



Doc#: 1228431080 Fee: \$88.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/10/2012 03:37 PM Pg: 1 of 26

88942402/3

Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 12-09-215-028-0000

Address:

Street: 9550 William Street

Street line 2:

City: Rosemont

State: IL

ZIP Code: 60018

Lender: PCCP First Mortgage II REIT Sub, LCC

Borrower: Continental 191 Fund LLC

Loan / Mortgage Amount: \$16,500,000.00

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.

Certificate number: FF3AB0DC-2E99-433B-AD77-3BB8A80D0E98

Execution date: 10/08/2012

Property of Cook County Clerk's Office

UNOFFICIAL COPY**PREPARED BY:**

Gibson, Dunn & Crutcher LLP
 555 Mission Street
 San Francisco, California 94105
 Attention: Fred Pillon, Esq.

**AFTER RECORDING
RETURN TO:**

PCCP First Mortgage II REIT Sub, LCC
 c/o PCCP, LLC
 222 North Sepulveda Boulevard, Ste 2222
 El Segundo, California 90245
 Name: Betty Kao

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

THIS COMMERCIAL LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Mortgage**") is made as of October 10th, 2012, by CONTINENTAL 191 FUND LLC, a Wisconsin limited liability company, as Grantor ("**Mortgagor**"), to and for the benefit of PCCP FIRST MORTGAGE II REIT SUB, LLC, a Delaware limited liability company as Mortgagee (together with its successors and/or assigns, "**Mortgagee**").

ARTICLE 1. GRANT OF MORTGAGE

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Mortgage, Mortgagor hereby irrevocably grants, conveys, mortgages, bargains, pledges, transfers, warrants (subject to Section 4.2 below), sets over and assigns to Mortgagee Mortgagor's interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Mortgagor (collectively, the "**Property**"):
- (a) the leasehold estate ("**Leasehold Estate**") demised by that certain Parking Lease Agreement dated May 8, 2007 (as modified, amended and assigned to date, the "**Lease**") by and between the Village of Rosemont, an Illinois home rule municipal corporation, as landlord and Mortgagor, as tenant, for a certain parcel of real property located in the City of Rosemont, County of Cook, State of Illinois, described on Exhibit A attached hereto (the "**Real Property**"), together with all after acquired title in respect of the Real Property, and together with all of Mortgagor's right, title and interest, options and privileges created in and by the above-described Lease;

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- (b) all streets, ways, roads and alleys used in connection with or pertaining to the Real Property, and together with all development rights or credits, air rights, water, water rights and water stock related to such Real Property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the Real Property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto;
- (c) All buildings, other improvements and fixtures now or hereafter located on the Real Property, including, but not limited to, all apparatus, equipment, and appliances owned by Mortgagor and used in the operation or occupancy of the Real Property, it being intended by the parties that all such items shall be conclusively considered to be a part of the Real Property, whether or not attached or affixed to the Real Property (the "**Improvements**"); and
- (d) All interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing. The listing of specific rights or property shall not be interpreted as a limit of general terms.

ARTICLE 2. OBLIGATIONS SECURED

2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Mortgage for the purpose of securing the following obligations ("**Secured Obligations**"):

- (a) Payment to Mortgagee of all sums at any time owing under that certain Promissory Note Secured by Mortgage ("**Note**") of even date herewith, in the maximum principal amount of up to SIXTEEN MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$16,500,000.00) executed by Mortgagor, as borrower, and payable to the order of Mortgagee, as lender, *with an initial Maturity Date of October 1, 2015 (subject to one (1) twelve (12) month extension option)* and bearing interest pursuant to the terms of the Note at a floating or variable rate of interest equal to the "**Applicable Interest Rate**", which is defined as follows:

"**Applicable Interest Rate**" is the sum of (i) 6.25%; plus (ii) the rate designated as "**LIBOR**" for U.S. dollar deposits with one (1) month maturities as quoted by a national bank as determined by Mortgagee (in any case, "**Bank**") from Reuters LIBOR01 or any successor thereto, which shall be that one-month LIBOR rate in effect two (2) New York Banking Days (as defined below) prior to the beginning of each calendar month, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation, such rate to be reset at the beginning of each succeeding month; provided, however, that, notwithstanding anything to the contrary contained in the Note, in no event shall the LIBOR portion of the Applicable Interest Rate (under clause (ii) above) be less than the greater of (i) 1% per annum (or the daily equivalent thereof), or (ii) the one month LIBOR rate in effect three days

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prior to the Closing Date (as such term is defined in the Loan Agreement). As used herein, the following terms shall have the following meanings:

“**New York Banking Day**” means any day (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York.

