

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1302934058 **Fee:** \$76.00
Karen A. Yarbrough RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 01/29/2013 02:03 PM Pg: 1 of 20

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 29-12-220-031-0000

Address:

Street: 371 YATES AVE.

Street line 2:

City: CALUMET CITY

State: IL

ZIP Code: 60409

Lender: WELLS FARGO BANK, NATIONAL ASSOCIATION

Borrower: LSREF2 NOVA INVESTMENTS III, LLC

Loan / Mortgage Amount: \$596,674,700.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it consists of more than 4 units.

FIDELITY NATIONAL TITLE

999011505

Certificate number: EE05E2BF-FECD-4185-81FC-AC955A40622A

Execution date: 11/26/2012

UNOFFICIAL COPY

Transaction No. 1003210 (Space Above For Recorder's Use)

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

NAME OF MORTGAGOR: LSREF2 NOVA INVESTMENTS III, L.L.C, a Delaware limited liability company
Organizational Number: 4897540
Permanent Tax Index Number: 22-12-220-031-0000
Address: 2711 North Haskell Avenue, Suite 1700, Dallas, TX 75204

NAME OF MORTGAGEE: WELLS FARGO BANK, NATIONAL ASSOCIATION
Address: 333 S. Grand Avenue, 9th Floor, Los Angeles, CA 90071, Attention: Michael Nagin

DRAFTED BY: Gibson, Dunn & Crutcher LLP

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, California 94105-2933
Attn: Deborah A. Cussen, Esq.
Transaction No. 1003210

[ILLINOIS]

Nova 119

UNOFFICIAL COPY**THIS MORTGAGE SECURES OBLIGATIONS UNDER A
PURCHASE AND REPURCHASE AGREEMENT AND SECURITIES CONTRACT****MORTGAGE
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THE PARTIES TO THIS MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage"), made as of November 26, 2012, are LSREF2 NOVA INVESTMENTS III, LLC, a Delaware limited liability company ("Mortgagor"), having an address at 2711 North Haskell Avenue, Suite 1700, Dallas, TX 75204, and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Mortgagee"), having an address at 333 S. Grand Avenue, 9th Floor, Los Angeles, CA 90071, Attention: Michael Nagin.

ARTICLE 1. GRANT IN TRUST

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Mortgage, Mortgagor irrevocably grants, bargains, sells, conveys, mortgages, encumbers, transfers, hypothecates, pledges, sets over, and grants a security interest and assigns to Mortgagee all of that real property located in the County of Cook, State of Illinois, described on Exhibit A attached hereto, together with all buildings and other improvements, fixtures and equipment now or hereafter located on the real property, all right, title, interest, and privileges of Mortgagor in and to all streets, roads, and alleys used in connection with or pertaining to such real property, all water and water rights, minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, all appurtenances, easements, rights and rights of way appurtenant or related thereto, and all air rights, development rights and credits, licenses and permits related to the real property. All interest or estate which Mortgagor may now have or hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing, are collectively referred to herein as the "**Property**". The listing of specific rights or property shall not be interpreted as a limit of general terms.
- 1.2 **WARRANTY OF TITLE; USE OF PROPERTY.** Mortgagor warrants that it is the sole owner of good and marketable unencumbered fee simple title to the Property, subject only to the Permitted Encumbrances (as defined in the Repurchase Agreement, as defined below). Mortgagor warrants that the Property is not used principally for agricultural or farming purposes, and that the Property is not homestead property.
- 1.3 **USE OF PROCEEDS.** Mortgagor represents and warrants to Mortgagee that the proceeds of the obligations secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligations secured by this Mortgage constitute (a) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (b) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Mortgage for the purpose of securing: (a) the performance of the obligations of LSREF2 Nova Investments, LLC, a Delaware limited liability company ("Seller 1"), LSREF2 Nova Investments Trust 2010, a Delaware statutory trust ("Seller 2," collectively with Seller 1, the "Seller"), Mortgagor and LSREF2 Nova Investments II, LLC, a Delaware limited liability company contained herein and in that certain Purchase and Repurchase Agreement and Securities Contract dated as of December 10, 2010 to which Mortgagor and Mortgagee are parties (as amended, supplemented, replaced or modified from time to time, "**Repurchase Agreement**"), including the obligation of the Seller to pay the Repurchase Price in the principal amount of Two Hundred Ninety Eight Million Three Hundred Thirty Seven Thousand Three Hundred Fifty and No/100 Dollars (\$298,337,350) which shall be due on the

