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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



1236618072

Doc#: 1236618072 Fee: \$62.00
Karen A. Yarbrough RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/31/2012 12:27 PM Pg: 1 of 13

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 17-17-209-019-0000

Address:

Street: 40 South Halsted Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60607

Lender: City of Chicago

Borrower: CD-EB/EP Retail JV, LLC

Loan / Mortgage Amount: \$0.00

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: CE004FC6-9071-4431-83F3-0FE7F37451EA

Execution date: 12/24/2012

549361 2012 PP

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First American Title Order # NCS-549361 2 of 2 AP

Prepared by and after recording
return to:

Keith May
Department of Law
City of Chicago
121 North LaSalle Street
Chicago, Illinois 60602

This space reserved for Recorder's use only.

JUNIOR MORTGAGE

THIS JUNIOR MORTGAGE ("Mortgage") is made and given as of this 24th day of December, 2012 by CD-EB/EP RETAIL JV, LLC, a Delaware limited liability company ("Mortgagor"), to the CITY OF CHICAGO, an Illinois municipal corporation, having its principal office at 121 North LaSalle Street, Chicago, Illinois 60602 ("City" or "Mortgagee").

RECITALS

WHEREAS, the City Council of the City, by ordinance adopted October 5, 2011, authorized the execution by Mortgagor, and the City of that certain Gateway (Monroe and Halsted) Redevelopment Agreement dated as of November 10, 2011, a copy of which has been recorded prior to the recording of this Mortgage (such agreement, as amended, supplemented or modified, the "Redevelopment Agreement"); and

WHEREAS, all terms, unless defined herein, shall have the meaning given to them in the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement provides, inter alia, for the Mortgagor to redevelop the real property legally described in Exhibit A attached hereto (the "Land") with the Project; and

WHEREAS, pursuant to Section 8.06 of the Redevelopment Agreement, commencing on December 24, 2012 (i.e., the date the City issues the Certificate to Mortgagor) and continuing for each calendar year during the ten (10) year period thereafter (the "Enforceability Period"), the Mortgagor shall submit to HED the Annual Compliance Report during the March following the calendar year to which the Annual Compliance Period relates (the "Reporting Covenant");

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WHEREAS, the failure of the Mortgagor to comply with the Reporting Covenant shall constitute an Event of Default under Section 5.1 below and Mortgagee's sole and exclusive remedy under the Redevelopment Agreement in connection with such failure shall be limited to those remedies set forth in this Mortgage; and

WHEREAS, the parties intend that this Mortgage secure the Mortgagor's performance of the Reporting Covenant in the event of an Event of Default;

NOW, THEREFORE, to secure the performance by Mortgagor of the Reporting Covenant, and in order to charge the properties, interests and rights hereinafter described with such mortgage lien, Mortgagor has executed and delivered the mortgage and does hereby grant, convey, assign, mortgage, warrant, grant a security interest in, and confirm unto, Mortgagee and its successors and assigns forever, all of the following rights, interests, claims and property (collectively, the "Mortgaged Property"), subject to all matters of record:

(A) The Land, together with all easements, water rights, hereditaments, mineral rights and other claims, rights and interests appurtenant thereto;

(B) All buildings, structures and other improvements of every nature whatsoever now or hereafter situated on the Land, including, without limitation, the Project, all fixtures or attachments of every kind and nature whatsoever now or hereafter owned by Mortgagor which are or shall be attached to, located in or on, forming a part of, used or intended to be used in connection with or incorporated in the Land or such buildings, structures and other improvements, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing ("Improvements");

(C) All tenements, easements, rights-of-way and rights used as a means of access to the Land and Improvements and appurtenances thereto now or hereafter belonging or pertaining thereto;

(D) All rents and issues of the Land and Improvements from time to time and all of the estate, right, title, interest, property, possession, claim and demand at law, as well as in equity of Mortgagor, in and to the same;

(E) All right, title and interest of Mortgagor in and to all fixtures, personal property of any kind or character now or hereafter attached to, contained in and used or useful in connection with the Land or the Improvements, together with all furniture, floor covering, fittings, furnishings, apparatus, goods, systems, fixtures and other items of personal property of every kind and nature, now or hereafter located in, upon or affixed to the Land or the Improvements, or used or useful in connection with any present or future operation of the Land or the Improvements, including, but not limited to, all apparatus and equipment used to supply heat, gas, air conditioning, water, light, power, refrigeration, electricity, plumbing and ventilation, including all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing, and all proceeds therefrom (the "Equipment");

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(F) All of the estate, interest, right, title or other claim or demand which Mortgagor now has or may acquire with respect to (i) proceeds of insurance in effect with respect to the Land, the Improvements or the Equipment, and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding of all or any portion of the Land, the Improvements or the Equipment;

(G) All intangible personal property, accounts, licenses, permits, instruments, contract rights, and chattel paper of Mortgagor, including, but not limited to, cash, accounts receivable, bank accounts, certificates of deposit, rights (if any) to amounts held in escrow, deposits, judgments, liens and causes of action, warranties and guarantees, relating to the Land, the Equipment or the Improvements;

(H) All other property rights of Mortgagor of any kind or character related to all or any portion of the Land, the Improvements or the Equipment; and

(I) The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding clauses.

