

2  
1/3

13-02223

Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



1320755038

Doc#: 1320755038 Fee: \$90.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 07/26/2013 10:41 AM Pg: 1 of 27

Report Mortgage Fraud  
800-532-8785

PREMIER TITLE

The property identified as:

PIN: 33-07-111-014-0000

Address:

Street: 2450 Terrace Avenue

Street line 2:

City: Lynwood

State: IL

ZIP Code: 60411

Lender: Sherpa Capital Group, LLC.

Borrower: Genesis I, LLC.

Loan / Mortgage Amount: \$178,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is not owner-occupied.

Certificate number: 35459D9D-3EF5-45C4-9D34-B982E927E179

Execution date: 07/17/2013

21

# UNOFFICIAL COPY

THIS DOCUMENT PREPARED  
BY AND MAIL TO:  
KEITH A. ZERMAN  
Gardi & Haught, Ltd.  
939 Plum Grove Road  
Suite C  
Schaumburg, Illinois 60173

*This space reserved for Recorder's use only*

## MORTGAGE AND SECURITY AGREEMENT

**THIS MORTGAGE AND SECURITY AGREEMENT** (as modified from time to time, the "Mortgage"), made as of the 17<sup>th</sup> day of July, 2013, by **GENESIS 1, LLC**, an Illinois limited liability company ("Mortgagor"), whose address is 3108 South Route 59, Suite 124-260, Naperville, Illinois 60564, to **SHERPA CAPITAL GROUP, LLC**, an Illinois limited liability company (hereinafter together with its successors and assigns, including each and every, from time to time, holder of the "Note", as hereinafter defined ("Mortgagee"), whose address 1070 North Milwaukee Avenue, Chicago, Illinois 60642; ATTN: Ashish Parikh, or such other place as designated in writing, from time to time, by Lender.

**WHEREAS**, Mortgagor is justly indebted to Mortgagee pursuant to that certain Balloon Mortgage Note of even date (the "Note") in the original principal sum of ONE HUNDRED SEVENTY-EIGHT THOUSAND DOLLARS (\$178,000.00) made payable to the order of and delivered to Mortgagee, in and by which said Note, Mortgagor promises to pay equal monthly payments of interest at the rate provided in said Note due and owing, from time to time, with the principal balance, together with all accrued and unpaid interest due, on or before February 1, 2014. The Note evidences, in part, Mortgagor's obligations to Mortgagee. All of said payments of principal and interest are to be made payable at such place as the holder of the Note may, from time to time, in writing appoint, and in the absence of such appointment, then at the office of Mortgagee; and

**WHEREAS**, the indebtedness evidenced by the Note, including the principal, interest and premiums, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in the Note or in the other documents and instruments executed by Mortgagee in favor of Mortgagor of even date between Mortgagor and Mortgagee, including, without limitation, this Mortgage, any and all subsequent mortgages executed by Mortgagor in favor of Mortgagee (individually, a "Subsequent Mortgage" and collectively, the "Subsequent Mortgages") as additional security for Mortgagor's payment and performance under the Note, as set forth in that certain Acknowledgement of even date executed by Mortgagor in favor of Mortgagee (the "Acknowledgement"), that certain Assignment of Leases and Rents of even date (the "Assignment of Rents") pertaining to that certain the real property commonly known 2450 Terrace Avenue, Lynwood, Illinois (the "Property") (the "Assignment of Rents"), that certain Assignment of any guaranty of the payment and performance of the "Indebtedness Hereby Secured," as hereinafter defined, including, without limitation, that certain joint and several Guaranty of even date executed by Chad Cutshall and Ronald Plonis in favor of Mortgagee (the "Guaranty"), and all other documents and instruments executed by and between Mortgagor or any guarantor of such payment and performance, on the one hand, and Mortgagee pertaining to the transactions described herein, including,

# UNOFFICIAL COPY

without limitation, the Acknowledgement (collectively, the "Loan Documents"), are herein called the "Indebtedness Hereby Secured."

**NOW, THEREFORE**, Mortgagor, to secure the payment and performance by Mortgagor of the Indebtedness Hereby Secured, including, without limitation, pursuant to the Note in accordance with the terms, provisions and limitations of this Mortgage, and the performance of the covenants and agreements herein contained and contained in the Loan Documents, by Mortgagor, and also in consideration of the sum of Ten Dollars (\$10.00) in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does by these presents MORTGAGE, WARRANT and CONVEY, subject to the "Permitted Exceptions", as defined in paragraph 33(a) below, unto Mortgagee, its successors and assigns, the Property legally described in Exhibit A attached hereto and incorporated by reference herein and all of its estate, right, title and interest therein.

