest, to collect all of said rents and profits; provided that, Mortgagor shall have the exclusive right to collect, but not prior to accrual, all of the rents, and to retain, use and enjoy the same unless and until an Event of Default shall occur under this Mortgage. The right of Mortgagor to collect rents shall constitute a revocable license in favor of Mortgagor, revocable by Lender upon an Event of Default.

9. **Effect of Extensions of Time and Other Changes.** If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Loan Agreement is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in the Mortgage, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by the Lender, notwithstanding such extension, variation, release or change.

10. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (b) the imposition upon the Lender of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by the Mortgagor, or (c) a change in the method of taxation of mortgages, deeds of trust or debts secured by mortgages or deeds of trust or the Lender's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness or the holders thereof, then the Mortgagor, upon demand by the Lender, shall pay such Taxes or charges, or reimburse the Lender therefor; provided, however, that the Mortgagor shall not be deemed to be required to pay any income or franchise taxes of the Lender. Notwithstanding the foregoing, if in the opinion of counsel for the Lender it is or may be unlawful to require the Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the Lender may declare all of the Indebtedness to be due and payable within thirty (30) days.

11. **Lender's Performance of Defaulted Acts and Expenses Incurred by Lender.** If an Event of Default under this Mortgage has occurred and is continuing, the Lender may, but need not, make any payment or perform any act herein required of the Mortgagor in any form and manner deemed expedient by the Lender, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of the Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by the Lender in regard to any tax referred to in Section 6 hereof or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by the Mortgagor to the Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the interest rate specified in the Loan Agreement. In addition to the foregoing, any costs, expenses

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and fees, including reasonable attorneys' fees, incurred by the Lender in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of the Lender's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Loan Agreement, this Mortgage, or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Loan Agreement, this Mortgage, or the Premises, to the extent that Lender is not at fault, shall be so much additional Indebtedness, and shall become immediately due and payable by the Mortgagor to the Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the interest rate specified in the Loan Agreement. The interest accruing under this Section shall be immediately due and payable by the Mortgagor to the Lender, and shall be additional Indebtedness evidenced by the Loan Agreement and Note and secured by this Mortgage. The Lender's failure to act shall never be considered as a waiver of any right accruing to the Lender on account of any Event of Default under this Mortgage or the Loan Agreement. Should any amount paid out or advanced by the Lender hereunder or pursuant to any agreement executed by the Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then the Lender shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

12. **Security Agreement.** The Mortgagor and the Lender agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to (a) all sums at any time on deposit for the benefit of the Mortgagor or held by the Lender (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage, and (b) 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 and which property is hereinafter referred to as "**Personal Property**"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the supporting obligations (as defined in the Code) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "**Collateral**"), and that a security interest in and to the Collateral is hereby granted to the Lender, and the Collateral and all of the Mortgagor's right, title and interest therein are hereby assigned to the Lender, 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:

(a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral and has rights in and the power to transfer the Collateral, subject to no liens, charges or encumbrances other than the lien of this Mortgage, the Permitted Exceptions, and other liens and encumbrances benefiting the Lender and no other party.

(b) The Collateral is to be used by the Mortgagor solely for business purposes.

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(c) The tangible Collateral (except for books and records, which may be kept at Mortgagor's principal place of business or with any third party manager of the Premises) will be kept at the Real Estate and, except for Obsolete Collateral, will not be removed therefrom without the consent of the Lender (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

(d) The only persons having any interest in the Premises are the Mortgagor, the Lender, the Senior Lender, and holders of interests, if any, expressly permitted hereby.