“**Reuters LIBOR01**” means Reuters Screen LIBOR01 Page (or such other page as may replace Reuters Screen LIBOR01 Page for the purpose of displaying London interbank offered rates of major banks for United States dollar deposits); and

- (b) Payment and performance of all covenants and obligations of Mortgagor under this Mortgage; and
- (c) Payment and performance of all covenants and obligations on the part of Mortgagor under (i) that certain Loan Agreement (“**Loan Agreement**”) of even date herewith, by and between Mortgagor and Mortgagee; and (ii) each other Loan Document (as defined in the Loan Agreement) to which Mortgagor is a party, but expressly excluding the Environmental Indemnity Agreement or the Carveout Guaranty (as each such term is defined in the Loan Agreement); and
- (d) Any and all future advances made or to be made under or in connection with the Loan Agreement, whether such advances are obligatory or to be made at the option of Mortgagor, or otherwise, as are made within 20 years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no Secured Obligations outstanding at the time any advance is made, it being understood that the lien of this Mortgage shall be valid as to all Secured Obligations, including future advances, from the time of its filing for record in the recorder’s office in the county in which the premises are located;
- (e) Payment and performance of all covenants and obligations of Mortgagor under the Interest Rate Protection Agreement;
- (f) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 **OBLIGATIONS.** The term “**obligations**” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

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- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. Capitalized terms not specifically defined herein have the meaning given such terms in the Loan Agreement. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and reborrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Mortgagor hereby irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all subleases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether now existing or entered into after the date hereof, but excluding agreements for the rental of hotel rooms by transient guests ("**Subleases**"); and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Subleases ("**Payments**"). The term Subleases shall also include all guarantees of and security for the sublessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Subleases and Payments is not contingent upon, and may be exercised without possession of, the Property.
- 3.2 **GRANT OF LICENSE.** Subject to the terms and conditions of that certain Cash Management Agreement of even date herewith among Mortgagor, Mortgagee and Manager ("**Cash Management Agreement**"), Mortgagee confers upon Mortgagor a license ("**License**") to collect and retain the Payments as they become due and payable, upon the occurrence and during the continuance of an Event Default (as hereinafter defined). Upon the occurrence and during the continuance of an Event of Default, the License shall be automatically revoked and Mortgagee may collect and apply the Payments pursuant to Section 6.4 without notice and without taking possession of the Property. Mortgagor hereby irrevocably authorizes and directs the sublessees under the Subleases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Subleases, or for the performance of any of the lessees' undertakings under the Subleases, and the lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the sublessees from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee.
- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable Assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms,

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agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Subleases; or (c) responsible or liable for any waste committed on the Property by the sublessees under any of the Subleases or any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any subessee, licensee, employee, invitee or other person. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder; or (ii) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Mortgagor arising under the Subleases.

- 3.4 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) prior to the date of this Mortgage, Mortgagor delivered to Mortgagee a true, accurate and complete list of all Subleases; (b) all existing Subleases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Subleases on the part of any party; (c) no rent under or other payment under any existing Subleases has been paid by any lessee for more than one (1) month in advance; and (d) none of the lessor's interests under any of the Subleases has been transferred or assigned, except in connection with the Prior Loan, which assignment is no longer in effect as of the date hereof.
- 3.5 **COVENANTS.** Mortgagor (a) shall not enter into any Subleases at the Property except in accordance with the terms and conditions of the Loan Agreement or (b) execute any other assignment relating to any of the Subleases except in favor of Mortgagee. Mortgagor shall timely perform all material obligations that are required to be performed by the landlord under the Subleases and promptly give Mortgagee copies of any written notice given or received by Mortgagor of any default which occurs with respect to any of the Subleases, whether the default be that of the sublessee or of the lessor respectively thereunder. Without in any way limiting the requirement of Mortgagee's consent hereunder, if the provisions of the Cash Management Agreement shall be in effect, any sums received by Mortgagor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any Subleases shall be applied as provided in the Cash Management Agreement.
- 3.6 **ESTOPPEL CERTIFICATES.** Within fifteen (15) days after written request by Mortgagee, Mortgagor shall use diligent efforts to deliver to Mortgagee and to any party designated by Mortgagee estoppel certificates executed by Mortgagor and by each of the sublessees certifying (if such be the case): (a) that the foregoing assignment and the Subleases are in full force and effect; (b) the date of each sublessee's most recent payment of rent; (c) that there are no defenses or offsets outstanding, or stating those claimed by Mortgagor or sublessees under the foregoing assignment or the Subleases, as the case may be; and (d) any other information reasonably requested by Mortgagee.

