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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



1312049022

Doc#: 1312049022 Fee: \$114.00  
RHSP Fee: \$10.00 Affidavit Fee:  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 04/30/2013 10:16 AM Pg: 1 of 39

Report Mortgage Fraud  
800-532-8785

The property identified as:

PIN: 14-20-211-029

Address:

Street: 3834 N SHEFFIELD

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60613

Lender: ASSOCIATED BANK, NATIONAL ASSOCIATION

Borrower: SHEFFIELD I, LLC

Loan / Mortgage Amount: \$9,400,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

FREEDOM TITLE CORPORATION  
2260 HICKS ROAD SUITE 415  
ROLLING MEADOWS IL 60008

0714205 1/2

Certificate number: 01CDC6BA-233B-4344-BD99-36513D26F022

Execution date: 04/23/2013

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Prepared by,  
recording requested by,  
and after recording return to:

Michael D. Rothstein, Esq.  
Dykema Gossett PLLC  
10 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606

## MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

This Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "**Mortgage**") is made as of April 25, 2013, by **SHEFFIELD I, LLC**, a Delaware limited liability company ("**Mortgagor**"), to **ASSOCIATED BANK, NATIONAL ASSOCIATION**, a national banking association, its successors and assigns ("**Mortgagee**").

### RECITALS

A. Pursuant to the terms of that certain Loan Agreement dated as of even date herewith by and among Mortgagee and Mortgagor (the "**Loan Agreement**"), Mortgagee has agreed to make a loan to Mortgagor in the stated principal amount of Nine Million Four Hundred Thousand and 00/100 DOLLARS (\$9,400,000.00) (the "**Loan**"). The Loan is evidenced by that certain Promissory Note dated as of the date hereof in the principal amount of \$9,400,000.00 from Mortgagor to Mortgagee (the "**Note**").

B. The Loan is due and payable in full on April 25, 2016, (the "**Maturity Date**"), except as such date may be accelerated pursuant to the terms hereof or any other Loan Document (as hereinafter defined).

C. The proceeds of the Loan shall be used in part to refinance the "**Mortgaged Property**" (as defined herein), located in Cook County, Illinois, and legally described on Exhibit A attached hereto.

1. **DEFINITIONS; RECITALS.** Certain terms used in this Mortgage are defined below and certain other terms used in this Mortgage are defined elsewhere in this Mortgage. All recitals to this Mortgage are hereby incorporated by reference as if expressly set forth herein.

"**Business Day**" shall have the meaning ascribed to such term in the Note.

"**Event of Default**" has the meaning ascribed in Section 7.1 hereof.

"**Fixtures**" has the meaning given to such term in the definition of "Mortgaged Property".

"**Guarantors**" means, collectively, all guarantors of the Loan.

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“**Guaranty**” means that certain Guaranty of Payment dated as of even date herewith from Guarantors for the benefit of Mortgagee.

“**Improvements**” has the meaning given to such term in the definition of “Mortgaged Property.”

“**Indebtedness**” means collectively, all indebtedness evidenced by or arising under the Note, the Loan Agreement and other Loan Documents, together with interest thereon, including sums added to the principal balance of the Loan in accordance with the terms thereof, and all prepayment, late charges or other charges or fees payable thereunder, and any and all modifications, extensions, renewals or substitutions thereof whether or not evidenced by a new or additional promissory note or notes.

“**Leases**” means all leases, licenses, concessions, tenancies, occupancy agreements and other agreements entered into by or on behalf of Mortgagor (or any predecessor of Mortgagor, to the extent Mortgagor or the Mortgaged Property (hereinafter defined) remain subject thereto) whether made before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. § 101 *et seq.*, as the same may be amended from time to time (the “**Bankruptcy Code**”), demising, leasing or granting rights of possession or use of all or any portion of the Mortgaged Property, together with all modifications, extensions or renewals thereof now existing or hereafter permitted under the Loan Documents.

“**Loan Documents**” means the Loan Agreement, this Mortgage, the Note and all other documents and instruments now and hereafter evidencing or securing the Loan or the Obligations secured by this Mortgage.

“**Mortgaged Property**” means all of Mortgagor’s right, title and interest in: the real estate legally described in **Exhibit A**, attached hereto and incorporated herein by reference, together with all buildings and other improvements of every nature whatsoever (“**Improvements**”) now or hereafter located thereon, and any and all right, title or interest in any other real property or improvements comprised in such real property, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, which right, title or interest is now owned or acquired by Mortgagor after the date of this Mortgage (such real property, buildings, improvements and after-acquired interest being hereinafter collectively referred to as the “**Real Property**”); the Personal Property; all existing and future development rights transferred or appurtenant to the Real Property, all easements, rights-of-way, gores of real estate, streets, ways, alleys, sewer rights, waters, water courses, water rights and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Property and other rights now or hereafter made appurtenant to the Real Property; all fixtures, machinery, equipment, and appliances at any time attached to, or located in or on the Real Property in which Mortgagor has an interest (the “**Fixtures**”); all rights in or to existing or future streets or public places; all existing and future minerals, oil, gas and other hydrocarbon substances upon, under or through the Real Property; all water and water rights, pumps and pumping plants, and existing and

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future water stock relating thereto; and all intangible property and rights relating to the foregoing property, or the operation thereof or used in connection therewith, including all options, sales contracts and rights of first refusal of any nature whatsoever, covering all or any portion of such property, together with any deposits or other payments made in connection therewith, permits and approvals, air rights and other similar land use permits, approvals or entitlements and all proceeds of any of the foregoing. Any reference in this Mortgage to the “**Mortgaged Property**” shall mean the Mortgaged Property described in this Section, any part thereof, or any interest therein.

“**Obligations**” has the meaning given to such term in Section 3.

“**Personal Property**” means all of Mortgagor’s right, title and interest in and to all “Accounts”, “Cash proceeds”, “Chattel paper”, “Collateral”, “Commercial tort claims”, “Deposit accounts”, “Documents”, “Electronic chattel paper”, “Equipment”, “Fixtures”, “General intangibles”, “Goods”, “Instruments”, “Inventory”, “Investment property”, “Letter-of-credit rights”, “Noncash proceeds”, “Payment intangibles”, “Proceeds”, “Software”, “Supporting Obligations”, and “Tangible chattel paper”, as defined in the Uniform Commercial Code, in which Mortgagor has any interest, whether currently owned or hereafter acquired, including but not limited to all such property relating to, generated from, arising out of or incidental to the ownership, development, use or operation of the Real Property (whether or not subsequently removed from the Real Property (other than that portion of the Mortgaged Property consisting of the Real Property), including, without limitation, all (i) machinery and tools; (ii) rugs, carpets and other floor coverings; (iii) draperies and drapery rods and brackets, awnings, window shades, venetian blinds and curtains; (iv) lamps, chandeliers and other lighting fixtures; (v) office maintenance and other supplies; (vi) apparatus, appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment; (vii) beds, bureaus, chiffoniers, chests, chairs, desks, mirrors, bookcases, tables, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, facsimile machines, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), other customary hotel equipment; (viii) leases, lease guarantees, contracts, contract rights, franchise agreements, licenses, permits and certificates; (ix) deposits, funds, money and deposit accounts; (x) tenements, hereditaments and appurtenances; (xi) approvals and parcel maps (whether tentative or final), building permits and certificates of occupancy; (xii) names under or by which the Mortgaged Property or any of the Improvements may at any time be operated or known and rights to carry on business under any such names or any variant thereof;