UNOFFICIAL COPY

Transaction No. 1003210

Repurchase Date to occur no later than December 10, 2014; (b) any and all extensions, renewals, or modifications of the Repurchase Agreement, whether the same be in greater or lesser amounts; (c) payment and performance of any future advances and other obligations that the Mortgagor or Seller may agree to pay and perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, which such future advance or obligation need not be evidenced by a writing which recites that it is secured by this Mortgage; and (d) the performance of the obligations contained in the Transaction Documents (as defined in the Repurchase Agreement) now or hereafter entered into pursuant to the Repurchase Agreement, including any other REO Subsidiary Mortgage (as defined in the Repurchase Agreement) now or hereafter given by an REO Subsidiary (as defined in the Repurchase Agreement) securing the performance of obligations secured by this Mortgage in the maximum amount of up to Five Hundred Ninety Six Million Six Hundred Seventy Four Thousand Seven Hundred and No/100 Dollars (\$596,674,700) (collectively, the "**Secured Obligations**").

- 2.2 **OBLIGATIONS; INCORPORATION.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include all Price Differential (as defined in the Repurchase Agreement) and charges, prepayment charges (if any), late charges, exit fees, and fees at any time accruing or assessed on any of the Secured Obligations, together with all costs of collecting the Secured Obligations. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. 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 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 present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing, occupancy or operation of the Property, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("**Leases**"); and (b) the rents, issues, revenues, receipts, deposits, security deposits, letters of credit, lease bonds and other deposit substitutes or credit enhancements and profits of the Property, including all amounts payable and all rights and benefits accruing to Mortgagor under the Leases, and all deposits, security deposits, letters of credit, lease bonds and other deposit substitutes, or credit enhancements ("**Payments**"). The term "Leases" shall also include all subleases and other agreements for the use or occupancy of the Property, all guarantees of and security for the tenant's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Payments is not contingent, upon and may be exercised without, possession of the Property.
- 3.2 **GRANT OF LICENSE.** Mortgagee confers upon Mortgagor a revocable license ("**License**") to collect and retain the Payments as they become due and payable, until the occurrence and during the continuance of a Default (as hereinafter defined). Upon a Default, and during the continuance thereof, the License shall be automatically revoked and Mortgagee may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Mortgagee. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no duty to inquire as to whether any Default has actually occurred or is then existing. Mortgagor hereby relieves the tenants from any liability to Mortgagee by reason of relying upon and complying with any such notice or demand by Mortgagee. Mortgagee may apply, in its sole discretion, any Payments so collected by Mortgagee against any Secured Obligation under the Transaction Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Mortgagee shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice. If and when Mortgagee has accepted a cure of a Default, Mortgagee shall re-confer the License upon Mortgagor until the occurrence and continuance of another Default.

UNOFFICIAL COPY

Transaction No. 1003210

- 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, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases 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 tenant, licensee, employee, invitee or other person; (d) responsible for or under any duty to produce rents or profits; or (e) directly or indirectly liable to Mortgagor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder or to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.
- 3.4 **COVENANTS.** Mortgagor covenants and agrees at Mortgagor's sole cost and expense to perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases. Mortgagor shall not, without Mortgagee's prior written consent or as otherwise permitted by any provision of the Repurchase Agreement: (i) execute any other assignment relating to any of the Leases; or (ii) subordinate or agree to subordinate any of the Leases to any other mortgage or encumbrance. Any such attempted action in violation of the provisions of this Section shall be null and void.

ARTICLE C. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Mortgagor hereby grants and assigns to Mortgagee a security interest to secure payment and performance of all of the Secured Obligations, in all of the right, title and interest of Mortgagor in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all Payments and other rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Mortgagor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property, or any of their affiliates; all warrants, stock options or similar rights owned by Mortgagor in and to any tenant, any licensee or any other Person providing services related to or for the benefit of the Property, or any of their affiliates; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undeclared, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; 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; all plans, drawings and specifications relating to the Property; all Purchase Price (as defined in the Repurchase Agreement) funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee or held in trust for Mortgagee pursuant to the Repurchase Agreement; all reserves, deferred payments, deposits, security deposits, letters of credit, lease bonds and other deposit substitutes, credit enhancements, other like items, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof; all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Mortgagee to Mortgagor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar

UNOFFICIAL COPY

Transaction No. 1003210

transaction or arrangement howsoever described or defined), if any, at any time entered into between Mortgagor and Mortgagee in connection with the Repurchase Agreement; 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 the Illinois Uniform Commercial Code, as amended or recodified from time to time ("UCC").