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ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Mortgagor hereby grants and assigns to Mortgagee as of the Effective Date (as defined in the Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest, expressly excluding any personal property belonging to the landlord under the Lease (collectively, the “Collateral”):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, embedded software therein, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the Real Property described on Exhibit A attached hereto and incorporated by reference herein (to the extent the same are not effectively made a part of the Real Property pursuant to Section 1.1 above) or (ii) the Improvements (which Real Property and Improvements are collectively referred to herein as the Property); all after acquired title, and all right, title, interest and privileges of Mortgagor in and to all streets, ways, roads and alleys used in connection with or pertaining to such Real Property, and together with all development rights or credits, air rights, water, water rights and water stock related to such Real Property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the Real Property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all buildings, other improvements and fixtures now or hereafter located on the Real Property, including, but not limited to, all furniture, furnishings, fixtures, goods, supplies equipment, inventory or personal property owned by Mortgagor and now or hereafter located on, attached to or used in and about the Improvements and renewals, replacements or substitutions therefor, including, but not limited to, all machines, engines, boilers, dynamos, escalators, elevators, stokers, tanks, cabinets, awnings and all appliances, communication, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and sprinkler and fire and theft protection equipment, and all fixtures and appurtenances thereto, and such other inventory, goods and chattels and personal property owned by Mortgagor as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein (including, but not limited to, beds, bureaus, chiffoniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, motors, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers and other hotel equipment and other property of every kind and nature, whether tangible or intangible, whatsoever owned by

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Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Real Property and the Improvements, it being intended by the parties that all such items shall be conclusively considered to be a part of the Real Property, whether or not attached or affixed to the Real Property; together with all rents, issues, deposits and profits of the Property and the Leasehold Estate (to the extent, if any, they are not subject to Article 3); all inventory, accounts, cash receipts, deposit accounts, accounts receivable, revenues, credit card receipts and other receivables collected from guest rooms, restaurants, bars, meeting rooms, conference rooms, banquet rooms, other food and beverage facilities, recreational facilities, vending machines, telephone and television systems and guest laundry, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and/or occupancy of all or any part of the Real Property or Improvements or rendering of services by Mortgagor or any operator or manager of the hotel located in or at the Real Property or Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms, or other space, halls, stores and office, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges and proceeds, if any, from business interruption or other loss of income insurance and any other items of revenue, receipts or other income as identified in the most recent addition of the Uniform System of Accounts for the Lodging Industry, as adopted by the American Hotel and Motel Association, as the same may be amended, modified or supplemented from time to time, contract rights, general intangibles, chattel paper (whether electronic or tangible), instruments, documents, notes, drafts, letters of credit, letter of credit rights, supporting obligations insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing or operation of the Property and the Leasehold Estate or any business now or hereafter conducted thereon by Mortgagor; all rights of Mortgagor under any interest rate hedge, cap, swap or similar agreement; all permits consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property or the Leasehold Estate; all plans, drawings and specifications relating to the Property; all loan funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee or another depository pursuant to the Loan Agreement or any other Loan Documents; all reserves, deferred payments, deposits, accounts, refunds and payments of any kind related to the Property, the Leasehold Estate or any portion thereof; together with all after acquired property; and together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (as defined below); and is to be recorded in the real estate records of the county in which the Property is located.

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- 4.2 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) Mortgagor has, or will have, good title to the Collateral, subject to the Permitted Encumbrances (as defined in the Loan Agreement); (b) Mortgagor has not previously assigned or encumbered the Collateral, and Mortgagor has not delivered or authorized any other person to deliver any financing statement covering any of the Collateral to any other person or entity except in connection with the Prior Loan, which assignments and/or financing statement are no longer in effect as of the date hereof; and (c) Mortgagor's principal place of business is located at the address shown in Section 7.11. Mortgagor's organizational registration number is: C064100.
- 4.3 **RIGHTS OF MORTGAGEE.** In addition to Mortgagee's rights as a "Secured Party" under the Illinois Uniform Commercial Code, as amended or recodified from time to time ("UCC"), Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under UCC §9-621 as amended or recodified from time to time, or other applicable law.
- 4.4 **RIGHTS OF MORTGAGEE UPON EVENT OF DEFAULT.** Upon the occurrence and during the continuance of an Event of Default under this Mortgage, then in addition to all of Mortgagee's rights as a Secured Party under any Loan Document, the UCC or otherwise at law:
- (a) Mortgagee may (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; (iii) sell, assign and deliver at any place and in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sales; and
 - (b) Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Mortgagee deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Mortgagee may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Collateral.