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(xiii) trademarks, other intellectual property and good will; (xiv) management agreements, service contracts, supply contracts or other contracts or agreements; (xv) warranties; (xvi) water stock; (xvii) shares of stock or other evidence of ownership of any part of the Mortgaged Property or Improvements that is owned by Mortgagor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing, maintaining or operating any part of the Mortgaged Property or Improvements; (xviii) plans and specifications prepared for construction of improvements on the Mortgaged Property or any part thereof, and studies, data and drawings related thereto, including, without limitation, studies, data or reports relating to toxic or hazardous wastes or materials located on the Mortgaged Property, all environmental audits, studies and reports, approvals and agreements, and/or Improvements, and contracts and agreements of Mortgagor relating to the aforesaid plans and specifications or to the aforesaid studies, data, reports and drawings or to the construction of improvements on the Mortgaged Property; (xix) sales agreements, marketing studies, feasibility studies, deposit receipts, escrow agreements and other ancillary documents and agreements entered into respecting the sale to any purchasers of any part of the Mortgaged Property and other proceeds of the sale thereof; (xx) damages, royalties and revenue of every kind, nature and description whatsoever that Mortgagor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Mortgaged Property; (xxi) deposits made with or other security given to utility companies by Mortgagor with respect to the Mortgaged Property and/or Improvements; (xxii) advance payments of insurance premiums made by Mortgagor with respect to, and all claims or demands with respect to, insurance; (xxiii) negotiable certificates of deposit of Mortgagor in Mortgagee's possession and all accounts of Mortgagor maintained with Mortgagee and each deposit account of Mortgagor assigned to Mortgagee pursuant to any agreement; (xxiv) insurance proceeds (including insurance proceeds for insurance not required under the terms of this Mortgage); (xxv) condemnation awards; (xxvi) causes of action, claims, compensation, awards and recoveries for any damage or injury to the Mortgaged Property and/or Improvements or for any loss or diminution in value of the Mortgaged Property and/or Improvements; (xxvii) books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof; (xxviii) guaranties of and security for any of the foregoing; (xxix) all reserve, deposit and impound accounts; (xxx) all substitutions, renewals, improvements, attachments, accessions, additions and replacements to any of the foregoing; and all "Proceeds" (as such term is defined in the Uniform Commercial Code), collections, insurance proceeds and products of any of the property listed in (i) through (xxx) above, proceeds of any voluntary or involuntary disposition or claim respecting any part thereof (pursuant to judgment, condemnation award or otherwise) and all documents, instruments, general intangibles, goods, equipment, inventory, chattel paper, monies, accounts, deposit accounts and other personal property that may arise from the sale or disposition of any of the foregoing, all guaranties of and security for any of the foregoing, and all books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof, relating to any of the foregoing.

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“**Real Property**” has the meaning given to such term in the definition of Mortgaged Property.

“**Rents**” means all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or any of its affiliates, or any of their agents or employees, from any and all sources arising from or attributable to the Mortgaged Property and proceeds, if any, from business interruption or other loss of income insurance, whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code.

“**Uniform Commercial Code**” means the Uniform Commercial Code as enacted in the State of Illinois, as amended from time to time.

2. **GRANT.** Mortgagor does hereby irrevocably and unconditionally mortgage, grant, bargain, sell, pledge, assign, hypothecate, warrant, transfer and convey to Mortgagee, and grant a security interest to Mortgagee in, the Mortgaged Property, together with all right to possession of the Mortgaged Property after the occurrence of any Event of Default. Mortgagor hereby releases and waives all rights under and by virtue of the homestead exemption laws of the State of Illinois. This Mortgage is a variable rate mortgage.

3. **OBLIGATIONS SECURED.** Mortgagor makes the foregoing grant and assignment for the purpose of securing the following (collectively, the “**Obligations**”) in such order of priority as Mortgagee may determine: (a) the payment of the Loan and all interest, late charges, LIBOR breakage charges (including any Make Whole Costs described in the Note), prepayment premium, if any, exit fee, if any, interest rate swap or hedge expenses (if any), reimbursement obligations, and other Indebtedness evidenced by or owing under the Note, the Loan Agreement, or any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (b) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Mortgagor or any other obligor to or benefiting the Mortgagee which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (c) the reimbursement to the Mortgagee of any and all sums incurred, expended or advanced by the Mortgagee pursuant to any term or provision of or constituting additional Indebtedness under or secured by this Mortgage, the Loan Agreement, or any of the other Loan Documents.

#### 4. **SECURITY AGREEMENT AND FIXTURE FILING.**

4.1 **Grant of Security Interest.** Mortgagor hereby grants to Mortgagee a security interest in the Personal Property to secure all of the Obligations. This Mortgage constitutes a security agreement with respect to all personal property in which Mortgagee is granted a security interest hereunder, and Mortgagee shall have all of the rights and

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remedies of a secured party under the Uniform Commercial Code as well as all other rights and remedies available at law or in equity.

4.2 Perfection. Mortgagor will execute, acknowledge, deliver and cause to be recorded or filed, in the manner and place required by any present or future law, any instrument that may be requested by Mortgagee to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Mortgage or the interest of Mortgagee in the Mortgaged Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Mortgagor shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, actual attorneys' fees and costs (of both in house and outside counsel), incurred by Mortgagee in connection with the preparation, execution, and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the execution and delivery of such instruments. Mortgagor hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as the attorney-in-fact of Mortgagor, to execute, deliver and, if appropriate, file with the appropriate filing officer or office any such instruments if Mortgagor should fail to do so within five (5) days of written demand by Mortgagee. In addition, Mortgagor hereby authorizes Mortgagee to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Mortgagee, and such financing statement may list the collateral as "all assets of Debtor".

4.3 Place of Business. Mortgagor maintains a place of business, as set forth as the address of Mortgagor in Section 9.1 below, and Mortgagor will notify Mortgagee in writing of any change in its place of business within five (5) days of such change. Fixtures. This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Uniform Commercial Code and also to be recorded as a "fixture filing" in accordance with Uniform Commercial Code Section 9-502(c), and covers goods that are or are to become Fixtures.

4.4 Representations and Warranties. Mortgagor represents and warrants that: (i) Mortgagor is the record owner of the Mortgaged Property located at the address set forth on Exhibit A; (ii) Mortgagor's chief executive office is located in the State of Illinois; (iii) Mortgagor's state of formation is the State of Delaware; (iv) Mortgagor's exact legal name is as set forth on Page 1 of this Mortgage; and (v) the organizational identification number of Mortgagor is 5007669.

5. ASSIGNMENT OF RENTS. Mortgagor absolutely, unconditionally and irrevocably assigns to Mortgagee the Leases and the Rents. This assignment is an absolute and present assignment from Mortgagor to Mortgagee and not merely the passing of a security interest. Notwithstanding the immediately preceding sentence, Mortgagee confers upon Mortgagor the license to collect and retain the Rents, issues and profits of the Mortgaged Property as they become due and payable and otherwise deal with the Leases, subject, however,

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to the right of Mortgagee to revoke such license at any time upon the occurrence of an Event of Default in its sole discretion and without notice to Mortgagor. Mortgagee shall have the absolute right to revoke such authority and collect and retain the Rents without taking possession of all or any part of the Mortgaged Property. The right to collect Rents herein provided shall not cause Mortgagee to be a "mortgagee in possession" for any purpose, nor shall such right impose upon Mortgagee the duty to produce Rents or maintain the Mortgaged Property in whole or in part. Possession of the Mortgaged Property by a receiver appointed by a court of competent jurisdiction shall not be considered possession of the Mortgaged Property by Mortgagee for purposes hereof. Following the occurrence of an Event of Default, Mortgagee may apply, in its sole discretion and in any order of priority, any Rents collected against the costs of collection and any Indebtedness of Mortgagor arising under the Loan Documents. Collection of any Rents shall not cure or waive any Event of Default or notice of Event of Default, or invalidate any acts done pursuant to such notice.