TOGETHER with Mortgagor's interest as lessor in and to all leases of said Property, or any part thereof, heretofore or hereafter made and entered into by Mortgagor during the life of this Mortgage or any extension or renewal hereof

TOGETHER with all buildings and improvements now or hereafter constructed upon or erected upon or located on the real estate legally described in Exhibit A attached hereto, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the real estate legally described in Exhibit A attached hereto, and all rents, issues, royalties, income, proceeds, profits and other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, curtain and drapery fixtures, partitions, attached floor covering now or hereafter therein or thereon, and all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing): all fixtures, apparatus, equipment and articles, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be, for the purposes of this Mortgage, deemed to be real estate and conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as defined in the Uniform Commercial Code of Illinois (the "Code")), this Mortgage is hereby deemed to also be a security agreement under the Code for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as a Secured Party (as defined in the Code), as more particularly provided in Section 33 of this Mortgage.

TOGETHER with all awards made to the present and all subsequent owners of some or all of the Property by any governmental or other lawful authority for taking by eminent domain the whole or any part of the Property or improvements thereon, the temporary use thereof or any easement thereon or thereunder, including any awards for any changes of grade of streets, which said awards are hereby assigned to Mortgagee, who is hereby authorized to collect and receive the proceeds of any such awards from said authorities and to give proper receipts and acquittances thereof.

TOGETHER with all right, title and interest of Mortgagor, if any, in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and in and to the land lying in the

# UNOFFICIAL COPY

bed of any street, road, alley or avenue, opened or proposed, in front of or adjoining the above described real estate to the center line thereof.

TO HAVE AND TO HOLD the same unto Mortgagee and its successors and assigns forever, together with all estates, titles, claims and demands whatsoever of Mortgagor in and to said Property or any part thereof, and Mortgagor does hereby covenant, warrant and agree that it is lawfully seized and possessed of said real estate in fee simple absolute and has good and lawful right and authority to sell, convey and mortgage same; that said real estate is free from all liens, claims, charges and encumbrances whatsoever, except as set forth herein, and that Mortgagor will warrant and defend the title to said real property against the lawful claims and demands of all persons.

Provided, however, if and when: (a) Mortgagor has duly and punctually paid, in full, the principal amount of the Note and all interest as provided thereunder, and all other amounts accrued, provided or otherwise required to be paid under the Note, this Mortgage and the Loan Documents; and (b) Mortgagor has performed all of the terms, provisions, conditions and agreements herein contained and the other Loan Documents on the part of Mortgagor to be performed or observed, then this Mortgage shall be released at the cost of Mortgagor, but otherwise shall remain in full force and effect.

Mortgagor further covenants, warrants and agrees with Mortgagee as follows:

1. Duty of Payment. Mortgagor will promptly pay, or otherwise cause to be paid, the above-described Note according to the tenor and effect thereof and as in said Note provided, and will also pay any other note or notes which hereafter may be given in renewal or extension thereof, and any and all other sums secured hereby at the time therein and herein designated. This Mortgage shall be and remain security for the payment of all such notes.
2. Prepayment Privilege. At such time as Mortgagor is not in default under the terms of the Note, this Mortgage, or any of the Loan Documents, Mortgagor may prepay some or all of the amounts due and owing under the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Note, but not otherwise.
3. Covenants. Mortgagor shall keep and perform all covenants, conditions and terms of this Mortgage and pay or cause to be paid to Mortgagee all amounts due and owing according to the terms and conditions of said Note, and shall keep and perform all covenants, conditions and terms contained in said Note, all of which covenants, conditions and terms are incorporated herein by reference.
4. Maintenance, Repair and Restoration of Improvements, Payment of Liens, Etc. Mortgagor shall: (a) subject to Section 8 of this Mortgage promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Property which may become damaged or be destroyed; (b) keep all the Property in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for liens; (c) pay when due any indebtedness which, if not paid, would entitle the obligee thereof to a lien or charge on any part of the Property; (d) complete, within a reasonable time, any building or buildings now or at any time in process of erection on and within any part of the Property; (e) comply with all requirements of law, municipal ordinances, rules, regulations or restrictions of record with respect to the Property and the use thereof; (f) not make any material alterations, repairs, additions or improvements in or on any of said Property, except as required by law or municipal ordinance, without the written consent of Mortgagee which consent shall not be unreasonably withheld, conditioned or delayed; (g) not suffer or permit any change in the general nature of the occupancy of any part of the Property without Mortgagee's written consent, which consent shall not be unreasonably withheld, conditioned or delayed; (h) not initiate or acquiesce in any zoning reclassification without Mortgagee's written consent, which consent shall not be unreasonably withheld, conditioned or delayed; and (i) allow Mortgagee to inspect any one or more Units comprising the Property at