(e) No Financing Statement (other than Financing Statements showing the Lender or Senior Lender as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and the Mortgagor, at the Mortgagor's own cost and expense, upon demand, will furnish to the Lender such further information and will execute and deliver to the Lender such financing statements and other documents in form reasonably satisfactory to the Lender and will do all such acts as the Lender may request at any time or from time to time 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 the Lender and no other party, and liens and encumbrances (if any) expressly permitted hereby; and the 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 reasonably deemed by the Lender to be desirable. The Mortgagor hereby irrevocably authorizes the Lender at any time, and from time to time, to file in any necessary or appropriate jurisdiction any initial financing statements and amendments thereto, without the signature of the Mortgagor, that (i) indicate the Collateral (A) is comprised of all assets of the Mortgagor or words of similar effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or (B) as being of an equal or lesser scope or within greater detail as the grant of the security interest set forth herein, and (ii) contain any other information required by the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether the Mortgagor is an organization, the type of organization and any organizational identification number issued to the Mortgagor, and (B) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Collateral relates. The Mortgagor agrees to furnish any such information to the Lender promptly upon request. The Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by the Lender in any jurisdiction prior to the date of this Mortgage. In addition, the Mortgagor shall make appropriate entries on its books and records disclosing the Lender's security interests in the Collateral.

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(f) Upon and during the continuance of an Event of Default under this Mortgage, the Lender 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, so far as the Mortgagor can give authority therefor, with or without judicial process, may 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 the Lender 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 the Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations, as provided in the Code. The Lender may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. The Lender may require the Mortgagor to assemble the Collateral and make it available to the Lender for its possession at a place to be designated by the Lender which is reasonably convenient to both parties. The Lender will give the Mortgagor at least 10 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 the Mortgagor hereinafter set forth at least 10 days before the time of the sale or disposition. The Lender may buy at any public sale. The Lender 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 the Lender 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 attorneys' fees and legal expenses incurred by the Lender, shall be applied against the Indebtedness in such order or manner as the Lender shall select. The Lender will account to the Mortgagor for any surplus realized on such disposition.

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

(h) This Mortgage is intended to be a financing statement filed as a fixture filing pursuant to Illinois Uniform Commercial Code Section 9-502(b). The addresses of the Mortgagor (Debtor) and the Lender (Secured Party) are hereinbelow set forth. This Mortgage is to be filed for recording in appropriate public records of the county or counties where the Premises are located. The Mortgagor is the record owner of the Premises.

(i) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between the 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 the Mortgagor, as lessor thereunder.

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(j) The Mortgagor represents and warrants that: (i) the Mortgagor is the record owner of the Premises; (ii) the Mortgagor's chief executive office is located in the State of Illinois; (iii) the Mortgagor's state of organization is the State of Illinois; (iv) the Mortgagor's organizational identification number is IL03959554; and (v) the Mortgagor's exact legal name is as set forth on Page 1 of this Mortgage.

(k) The Mortgagor hereby agrees that: (i) where Collateral is in possession of a third party, the Mortgagor will join with the Lender in notifying the third party of the Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of the Lender; (ii) the Mortgagor will cooperate with the Lender in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and (iii) until the Indebtedness is paid in full, Mortgagor will not change the state where it is located or change its name or form of organization without giving the Lender at least 30 days prior written notice in each instance.

13. **Events of Default; Acceleration.** Each of the following shall constitute an Event of Default under this Mortgage.

(a) Mortgagor fails to pay any installment of interest or principal payment within five (5) days of the date due.

(b) The Mortgagor fails to pay any amount payable under this Mortgage when any such payment is due in accordance with the terms hereof and the failure of Mortgagor to cure the same within five (5) days after notice from Lender to Mortgagor thereof.

(c) The Mortgagor fails to perform or observe, or to cause to be performed or observed, any other obligation, covenant, term, agreement or provision required to be performed or observed by the Mortgagor under this Mortgage and the failure of Mortgagor to cure the same within thirty (30) days after notice from Lender to Mortgagor thereof, provided that, if such failure cannot reasonably be cured within such 30-day period, Mortgagor shall have such additional period of time to cure such failure as is reasonably necessary provided further that Mortgagor is diligently pursuing such cure.