6. **COVENANTS**. Mortgagor covenants and agrees that:

6.1 **Performance of Obligations**. Mortgagor shall promptly pay when due the Indebtedness and shall perform and comply with in a timely manner all other Obligations.

6.2 **Title**. Mortgagor warrants and represents that (a) Mortgagor lawfully holds fee simple title to the Real Property and title to such Mortgaged Property is subject only to the matters approved by Mortgagee and set forth on the title insurance policy delivered to Mortgagee with respect to the Real Property (collectively, the "**Permitted Encumbrances**") and Mortgagor has the right to encumber the same; (b) the person executing this Mortgage on behalf of Mortgagor has the full right, power and authority so to do on behalf of Mortgagor; (c) this Mortgage, as so executed and delivered, is a valid and fully binding obligation of Mortgagor, enforceable in accordance with its terms; and (d) Mortgagor, its authorized employees, agents and representatives, have all reviewed, approved, and been fully advised with respect to this Mortgage, the Loan, the Loan Documents, and any other document or instrument executed and delivered in connection therewith or as security therefor.

6.3 **Incorporation by Reference**. All the covenants, conditions and agreements contained in the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

6.4 **Insurance**. Mortgagor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Mortgagor and the Mortgaged Property as required herein.

6.5 **Maintenance of Mortgaged Property**. Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures and the Personal Property shall not be removed, demolished or materially altered without the consent of Mortgagee; provided, however, that the Mortgagor may replace, repair and/or remove any such Fixtures or Personal Property without Mortgagee's consent, to the extent they may become outdated, obsolete or in need of replacement, at Mortgagor's sole discretion, provided that the value of the



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Fixtures or Personal Property so replaced or removed shall not exceed the aggregate value of Fifteen and 00/100ths dollars (\$15,000.00). Mortgagor shall promptly repair, replace or rebuild any part of the Improvements which may be destroyed by any casualty or become damaged, worn or dilapidated or which may be affected by any condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Real Property.

6.6 Waste. Mortgagor shall not commit or suffer any physical waste of the Mortgaged Property or make any change in the use of the Mortgaged Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Mortgaged Property, or take any action that is reasonably likely to invalidate or allow the cancellation of any insurance policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Mortgaged Property or the security of this Mortgage. Mortgagor will not, without the prior written consent of Mortgagee, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Real Property, regardless of the depth thereof or the method of mining or extraction thereof.

6.7 Performance of Other Agreements. Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by Mortgagor pursuant to the Loan Documents and any other agreement or recorded instrument affecting or pertaining to the Mortgaged Property and any amendments, modifications or changes thereto.

6.8 Environmental Indemnity. Concurrently herewith the Mortgagor, certain other parties, and the Guarantors have executed and delivered to the Mortgagee that certain Environmental Indemnity Agreement dated as of the date hereof (the "**Indemnity**") pursuant to which the Mortgagor, such other parties, and the Guarantors have indemnified the Mortgagee for environmental matters concerning the Mortgaged Property, as more particularly described therein. The provisions of the Indemnity are hereby incorporated herein and this Mortgage shall secure the obligations of the Mortgagor thereunder.

6.9 Change of Name, Identity or Structure. Mortgagor shall not change Mortgagor's name, identity (including its trade name or names) or its corporate, partnership, limited liability company or other structure without Mortgagee's prior, written approval. Mortgagor hereby authorizes, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Mortgagee to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Mortgagee, Mortgagor shall execute a certificate in form satisfactory to Mortgagee listing the trade names under which Mortgagor intends to operate the Mortgaged Property, and representing and warranting that Mortgagor does business under no other trade name.

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## 6.10 Property Related Covenants. Mortgagor shall:

- (a) comply with all requirements of law, state or local ordinances or restrictions and covenants of record with respect to the Mortgaged Property and the use thereof;
- (b) obtain and maintain in full force and effect, and satisfy the terms and conditions of, all permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its Obligations under this Mortgage;
- (c) make no material alterations in the Mortgaged Property or demolish any portion of the Mortgaged Property without the Mortgagee's prior written consent, except as required by law or municipal ordinance, and except for those renovations of which Mortgagee has been previously advised and for which the construction escrow as set forth in Section 9 of this Mortgage has been established;
- (d) suffer or permit no change in the use of the occupancy of the Mortgaged Property, without the Mortgagee's prior written consent;
- (e) pay when due all operating costs of the Mortgaged Property;
- (f) not initiate or acquiesce in any zoning reclassification with respect to the Mortgaged Property, without the Mortgagee's prior written consent; and
- (g) comply, and shall cause the Mortgaged Property at all times to be operated in compliance, with all applicable federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations.

6.11 OFAC. Mortgagor shall ensure, and cause each of its subsidiaries to ensure, that (i) no person who owns twenty percent (20.00%) or more of the equity interests in the Mortgagor, or otherwise controls the Mortgagor or any of its subsidiaries is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders; and (ii) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

6.12 Separateness Covenants. Mortgagor shall not hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any real or personal property other than the Mortgaged Property, or become a shareholder of or a member or partner in any entity which acquires any property other than the Mortgaged Property. Mortgagor shall:

- (a) maintain its own accounts, books, records and financial statements separate from and not commingled with any of those of any other person or entity;

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(b) hold itself out as a separate entity and observe all organizational formalities; and

(c) not guarantee or pledge any of its assets to secure the debts of any other entity or person.

## 6.13 Required Insurance.

(a) Mortgagor shall at all times provide, maintain and keep in force, or cause to be provided, maintained and kept in force, the following policies of insurance:

(i) Insurance against loss or damage to the Mortgaged Property by fire and other risks, written on an "all risk" special perils, 100% full replacement cost basis, without deduction for foundations and footings, and without co-insurance, and with not more than \$25,000 deductible from the loss payable for any casualty;

(ii) Commercial general liability insurance, including coverage for elevators and escalators (if existing), if any, on the Mortgaged Property and completed operations coverage for two years after any construction or repair at the Mortgaged Property has been completed, on an occurrence basis, against claims for personal injury, including without limitation bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than \$2,000,000 per occurrence;

(iii) Workers compensation insurance covering Mortgagor, in accordance with the requirements of Illinois law;

(iv) During the course of any construction or repair at the Mortgaged Property, all risk builders risk course of construction insurance against all risks of physical loss, on a completed value basis, including collapse and transit coverage, with a deductible not to exceed \$25,000, in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished, and containing the "permission to occupy" endorsement, and insuring all general contractors and subcontractors of any tier;

(v) Boiler and machinery insurance covering any pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and escalator equipment located on the Mortgaged Property, and insurance against loss of occupancy or use arising from any breakdown therein, all in such amounts as are satisfactory to Mortgagee;

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(vi) Business interruption, use and occupancy or rent loss insurance on the Mortgaged Property covering loss of the use of the Mortgaged Property caused by the perils covered by the policies described in (i) and (v) above, for a period of 12 months or such longer period as Mortgagee shall require, in an amount not less than 100% of the projected annual revenue from the Mortgaged Property as determined by Mortgagee, and written on a gross rental income, gross profits or extended period of indemnity form;

(vii) If all or any portion of any building located on the Mortgaged Property is located in an area that has been identified by the Director of the Federal Emergency Management Agency as a special flood hazard area, flood insurance in an amount at least equal to the principal amount of the Loan or to the maximum amount of coverage allowed for the particular type of property under the National Flood Insurance Program, whichever is less;

(viii) Commercial general liability insurance covering any contractors performing work at the Mortgaged Property, on an occurrence basis, against claims for personal injury, including without limitation bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than \$2,000,000 per occurrence;

(ix) Workers compensation insurance covering any contractors performing work at the Mortgaged Property, in accordance with the requirements of Illinois law;

(x) Errors and omissions insurance covering any architects and engineers performing professional services with respect to the Mortgaged Property, each in the amount as reasonably approved by Mortgagee;

(xi) Such other insurance, and in such amounts, as may from time to time be required by Mortgagee against the same or other hazards and which may be obtained on commercially reasonable terms.