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(c) Notwithstanding any other provision hereof, Mortgagee shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagor shall make an express written election of said remedy under UCC §9-621 as amended or recodified from time to time, or other applicable law.

4.5 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Mortgagee may, without the obligation to do so, in Mortgagee's name, or in the name of Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to any of the Collateral and take any other action required of Mortgagor herein; provided, however, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee.

ARTICLE 5 RIGHTS AND DUTIES OF THE PARTIES

5.1 **TITLE AND POSSESSION.** Mortgagor represents and warrants that Mortgagor lawfully holds and possesses, or will hold and possess, good, marketable, insurable leasehold estate in the Property without limitation on the right to encumber, and this Mortgage is a first and prior Lien on the Property. Provided no Event of Default has occurred and is continuing hereunder, Mortgagor shall be permitted to remain in full possession, enjoyment and control of the Property, subject always to the observance and performance of the terms of this Mortgage.

5.2 **TAXES AND ASSESSMENTS.** Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a Lien upon or cause a loss in value of the Property or any interest therein; provided, however, Mortgagor's obligation under this Section 5.2 shall be deemed satisfied if Mortgagor complies with Section 5.3 below. Mortgagor shall also pay prior to delinquency any and all taxes, assessments, levies and charges now or hereafter imposed by any public authority upon Mortgagee by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Mortgagee pursuant to any Secured Obligation; provided, however, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Mortgagee and which are measured by and imposed upon Mortgagee's net income.

5.3 **TAX AND INSURANCE IMPOUNDS.** Mortgagor shall, until all Secured Obligations have been paid in full, pay to Mortgagee the Tax and Insurance Monthly Installment as and when required (and as defined in) Section 12.2 of the Loan Agreement.

5.4 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor shall promptly pay and perform each Secured Obligation when due. By its execution hereof, Mortgagor hereby acknowledges its receipt of the fully executed Loan Agreement and Mortgagor hereby agrees to be bound by all terms and conditions contained in the Loan Agreement respecting the Property.

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5.5 **LIENS, ENCUMBRANCES AND CHARGES.** Subject to Mortgagor's rights under Section 8.3 of the Loan Agreement, Mortgagor shall (i) immediately discharge any Lien not approved by Mortgagee in writing that has or may attain priority over this Mortgage and (ii) pay when due all obligations secured by or reducible to Liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto.

5.6 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

(a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Mortgagee and, at the request of Mortgagee, shall be paid directly to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, Mortgagee may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and shall release the balance of any insurance proceeds Mortgagee receives to Mortgagor upon the conditions Mortgagee set forth in Sections 5.7 and 5.8 of the Loan Agreement. Except as otherwise set forth in the Loan Agreement, Mortgagee may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Mortgagee; provided, however, in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Mortgagee or its employees or agents.

(b) Subject to the terms and conditions set forth in the Loan Agreement, Mortgagee may and, if required by the Loan Agreement shall, permit insurance proceeds held by Mortgagee to be used for repair or restoration.

5.7 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Mortgagor covenants: (a) to insure the Property against such risks as Mortgagee may require pursuant to the Loan Agreement and, at Mortgagee's request, to provide evidence of such insurance to Mortgagee, and to comply with the requirements of any insurance companies insuring the Property; (b) to keep the Property in good condition and repair, subject to ordinary wear and tear; (c) except as permitted by the Loan Agreement not to remove or demolish the Property or any part thereof, not to alter, restore or add to the Property without Mortgagee's prior written consent, (d) except as permitted by the Loan Agreement not to initiate or acquiesce in any change in any zoning or other land classification which affects the Property without Mortgagee's prior written consent; (e) to complete or restore promptly and in good and workmanlike manner the Property, or any part thereof which may be damaged or destroyed, without regard to the adequacy of insurance proceeds; (f) to comply in all material respects with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable

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servitudes, whether public or private, of every kind and character which affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (g) not to commit or permit waste of the Property or Collateral; and (h) to do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.8 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Mortgagee hereunder against all adverse claims other than the Permitted Encumbrances. To the extent required by the Loan Agreement, Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property or Collateral and of any condemnation offer or action.