- 4.2 **RIGHTS OF MORTGAGEE.** In addition to Mortgagee's rights as a "Secured Party" under the UCC or otherwise at law, Mortgagee may, but shall not be obligated to, at any time after the occurrence and during the continuance of a Default 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. Upon the occurrence and during the continuance of a Default, 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 reasonably acceptable to 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 reasonably acceptable to Mortgagee at Mortgagor's expense; or (iii) sell, assign and deliver in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales. 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 the UCC or other applicable law.

Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Mortgagee's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that 10 days prior notice of such disposition is commercially reasonable notice. Mortgagor further agrees that any sale or other disposition of all or any portion of the Collateral may be applied by Mortgagee first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations. Notwithstanding anything herein to the contrary, 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 Section 9-620, or other applicable law. Mortgagor agrees that Mortgagee shall have no obligation to process or prepare any Collateral for sale or other disposition.

- 4.3 **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, upon a Default hereunder, take any other action required of Mortgagor; provided, however, that Mortgagee as such attorney in fact shall be accountable only for such funds as are actually received by Mortgagee.

- 4.4 **REPRESENTATIONS, WARRANTIES AND COVENANTS.** Mortgagor represents and warrants that: (a) Mortgagor's principal place of business is located at the address shown in Section 7.8 below; and (b) Mortgagor's legal name is exactly as set forth on the first page of this Mortgage and all of Mortgagor's organizational documents or agreements delivered to Mortgagee are complete and accurate in every respect. Mortgagor agrees: (i) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Mortgagee 30 days prior written notice thereof; (ii) to cooperate with Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the creation, preservation, perfection, priority or enforcement of any of its

UNOFFICIAL COPY

Transaction No. 1003210

rights hereunder; and (iii) that Mortgagee is authorized to file financing statements in the name of Mortgagee to perfect Mortgagee's security interest in the Collateral.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor shall promptly pay and perform each Secured Obligation when due. If Mortgagor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may significantly affect Mortgagee's rights in the Property, then Mortgagee may (but is not obligated to), at Mortgagor's expense, take such action as it considers to be necessary to protect the value of the Property and Mortgagee's rights in the Property, including the retaining of counsel, and any amount so expended by Mortgagee will be added to the Secured Obligations and will be payable by Mortgagor to Mortgagee on demand, together with interest thereon from the date of advance until paid at a rate equal to the Pricing Rate plus four percent per annum.
- 5.2 **TAXES AND ASSESSMENTS.** Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed upon the Property by any public authority or 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, that 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 **LIENS, ENCUMBRANCES AND CHARGES.** Mortgagor shall immediately discharge any material lien not approved by Mortgagee in writing or any lien that has or may attain priority over this Mortgage, except for any such liens as are being appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided in accordance with GAAP and will not cause a Material Adverse Effect (as defined in the Repurchase Agreement).
- 5.4 **DUE ON SALE OR ENCUMBRANCE.** Except as permitted by the Repurchase Agreement, if the Property or any interest therein shall be sold, transferred, mortgaged, assigned, further encumbered or leased, including if a Change of Control (as defined in the Repurchase Agreement) occurs, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Mortgagee (in Mortgagee's sole and absolute discretion), THEN Mortgagee, in its sole discretion, may at anytime thereafter declare all Secured Obligations immediately due and payable.
- 5.5 **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 in accordance with the terms of the Repurchase Agreement, shall be paid directly to Mortgagee subject to the terms and provisions of this Section 5.5: (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 or Collateral; (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 or Collateral; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property or Collateral (whether or not expressly required by Mortgagee to be maintained by Mortgagor, including earthquake insurance and terrorism insurance, if any); and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Mortgage, in the event of the occurrence and continuance of a Default, Mortgagee may at its discretion in accordance with the terms of the Repurchase Agreement apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order acceptable to Mortgagee, or Mortgagee may release all or any part of the proceeds to Mortgagor upon any conditions Mortgagee may reasonably impose. If a Default is not then continuing, Mortgagee shall deliver the proceeds described in subparagraphs (i)-(iv) above to Mortgagor to be used in the repair and restoration of the Property, with all amounts remaining

UNOFFICIAL COPY

Transaction No. 1003210

thereafter being delivered to the Collection Account (as defined in the Repurchase Agreement) to be distributed in accordance with the Repurchase Agreement. During the existence of a Default, 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, that in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including any malfeasance or nonfeasance by Mortgagee or its employees or agents.