(b) All policies of insurance required by this Mortgage shall be issued by companies, and in amounts in each company, and in a form, satisfactory to Mortgagee and, without limitation on the generality of the foregoing, shall comply with the following provisions:

(i) All policies of insurance shall be issued by insurance companies having an AM Best's Rating Guide Policy Rating of not less than A and Financial Rating of not less than VIII;

(ii) All policies of insurance shall be maintained for and name Mortgagor and Mortgagee as insureds, as their respective interests may

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appear, and the policies required by paragraphs (a) (i), (iv), (v), (vi) and (vii) of this Section shall have attached thereto a standard mortgagee's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee;

(iii) All policies of insurance shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor or Mortgagee which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim or deductions against Mortgagor, and shall provide that the amount payable for any loss shall not be reduced by reason of coinsurance;

(iv) All policies of insurance shall contain a provision that they will not be cancelled or amended, including any reduction in the scope or limits of coverage, without at least 30 days' prior written notice to Mortgagee.

(c) The following notice is provided pursuant to paragraph (3) of Section 180/10 of Chapter 815 of the Illinois Compiled Statutes (2002). As used herein, "you" means Mortgagor and "we" and "us" means Mortgagee: Unless you provide evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges we 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 your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

6.14 Delivery of Policies; Payment of Premiums. Mortgagor shall furnish Mortgagee with the original of all required policies of insurance or certificates satisfactory to Mortgagee. At least thirty (30) days prior to the expiration of each such policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this Mortgage.

6.15 Taxes and Other Impositions.

(a) Mortgagor shall pay or cause to be paid, at least two (2) days prior to delinquency, all real property taxes and assessments, general and special, and

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all other taxes and assessments of any kind or nature whatsoever, including without limitation any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Property, which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Property, or any part thereof (all of which taxes, assessments and other governmental charges and non-governmental charges of the above-described or like nature are hereinafter referred to as "**Impositions**"); provided however, that if, by law, any such Imposition is payable, or at the option of the taxpayer may be paid, in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest. Mortgagee shall have the right to require Mortgagor to make monthly deposits of the Impositions in amounts reasonably determined by Mortgagee.

(b) Mortgagor shall furnish to Mortgagee within 30 days after the date upon which any Imposition is due and payable by Mortgagor, official receipts of the appropriate taxing authority, or other proof satisfactory to Mortgagee, evidencing the payment thereof.

(c) Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay the collection of the contested Impositions and prevent the sale or forfeiture of the Mortgaged Property to collect the same, provided that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenants to pay any such Imposition at the time and in the manner provided in this Section unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to so contest or object to an Imposition, and unless, at Mortgagee's sole option, (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that legal proceedings instituted by Mortgagor contesting or objecting to such impositions shall conclusively operate to prevent the sale or forfeiture of the Mortgaged Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; and/or (ii) Mortgagor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Mortgagee, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Mortgaged Property during the pendency of such contest, adequate fully to pay all such contested Impositions and all interest and penalties upon the adverse determination of such contest.

6.16 Tax Deposits. At Mortgagee's option, Mortgagor shall deposit with Mortgagee, on the same day monthly debt service payments are due, until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of 105% of the most recent ascertainable annual Impositions on the Mortgaged Property. If requested by Mortgagee,

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Mortgagor shall also deposit with Mortgagee an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Impositions for the current calendar year become due, shall be sufficient to pay in full such installment of annual Impositions, as estimated by Mortgagee. Such deposits are to be held without any allowance of interest and are to be used for the payment of Impositions next due and payable when they become due. So long as no Event of Default shall exist, Mortgagor shall, at its option, pay such Impositions when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagee for the payment thereof. If the funds so deposited are insufficient to pay any such Impositions for any year (or installments thereof, as applicable) when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Impositions in full. If the funds so deposited exceed the amount required to pay such Impositions for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee. Mortgagee, in making any payment hereby authorized relating to Impositions, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

6.17 Utilities. Mortgagor shall pay or cause to be paid when due all utility charges which are incurred by Mortgagor or others for the benefit of or service to the Mortgaged Property or which may become a charge or lien against the Mortgaged Property for gas, electricity, water or sewer services furnished to the Mortgaged Property and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any portion thereof, whether or not such assessments or charges are liens thereon.

6.18 Actions by Mortgagee to Preserve Mortgaged Property. Should Mortgagor fail to make any payment or to do any act as and in the manner provided herein or in any of the other Loan Documents, Mortgagee in its own discretion, without obligation so to do and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith, without limiting its general powers, Mortgagee shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Mortgaged Property; (ii) to make additions, alterations, repairs and improvements to the Mortgaged Property which it may consider necessary and proper to keep the Mortgaged Property in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the Mortgaged Property, the security hereof or the rights or powers of Mortgagee; (iv) to pay any Impositions asserted against the Mortgaged Property and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Mortgagee may affect or appears to affect the Mortgaged Property or the security of this Mortgage or which may be prior or superior hereto; and (vi) in exercising such powers, to

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pay necessary expenses, including employment of and payment of compensation to counsel or other necessary or desirable consultants, contractors, agents and other employees. Mortgagor authorizes Mortgagee to do and cause to be done all or any of the foregoing in the event Mortgagee shall be entitled to take any or all of the action provided for in this Section. Mortgagor shall within ten (10) days of written demand therefor by Mortgagee, pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys and reasonable attorneys fees and expenses, all of which shall constitute so much additional Indebtedness secured by this Mortgage immediately due and payable, with interest thereon from the date of such demand until paid at a variable rate 5% above the highest interest rate from time to time prevailing on the Note.

## 6.19 Damage and Destruction.

(a) Mortgagor shall give Mortgagee prompt notice of any damage to or destruction of any portion or all of any Mortgaged Property, and the provisions contained in the following paragraphs of this Section shall apply in the event of any such damage or destruction.

(b) In the case of loss covered by policies of insurance, Mortgagee is hereby authorized at its option either (i) if an Event of Default has occurred or the loss exceeds ten percent (10%) of the amount of the Loan allocated by Mortgagee to such Mortgaged Property, to settle and adjust any claim under such policies without the consent of Mortgagor, or (ii) in all other cases to allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; and in any case Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness secured by this Mortgage, and shall be reimbursed to Mortgagee from such proceeds or from Mortgagor upon demand.

(c) In the event of any insured damage to or destruction of the Mortgaged Property or any part thereof in excess of \$250,000.00, Mortgagee shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Mortgagee pursuant to the terms of this Section 6.19, after the payment of all of Mortgagee's expenses, either (i) on account of the Indebtedness secured by this Mortgage, irrespective of whether such principal balance is then due and payable, whereupon Mortgagee may declare the whole of the balance of Indebtedness secured by this Mortgage to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in subsection (d) below.

(d) In the event that Mortgagee shall elect that proceeds of insurance are to be applied to the repair and restoration of the Mortgaged Property, Mortgagor hereby covenants promptly to repair and restore the same as required by the Loan Documents, but in no event later than three (3) months prior to the



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Maturity Date. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration in the manner and on the terms customarily used by lenders in the Chicago metropolitan area.