# UNOFFICIAL COPY

any reasonable time upon not less than twenty-four (24) hours prior notice (except in the event of an emergency or upon an Event of Default, which event remains uncured, whereupon Mortgagee may enter any portion of the Property at any time, without prior notice) and access thereto shall be permitted for that purpose; and (j) cause the each and every Unit comprising the Property at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations (herein called "Environmental Regulations") so that no cleanup, claim or other obligation or responsibility arises from a violation of any such laws, statutes, ordinances, rules and regulations.

5. Payment of Taxes. Mortgagor shall pay when first due, and before any penalty attaches, all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against all of the Units comprising the Property (all herein generally called "Taxes") when first due, and shall, upon written request, furnish to Mortgagee duplicate receipts thereof. To prevent default hereunder, Mortgagor shall pay, in full, under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.

6. Contests. Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon any one or more Units comprising the Property or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Property (all herein called "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

- (a) Mortgagor immediately shall give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;
- (b) Mortgagor shall deposit with Mortgagee the full amount (herein called the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;
- (c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of any part of the Property, and shall permit Mortgagee to be represented in any such contest and shall pay all reasonable expenses incurred and paid by Mortgagee in so doing, including reasonable fees and expenses of Mortgagee's counsel, all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the then applicable rate of interest accruing under the Note until paid, and payable within five (5) days of written demand; and
- (d) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, any part of the Property shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at

# UNOFFICIAL COPY

the at the then applicable rate of interest accruing under the Note, and payable within five (5) days of written demand; and provided further that Mortgagee may in such case use and apply for such purpose monies deposited as provided in Subsection 6(b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

7. Insurance. Mortgagor shall keep all buildings and improvements now or hereafter situated on and within the Property, including, without limitation, each Unit, insured against loss or damage by fire and other hazards as may be reasonably required by Mortgagee, in forms, companies and amounts satisfactory to Mortgagee, and with mortgagee clauses attached to all policies in favor of and on forms satisfactory to Mortgagee, and shall deliver all policies to Mortgagee. If Mortgagee elects and so notifies Mortgagor, Mortgagor, at its expense, shall furnish Mortgagee with an appraisal of the full insurable value of the Property, in part and as a whole, made by appraisers satisfactory to Mortgagee. Mortgagor shall also carry liability insurance protecting Mortgagee against liability for injuries to persons and property occurring in, on or adjacent to the Property, in forms, companies, and amounts satisfactory to Mortgagee with the policy or policies evidencing such insurance to contain a thirty (30) day notice of cancellation clause in favor of Mortgagee. Such liability policy or policies or certificates thereof shall be delivered to Mortgagee when requested by Mortgagee. Mortgagor shall, until the Indebtedness Hereby Secured is paid in full, furnish Mortgagee at least thirty (30) days prior to the date each coverage required herein would otherwise expire with evidence of the renewal or continuation of such coverage in the form of premium receipt or renewal policies or certificates.

Mortgagor covenants and agrees with Mortgagee that, so long as this Mortgage remains in effect, Mortgagor will furnish to Mortgagee, upon request of Mortgagee, reports on each existing insurance policy showing such information as Mortgagee may reasonably request, including without limitation the following: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the properties insured; (e) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (f) the expiration date of the policy. In addition, upon request of Lender (however not more than annually), Mortgagor will have an independent appraiser satisfactory to Mortgagee determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Mortgagor.

In the event the Property, or any part thereof, are at any time leased and the lease or leases have been assigned to Mortgagee as additional security for the payment of indebtedness secured by this Mortgage, Mortgagor shall, upon the request of Mortgagee, provide rent insurance payable to Mortgagee in an amount equal to the annual rental payable under such assigned lease or leases plus the lessee's approximate annual liability for taxes, assessments, utility charges, operating expenses and insurance premiums as provided in the lease or leases.

Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor may make or any claim that is made against Mortgagor in connection with any part or all of the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for any or all of the Property, as the case may be, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges that Mortgagee may impose in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. Without limitation of any other provision of this Mortgage, the cost of such insurance shall be added to the Indebtedness Hereby Secured. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

# UNOFFICIAL COPY

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance. In the event of a foreclosure of the lien of this Mortgage, or of a transfer of title to any or all of the Property either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be.

8. Adjustment of Losses and Application of Proceeds of Insurance. In the event of any damage to or destruction of any or all of the Property, covered by any policy or policies of insurance required to be carried by Mortgagor, Mortgagee may, in its discretion (and it is hereby authorized to), either settle and adjust any claim under such insurance policies with the consent of Mortgagor, which consent shall not be unreasonably withheld, conditioned or delayed, or allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. In either case, the proceeds shall be paid to Mortgagee, if Mortgagee so elects, and Mortgagee is authorized to collect and to give receipt therefore. If (a) Mortgagor or any lessee is obligated to rebuild and restore the damaged or destroyed buildings or improvements under the terms of any lease or leases, and (b) such damage or destruction does not result in the cancellation or termination of any such lease, and (c) the insurers do not deny liability with respect to the loss, such proceeds, after deducting therefrom any expenses incurred in the collection thereof, shall be used to reimburse Mortgagor or the lessee (whichever is obligated under the terms of the lease to accomplish the rebuilding and restoration) for the cost of rebuilding and restoring the Units, buildings and improvements on and within the Property. In all other cases such insurance proceeds may, at the option of the Mortgagee, either be applied in reduction of the indebtedness secured hereby, whether or not then due and payable, or be held by Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding and restoration of Units, buildings and improvements on and within the Property.

In the event of rebuilding and repair, such repair and restoration of the buildings and improvements shall be commenced promptly after the occurrence of the loss and shall be so restored and rebuilt as to be of at least equal replacement value and substantially the same character as prior to such damage and destruction, and in the event the estimated costs of rebuilding and restoration exceed twenty-five percent (25%) of the indebtedness then remaining unpaid as secured by this Mortgage, then the drawings and specifications pertaining to such rebuilding and restoration shall be subject to the prior written approval of Mortgagee.

In the event that Mortgagor or any lessee is entitled to reimbursement out of the insurance proceeds, such proceeds shall be made available, from time to time, upon the furnishing to Mortgagee of satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractor's sworn statements and other evidence of cost and of payment as Mortgagee may reasonably require and approve. No payment made by Mortgagee prior to the final completion of the work shall, together with all payments theretofore made, exceed ninety percent (90%) of the value of the work performed to the time of payment, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work free and clear of liens.

Should a loss occur after foreclosure or sale proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoration of the buildings or improvements, shall be used to pay the amount due in accordance with any decree of foreclosure, and the balance, if any, shall be paid to the owner of the equity of redemption if he shall then be entitled to the same, or otherwise as any court having jurisdiction may direct. Following any foreclosure sale, or other sale of any or all of the Property by Mortgagee pursuant to the terms hereof, Mortgagee is authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale and to take such other steps as



# UNOFFICIAL COPY

Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

9. Stamp Tax. If by the laws of the United States of America or of any state having jurisdiction of Mortgageor or of the Property or of the transaction evidenced by the Note and this Mortgage, any tax or fee is due or becomes due in respect of the issuance of the Note hereby secured or the making, recording, and registration of this Mortgage, Mortgageor covenants and agrees to pay such tax or fee in the manner required by such law, and to hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any such tax or fee.

10. Effect of Changes In Law Regarding Taxation. In the event of the enactment after the date hereof of any law of the state in which the Property is located deducting from the value of land for the purposes of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges of liens herein required to be paid by Mortgageor, or changing any of the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in any or all of the Property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then and in any such event Mortgageor, upon demand by Mortgagee, shall pay such taxes or assessment or reimburse Mortgagee therefore; provided, however, that if in the reasonable opinion of legal counsel for Mortgagee it might be unlawful to require Mortgageor to make such payment, or the making of such payment might be construed as imposing a rate of interest beyond the maximum permitted by law, then and in such event Mortgagee may elect by notice in writing given to Mortgageor to declare all of the indebtedness secured hereby to become due and payable sixty (60) days from the giving of such notice.