5.9 **MORTGAGOR REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING LEASE.** With respect to the Lease, Mortgagor hereby warrants, represents and covenants as follows:

- (a) The fee title and Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either the landlord thereunder, Mortgagor, Mortgagee or a third party, whether by purchase or otherwise. If Mortgagor acquires the fee title or any other estate, title or interest in the property demised by the Lease, or any part thereof, the lien of this Mortgage shall automatically and without the necessity of the execution and/or delivery of any further instruments or documents attach to, cover and be a lien upon such acquired estate, title or interest and the same shall thereupon be and become a part of Property with the same force and effect as if specifically encumbered herein. Without limitation or derogation of the foregoing sentence the Mortgagor nevertheless agree to execute all instruments and documents which the Mortgagee may require to ratify, confirm and further evidence the Mortgagee's lien on the acquired estate, title or interest. Furthermore, the Mortgagor hereby appoints Mortgagee its true and lawful attorney in fact to execute and deliver all such instruments and documents in the name and on behalf of the Mortgagor. This power, being coupled with an interest, shall be irrevocable as long as the Secured Obligations remains unpaid; and
- (b) If the Lease is canceled or terminated, and if Mortgagee or its nominee shall acquire an interest in any new lease of the property demised thereby, the Mortgagor shall have no right, title or interest in or to the new lease or the leasehold estate created by such new lease.

5.10 **COMPENSATION; EXCULPATION; INDEMNIFICATION.**

- (a) Mortgagor shall pay Mortgagee's costs and reimburse Mortgagee for reasonable expenses Mortgagee incurs in the administration of this Mortgage, including reasonable attorneys' fees. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of (i) the proper exercise of the

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rights, remedies or powers granted to Mortgagee in this Mortgage; (ii) the failure or refusal of Mortgagee to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or (iii) any loss sustained by Mortgagor or any third party resulting from any act or omission of Mortgagee in managing the Property after an Event of Default unless the loss is caused by the gross negligence or willful misconduct of Mortgagee and no such liability shall be asserted against or imposed upon Mortgagee, and all such liability is hereby expressly waived and released by Mortgagor.

- (b) Mortgagor indemnifies Mortgagee (and their respective successors, assigns and participants) against, and holds Mortgagee (and their respective successors, assigns and participants) harmless from, all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other expenses which either may suffer or incur: (i) by reason of this Mortgage; (ii) by reason of the execution of this trust or in performance of any act required or permitted hereunder or required by law; (iii) as a result of any failure of Mortgagor to perform Mortgagor's obligations; or (iv) by reason of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations of Mortgagor contained in any other document related to the Property. The above obligation of Mortgagor to indemnify and hold harmless Mortgagee (and their respective successors, assigns and participants) shall survive the release and cancellation of the Secured Obligations and the release and reconveyance or partial release and reconveyance of this Mortgage.
- (c) Mortgagor shall pay all amounts and indebtedness arising under this Section 5.10 immediately after demand by Mortgagee (or their respective successors, assigns or participants) together with interest thereon from the date of such demand at the rate of interest then applicable to the principal balance of the Note as specified therein.

5.11 **DUE ON SALE OR ENCUMBRANCE.** If the Property or any interest therein, or if any portion of the corporate stock, general partnership interests or limited liability company interests in Mortgagor (except as otherwise expressly permitted by the Loan Agreement), shall be sold, transferred, mortgaged, assigned, encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Mortgagee, THEN Mortgagee, in its sole discretion, may declare all Secured Obligations immediately due and payable.

5.12 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("**Interested Parties**"), Mortgagee may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement with Mortgagor or the applicable obligor extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Property and other security for the Secured Obligations. None of the foregoing actions

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shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the Lien of this Mortgage upon the Property and Collateral.

- 5.13 **RELEASE.** At such time as the Secured Obligations shall be fully paid and performed and all commitments contained in the Loan Documents to extend credit thereunder shall have terminated, then this Mortgage and the estate and rights hereby granted shall cease and this Mortgage shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.
- 5.14 **SUBROGATION.** Mortgagee shall be subrogated to the Lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to this Mortgage or by the proceeds of any loan secured by this Mortgage.
- 5.15 **RIGHT OF INSPECTION.** Mortgagee, its agents and employees, may enter the Property at any reasonable time, after reasonable notice to Mortgagor, for the purpose of inspecting the Property and ascertaining Mortgagor's compliance with the terms hereof.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **EVENT OF DEFAULT.** For all purposes hereof, the term “**Event of Default**” shall mean the existence of any Event of Default, as defined in the Loan Agreement.
- 6.2 **RIGHTS AND REMEDIES.** At any time after the occurrence and during the continuance of an Event of Default, Mortgagee shall each have all the following rights and remedies:
- (a) By written notice to Mortgagor, to declare all Secured Obligations immediately due and payable;
 - (b) With or without notice, and without releasing Mortgagor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any Event of Default of Mortgagor and, in connection therewith, to enter upon the Property and do such acts and things as Mortgagee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Mortgagee under this Mortgage; (ii) to pay, purchase, contest or compromise any encumbrance, charge, Lien or claim of Lien which, in the sole judgment of either Mortgagee, is or may be senior in priority to this Mortgage, the judgment of Mortgagee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; or (v) to employ counsel, accountants, contractors and other appropriate persons.
 - (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and