## 6.20 Eminent Domain.

(a) Should the Mortgaged Property or any part thereof or interest therein be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Mortgagor receive any notice or other information regarding any such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee, and the provisions contained in the following paragraphs of this Section shall apply.

(b) Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All proceeds of compensation, awards, damages, rights of action and proceeds awarded to Mortgagor are hereby assigned to Mortgagee and Mortgagor shall execute such further assignments of such proceeds as Mortgagee may require.

(c) In the event that any portion of the Mortgaged Property are taken or damaged as aforesaid, all such proceeds shall be applied upon the Indebtedness secured by this Mortgage or applied to the repair and restoration of the Mortgaged Property, as Mortgagee in its sole discretion shall elect.

(d) Notwithstanding the provisions of this paragraph to the contrary, if any condemnation or taking of less than the entire Mortgaged Property occurs and provided that no Event of Default and no event or circumstance which with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and if such partial condemnation, in the reasonable discretion of Mortgagee, has no material adverse effect on the operation or value of the Mortgaged Property, then the award or payment for such taking or consideration for damages resulting therefrom may be collected and received by Mortgagor, and Mortgagee hereby agrees that in such event it shall not declare the Indebtedness to be due and payable, if it is not otherwise then due and payable.

(e) In the event that Mortgagee shall elect that such proceeds are to be applied to the repair and restoration of the Mortgaged Property, Mortgagor hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration in the manner and on the terms customarily used by Mortgagee for disbursements of construction loan proceeds.

6.21 Inspection of Mortgaged Property. Upon not less than three (3) day's prior written or telephonic notice (provided that such notice shall not be required if an

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Event of Default has occurred), Mortgagee, or its agents and representatives are authorized to enter at any reasonable time upon or in any part of the Mortgaged Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage or any of the other Loan Documents.

## 6.22 Inspection of Books and Records.

(a) Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the Mortgaged Property and shall make such books and records and all supporting vouchers and data available for examination by Mortgagee and its agents at any time and from time to time on request at the offices of Mortgagee, or at such other location as may be mutually agreed upon.

(b) Mortgagor shall also furnish to Mortgagee such other information and data with respect to the Mortgaged Property as may be reasonably requested by Mortgagee.

## 6.23 Title, Liens and Conveyances.

(a) Except for Permitted Encumbrances, Mortgagor shall not create, suffer or permit to be created or filed against the Mortgaged Property, or any part thereof or interest therein, any mortgage lien or other lien, charge or encumbrance, either superior or inferior to the lien of this Mortgage. Mortgagor shall have the right to contest in good faith the validity of any such lien, charge or encumbrance, provided that Mortgagor shall first deposit with Mortgagee a bond, title insurance or other security satisfactory to Mortgagee in such amounts or form as Mortgagee shall require; provided further that Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to discharge or so contest any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law and any amounts expended by Mortgagee in so doing shall be so much additional Indebtedness secured by this Mortgage. Except for Permitted Encumbrances and liens, charges and encumbrances being contested as provided above, in the event that Mortgagor shall suffer or permit any superior or junior lien, charge or encumbrance to be attached to the Mortgaged Property and shall fail to discharge same as described above, Mortgagee, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to Mortgagor.

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(b) In the event title to any Mortgaged Property is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein upon the creation of any lien against any Mortgaged Property shall also be construed as a similar prohibition or limitation against the creation of any lien or security interest upon the beneficial interest under such trust.

(c) In the event that Mortgagor shall sell, transfer, encumber, convey or assign or there shall otherwise occur the sale, transfer, conveyance or assignment of (i) the title to all or any portion of any Mortgaged Property or (ii) any member's interest or manager's interest in Mortgagor or a controlling interest in any member or manager of Mortgagor whether by operation of law, voluntarily, or otherwise, or Mortgagor or any member of Mortgagor shall contract to do any of the foregoing in a transaction which would not result in the repayment of the entire Loan, Mortgagee, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to Mortgagor. Notwithstanding the foregoing prohibition on transfers of membership interests in Mortgagor, the sale, conveyance, assignment or transfer of a membership interest shall be permitted if made to (i) a member of the Immediate Family of the assigning member and/or members of his Immediate Family, (ii) a trust for the benefit of the assigning member and/or members of his Immediate Family, (iii) another member of Mortgagor; provided, further, that the member to whom the sale, conveyance assignment or transfer is made must have been a member of the Mortgagor at the time of execution of this Mortgage by Mortgagor, or (iv) a person who is presently not a member as long as not greater than forty-nine percent (49%) in the aggregate of the entire membership interests are sold, transferred, conveyed or assigned; provided that in any such case, the members of Mortgagor who are guarantors of the Loan as of the date hereof must retain managerial and operational control of Mortgagor. For purposes of this Agreement, "Immediate Family" is defined as the spouse, former spouse, children, grandchildren, parents or grandparents of the specific member.

(d) Any waiver by Mortgagee of the provisions of this Section shall not be deemed to be a waiver of the right of Mortgagee to insist upon strict compliance with the provisions of this Section in the future.

## 6.24 Taxes Affecting Mortgage.

(a) If at any time any federal, State or municipal law shall require any documentary stamps or other tax hereon or on the Note, or shall require payment of any tax upon the Indebtedness secured hereby, then the said Indebtedness and the accrued interest thereon shall be and become due and payable at the election of Mortgagee upon 30 days' notice to Mortgagor; provided, however, that said election shall be unavailing and this Mortgage and the Note shall be and remain in effect, if Mortgagor lawfully may pay for such stamps or such tax including interest and penalties thereon to or on behalf of Mortgagee and Mortgagor do in

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fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

(b) In the event of the enactment after the date of this Mortgage of any law of the State of Illinois deducting from the value of the Mortgaged Property for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder hereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if, in the opinion of counsel for Mortgagee, (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Indebtedness secured hereby to be due and payable within 30 days from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that Mortgagor is not obligated to pay any portion of Mortgagee's federal or State income tax.

## 6.25 Environmental Matters.

(a) Mortgagor hereby represents and warrants to Mortgagee that, except as disclosed in the environmental site assessment referred to in the Indemnity (i) neither Mortgagor, nor any of its affiliates or subsidiaries, nor to the best of Mortgagor's knowledge, any other person or entity, has ever caused or permitted any Hazardous Substance (as defined in the Indemnity) to be placed, held, located or disposed of on, under or at the Mortgaged Property or any part thereof; (ii) none of the property described above has ever been used by Mortgagor or any of its affiliates or subsidiaries, or to the best of Mortgagor's knowledge, by any other person or entity, as a treatment, storage or disposal site, whether permanent or temporary, for any Hazardous Substance; (iii) there are no above ground or underground storage tanks located on the Mortgaged Property; and (iv) neither Mortgagor nor the Mortgaged Property are subject to any private or governmental lien or judicial or administrative notice or action pending, or to the best of Mortgagor's knowledge, threatened, relating to Hazardous Substance or the environmental condition of the Mortgaged Property.

(b) Mortgagor shall not allow any Hazardous Substance to be stored, located, discharged, possessed, managed, processed or otherwise handled on the Mortgaged Property, and shall comply with all Environmental Laws (as defined in the Indemnity) affecting the Mortgaged Property.

(c) Mortgagor shall comply with the Indemnity of even date executed by Mortgagor and Guarantors.

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(d) The representations, warranties, covenants, indemnities and obligations provided for in this Section 6.25 shall be continuing and shall survive the payment, performance, satisfaction, discharge, cancellation, termination, release and foreclosure of this Mortgage.