11. Mortgagee's Reliance on Tax Bills, Etc. In making any payment hereby authorized relating to taxes or assessments or for the purchase, discharge, compromise or settlement of any prior lien, Mortgagee may make such payment according to any bill, statement or estimate secured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof or without inquiry as to the validity or amount of any claim for lien which may be asserted.

12. Mortgagee's Performance of Defaulted Acts. In case of any "Event of Default" (hereinafter defined), after applicable notice and expiration of applicable grace periods, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgageor, in any form and manner deemed expedient and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting any or all of the Property, or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including all reasonable attorneys' fees and any other money advanced by Mortgagee to protect the Property, separately and as a whole, and the lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the Default Rate from the date of expenditure or advance until paid. No inaction on the part of Mortgagee shall be considered as a waiver of any right accruing to it on account of any default on the part of Mortgageor. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, 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; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, provided that if no Event of Default then exists hereunder Mortgagee shall give to Mortgageor ten (10) days' prior written notice thereof.



# UNOFFICIAL COPY

13. Acceleration of Indebtedness in Case of Default. Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

- (a) Mortgagor fails to pay (i) within five (5) days when such payment is due, any installment of principal, interest or other amounts payable pursuant to the Note, or (ii) any installment of real estate taxes attributable to the Property on or before the due date for payment thereof, or (iii) after five (5) days notice any other amount payable pursuant to this Mortgage or any of the other Loan Documents;
- (b) Mortgagor fails to promptly 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 any one or more of the Loan Documents, including, without limitation, (i) the Note, (ii) this Mortgage, (iii) any Subsequent Mortgage, (iv) the Assignment of Rents, (v) the Acknowledgement, (vi) any one or more of the Loan Documents or (vii) any other document or instrument referenced as a "Document" or "Other Agreement" or otherwise evidencing or securing the Note or delivered to induce Mortgagee to disburse the proceeds thereof including, without limitation, any guaranty of the payment or performance of the obligations secured hereby, and (vi) for any other agreement with Mortgagee within thirty (30) days after written notice provided, however, that in the event such failure cannot be cured within said thirty (30) day period, and Mortgagor has otherwise diligently commenced to cure within such thirty (30) days, then Mortgagor shall have such reasonable additional time to cure the default, which default shall in any event be corrected within sixty (60) days after delivery of the above acquired written notice specifying such default, unless the continued operation or safety of the Property, or the priority, validity or enforceability of the lien created by this Mortgage, or any other Loan Document or the value of any or all of the Property is impaired, threatened, or jeopardized;
- (c) The existence of any material inaccuracy or untruth in any representation or warranty contained in this Mortgage or any of the other Loan Documents or of any statement or certification as to facts delivered to Mortgagee by Mortgagor, any co-maker or guarantor of the Note, or any applicant for the loan, evidenced by the Note;
- (d) The occurrence of any one or more events of default in any document, instrument or other agreement between Mortgagee and any guarantor, if any, of the Indebtedness Secured Hereby;
- (e) At any time, Mortgagor files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of all or any substantial part of the property of any of Mortgagor or any or all of the Property, including, without limitation, individual Units
- (f) The commencement of any involuntary petition in bankruptcy against Mortgagor, or the institution against Mortgagor 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

# UNOFFICIAL COPY

similar officer for all or any substantial part of the property of Mortgagor which shall remain undismissed or undischarged for a period of sixty (60) days;

- (g) Any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of Section 30 of this Mortgage;
- (h) If notice is given that any of the Property, or any part of such Property, is subject to levy, attachment, seizure, or confiscation or uninsured loss, provided, however, that the deductible amount on any insurance policy currently in effect on the Property shall not be considered an uninsured loss pursuant to this subsection;
- (i) Mortgagor shall be dissolved, whether voluntarily or involuntarily, and Mortgagor has not taken all actions required to become reinstated;
- (j) Subject to any applicable cure and/or notice periods, any material default shall occur under any material agreement, document or instrument binding upon Mortgagor, or any assets of Mortgagor, including, but not limited to, any default in the payment when due of any principal of or interest on any indebtedness for money borrowed or guaranteed by Mortgagor, or any default in the payment when due, or in the performance or observance of, any material obligation of, or condition agreed to by, Mortgagor with respect to any purchase or lease of any real or personal property or services; or
- (k) The death of any guarantor, as described in the Guaranty