- b. The use by Mortgagor of insurance or condemnation proceeds for repair or restoration of the Property shall, at Mortgagee's option, be conditioned upon reasonable conditions, including: (i) the deposit with Mortgagee of such additional funds which Mortgagee determines are needed to pay all costs of the repair or restoration (including taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee; (iii) the delivery to Mortgagee of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Mortgagee, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Mortgagee; and (iv) the delivery to Mortgagee of evidence acceptable to Mortgagee (aa) that after completion of the work the income from the Property will be sufficient to pay all expenses for the Property; (bb) of the continuation of Leases acceptable to and required by Mortgagee; (cc) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Mortgagor and Seller and any Guarantor (as defined in the Repurchase Agreement) since the date of this Mortgage; and (ee) of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within 30 days of receipt by Mortgagee of such insurance or condemnation proceeds, then Mortgagee may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Mortgagee in its sole discretion may choose.

- 5.6 **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. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any material claim, of the filing of any material action or proceeding, of any material damage to the Property or Collateral and of any condemnation offer or action.

- 5.7 **COMPENSATION; EXCULPATION; INDEMNIFICATION.** Mortgagor shall pay all Mortgagee's fees and reimburse Mortgagee immediately upon demand for expenses 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 (a) the exercise or non-exercise of the rights, remedies or powers granted to Mortgagee in this Mortgage; (b) 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 (c) any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Property after a Default (hereinafter defined) or from any other act or omission (regardless of whether same constitutes negligence) of Mortgagee in managing the Property after a 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.

MORTGAGOR AGREES TO INDEMNIFY MORTGAGEE AGAINST, AND HOLD MORTGAGEE HARMLESS FOR, FROM, AND AGAINST 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 THE PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED

UNOFFICIAL COPY

Transaction No. 1003210

HEREUNDER OR BY LAW; (ii) AS A RESULT OF ANY FAILURE OF MORTGAGOR TO PERFORM MORTGAGOR'S OBLIGATIONS; OR (iii) 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 CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE PROPERTY. The above obligation of Mortgagor to indemnify and hold harmless Mortgagee shall survive the release and cancellation of the Secured Obligations and the release or partial release of the lien of this Mortgage. Notwithstanding anything contained in this Mortgage to the contrary, Mortgagor shall not be liable for the payment of losses to the extent the same arises by reason of gross negligence, illegal acts or willful misconduct of Mortgagee or that first arise after a foreclosure or a deed in lieu of foreclosure of the Property or the appointment of a receiver for the Property.

5.8 **INTENTIONALLY OMITTED.**

5.9 **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 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 shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Mortgage upon the Property and Collateral.

5.10 **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 the Transaction Documents or by the proceeds of the Repurchase Agreement.

5.11 **RIGHT OF INSPECTION.** No more than once in any calendar year or at any time after the occurrence and during the continuance of a Default, Mortgagee, its agents and employees, may enter the Property at any reasonable time for the purpose of inspecting the Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof. Mortgagee shall use commercially reasonable efforts to assure that Mortgagee's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business operations of Mortgagor's tenants on the Property.

5.12 **TRANSFERS.** Nothing contained in Article 5 shall be deemed to limit or restrict (a) Mortgagor's right to enter into a lease as set forth in the Repurchase Agreement, or (b) any sale, conveyance or other transfer of the Property or any interest therein specifically permitted (with or without Mortgagee's consent) by the terms and provisions of the Repurchase Agreement.

5.13 **INTENTIONALLY OMITTED.**

ARTICLE 6. DEFAULT PROVISIONS

6.1 **DEFAULT.** For all purposes hereof, the term "**Default**" means the occurrence of any Event of Default under the Repurchase Agreement or any of the other Transaction Documents, including this Mortgage; provided, however, that Mortgagor shall not be in Default with respect to the performance of any covenant to be performed under this Mortgage unless Mortgagor has failed to cure the breach within 10 Business Days of receiving written notice of such breach from Mortgagee; provided further, that if Mortgagor shall within such 10 Business Day period commence action to cure such breach but is unable, by reason of the nature of the performance required, to cure same within such period, and if Mortgagor continues such action thereafter diligently and without unnecessary delays, and such breach is of a nature that is capable of being cured, Mortgagor shall not be in default hereunder until the expiration of a period of time as may be reasonably necessary to cure such failure; and provided further, that in any event Mortgagor shall be in default hereunder if such failure is not cured on or before 90 days after receipt by Mortgagee of the above described written demand for performance.