6.26 Estoppel Letters. Mortgagor shall furnish from time to time within 15 days after Mortgagee's request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the Indebtedness secured by this Mortgage.

## 7. DEFAULT PROVISIONS.

7.1 Events of Default. Any one or more of the following shall constitute an Event of Default under this Mortgage:

(a) Mortgagor fails to pay (i) any principal or interest payment owing on the Note within five (5) days of the date when due, or (ii) any other amount payable to Mortgagee under the Note, this Mortgage, or any of the other Loan Documents within five (5) days after the date when any such payment is due in accordance with the terms hereof or thereof; or

(b) Mortgagor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under the Note, this Mortgage or any of the other Loan Documents; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Mortgaged Property, and the priority, validity and enforceability of the liens created by the Mortgage or any of the other Loan Documents and the value of the Mortgaged Property are not impaired, threatened or jeopardized, then Mortgagor shall have a period ("Cure Period") of thirty (30) days after Mortgagor obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if Mortgagor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate; or

(c) Mortgagor or any Guarantor shall file a voluntary petition in bankruptcy, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor or any such Guarantor or of all or any part of the Mortgaged Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors,

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or shall admit in writing its or his inability to pay its or his debts generally as they become due; or

(d) The commencement of any involuntary petition in bankruptcy against Mortgagor or any Guarantor or the institution against Mortgagor or any Guarantor of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor or any Guarantor which shall remain undismitted or undischarged for a period of sixty (60) days; or

(e) The dissolution, termination or merger of Mortgagor or the occurrence of the death or declaration of legal incompetency of any two or more individual Guarantors unless within the ninety (90) day period immediately following such death or declaration of legal incompetency (i) Mortgagor provides Mortgagee with a substitute guarantor or guarantors whose creditworthiness and real estate experience and skills are comparable to those of the original Guarantors and who are otherwise acceptable to Mortgagee in Mortgagee's sole discretion, and (ii) such substitute guarantor or guarantors execute a guaranty in favor of Mortgagee in form and substance substantially similar to the existing guaranty and otherwise satisfactory to Mortgagee; or

(f) The occurrence of a default under Section 6.23(c) hereof; or

(g) A court of competent jurisdiction shall enter an order of relief pursuant to, or an order, judgment or decree approving, a petition filed against Mortgagor, or any indemnitor under the Indemnity, or any Guarantor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of 60 days, whether or not consecutive, from the first date of entry thereof; or any trustee, receiver or liquidator of Mortgagor or any such Guarantor or of all or any part of the Mortgaged Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed and such appointment shall remain unvacated and unstayed for an aggregate of 60 days, whether or not consecutive; or

(h) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Property, or any judgment involving monetary damages shall be entered against Mortgagor which shall become a lien on the Mortgaged Property or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within 60 days after its entry or levy; or

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(i) If any representation or warranty of Mortgagor, or any Guarantor, contained in this Mortgage, in any of the other Loan Documents, or in any statement, certificate or other document delivered in connection with the Loan, shall be untrue or incorrect in any material respect; or

(j) Mortgagor fails to renew or provide any policy of insurance within the earliest time provided therefor in this Mortgage or any of the Loan Documents; or

(k) The occurrence of an Event of Default under the Loan Agreement, any other Mortgage, the Note, or any of the other Loan Documents.

**7.2 Rights and Remedies.** Upon the occurrence of an Event of Default (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument), and in addition to such other rights as may be available under any other Loan Document or under applicable law, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Mortgagee may declare the outstanding principal balance of the Loan and all unpaid Indebtedness of Mortgagor hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) Uniform Commercial Code. Mortgagee shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the Uniform Commercial Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any Mortgaged Property where any such property may be found. Any requirement of the Uniform Commercial Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address set forth in Section 13.1 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Personal Property, may be sold as a single parcel if the Mortgagee elects. The Mortgagor hereby agrees that if the Mortgagee demands or attempts to take possession of the Personal Property or any portion thereof in exercise of its rights and remedies hereunder, the Mortgagor will promptly turn over and deliver possession thereof to the Mortgagee, and the Mortgagor authorizes, to the extent the Mortgagor may now or hereafter lawfully grant such authority, the Mortgagee, its employees and agents, and potential bidders or purchasers to enter upon the Real Property or any other office, building or property where the Personal Property or any portion thereof may at the time be located (or believed to be located) and the Mortgagee may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the

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Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Real Property and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute additional Obligations hereunder and shall be payable upon demand, with interest thereon at the Default Rate until paid.

(c) Foreclosure. Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage against any or all portions or all of the Mortgaged Property and other collateral of the Loan. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Obligations in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., as from time to time amended (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this Section, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and Indebtedness and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage or the Mortgaged Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall constitute Obligations hereunder and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid.

(d) Appointment of Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Property and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the



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appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise. Mortgagor agrees to promptly deliver to any such receiver all Leases, Rents, documents, financial data and other information requested by such receiver in connection with the Mortgaged Property and, without limiting the foregoing, Mortgagor hereby authorizes Mortgagee to deliver to any such receiver any or all of the Leases, Rents, documents, data and information in Mortgagee's possession relating to the Mortgaged Property.

(e) Taking Possession, Collecting Rents, Etc. Upon demand by Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(ii) cancel or terminate any Lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Mortgagor to cancel the same;

(iii) elect to disaffirm any Lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage without Mortgagee's prior written consent;

(iv) extend or modify any then existing Leases and make new leases of all or any part of the Mortgaged Property, which extensions,

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modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

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

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of taxes, premiums and other charges applicable to the Mortgaged Property, or in reduction of the Obligations in such order and manner as Mortgagee shall select; and

(vii) receive and collect the rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Mortgagor agrees to consent to a receiver if this is believed necessary or desirable by the Mortgagee to enforce its rights under this subsection. The collection of rents, issues, profits or revenues of the Mortgaged Property by the Mortgagee shall in no way waive the right of the Mortgagee to foreclose this Mortgage in the event of any said Event of Default

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any Personal Property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Mortgagor promises to pay upon demand together with interest thereon at the Default Rate until paid. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any Indebtedness actually received by Mortgagee. Without taking possession of the Mortgaged Property, Mortgagee may, in the event the Mortgaged Property become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged

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Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute additional Obligations payable upon demand with interest thereon at the Default Rate until paid.

(f) Exercise Other Rights and Remedies. Mortgagee may exercise or invoke any and all other rights and remedies as may be available to Mortgagee now or hereafter at law or in equity.

(g) Indemnity. The Mortgagor hereby agrees to indemnify, defend, protect and hold harmless the Mortgagee and its employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, lease or consumption of any of the Mortgaged Property, or any part thereof, or as a result of the Mortgagee seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property, except from such liabilities, claims or obligations as result from the gross negligence or intentional misconduct of the Mortgagee, its employees, officers or agents.

To the extent permitted by law, no action taken, or right or remedy invoked, by Mortgagee under this Section 7.2, including the appointment of a receiver for the Mortgaged Property, or the entry into possession of the Mortgaged Property, or any part thereof, by such receiver, or otherwise, shall be deemed to make Mortgagee a "mortgagee in possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property, or the use, occupancy, enjoyment or operation of all or any part thereof. In no event shall Mortgagee be required to accept a cure of any default beyond the applicable grace, notice and cure periods provided in the Loan Documents, if any, notwithstanding any statement or provision to the effect that rights or remedies are available while an Event of Default "exists", "continues" or is "outstanding", or during the "existence" or "continuation" of an Event of Default (or any similar statement or provision) in any of the Loan Documents, or anything else in the Loan Documents.

### 7.3 Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of

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foreclosure, and whether enumerated in Section 7.4 of this Mortgage, shall be added to the Obligations included in the amount of the debt secured hereby in the judgment of foreclosure.