(d) The existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage or of any statement or certification as to facts delivered to Lender by Mortgagor, provided that, if such inaccuracy or untruth was not intentional and is curable, Mortgagor shall have same notice and cure rights with respect thereto as is provided in subparagraph 13(b) above.

(e) The occurrence of a Prohibited Transfer.

(f) The occurrence of an Event of Default under the Loan Agreement.

If an Event of Default occurs under this Mortgage, the Lender may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to the

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Mortgagor, with interest thereon accruing from the date of such Event of Default until paid at the interest rate specified in the Loan Agreement.

14. Foreclosure; Expense of Litigation.

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, the Lender shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage, the Loan Agreement or the Note in accordance with the applicable laws of the State of Illinois, including without limitation, the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 et. seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, the Lender is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as the Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit or other proceeding to foreclose this Mortgage or enforce any other remedy of the Lender under this Mortgage or the Loan Agreement, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of the Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as the Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Section and such other expenses and fees as may be incurred in the enforcement of the Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the interest created by this Mortgage, including the reasonable fees of any attorney employed by the Lender in any litigation or proceeding affecting this Mortgage, the Loan Agreement, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding not incurred as a result of the fault of Lender shall be immediately upon demand due and payable by the Mortgagor, with interest thereon until paid at the interest rate specified in the Loan Agreement and shall be secured by this Mortgage.

15. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the applicable laws of the State of Illinois and, unless otherwise specified therein, in such order as the Lender may determine in its sole and absolute discretion.

16. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by the Lender, appoint a receiver for the Premises in accordance with the applicable laws of the State of Illinois. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a

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homestead or not and the Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when the Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or any amount found due or secured by any judgment or 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 judgment or decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

17. **Lender's Right of Possession in Case of Default.** At any time after an Event of Default under this Mortgage has occurred and is continuing, the Mortgagor shall, upon demand of the Lender, surrender to the Lender possession of the Premises. The Lender, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude the Mortgagor and its employees, agents or servants therefrom, and the Lender may then hold, operate, manage and control the Premises, either personally or by its agents. The Lender shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, the Lender shall have full power to:

- (a) Cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same;
- (b) Elect to disaffirm any lease or sublease which is then subordinate to this Mortgage;
- (c) Extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of 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 such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to this Mortgage and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

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(d) Make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as the Lender reasonably deems are necessary;

(e) Insure and reinsure the Premises and all risks incidental to the Lender's possession, operation and management thereof; and

(f) Receive all of such avails, rents, issues and profits.

18. **Application of Income Received by Lender.** The Lender, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as the Lender may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to the Lender and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

19. **Compliance with Illinois Mortgage Foreclosure Law.**

(a) 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.

(b) If any provision of this Mortgage shall grant to the Lender (including the Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default under this Mortgage which are more limited than the powers, rights or remedies that would otherwise be vested in the Lender or in such receiver under the Act in the absence of said provision, the Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

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20. **Rights Cumulative.** Each right, power and remedy herein conferred upon the Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under the Loan Agreement, the Note, this Mortgage or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Lender, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of the Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default under this Mortgage or acquiescence therein.

21. **Lender's Right of Inspection.** The Lender and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times upon not less than 24 hours' prior notice to the Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

22. **Release Upon Payment and Discharge of Mortgagor's Obligations.** The Lender shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by the Lender in connection with the execution of such release.

23. **Notices.** All notices required or permitted under this Mortgage shall be sent to the parties at the addresses and in the manner set forth in the Loan Agreement.

22. **Waiver of Rights.** The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales 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 or sales, 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; and without limiting the foregoing:

(a) The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order, judgment or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15-1601 or other applicable law of the State of Illinois or replacement statutes; and

(b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.