All of the Land, Improvements, estate and property hereinabove described, real, personal and mixed, whether or not affixed or annexed, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Land and Improvements and to be appropriated to the use thereof, and shall for the purposes of the Mortgage deemed to be conveyed and mortgaged hereby; provided, however, as to any property, aforesaid which does not so form a part and parcel of the Land and Improvements, the Mortgage is hereby deemed also to be a Security Agreement under the Uniform Commercial Code of the State of Illinois (the "Code") for the purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee as secured party (as defined in the Code) and as also contemplated and provided for in Section 6.10 hereof.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use, benefit and advantage forever, subject, however, to the terms, covenants and conditions herein;

WITHOUT limitation of the foregoing, Mortgagor hereby further grants unto Mortgagee, pursuant to the provisions of the Code, a security interest in all of the above-described property which are or are to become fixtures.

THIS MORTGAGE IS GIVEN TO SECURE the performance by the Mortgagor of the Reporting Covenant.

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SECTION 1

INCORPORATION OF RECITALS

The Mortgagor acknowledges and agrees that the recitals set forth above constitute an integral part of the Mortgage and are hereby incorporated herein by this reference.

SECTION 2

INCORPORATION OF REDEVELOPMENT AGREEMENT PROVISIONS

The Mortgagor acknowledges and agrees that Section 8.06 of the Redevelopment Agreement cited in the Recitals to this Mortgage, along with all defined terms used in such sections and all other defined terms from the Redevelopment Agreement that are used in this Mortgage, together with such other provisions of the Redevelopment Agreement as may be necessary to reasonably constitute such sections and defined terms, are incorporated herein by reference as if fully written out and included as definitions and independent covenants in this Mortgage.

SECTION 3

COVENANTS

The Mortgagor covenants, represents and warrants to Mortgagee that:

3.1 Redevelopment Agreement Covenants Mortgagor shall comply with the Reporting Covenant.

3.2 Subordination. Mortgagee and Mortgagor acknowledge that the lien of this Mortgage is subject and subordinate in each and every respect to any and all rights of any kind created by (i) that certain first mortgage lien granted by Mortgagor in that certain Construction Mortgage With Absolute Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of November 10, 2011, recorded with the Cook County Recorder on November 14, 2011 as Document No. 1131845062 (as amended, restated, supplemented or otherwise modified from time to time, the "Wells Mortgage"), in favor of Wells Fargo Bank, National Association ("Wells"), and (ii) any mortgage recorded against the Mortgaged Property after the recordation of this Mortgage and/or the Wells Mortgage that is intended to replace or substitute the Wells Mortgage (or any successor mortgage) with a new first mortgage lien. Mortgagee and Mortgagor further acknowledge that this Mortgage is subject to the Subordination Agreement, dated as of November 10, 2011, recorded with the Cook County Recorder on November 14, 2011 as Document No. 1131845065, executed by and between Mortgagee and Wells, as the same is amended, restated, supplemented or otherwise modified from time to time.

So long as the Wells Mortgage is in effect, in the event of any conflict or inconsistency between the provisions of this Mortgage and the Wells Mortgage, the provisions of the Wells Mortgage shall prevail. Any amendment, restatement, supplement, modification, waiver or

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forbearance by Wells under the Wells Mortgage (and any related documents) shall not impair the priority of its lien under the Wells Mortgage (and any related documents).

SECTION 4

RELEASE

4.1 Release of Mortgage. Upon the expiration of the Enforceability Period, if Mortgagor has complied with the Reporting Covenant, then the Mortgagee shall, within thirty (30) days of receipt of a written request from Mortgagor, execute a release of this Mortgage in recordable form and deliver the same to Mortgagor for recording. Upon receipt, Mortgagor shall promptly cause such release to be recorded with the Cook County, Illinois Recorder of Deeds. Notwithstanding anything to the contrary contained herein, this Mortgage shall automatically expire and be of no further force and effect upon expiration of the Enforceability Period.