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that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations;

- (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such appointment;
- (e) To enter upon, possess, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property, to make, terminate, enforce or modify Leases of the Property upon such terms and conditions as Mortgagee deems proper, to make repairs, alterations and improvements to the Property as necessary, in Mortgagee's or Mortgagee's sole judgment, to protect or enhance the security hereof;
- (f) To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Mortgagee, or either of them, determine in their sole discretion.
- (g) Upon sale of the Property at any judicial foreclosure, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Mortgagee; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Mortgagee (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios previously discussed

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between Mortgagor and Mortgagee; and (z) Mortgagee's credit bid may be (at Mortgagee's sole and absolute discretion) higher or lower than any appraised value of the Property.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** After deducting all reasonable costs, fees and expenses of Mortgagee, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and all expenses of any judicial proceeding wherein such sale may be made, Mortgagee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Mortgagee under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Mortgagee under Section 6.2 or Section 3.2, less all reasonable costs and expenses incurred by Mortgagee or any receiver under Section 6.2, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Mortgagee shall determine in its sole discretion; provided, however, Mortgagee shall have no liability for funds not actually received by Mortgagee.
- 6.5 **NO CURE OR WAIVER.** Neither Mortgagee's nor Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Mortgagee or any receiver shall cure or waive any breach, Event of Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other defaults), or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the Lien of this Mortgage.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Mortgagee, within ten (10) days after demand, all costs and expenses incurred by Mortgagee pursuant to Section 6.2 (including, without limitation, court costs and reasonable attorneys' and paralegals' fees, whether internal or external and whether incurred in litigation or not) with interest from the date of notice of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 6.7 **POWER TO FILE NOTICES AND CURE EVENTS OF DEFAULT.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, (b) upon the issuance of a deed pursuant to the foreclosure

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of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Collateral, and (d) upon the occurrence and during the continuation of an event, act or omission which constitutes an Event of Default, Mortgagee may perform any obligation of Mortgagor hereunder; provided, however, that: (i) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (ii) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to act under this Section.

6.8 REJECTION OR TERMINATION OF LEASE UNDER BANKRUPTCY CODE.

- (a) If the Lease is terminated upon rejection or disaffirmance thereof pursuant to the Bankruptcy Code or any other law effecting creditor's rights, then (i) Mortgagor, immediately after obtaining notice thereof, shall give notice thereof to Mortgagee, (ii) Mortgagor, without the prior written consent of Mortgagee, shall not elect to treat the Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code or any comparable federal or state statute or law, and any election by Mortgagor made without such consent shall be void, and (iii) this Mortgage, the Loan Agreement and all the liens and provisions hereof and of the Loan Agreement shall extend to and cover Mortgagor's possessory rights under Section 365(h) of the Bankruptcy Code and to any claim for damages due to the rejection or termination of the Lease. Mortgagor hereby assigns irrevocably to Mortgagee Mortgagor's rights to treat the Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code and to offset rents under the Lease in the event any case, proceeding or other action is commenced by or against the landlord under the Lease under the Bankruptcy Code or any comparable federal or state statute or law; provided that Mortgagee shall not exercise such rights and shall permit Mortgagor to exercise such rights with the prior written consent of Mortgagee, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing.
- (b) Mortgagor hereby assigns to Mortgagee Mortgagor's rights under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law, in any case, proceeding or other action commenced by or against Mortgagor under the Bankruptcy Code or comparable state statute or law, (i) to reject the Lease and (ii) to seek an extension of the period within which to accept or reject the Lease. At Mortgagee's request, Mortgagor shall assign its interest in the Lease to Mortgagee in lieu of rejecting the Lease, upon receipt by Mortgagor of written notice from Mortgagee of such request, together with Mortgagee's agreement to cure any existing defaults of Mortgagor under the Lease that are reasonably susceptible of being cured by Mortgagee.