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24. **Contests.** Notwithstanding anything to the contrary herein contained, the Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (each, a "**Contested Lien**"), and no Contested Lien shall constitute an Event of Default under this Mortgage, if, but only if:

(a) The Mortgagor shall forthwith give notice of any Contested Lien to the Lender at the time the same shall be asserted;

(b) The Mortgagor shall either pay under protest or deposit with the Lender the full amount (the "**Lien Amount**") of such Contested Lien, together with such amount as the Lender may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment the Mortgagor may furnish to the Lender a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be reasonably satisfactory to the Lender;

(c) The Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit the Lender to be represented in any such contest and shall pay all expenses incurred, in so doing, including reasonable fees and expenses of the Lender's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the interest rate specified in the Loan Agreement until paid, and payable upon demand);

(d) The Mortgagor shall pay each such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be finally determined adverse to the Mortgagor, or (ii) forthwith upon demand by the Lender if, in the reasonable opinion of the Lender and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if the Mortgagor shall fail so to do, the Lender may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the reasonable judgment of the Lender to obtain the release and discharge of such liens; and any amount expended by the Lender in so doing shall be so much additional Indebtedness bearing interest at the interest rate specified in the Loan Agreement upon demand until paid, and payable upon demand; and provided further that the Lender may in such case use and apply monies deposited as provided in paragraph (b) of this Section and may demand payment upon any bond or title indemnity furnished as aforesaid.

25. **Expenses Relating to Loan Agreement and Mortgage.** The Mortgagor will pay all title insurance premiums, filing, registration and recording fees, and all other expenses incident to the negotiation, execution, and delivery of the Loan Agreement, the Note and this Mortgage, including Lender's attorneys fees and costs, and all federal, state, county and municipal taxes, and other taxes (provided the Mortgagor shall not be required to pay any income or franchise taxes of the Lender), duties, imposts, assessments and charges arising out of

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or in connection with the execution and delivery of the Loan Agreement, the Note and this Mortgage.

26. **Statement of Indebtedness.** The Mortgagor, within seven days after being so requested by the Lender, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

27. **Further Instruments.** Upon request of the Lender, the Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage.

28. **Additional Indebtedness Secured.** All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Loan Agreement, the Note, or any other Loan Document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by the Lender to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

29. **Indemnity.** The Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against the Lender in the exercise of the rights and powers granted to the Lender in this Mortgage, and the Mortgagor hereby expressly waives and releases any such liability, except to the extent resulting from the acts, omissions, negligence or willful misconduct of the Lender. The Mortgagor shall indemnify and save the Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "**Claims**"), of whatever kind or nature which may be imposed on, incurred by or asserted against the Lender at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which the Lender may or does become party, either as plaintiff or as defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to the Lender in accordance with the terms of this Mortgage; provided, however, that the Mortgagor shall not be obligated to indemnify or hold the Lender harmless from and against any Claims to the extent arising from the acts, omissions, negligence or willful misconduct of the Lender. All costs provided for herein and paid for by the Lender shall be so much additional Indebtedness and shall become immediately due and payable upon demand by the Lender and with interest thereon from the date demanded by the Lender until paid at the interest rate specified in the Loan Agreement.

30. **Subordination of Property Manager's Lien.** Any property management agreement for the Premises entered into hereafter with a property manager shall contain a

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provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Premises shall be subject and subordinate to the lien of this Mortgage and shall provide that the Lender may terminate such agreement, without penalty or cost, at any time after the occurrence of an Event of Default under this Mortgage upon no more than thirty (30) days written notice, unless the property manager is an affiliate of Mortgagor, in which case no notice need to given. Such property management agreement or a short form thereof, at the Lender's request, shall be recorded in the appropriate public records of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, the Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with the Lender, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to this Mortgage.

31. Compliance with Environmental Laws.

(a) Definitions. As used herein, the following terms shall have the following meanings:

(i) "Environmental Laws" means all federal, state and local statutes, laws, rules, regulations, ordinances, requirements, or rules of common law, including but not limited to those listed or referred to in paragraph (b) below, any judicial or administrative interpretations thereof, and any judicial and administrative consent decrees, orders or judgments, whether now existing or hereinafter promulgated, relating to public health and safety and protection of the environment.