UNOFFICIAL COPY

Transaction No. 1003210

6.2 **RIGHTS AND REMEDIES.** At any time after the occurrence and during the continuance of a Default, Mortgagee shall have all the following rights and remedies:

- a. With or without notice, to declare all Secured Obligations immediately due and payable;
- b. With or without notice, and without releasing Mortgagor or Seller from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor or Seller and, in connection therewith, to enter upon the Property and do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof, including: (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 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 and to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; or (iv) 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 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 to 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 Subject Property as necessary, in Mortgagee's sole judgment, to protect or enhance the security hereof;
- f. INTENTIONALLY OMITTED; and
- g. 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 determines in its sole discretion.

Upon sale of the Property at any judicial or non-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 the costs of any 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

UNOFFICIAL COPY

Transaction No. 1003210

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 (iv) such other factors or matters that Mortgagee 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 specified in the Transaction Documents or previously discussed between Mortgagor and Mortgagee; and (z) Mortgagee's credit bid may be higher or lower than any appraised value of the Property.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Mortgagee, including cost of evidence of title and attorneys' fees in connection with exercising the power of sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Mortgagee under the terms hereof and not then repaid, with accrued interest at a rate equal to the Pricing Rate plus four percent per annum; (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 this Mortgage other than those described in Section 6.3, less all costs and expenses incurred by Mortgagee or any receiver, including attorneys' fees, shall be applied in accordance with the terms of the Repurchase Agreement; provided, however, that Mortgagee shall have no liability for funds not actually received by Mortgagee.
- 6.5 **NO CURE OR WAIVER.** Neither 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, 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, or security interests created by, this Mortgage.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Mortgagee immediately and without demand all costs and expenses actually incurred by Mortgagee pursuant to this Article 6 (including court costs and reasonable attorneys' fees, whether incurred in litigation, including at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property). In addition, Mortgagor will pay a reasonable fee for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit. All of the foregoing amounts must be paid to Mortgagee as part of any reinstatement tendered hereunder. In the event of any legal proceedings, court costs and reasonable attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Mortgagee.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to prepare, execute and file or record any document necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Property and Collateral, and upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Mortgagee may perform any obligation of Mortgagor hereunder provided Mortgagee has provided Mortgagor with any required written notice or cure period, if any, as required by the Repurchase Agreement.
- 6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Mortgagee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law or in any other agreements

UNOFFICIAL COPY

Transaction No. 1003210

between Mortgagor and Mortgagee. No failure on the part of Mortgagee to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Mortgagee in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Mortgagee shall not waive the agreement contained herein that time is of the essence, nor shall Mortgagee waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.

6.9 **ILLINOIS MORTGAGE FORECLOSURE LAW.** 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:

- a. 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. If 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 6.2 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of a 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 which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Mortgage, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.
- b. Wherever provision is made in this Mortgage or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements, in favor of Mortgagee, or to confer authority upon Mortgagee 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 Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale.
- c. In addition to any provision of this Mortgage authorizing 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 and 15-1702 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 and 15-1703 of the Act.
- d. 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.
- e. Mortgagor hereby expressly waives any and all rights of reinstatement and 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 reinstatement and

UNOFFICIAL COPY

Transaction No. 1003216

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.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** This Mortgage and the other Transaction Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The other Transaction 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 Collateral and such further rights and agreements are incorporated herein by this reference. Where Mortgagor and Seller are not the same, "Mortgagor" means the owner of the Property in any provision dealing with the Property, "Seller" means the obligor in any provision dealing with the Secured Obligations, and both where the context so requires.
- 7.2 **ATTORNEYS' FEES.** If an attorney is engaged by Mortgagee to exercise rights or remedies or otherwise take actions to collect under the Repurchase Agreement or under any other Transaction Documents, or if suit be instituted for collection, enforcement of rights and remedies, then in all events, Mortgagor agrees to pay all reasonable costs of enforcement or collection, exercise of remedies or rights or other assertion of claims, including reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.
- 7.3 **NO WAIVER.** No previous waiver and no failure or delay by Mortgagee in acting with respect to the terms of this Mortgage shall constitute a waiver of any breach, default, or failure of condition under this Mortgage or the obligations secured thereby. A waiver of any term of this Mortgage or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of the Repurchase Agreement and the terms of any other document related thereto, the terms of the Repurchase Agreement shall prevail.
- 7.4 **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.
- 7.5 **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 does not waive or modify the provisions of the Section of the Mortgage above titled "Due on Sale or Encumbrance".
- 7.6 **GOVERNING LAW.** This Mortgage shall be construed in accordance with the laws of the state where the Property is located, except to the extent that federal laws preempt the laws of such state.
- 7.7 **EXHIBITS INCORPORATED.** All exhibits, schedules or other items attached hereto are incorporated into this Mortgage by such attachment for all purposes.
- 7.8 **NOTICES.** All notices, demands 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 United States Postal Service mail, postage prepaid, except that notice 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 days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