SECTION 5

DEFAULT

5.1 Events of Default. As used in this Mortgage, the term "Event of Default" shall refer to the failure by Mortgagor to comply with Reporting Covenant, which failure constitutes a default under the Redevelopment Agreement and which remains unremedied for 30 days after notice thereof from Mortgagee to Mortgagor provided, however, that if any such default cannot reasonably be remedied within said 30-day period and if Mortgagor shall have commenced to remedy such default within said 30-day period and shall thereafter continue diligently to effect such remedy, then said 30-day period shall be extended to 60 days upon written request from Mortgagor to Mortgagee delivered during such 30-day period.

5.2 Remedies. If an Event of Default occurs, Mortgagee's sole remedy shall be limited to any and all remedies available in equity and no other. Without limiting the foregoing, Mortgagee shall not be entitled to (a) the remedy of foreclosure, (b) appointment of a receiver, (c) receive the proceeds of any sale or other disposition of the Project, insurance proceeds, condemnation awards, or rents or other income generated from the Property or (d) any other remedy at law. No act of omission or commission of Mortgagee, including specifically any failure to exercise any right or remedy, shall be deemed to be a waiver or release of the same; any such waiver or release is to be effected only through a written document executed by Mortgagee and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of Mortgagee's rights or remedies hereunder. Notice of the exercise of any right or remedy granted to Mortgagee under this Mortgage is required to be given to Mortgagor and Wells prior to Mortgagee exercise of the same.

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SECTION 6

MISCELLANEOUS PROVISIONS

6.1 Notice. Unless otherwise specified, any notice, demand or request required hereunder shall be given in the same manner as in Section 17 of the Redevelopment Agreement. Any notice to Mortgagor shall also be given to Mortgagor's senior lender at the following address (or such replacement address to the extent provided by Mortgagor):

If to Wells: Wells Fargo Bank, National Association
123 North Wacker Drive, Suite 1900
Chicago, Illinois 60606
Attention: Aaron M. Winkler (Loan No. 1003518)

With a copy to: Wells Fargo Bank, National Association
608 2nd Ave South, 11th Floor
Minneapolis, Minnesota 55402
Attention: Patti Mathews (Loan No. 1003518)

6.2 Time. Time is of the essence with respect to this Mortgage and the performance of the covenants contained herein.

6.3 Modifications. This Mortgage may not be altered, amended, modified, canceled, changed or discharged except by written instrument signed by Mortgagor and Mortgagee or their respective permitted successors and permitted assigns.

6.4 Headings. The headings of articles, sections, paragraphs and subparagraphs in this Mortgage are for convenience of reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

6.5 Governing Law; Venue; Jurisdiction. This Mortgage shall be construed and enforced according to the internal laws of the State of Illinois without regard to its conflict of laws principles. If there is a lawsuit under this Mortgage, each party agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois, or the United States District Court for the Northern District of Illinois.

6.6 Severability. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held invalid, the remainder of this Mortgage shall be construed as if such invalid part were never included herein and this Mortgage shall be and remain valid and enforceable to the fullest extent permitted by law.

6.7 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

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6.8 Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Nothing in this Section 6.8 shall be construed to modify the transfer and assignment limitations set forth in the Redevelopment Agreement.

6.9 Further Assurances. Mortgagor will perform, execute, acknowledge and deliver every act, deed, conveyance, transfer and assurance necessary or proper, in the sole judgment of Mortgagee for assuring, conveying, mortgaging, assigning and confirming to Mortgagee all property mortgaged hereby or property intended so to be, whether now owned or hereafter acquired by Mortgagor, and for creating, maintaining and preserving the lien and security interest created hereby on the Mortgaged Property. Upon any failure by Mortgagor to do so, Mortgagee may make, execute and record any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee and its agents as attorney-in-fact for that purpose. Mortgagor will reimburse Mortgagee for any sums expended by Mortgagee in making, execute and recording such documents including attorneys' fees and court costs.

6.10 Security Agreement. This Mortgage shall be construed as a "security agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Illinois with respect to any part of the Mortgaged Property which constitutes fixtures or personal property. Mortgagee shall have all the rights with respect to such fixtures or personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Mortgagee by this Mortgage or any other agreement. Upon the recording hereof, this Mortgage shall constitute a financing statement under the Uniform Commercial Code, with Mortgagor being the Debtor, Mortgagee being the Secured Party, and the parties having the addresses set forth in the recitals.