(ii) "Hazardous Material" means without limitation, above or underground storage tanks, flammables, explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides and toxic or hazardous substances on materials of any kind, including without limitation, substances now or hereafter defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the following statutes, as amended and as the same may from time to time hereafter be further amended: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601, et seq., "CERCLA"); the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §9671 et seq., "SARA"); the Hazardous Materials Transportation Act (49 U.S.C. §1801, et seq., "HMTA"); the Toxic Substances Control Act (15 U.S.C. §2601, et seq., "TSCA"); the Resource Conservation and Recovery Act (42 U.S.C. §6901, et seq., "RCRA"); the Clean Air Act (42 U.S.C. §7401 et seq., "CAA"); the Clean Water Act (33 U.S.C. §1251, et seq., "CWA"); the Rivers and Harbors Act, (33 U.S.C. §401 et seq., "RHA"); and any so-called "Superlien law"; and in the regulations promulgated pursuant thereto, and any other applicable federal, state or local law, common law, code, rule, regulation, order, policy or ordinance, presently in effect or hereafter enacted, promulgated or implemented.

(iii) "Environmental Liability" means any losses, liabilities, obligations, penalties, charges, fees, claims, litigation demands, defenses, costs, judgments, suits, proceedings, response costs, damages (including consequential damages), disbursements or expenses of any kind or

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nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Lenders or its affiliates, members, managers, officers, employees, and agents (collectively "Affiliates") in connection with or arising from:

(1) any Hazardous Material on, in, under or affecting all or any portion of the Premises, the groundwater, or any surrounding areas;

(2) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Section;

(3) any violation or claim of violation by Mortgagor of any Environmental Laws;

(4) the imposition of any lien for damages caused by, or the recovery of any costs for, the cleanup, release or threatened release of Hazardous Material;

(5) the enforcement of this agreement or the assertion by Mortgagor of any defense to its obligations hereunder;

(6) the costs of removal of any and all Hazardous Materials from all or any portion of the Premises or any surrounding areas; or

(7) costs incurred to comply, in connection with all or any portion of the Premises or any surrounding areas, with all Environmental Laws with respect to Hazardous Materials.

(b) **Representations, Warranties and Covenants.** Mortgagor hereby represents and warrants to Lender and covenants and agrees with Lender that except as set forth in the Reports (as hereinafter defined):

(i) To the knowledge of Mortgagor, the soil, subsoil, bedrock, surface water and ground water of the Premises are free of any Hazardous Material.

(ii) To the knowledge of Mortgagor, the Premises (including underlying groundwater and areas leased to tenants, if any) and the use and operation thereof are currently in compliance, and shall comply, with all Environmental Laws. All required governmental permits and licenses are and shall remain in effect, and Mortgagor is in compliance and shall comply therewith. All Hazardous Material present, handled or generated on the Premises have been or will be disposed in a lawful manner and in compliance with all Environmental Laws. Mortgagor shall satisfy all requirements or applicable Environmental Laws for the maintenance and removal of all underground storage tanks, if any, on the Premises. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

(iii) To the knowledge of Mortgagor, no generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material has occurred, is occurring or shall be introduced to or handled on or from the Premises. No environmental or public health or safety hazards currently exist with respect to the Premises or the business or operations conducted thereon. No

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underground storage tanks (including petroleum storage tanks) are present on or under the Premises except as disclosed to Lender.

(iv) There are no pending or, to the best knowledge of Mortgagor, threatened: (a) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Premises, or the disposal or presence of Hazardous Material, or regarding any Environmental Laws; or (b) liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind that could impair the value of the Premises, or the priority of this Mortgage lien or of any of the other documents or instruments now or hereafter given as security for the indebtedness hereby secured.

(v) Mortgagor shall immediately notify Mortgagee and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Premises or compliance with Environmental Laws. Mortgagor shall promptly cure and have dismissed any such actions and proceedings to the satisfaction of Mortgagee. Mortgagor shall keep the Premises free of any lien imposed pursuant to any Environmental Laws.