UNOFFICIAL COPY

Transaction No. 1003210

Mortgagor: LSREF2 NOVA INVESTMENTS III, LLC
 2711 N. Haskell Avenue
 Suite 1700
 Dallas, Texas 75204
 Attention: Legal Department

With a copy to:

Hudson Americas LLC
 888 Seventh Avenue, 4th Floor
 New York, NY 10019
 Attn: Lance Gasch
 Fax: (212) 849-9672

and:

Hunton & Williams LLP
 200 Park Avenue, 53rd Floor
 New York, New York 10166
 Attn: Nadia Burgard

Mortgagee: WELLS FARGO BANK, NATIONAL ASSOCIATION
 333 S. Grand Avenue, 9th Floor
 Los Angeles, CA 90071
 Attention: Michael Nagin
 Transaction #: 1003210

With a copy to:

Gibson Dunn & Crutcher LLP
 555 Mission Street, Suite 3000
 San Francisco, CA 94105
 Attention: Deborah A. Cussen, Esq.

Any party shall have the right to change its address for notice hereunder to any other location within the United States by the giving of 15 days notice to the other party in the manner set forth hereinabove.

Mortgagor requests a copy of any statutory notice of default and a copy of any statutory notice of sale be mailed to Mortgagor at the address set forth above.

7.9 **REPURCHASE AGREEMENT AND TRANSACTION DOCUMENTS.** Mortgagor represents and warrants that Mortgagor has received and reviewed the Repurchase Agreement and the Transaction Documents and is fully familiar with the terms thereof. Mortgagor agrees to comply fully with the obligations of, and be bound by, the covenants, liabilities and obligations in the Repurchase Agreement applicable to the Property.

7.10 **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 and Collateral, hereby waives all rights to have the Property and Collateral and any other property which is now or later may be security for any Secured Obligation ("**Other Property**") marshaled upon any foreclosure of the lien of this Mortgage or on a foreclosure of any other lien securing 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.

7.11 **INTENTIONALLY OMITTED.**

UNOFFICIAL COPY

Transaction No. 1003216

7.12 **SUBORDINATION OF PROPERTY MANAGER'S LIEN.** Any property management agreement for the Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien or similar rights that the property manager or anyone claiming by, through or under the property manager may have in the Property shall be subject and subordinate to the lien of this Mortgage and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of a Default hereunder. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the County Recorder of the county where the Property is located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

7.13 **DATE/DOWN OF REPRESENTATIONS AND WARRANTIES.** Mortgagor hereby (a) represents and warrants that the Property is an REO Property (as defined in the Repurchase Agreement) and that each Obligor is subject to the covenants and obligations with regard to the Property as an REO Property as set forth in the Repurchase Agreement, and (b) as of the date hereof, makes the representations and warranties to Mortgagee set forth in the Repurchase Agreement which are applicable to the Property as an REO Property.

ARTICLE 8. CROSS-DEFAULT PROVISIONS

8.1 **ADDITIONAL SECURITY - OBLIGATIONS SECURED BY REO SUBSIDIARY MORTGAGES.** In addition to the obligations secured by this Mortgage and described as the "Secured Obligations" herein, this Mortgage shall also secure the payment and performance of all obligations secured by each of the REO Subsidiary Mortgages.

8.2 **ADDITIONAL SECURITY - OBLIGATIONS SECURED BY MORTGAGE.** In addition to the obligations secured by each of the REO Subsidiary Mortgages, each of the REO Subsidiary Mortgages shall also secure the payment and performance of all obligations secured by this Mortgage.

8.3 **DEFAULT - OTHER REO SUBSIDIARY MORTGAGES.** A Default under any of the other REO Subsidiary Mortgages, as defined therein, shall at Mortgagee's option, constitute a Default under this Mortgage.

8.4 **DEFAULT - MORTGAGE.** A Default under this Mortgage shall, at Mortgagee's option, constitute a Default under any of the other REO Subsidiary Mortgages, or any of them.