6.11 No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien thereof do not merge in fee simple title, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to the Mortgaged Property or the ownership thereof, then, unless a contrary interest is manifested by Mortgagee, as evidenced by an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

6.12 Counterparts. This Mortgage may be executed in one or more counterparts. All such counterparts, when taken together, shall comprise the fully executed document. This Mortgage may also be executed by delivery by facsimile or electronic mail of an executed counterpart of this Mortgage. The parties hereto agree that the signature of any party transmitted by facsimile with confirmation of transmission or by electronic mail shall have binding effect as though such signature were delivered as an original.

[SIGNATURES ON FOLLOWING PAGE]

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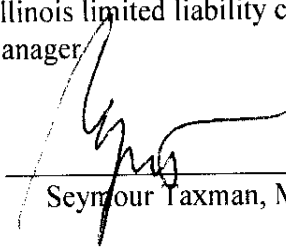
IN WITNESS WHEREOF, the parties hereto have caused this Junior Mortgage to be executed on or as of the day and year first above written.

MORTGAGOR:

**CD-EB/EP RETAIL JV LLC,
a Delaware limited liability company**

By: Chitown-Diamond JV LLC,
a Delaware limited liability company,
a Manager

By: Taxman Manager LLC,
an Illinois limited liability company,
a Manager

By: 
Seymour Taxman, Manager

MORTGAGEE:

CITY OF CHICAGO

By: _____
Andrew J. Mooney, Commissioner
Department of Housing and Economic
Development

[NOTARY PAGES FOLLOW]

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IN WITNESS WHEREOF, the parties hereto have caused this Junior Mortgage to be executed on or as of the day and year first above written.

MORTGAGOR:

**CD-EB/EP RETAIL JV LLC,
a Delaware limited liability company**


By: Chitown-Diamond JV LLC,
a Delaware limited liability company,
a Manager

By: Taxman Manager LLC,
an Illinois limited liability company,
a Manager

By: _____
Seymour Taxman, Manager

MORTGAGEE:

CITY OF CHICAGO

By:  _____
Andrew J. Mooney, Commissioner
Department of Housing and Economic
Development

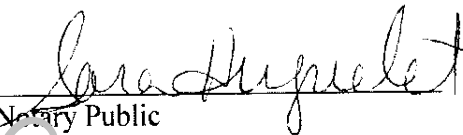
[NOTARY PAGES FOLLOW]

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Seymour Taxman, personally known to me to be the Manager of TAXMAN MANAGER LLC, an Illinois limited liability company, acting in its capacity as a Manager of CHITOWN-DIAMOND JV LLC, a Delaware limited liability company, which is a Manager of CD-EB/EP Retail JV LLC, a Delaware limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument, pursuant to the authority given to him by the members/managers of the Developer, as his free and voluntary act and as the free and voluntary act of the Developer, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this ___ day of December, 2012.


Notary Public

My Commission Expires 07/23/15

(SEAL)



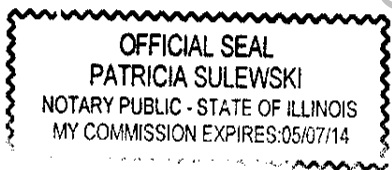
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Patricia Sulewski, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Andrew J. Mooney, personally known to me to be the Commissioner of the Department of Housing and Economic Development of the City of Chicago (the "City") and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument pursuant to the authority given to him by the City, as his free and voluntary act and as the free and voluntary act of the City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 21st day of December, 2012.

Patricia Sulewski
Notary Public



My Commission Expires 5/7/14

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EXHIBIT A

LEGAL DESCRIPTION OF LAND

All the certain real property located in the County of Cook, State of Illinois, described as follows:

THE SOUTH 20.00 FEET OF LOTS 3 AND 14, TOGETHER WITH LOTS 4 THROUGH 13, INCLUSIVE, IN BLOCK 1 IN DUNCAN'S ADDITION TO CHICAGO, A SUBDIVISION OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN; INCLUDING THAT PART OF VACATED SOUTH ACADEMY PLACE FALLING WITHIN THE AFORESAID LOTS AND LYING SOUTH OF THE NORTH LINE OF THE SOUTH 20.00 FEET OF LOTS 3 AND 14 AFORESAID, SAID VACATED SOUTH ACADEMY PLACE BEING A NORTH-SOUTH 14.00 FOOT ALLEY VACATED PER ORDINANCE PASSED NOVEMBER 2, 2011 AND RECORDED NOVEMBER 9, 2011 AS DOCUMENT 1131316023, IN COOK COUNTY, ILLINOIS.

PINS: 17-17-209-019 and 020

Formerly a part of PIN 17-17-209-003 and all of PIN's 17-17-209-004 & 010 thru 018

Property Address: 40 South Halsted Street, Chicago, IL 60607