7.4 Payment of Costs, Expenses and Attorneys' Fees. All costs and expenses incurred by Mortgagee pursuant to Section 7.2 (including court costs and attorneys' fees and costs of both in house and outside counsel, whether or not incurred in litigation and whether or not foreclosure is concluded, including, without limitation, attorney's fees and costs of both in house and outside counsel incurred in connection with any judicial or nonjudicial foreclosure of this Mortgage or the other Loan Documents, or in connection with both judicial and nonjudicial foreclosure, if Mortgagee shall elect to pursue each such remedy whether concurrently or independently and reasonable attorneys' fees and costs of in house counsel of Mortgagee) shall be secured by this Mortgage and shall bear interest at the Default Rate, from the date of expenditure until such sums have been paid. Mortgagee shall be entitled to bid, at any sale of the Mortgaged Property held pursuant to Section 7.2(c) above, the amount of all such costs, expenses, and interest in addition to the amount of any other Obligations by a credit bid as the equivalent of cash.

## 7.5 Protective Advances.

(a) Advances, disbursements and expenditures made by Mortgagee for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Mortgage constitute "**Protective Advances**":

(i) all advances by Mortgagee in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(ii) payments by Mortgagee of: (i) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

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(iv) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(vi) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(vii) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act; and

(viii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) premiums for casualty and liability insurance paid by Mortgagee, whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (ii) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (iii) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the mortgaged real estate; (iv) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the mortgaged real estate; (v) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

(b) All Protective Advances shall be additional Obligations, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(c) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act.

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(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (i) determination of the amount of the Obligations at any time;
- (ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (iv) application of income in the hands of any receiver or Mortgagee in possession; and
- (v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Act.

7.6 Remedies Cumulative; No Waiver. All rights and remedies of Mortgagee hereunder are cumulative and not alternative, and are in addition to all rights and remedies otherwise provided by law. No exercise of any right or remedy by Mortgagee shall constitute a waiver of any other right or remedy. No delay or omission by Mortgagee to exercise any right, power or remedy hereunder shall impair any such right or remedy, or be construed as a waiver of any Event of Default, or any acquiescence therein. By accepting payment of any sum secured hereby after its due date or later performance of any obligation secured hereby, Mortgagee shall not waive its right against any person obligated directly or indirectly hereunder, or on any obligation hereby secured, either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to make such prompt payment or render such performance; and Mortgagee's acceptance of partial payment of any sum secured hereby after its due date (which may be applied to such outstanding payment obligations as Mortgagee may elect, notwithstanding Mortgagor's instructions to the contrary), or acceptance of partial performance of any obligation secured hereby in default, shall not cure such payment failure or default, or affect any notice of an Event of Default or sale heretofore given or recorded, unless such notice is expressly revoked in writing by Mortgagee.

7.7 Releases, Extensions, Modifications and Additional Security. Without affecting the liability of any person for payment of any Indebtedness secured hereby, or the lien or priority of this Mortgage or any other Loan Document upon the Mortgaged Property, Mortgagee may, in its sole and absolute discretion, from time to time, with or without notice, do one or more of the following: release the liability of any person for the

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payment of any Indebtedness secured hereby; make any agreement or take any action extending the maturity or otherwise altering the terms or increasing the amount of any Indebtedness secured hereby; and accept additional security, or release all or a portion of the Mortgaged Property and other security held to secure the Indebtedness secured hereby. If Mortgagee holds any other or additional security for the payment of any Indebtedness or performance of any obligation hereby secured, then any sale or foreclosure of such security upon any Event of Default, in the sole discretion of Mortgagee, may be prior to, subsequent to, or contemporaneous with, any sale or foreclosure hereunder and any property in which Mortgagee holds a security interest may be sold as a unit with the Mortgaged Property.

7.8 Waiver of Right to Redeem - Waiver of Appraisalment, Valuation, Etc. Mortgageor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgageor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Obligations, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgageor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Act, or residential real estate, as defined in Section 5/15-1219 of the Act. To the fullest extent permitted by law, Mortgageor, on behalf of Mortgageor, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to Section 5/15-1601(b) of the Act, and (ii) any and all rights of reinstatement.

8. REPRESENTATIONS AND WARRANTIES. Mortgageor represents and warrants to Mortgagee as follows:

8.1 Mortgagor. Mortgageor is a duly formed limited liability company under the laws of the State of Delaware, validly existing, in good standing and fully qualified to do business in the States of Illinois and has full power and authority to execute the Loan Documents. The articles of organization and operating agreement of Mortgageor, copies of which have been furnished to Mortgagee, are in effect, unamended, and are the true, correct and complete documents relating to the Mortgageor's creation and governance.

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8.2 Guarantors. Guarantors have full power and authority to execute the Guaranty, the Indemnity Agreement and all other Loan Documents executed by them and to perform their respective obligations thereunder.

8.3 Title. Mortgagor owns good and marketable fee simple title to the Real Property and the Personal Property. The Real Property and the Personal Property are owned free and clear of all liens, claims and encumbrances, except the Permitted Encumbrances.

8.4 Validity and Enforceability of Documents. Upon the execution and delivery of the Loan Documents, the Loan Documents shall be valid and binding upon the parties that have executed the same in accordance with the respective provisions thereof, and shall be enforceable in accordance with the respective provisions thereof, subject only to applicable bankruptcy, reorganization, insolvency, moratorium and other similar laws affecting the enforcement of creditor's rights. Execution, delivery and performance of the Loan Documents do not and will not contravene, conflict with, violate or constitute a default under the articles of organization creating Mortgagor, the operating agreement of Mortgagor or the resolutions of the directors of Mortgagor, or any applicable law or any agreement, indenture or instrument to which Mortgagor, or the Guarantors are a party or are bound or which is binding upon or applicable to the Mortgaged Property or any portion thereof.

8.5 Litigation. There is not any condition, event or circumstance existing, or any litigation, arbitration, governmental or administrative proceeding, action, examination, claims or demand pending or, to the best of Mortgagor's knowledge after due inquiry, threatened affecting Mortgagor, the Guarantors or the Mortgaged Property, or involving the validity or enforceability of the Loan Documents or involving any risk of a judgment or liability which, if satisfied, would have an adverse effect on the financial condition, business or properties of Mortgagor, the Guarantors or the priority of the lien of the Mortgage, or which would prevent Mortgagor or the Guarantors from complying with or performing his, her or its obligations under this Agreement, the Note, the Guaranty or any of the other Loan Documents within the time limits set forth therein for such compliance or performance and no basis for any such matter exists.

8.6 Utilities; Authorities. All utilities necessary for the use, operation and occupancy of the Mortgaged Property (including, without limitation, water, storm sewer, sanitary sewer and drainage, electric, gas and telephone facilities) are available at the boundaries of the Real Property (or in the streets adjoining the Real Property), and all requirements for the use of such utilities have been fulfilled. All building, zoning, safety, disabled persons, health, fire, water district, sewerage and environmental protection agency permits and other licenses and permits which are required by any governmental authority for construction of the Improvements, and the use, occupancy and operation of the Real Property have been obtained by or furnished to Mortgagor and are in full force and effect or will be obtained by and maintained in full force and effect by Mortgagor when and as required by any governmental authority.