8.5 **WAIVER OF MARSHALING RIGHTS.** Mortgagor waives all rights to have all or part of the Property and Collateral described in this Mortgage or any of the other REO Subsidiary Mortgages, marshaled upon any foreclosure of this Mortgage or any of the other REO Subsidiary Mortgages. 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 Collateral described in either or both of said mortgages, security deeds or deeds of trust as a whole or in separate parcels, in any order that Mortgagee may designate. Mortgagor makes this waiver for itself, for all persons and entities claiming through or under Mortgagor and for persons and entities who may acquire a lien or security interest on all or any part of the Property and Collateral described in either of said mortgages, security deeds or deeds of trust, or on any interest therein.

8.6 **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Mortgage, all of the terms, covenants and conditions of the other REO Subsidiary Mortgages and the other Repurchase Documents shall remain in full force and effect.

8.7 **LIEN OF MORTGAGE AND OTHER REO SUBSIDIARY MORTGAGES** Mortgagor and Mortgagee acknowledge and agree that: this Mortgage shall constitute a lien or charge upon only that

UNOFFICIAL COPY

Transaction No. 1003210

property described herein as the "Property"; and each other REO Subsidiary Mortgage shall constitute a lien or charge upon only that property described therein as the "Property".

ARTICLE 9. NON-SELLER MORTGAGOR PROVISIONS

As Seller and Mortgagor are not the same party or parties, Mortgagor acknowledges and agrees as follows:

- 9.1 **CONDITIONS TO EXERCISE OF RIGHTS.** Mortgagor hereby waives any right it may now or hereafter have to require Mortgagee, as a condition to the exercise of any remedy or other right against Mortgagor hereunder or under any other document executed by Mortgagor in connection with any Secured Obligation: (a) to proceed against any Obligor (as defined in the Repurchase Agreement) or other person, or against any other collateral assigned to Mortgagee by Mortgagor or any Obligor or other person; (b) to pursue any other right or remedy in Mortgagee's power; (c) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Mortgagee by any Obligor or other person (other than Mortgagor), or otherwise to comply with the Illinois Commercial Code (as modified or recodified from time to time) with respect to any such personal property collateral; or (d) to make or give (except as otherwise expressly provided in the Transaction Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with any Secured Obligation or any collateral (other than the Property) for any Secured Obligation.
- 9.2 **DEFENSES.** Mortgagor hereby unconditionally and irrevocably waives any defense it may now or hereafter have that relates to: (a) any disability or other defense of any Obligor or other person; (b) the cessation, from any cause other than full performance, of the obligations of any Obligor or any other person; (c) the application of the proceeds of the Repurchase Agreement, by any Party or other person, for purposes other than the purposes represented to Mortgagor by any Obligor or otherwise intended or understood by Mortgagor or any Party; (d) any act or omission by Mortgagee which directly or indirectly results in or contributes to the release of an Obligor or other person or any collateral for any Secured Obligation; (e) the unenforceability or invalidity, in whole or in part, of the Repurchase Agreement or of any collateral assignment (other than this Mortgage) or guaranty with respect to any Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien (other than the lien hereof) which now or hereafter secures any Secured Obligation; (f) any failure of Mortgagee to marshal assets in favor of Mortgagor or any other person; (g) any modification of any Secured Obligation, including any renewal, extension, acceleration or increase in any amounts payable in connection therewith; (h) any and all rights and defenses arising out of an election of remedies by Mortgagee, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Mortgagor's rights of subrogation and reimbursement against the principal by the operation of law or otherwise; (i) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (j) any failure of Mortgagee to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (k) the election by Mortgagee, in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (l) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code; (m) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or (n) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Mortgagor further unconditionally and irrevocably waives any and all rights and defenses that Mortgagor may have because all or any portion of the Secured Obligations is now or hereafter secured by real property as provided in the Repurchase Agreement; this means, among other things, that: (1) Mortgagee may collect from Mortgagor without first foreclosing on any real or personal property collateral pledged by any other Obligor; (2) if Mortgagee forecloses on any real property collateral pledged by any other Obligor, then (A) the amount of the Secured Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Mortgagee may collect from Mortgagor even if Mortgagee, by foreclosing on the real property collateral, has destroyed any right Mortgagor may have to collect from any other Obligor. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Mortgagor may have because all or any portion of the Secured Obligations is now or hereafter may be secured by real property. Without limiting the generality of the foregoing or any other provision hereof, Mortgagor further

UNOFFICIAL COPY

Transaction No. 1003210

expressly waives to the fullest extent now or hereafter permitted by law any and all rights and defenses, including any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Mortgagor under any applicable law.