(vi) Mortgagor has not been given any notice to or received any inquiry from, or has any knowledge that any other person or entity has given notice to or received any inquiry from, any governmental agency or other entity concerning the release of any Hazardous Material either from or affecting the Premises and has not given or received notice of any pending or threatened action, suit (public or private), proceeding, investigation, or other proceeding, of any type or nature relating to the Premises.

(vii) Mortgagor shall provide such information and certifications which Lender may reasonably request from time to time to insure Mortgagor's compliance with this Section. To investigate Mortgagor's compliance with Environmental Laws and with this Section, Lender shall have the right, but no obligation, at any time to enter upon the Premises, take samples, review Mortgagor's books and records, interview Mortgagor's employees and officers, and conduct similar activities. Mortgagor shall cooperate in the conduct of such an audit.

(viii) To the knowledge of Mortgagor, the Premises has not been the subject of any investigation which could possibly result in legal, administrative or other action (public or private) being taken against the Premises pursuant to any Environmental Laws.

(ix) Mortgagor does not currently maintain environmental liability insurance on the Premises and has not applied for such insurance coverage for the Premises.

(x) Mortgagor has no knowledge that any current or former occupant or user of the Premises has violated any Environmental Laws.

For purposes of this Section 7(b), (i) any representation made "to the knowledge of Mortgagor" means to the actual knowledge of Robert Hartman, and (ii) "Reports" means the Phase I Environmental Property Assessment prepared by EPS Environmental Services, Inc. dated July 23, 2012 delivered to Lender.

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(c) **Lender's Right to Rely.** Lender is entitled to rely upon Mortgagor's representations and warranties contained in this Section despite any independent investigations by Lender or its consultants. Mortgagor shall take reasonable actions to determine for itself, and to remain aware of, the environmental condition of the Premises and shall have no right to rely upon any environmental investigations or findings made by Lender or its consultants.

(d) **Indemnification.** Mortgagor hereby indemnifies, defends (at trial and appellate levels and with counsel acceptable to Lender and at Mortgagor's sole cost) and holds Lender and its Affiliates free and harmless from and against Lender's Environmental Liability. The foregoing indemnity shall survive satisfaction of the Loan and any transfer of the Premises to Lender by voluntary transfer, foreclosure or by a deed in lieu of foreclosure. This indemnification shall not apply to any liability incurred by Lender as a direct result of affirmative actions of Lender as owner and operator of the Premises after Lender has acquired title to the Premises, and which actions are the sole and direct cause of damage resulting from the introduction and initial release of a Hazardous Material upon the Premises by Lender; PROVIDED, HOWEVER, this indemnity shall otherwise remain in full force and effect, including, without limitation, with respect to Hazardous Material which is discovered or released at the Premises after Lender acquires title to the Premises but which was not actually introduced at the Premises by Lender, with respect to the continuing migration or release of Hazardous Material previously introduced at or near the Premises and with respect to all substances which may be Hazardous Material and which are situated at the Premises prior to Lender taking title but are removed by Lender subsequent to such date.

(e) **Waiver.** Mortgagor, its successors and assigns, hereby waives, releases and agrees not to make any claim or bring any cost recovery action against Lender under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that Lender is strictly liable under any Environmental Laws, Mortgagor's obligation to Lender under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation or condition which results in liability to Lender.

(f) **Survival; Foreclosure.** The obligation of Mortgagor under this Section shall survive the foreclosure of this Mortgage, any transfer of the Premises to Lender by voluntary transfer, foreclosure or deed in lieu of foreclosure, and satisfaction of the Loan (through foreclosure, repayment or otherwise).

32. **Miscellaneous.**

(a) **Usury and Truth in Lending.** The Loan does not violate the laws of the State of Illinois relating to the rate of interest which may be charged upon loans of money. The Loan is an exempted transaction under the Truth In Lending Act, 15 U.S.C., §1601, et seq.