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8.7 Solvency. Mortgagor and all Guarantors ("**Obligors**") are solvent and able to pay their respective debts as such debts become due, and has capital sufficient to carry on such Obligor's present business transactions. The value of Mortgagor's and each of Guarantor's property, at a fair valuation, is greater than the sum of such Obligor's debts. No Obligor is bankrupt or insolvent, nor has any Obligor made an assignment for the benefit of such Obligor's creditors, nor has there been a trustee or receiver appointed for the benefit of such Obligor's creditors, nor has there been any bankruptcy, reorganization or insolvency proceedings instituted by or against any Obligor, nor will any Obligor be rendered insolvent by such Obligor's execution, delivery or performance of the Loan Documents or by the transactions contemplated thereunder.

8.8 Financial Statements. All financial statements submitted to Mortgagee relating to Mortgagor, the Guarantors and the Real Property are true, complete and correct, and have been prepared in accordance with general cash basis accounting principles and fairly present the financial condition of the person to which they pertain and the other information therein described and do not contain any untrue statement of a material fact or omit to state a fact material to the financial statement submitted or this Agreement. No material adverse change has occurred in the financial condition of Mortgagor, any Guarantor or the Real Property since the dates of each such financial statements.

8.9 Compliance with Laws. The Real Property and the use, occupancy and operation thereof for their intended purposes will not violate any applicable laws, any contractual arrangements with third parties, or any covenants, conditions, easements, rights of way or restrictions of record affecting the Real Property. Neither Mortgagor nor any agent thereof has received any notice, written or otherwise, alleging any such violation, which violation has not previously been cured. Upon completion of the Improvements, the Real Property will be in full compliance and conformity with all zoning requirements, including without limitation, those relating to setbacks, height, parking, floor area ratio, fire lanes and percentage of land coverage, and will not be a non-conforming or special use. No right to any off-site facilities will be necessary to insure compliance by the Real Property with all applicable laws.

8.10 No Defects. To the best of Mortgagor's knowledge, there are no defects in the design or construction of the building on the Real Property which would have a material adverse affect on its value, safety or intended use.

8.11 Additional Agreements. There are no management, leasing, development or other agreements in existence that affect the Mortgaged Property, other than those described in the schedule of Permitted Encumbrances or as previously delivered to Mortgagee.

All representations and warranties which have been made by Mortgagor in this Agreement or the other Loan Documents shall be true in all respects at the time of each disbursement of the Loan, and in the event of any material breach, misrepresentation or omission, Mortgagee shall have the absolute right to terminate its obligations to make additional disbursements of the Loan.

**UNOFFICIAL COPY**9. **MISCELLANEOUS.**

9.1 **Notices.** Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) sent by overnight express carrier, addressed in each case as follows:

To Mortgagor: Sheffield I, LLC  
324 West Touhy Avenue  
Park Ridge, Illinois 60068  
Attn: James W. Purcell

With a copy to: Gerard P. Walsh, Jr.  
Attorney at Law  
155 North Michigan Avenue  
Suite 9003  
Chicago, Illinois 60601

To Mortgagee: Associated Bank, National Association  
200 E. Randolph, 69th Floor  
Chicago, Illinois 60601  
Attn: Michael McGovern, Vice President

With copy to: Dykema Gossett PLLC  
10 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606  
Attn: Michael S. Kurtzon, Esq.

Either party by notice to the other in the manner provided herein may designate additional or different addresses for subsequent notices or communications.

9.2 **Time of the Essence.** Time is of the essence with respect to this Mortgage and the other Loan Documents, and each representation, warranty, covenant and condition hereunder and thereunder.

9.3 **Successors and Assigns; Mortgagee as Agent.** This Mortgage and all provisions hereof shall be binding upon and enforceable against the Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of the Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Obligations, or any interest therein.

9.4 **Amendments.** This Mortgage may be amended at any time and from time to time only by an amendment in writing executed by Mortgagee and Mortgagor.

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

9.6 Rules of Construction. When the identity of the parties or other circumstances make appropriate, the neuter gender shall include the feminine and masculine, and the singular number shall include the plural. Specific enumeration of rights, powers and remedies of Mortgagee and of acts which they may do and of acts Mortgagor must do or not do shall not exclude or limit the general. The headings of each Section are for information and convenience and do not limit or construe the contents of any provision hereof. The provisions of this Mortgage shall be construed as a whole according to their common meaning, not strictly for or against any party and consistent with the provisions herein contained, in order to achieve the objectives and purposes of these grants. The use in this Mortgage (including any Exhibit hereto) of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter; the use herein of the words "costs" or "expenses" shall include the cost of title evidence and fees and costs of attorneys for Mortgagee (both in house and outside counsel); and the use herein of the word "prompt", or "immediately" in any form, or words of similar import, when used with reference to any notice required to be given or act to be undertaken by Mortgagor shall mean notice given or act performed not later than five (5) days after the occurrence of the specified event for which notice or action is required, unless another time period is made expressly applicable.

9.7 Joint and Several Liability. If Mortgagor is composed of more than one person or entity, then the Obligations of Mortgagor under this Mortgage and under the other Loan Documents are joint and several; and each covenant, warranty, representation and agreement of Mortgagor hereunder and thereunder shall be deemed made by each such person or entity comprising Mortgagor, both individually and collectively.

9.8 Severability. If any term of this Mortgage, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

9.9 Commingling of Funds. No sums collected or retained by Mortgagee shall be deemed to be held in trust; and Mortgagee may commingle any and all such funds or

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proceeds with its general assets and shall not be liable for the payment of any interest or other return thereon, except to the minimum extent required by law.

9.10 Future Advances; Maximum Principal Amount Secured. It is agreed that this Mortgage shall also secure future or additional advances as may be made by Mortgagee at its exclusive option, to Mortgagor or its successors or assigns in title, for any purpose. The total amount of Indebtedness secured hereby may be increased or decreased from time to time, but the total unpaid balance so secured at any one time shall not exceed Eighteen Million Eight Hundred Thousand and 00/100 Dollars (\$18,800,000.00), plus interest thereon, and any disbursements made under this Mortgage for the payment of taxes, levies or insurance on the Mortgaged Property, with interest on such disbursements. The provisions of this Section apply regardless of whether any such advances are characterized as optional or obligatory, but nothing in this Section by itself obligates Mortgagee to make any additional advances hereunder.

9.11 CONSENT TO JURISDICTION. TO INDUCE THE MORTGAGEE TO ACCEPT THE NOTE, THE MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO THE MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. THE MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON THE MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO THE MORTGAGOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

9.12 WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND MORTGAGEE (BY ITS ACCEPTANCE HEREOF) HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE, THE LOAN, OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF MORTGAGEE OR MORTGAGOR OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOAN OR THE MORTGAGED PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS MORTGAGE AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS MORTGAGE WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN TO MORTGAGOR.

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9.13 Release Upon Payment and Discharge of Obligations. Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all of the Obligations, including payment of all reasonable expenses incurred by the Mortgagee in connection with the execution of such release.

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## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

LOT 3 (EXCEPT THE NORTH 2 3/4 INCHES THEREOF) IN SUB BLOCK 1 IN THE SUBDIVISION OF BLOCK 6 IN LAFLIN SMITH AND DYERS SUBDIVISION OF THE NORTHEAST 1/4 (EXCEPT 1.28 ACRES IN THE NORTHEAST CORNER THEREOF) IN SECTION 20, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

ALSO

THE SOUTH 1 3/4 INCHES OF THE NORTH 2 3/4 INCHES OF THE EAST 35 FEET OF LOT 3 IN SUB BLOCK 1 OF BLOCK 6 (BEING THAT PART OF THE NORTH 2 3/4 INCHES OF LOT 3 UPON WHICH IS PART OF THE NORTH WALL OF CARLOS HOTEL BUILDING AND NO MORE OR LESS) IN LAFLIN SMITH DYERS SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS

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Commonly known as: 3834 N. Sheffield, Chicago, Illinois 60613