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- (c) If the Lease is terminated upon the rejection or disaffirmance thereof pursuant to the Bankruptcy Code or any other law effecting creditor's rights, then any property not removed by Mortgagor as permitted or required by the Lease, shall, at the option of Mortgagee, be deemed abandoned by Mortgagor; provided that Mortgagee may remove any such property required to be removed by Mortgagor pursuant to the Lease, and all costs and expenses of such removal shall be paid by Mortgagor within five days of receipt by Mortgagor of an invoice therefor.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property and such further rights and agreements are incorporated herein by this reference.
- 7.2 **INTENTIONALLY OMITTED.**
- 7.3 **MERGER.** No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other Lien on, the Property unless Mortgagee consents to a merger in writing.
- 7.4 **OBLIGATIONS OF MORTGAGOR, JOINT AND SEVERAL.** If more than one person has executed this Mortgage as "Mortgagor", the obligations of all such persons hereunder shall be joint and several.
- 7.5 **INTENTIONALLY OMITTED.**
- 7.6 **WAIVER OF MARSHALING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a Lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation ("**Other Property**") marshaled upon any foreclosure of this Mortgage or on a foreclosure of any other security for any of the Secured Obligations. Mortgagee shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Mortgagee may designate.
- 7.7 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Property" means all and any part of the Property and any interest in the Property.
- 7.8 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 7.7 does not waive or modify the provisions of Section 5.12.

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- 7.9 **EXECUTION IN COUNTERPARTS.** This Mortgage may be executed in any number of counterparts, each of which, when executed and delivered to Mortgagee, will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.
- 7.10 **ILLINOIS LAW.** This Mortgage shall be construed in accordance with the laws of the State of Illinois, except to the extent that Federal laws preempt the laws of the State of Illinois.
- 7.11 **INCORPORATION.** Exhibit A as attached, is hereby incorporated into this Mortgage by this reference.
- 7.12 **NOTICES.** All notices or other communications required or permitted to be given pursuant to the provisions of this Mortgage shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of an Event of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the addresses set forth below; provided, however, that non-receipt of any communication as a result of any change of address of which the sending party was not notified or as a result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the addresses of the parties shall be:

Mortgagor: Continental 191 Fund LLC
 c/o Continental Properties Company, Inc.
 W134 N8675 Executive Parkway
 Menomonee Falls, WI 53051
 Attn: Chief Financial Officer

With a copy to: Continental 191 Fund LLC
 c/o Continental Properties Company, Inc.
 W134 N8675 Executive Parkway
 Menomonee Falls, WI 53051
 Attn: Legal Department

Mortgagee: PCCP First Mortgage II REIT Sub, LLC
 c/o PCCP, LLC
 222 North Sepulveda Boulevard, Ste. 2222
 El Segundo, California 90245
 Attn: Servicing

With a copy to: Gibson, Dunn & Crutcher LLP
 555 Mission Street
 San Francisco, California 94105

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Attn: Fred Pillon, Esq.
Telecopy No.: (415) 374-8432

*Only with respect to notices of default but not with respect to requests for approval of leasing matters or other contracts.

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Mortgagor shall forward to Mortgagee, without delay, any notices, letters or other communications delivered to the Property or to Mortgagor naming Mortgagee, "Lender" or any similar designation as addressee, or which is reasonably likely to affect the ability of Mortgagor to perform its obligations to Mortgagee under the Note or the Loan Agreement.

7.12 **SECONDARY MARKET TRANSACTIONS.** The terms and provisions of Article XIII of the Loan Agreement are hereby incorporated herein by this reference.

7.13 **LOCAL ILLINOIS PROVISIONS.**

- (a) Mortgagor represents and warrants to Mortgagee that the proceeds of the Note secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured by this Mortgage constitutes (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4.2) and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1).
- (b) This Mortgage secures the payment of the entire indebtedness secured hereby; provided, however, that the total amount secured by this Mortgage (excluding interest, costs, expenses, charges, fees, protective advances and indemnification obligations, all of any type or nature) shall not exceed an amount equal to two hundred percent (200%) of the face amount of the Note.
- (c) Pursuant to the terms of the Collateral Protection Act, 815 ILCS 180/1 et seq., Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Property, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required hereunder. If Mortgagee purchases insurance for the Property, the Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance,

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until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.

- (d) It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Mortgagor agrees and covenants that:
- (i) Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 5.3(a) of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee, 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 secured hereby and Mortgagee shall have the benefit of all applicable provisions of the Act.
- (ii) Notwithstanding anything to the contrary in this Mortgage or any of the Loan Documents, any action to enforce this Mortgage or to pursue any of the remedies set forth herein must be brought in the courts of the State of Illinois, in the county in which the Property is located.
- (iii) Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the

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Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale.

- (iv) In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 *et seq* of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties and provisions for in Sections 15-1701 *et seq* of the Act.
- (v) Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.
- (vi) Mortgagor hereby expressly waives any and all rights of redemption, if any, under any order 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 redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year set forth above.