(b) **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against the Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of the Lender, its successors and assigns and any holder or holders, from time to time, of the Note.

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(c) **Invalidity of Provisions; Governing Law.** In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the Mortgagor and the Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

(d) **Municipal Requirements.** The Mortgagor shall not by act or omission permit any building or other improvement on the Premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and the Mortgagor hereby assigns to the Lender any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by the Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void.

(e) **Rights of Tenants.** The Lender shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of the Lender. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(f) **Option of Lender to Subordinate.** At the option of the Lender, 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 condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by the Lender of a unilateral declaration to that effect and the recording thereof in the appropriate public records in and for the county wherein the Premises are situated. Lender agrees to execute a commercially reasonable subordination, non-disturbance and attornment agreement is requested by any tenant of the Premises.

(g) **Mortgagee-in-Possession.** Nothing herein contained shall be construed as constituting the Lender a mortgagee-in-possession in the absence of the actual taking of possession of the Premises by the Lender pursuant to this Mortgage.

(h) **Relationship of Lender and Mortgagor.** The Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of the Mortgagor or of any lessee, operator, concessionaire or licensee of the Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, the Lender shall not be deemed to be such partner, joint venturer, agent or associate on account of the Lender becoming a mortgagee-

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in-possession or exercising any rights pursuant to this Mortgage, or otherwise. The relationship of the Mortgagor and the Lender hereunder is solely that of debtor/creditor.

(i) **Time of the Essence.** Time is of the essence of the payment by the Mortgagor of all amounts due and owing to the Lender under the Loan Agreement, the Note and the performance and observance by the Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage.

(j) **No Merger.** The parties hereto intend that this Mortgage and the interest hereunder shall not merge in the fee simple title to the Premises, and if the Lender acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the interest hereunder shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(k) **Maximum Indebtedness.** Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness exceed \$4,500,000; provided, however, in no event shall the Lender be obligated to advance funds in excess of the face amount of the Note.

(l) **Execution of Counterparts.** This Mortgage may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

33. **Litigations Provisions.**

(a) **Consent to Jurisdiction.** THE MORTGAGOR AND LENDER CONSENT AND SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN CHICAGO, ILLINOIS, AND OF ANY STATE OR FEDERAL COURT LOCATED OR HAVING JURISDICTION IN THE COUNTY IN WHICH THE PREMISES IS LOCATED, IN WHICH ANY LEGAL PROCEEDING MAY BE COMMENCED OR PENDING RELATING IN ANY MANNER TO THIS MORTGAGE, THE LOAN AGREEMENT OR THE NOTE, AND WAIVE ANY OBJECTION TO VENUE IN ANY SUCH COURT AND ANY RIGHT EITHER MAY HAVE TO TRANSFER OR CHANGE THE VENUE FROM ANY SUCH COURT.

(b) **Waiver of Jury Trial.** THE MORTGAGOR AND LENDER HEREBY WAIVE TRIAL BY JURY IN ANY LEGAL PROCEEDING RELATING TO THIS MORTGAGE, THE LOAN AGREEMENT OR THE NOTE.

34. **Definitions of Certain Terms.** The following terms shall have the following meanings in this Mortgage:

Code: The Uniform Commercial Code of the State of Illinois as from time to time in effect; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, the security interest in any collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Illinois, the term "Code" shall mean the

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Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions of this Mortgage relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

Default: When used in reference to this Mortgage or any other document, or in reference to any provision of or obligation under this Mortgage or any other document, the occurrence of an event or the existence of a condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default under this Mortgage or such other document, as the case may be.

Event of Default: The following: (i) when used in reference to this Mortgage, one or more of the events or occurrences referred to in Section 13 of this Mortgage; and (ii) when used in reference to any other document, a default or event of default under such document that has continued after the giving of any applicable notice and the expiration of any applicable grace or cure periods.