- 9.3 **SUBROGATION.** Mortgagor hereby waives, until such time as all Secured Obligations are fully performed: (a) any right of subrogation against any Obligor that relates to any Secured Obligation; (b) any right to enforce any remedy Mortgagor may now or hereafter have against any Obligor that relates to any Secured Obligation; and (c) any right to participate in any collateral now or hereafter assigned to Mortgagee with respect to any Secured Obligation.
- 9.4 **SELLER INFORMATION.** Mortgagor warrants and agrees: (a) that Mortgagee would not enter into transactions contemplated by the Repurchase Agreement but for this Mortgage; (b) that Mortgagor has not relied, and will not rely, on any representations or warranties by Mortgagee to Mortgagor with respect to the credit worthiness of any Obligor or the prospects of repayment of any Secured Obligation from sources other than the Property; (c) that Mortgagor has established or will establish adequate means of obtaining from each Obligor on a continuing basis financial and other information pertaining to the business operations, if any, and financial condition of each Obligor; (d) that Mortgagor assumes full responsibility for keeping informed with respect to each Obligor's business operations, if any, and financial condition; and (e) that Mortgagee shall have no duty to disclose or report to Mortgagor any information now or hereafter known to Mortgagee with respect to any Obligor, including any information relating to any of Obligor's business operations or financial condition.
- 9.5 **REINSTATEMENT OF LIEN.** Mortgagee's rights hereunder shall be reinstated and revived, and the enforceability of this Mortgage shall continue, with respect to any amount at any time paid on account of any Secured Obligation which Mortgagee is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to any Obligor.
- 9.6 **SUBORDINATION.** Until all of the Secured Obligations have been fully paid and performed: (a) Mortgagor hereby agrees that all existing and future indebtedness and other obligations of each Obligor to Mortgagor (collectively, the "**Subordinated Debt**") shall be and are hereby subordinated to all Secured Obligations which constitute obligations of the applicable Obligor, and the payment thereof is hereby deferred in right of payment to the prior payment and performance of all such Secured Obligations; (b) Mortgagor shall not collect or receive any cash or non-cash payment, on any Subordinated Debt or transfer all or any portion of the Subordinated Debt; and (c) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, any Obligor with respect to any Subordinated Debt is received by Mortgagor, such payment or distribution shall be held in trust and immediately paid over to Mortgagee, is hereby assigned to Mortgagee as security for the Secured Obligations, and shall be held by Mortgagee in an interest bearing account until all Secured Obligations have been fully paid and performed.
- 9.7 **COLLATERAL PROTECTION INSURANCE.** Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by the Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in Mortgagor's Premises. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this paragraph. If Mortgagee purchases insurance for the Premises, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total outstanding balance of the Indebtedness. The cost of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

[REMAINDER OF PAGE INTENTIONALLY BLANK;
SIGNATURE PAGE FOLLOWS]

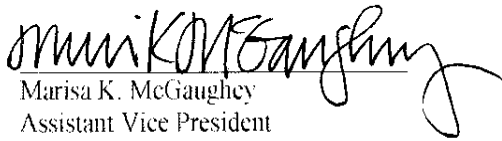
UNOFFICIAL COPY

Transaction No. 1003210

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

"MORTGAGOR"

LSREF2 NOVA INVESTMENTS III, L.L.C.
a Delaware limited liability company

By: 
Marisa K. McGaughey
Its: Assistant Vice President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Transaction No. 1003210

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me the undersigned, a Notary Public in and for said County and State, on this day personally appeared Marisa K. McGaughey, the Assistant Vice President of LSREF2 NOVA INVESTMENTS III, L.L.C, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and thereupon she acknowledged that she was authorized to execute the within instrument on behalf of said limited liability company, and that she executed said instrument as the voluntary act of the said limited liability company, and for the purposes and consideration expressed therein and in the capacity stated therein.

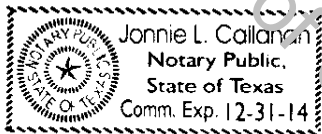
Given under my hand and seal of office this 16th day of October, A.D., 2012.

(Seal)



Jonnie L. Callahan Notary Public
(signature of Notary Public)

My Commission Expires: 12-31-2014



Cook County Clerk's Office

UNOFFICIAL COPY

Transaction No. 1003210

EXHIBIT A

DESCRIPTION OF PROPERTY

Exhibit A to Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by LSRIE2 NOVA INVESTMENTS III, LLC, a Delaware limited liability company, as Mortgagor, to WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgagee, dated as of November 26, 2012.

The Property is located in the City of Worth, County of Cook, State of Illinois and is described as follows:

LOTS 28, 29 AND 30 IN BLOCK 5 IN CALUMET CITY SUBDIVISION OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN #29-12-220-031-0000