MORTGAGOR:

CONTINENTAL 191 FUND LLC,
a Wisconsin limited liability company

By: Continental Rosemont LLC, its Manager

By: Continental Properties Company,
Inc., its Sole Member

By: *John A. Gunn*
Name: John A. Gunn
Title: Vice President

By: *Thomas J. Keenan*
Name: Thomas J. Keenan
Title: Executive Vice President

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

Property of Cook County Clerk's Office

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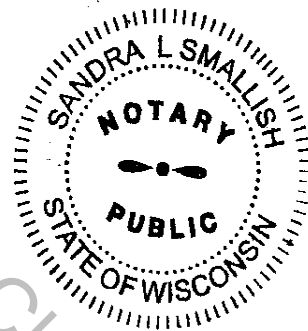
State of Wisconsin)
) SS
County of Waukesha)

The undersigned, a Notary Public in and for said County in the State aforesaid, does hereby certify that Yoshua A. Gunn, the Vice President of Continental Properties Company, Inc., Sole Member of Continental Rosemont LLC, Manager of Continental 191 Fund LLC, a Wisconsin limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she/he signed and delivered the said instrument as her/his own free and voluntary act, and as the free and voluntary act of Continental Properties Company, Inc., in its capacity as Sole Member of Continental Rosemont LLC, in its capacity as Manager of Continental 191 Fund LLC, a Wisconsin limited liability company for the purposes therein set forth.

Dated October 8, 2012

Sandra L. Smallish
Notary Public Sandra L. Smallish

My Commission Expires: 9/10/2015



Notary Public

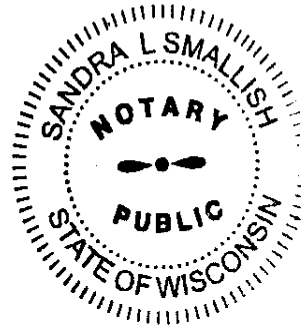
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State of Wisconsin)
) SS
County of Waukesha)

The undersigned, a Notary Public in and for said County in the State aforesaid, does hereby certify that Thomas V. Keenan, the Executive Vice President of Continental Properties Company, Inc., Sole Member of Continental Rosemont LLC, Manager of Continental 191 Fund LLC, a Wisconsin limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she/he signed and delivered the said instrument as her/his own free and voluntary act, and as the free and voluntary act of Continental Properties Company, Inc., in its capacity as Sole Member of Continental Rosemont LLC, in its capacity as Manager of Continental 191 Fund LLC, a Wisconsin limited liability company for the purposes therein set forth.

Dated October 3, 2012

Sandra L. Smallish
Notary Public Sandra L. Smallish
my Commission Expires: 5/10/2015



Notary Public

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EXHIBIT A DESCRIPTION OF PROPERTY

Property Address: 9550 Willam St, Rosemont, IL

P.I.N. No.: 12-09-216-002-0000

THE ESTATE OR INTEREST IN THE LAND DESCRIBED BELOW AND COVERED HEREIN IS: THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED IN PARAGRAPH 1.c. OF THE ALTA LEASEHOLD ENDORSEMENT(S) ATTACHED HERETO), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY:

THE VILLAGE OF ROSEMONT, AS LESSOR, AND CONTINENTAL 191 FUND LLC, A WISCONSIN LIMITED LIABILITY COMPANY, AS LESSEE, DATED MAY 11, 2007, A MEMORANDUM OF WHICH WAS RECORDED MAY 14, 2007 AS DOCUMENT 0713415149, WHICH LEASE DEMISES, NOT LESS THAN 125 PARKING SPACES, LOCATED IN THE PARKING FACILITY LOCATED ON THE FOLLOWING DESCRIBED LAND AND IDENTIFIED AS "ALOFT HOTEL PARKING AREA" ON EXHIBIT B ATTACHED THERETO, FOR A TERM OF YEARS AND ENDING 20 YEARS FROM THE DATE OF COMMENCEMENT AS DEFINED IN THE LEASE, SUBJECT TO NINE (9) SEPARATE OPTIONS TO EXTEND THE TERM FOR SUCCESSIVE PERIODS OF FIVE YEARS EACH.

LOT 2 IN THE ROSEMONT ENTERTAINMENT DISTRICT SUBDIVISION BEING A RESUBDIVISION OF LOT 1 THROUGH 20 (INCLUSIVE) AND THE ADJOINING MILTON PARKWAY IN REP SUBDIVISION AND ALSO PART OF LOT 2 IN FREDERICK JOSS DEVELOPMENT OF LAND, ALL IN THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Cook County Clerk's Office