Permitted Lease: The following:

- (a) The Operating Lease (as defined in the Loan Agreement);
- (b) The Montessori Lease (as defined in the Loan Agreement); and
- (c) Any Lease that has been approved in writing by Lender.

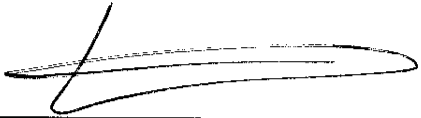
35. **Junior Mortgage.** The interest of the Lender in the Premises as created by this Mortgage is junior, subject and subordinate to the rights and liens created by the Senior Loan Documents (as defined in the Loan Agreement), which evidence and secure the Senior Loan (as defined in the Loan Agreement).

[SIGNATURE PAGE(S) AND EXHIBIT(S), IF ANY, FOLLOW THIS PAGE]

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


ENCORE REALTY PARTNERS, LLC
an Illinois limited liability company

By  _____
Robert Hartman, Manager

(SEAL)

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

Before me, Encore Realty Partners, LLC, an Illinois limited liability company, this 28 day of Sept, 2011, personally appeared by Robert Hartman, Manager, and acknowledged the execution of the foregoing instrument.


Printed Name: NANCY A. CERVANTES
Notary Public
Commission
Expires: 08-14-2013

"OFFICIAL SEAL"
NANCY A. CERVANTES
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 8/14/2013

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EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

THAT PART OF THE SOUTH ½ OF THE NORTHWEST ¼ OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST ¼; THENCE NORTH 00 DEGREES 04 MINUTES 43 SECONDS EAST, 1324.21 FEET; THENCE NORTH 89 DEGREES 35 MINUTES 43 SECONDS EAST, 954.00 FEET TO A SET ½" IRON ROD ON THE NORTHEASTERLY RIGHT OF WAY LINE OF THE DWIGHT D. EISENHOWER EXPRESSWAY (A 370 FOOT RIGHT OF WAY), SAID IRON ROD BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 89 DEGREES 35 MINUTES 43 SECONDS EAST, 691.10 FEET; THENCE SOUTH 00 DEGREES 24 MINUTES 17 SECONDS EAST AT RIGHT ANGLES TO THE PRECEDING COURSE, A DISTANCE OF 165.00 FEET; THENCE SOUTH 89 DEGREES 35 MINUTES 43 SECONDS WEST AT RIGHT ANGLES TO THE PRECEDING COURSE, A DISTANCE OF 65.00 FEET; THENCE SOUTH 00 DEGREES 24 MINUTES 17 SECONDS EAST AT RIGHT ANGLES TO THE PRECEDING COURSE, A DISTANCE OF 153.17 FEET TO A POINT ON THE NORTHEASTERLY LINE OF THE DWIGHT D. EISENHOWER EXPRESSWAY, SAID POINT ALSO BEING ON A CURVE CONCAVE SOUTHWESTERLY; THENCE ALONG THE NORTHEASTERLY LINE OF SAID EXPRESSWAY, BEING A CURVE TO THE LEFT HAVING A RADIUS OF 4029.83 FEET AND SUBTENDING A CHORD OF LENGTH 702.31 FEET AND BEARING NORTH 63 DEGREES 27 MINUTES 57 SECONDS WEST, FOR AN ARC DISTANCE OF 703.20 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

STREET ADDRESS: 4600 Frontage Road, Hillside, Illinois

PIN: 15-17-101-014-0000

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EXHIBIT B PERMITTED EXCEPTIONS

Exceptions set forth on the Lender's Title Policy of Chicago Title Insurance Company ("**Title Insurer**") naming Borrower as the fee owner of the Property as described in the Title Insurer's Commitment No. 1401-008894006, as follows: i) real estate taxes for 2012, a lien but not yet due and payable; ii) Schedule B – Part 1 exceptions T, AE, AV, and AY.

Property of Cook County Clerk's Office