If an Event of Default occurs, following delivery of notice, if applicable, and the expiration of all applicable cure and grace periods, Mortgagee may, at its option, declare the whole of the Indebtedness Hereby Secured to be immediately due and payable without notice to Mortgagor, with interest thereon from the date of such Event of Default at the "Default Rate", as defined in the Note. If while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on any or all of the Property, Mortgagee shall be or become entitled to, and shall accelerate the Indebtedness Hereby Secured, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the Indebtedness Hereby Secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

14. Foreclosure; Expense of Litigation. When the indebtedness or any part thereof secured hereby becomes due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or any part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the order of judgment for foreclosure and sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of said order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of, the Property, separately or as a whole, as the case may be. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or any or all of the Property, including probate, appellate and bankruptcy proceedings, or in preparations for the

# UNOFFICIAL COPY

commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder, and shall be secured by this Mortgage.

At all times, Mortgagor shall appear in and defend any suit, action or proceeding that might in any way in the sole judgment of Mortgagee affect the value of any or all of the Property, including, without limitation, and one or more Units, the priority of this Mortgage or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the indebtedness. Mortgagor shall, at all times, indemnify, hold harmless and reimburse Mortgagee on demand for any and all loss, damage, expense or cost, including cost of evidence of title and reasonable attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage, and shall bear interest within five (5) days of written demand at the Default Rate, and such interest shall be secured hereby and shall be due and payable on demand.

15. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of any or all of the Property, including, without limitation, any one or more Units, shall be distributed and applied in the following order of priority: (a) first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraphs hereof; (b) second, all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; (c) third, all principal, interest and fees remaining unpaid on the Note; and (d) fourth, any excess to any party entitled thereto as their rights may appear on the records of Mortgagee.

16. Appointment of Receiver or Mortgagee In Possession. Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of Mortgagee, appoint a receiver of any or all of the Property, including, without limitation, one or more Units, either before or after foreclosure sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of such Property or whether the same shall be then occupied as a homestead or not; and Mortgagee or any holder of the Note may be appointed as such receiver or as Mortgagee in possession. Such receiver or the Mortgagee in possession shall have power to collect the rents, issues and profits of the Property, including, without limitation, one or more Units, during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any) when Mortgagor, except for the intervention of such receiver or Mortgagee in possession, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of any or all of the Property during the whole of said period. The court from time to time may authorize the receiver or Mortgagee in possession to apply the net income in its hands in payment in whole or in part of: (a) the indebtedness secured hereby or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or the lien of such order or judgment, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

17. Mortgagee's Right to Inspect. Mortgagee shall have the right to inspect the Property, or any part thereof, at all reasonable times upon not less than twenty-four (24) hours prior notice except in the event of an emergency in which event access thereto shall be permitted at any time deemed necessary by Mortgagee for that purpose.

18. Condemnation. Mortgagor hereby assigns, transfers and sets over to Mortgagee the entire proceeds of any award or claim for damage for any of the mortgaged property taken or damages under the power of eminent domain or by condemnation. Mortgagee may elect to apply the proceeds of the award upon



# UNOFFICIAL COPY

or in reduction of the indebtedness secured hereby, whether or not then due and payable, or to require Mortgagee to restore or rebuild, in which event the proceeds shall be held by Mortgagee and used to reimburse Mortgagor for the cost of restoring and rebuilding all buildings, Units and improvements on and within the Property in accordance with plans and specifications to be submitted to and approved by Mortgagee. If Mortgagor or any lessee is obligated to restore and replace the damaged or destroyed buildings or improvements under the terms of any lease or leases, and if such taking does not result in cancellation or termination of such lease, the award shall be used to reimburse Mortgagee or the lessee (whichever is obligated under the terms of the lease to accomplish the rebuilding and restoration) for the cost of rebuilding and restoring of the buildings, Units and improvements of said Property, provided Mortgagee is not then in default under this Mortgage. In the event Mortgagee holds the proceeds to reimburse Mortgagee or any lessee for the costs of rebuilding and restoring any or all of the Property, including, without limitation, any one or more Units, then the proceeds of the award shall be paid out in the same manner as provided in Section 8 hereof for the payment of insurance proceeds in reimbursement of the cost of rebuilding and restoration. If the amount of such award is insufficient to cover the costs of rebuilding and restoration, Mortgagee shall pay such cost in excess of the award before being entitled to reimbursement out of the award. Any surplus which may remain out of said award after payment of such cost of rebuilding and restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby.

## 19. Partial Release Upon Payment and Discharge of Mortgagee's Obligations

(a) In the event Mortgagor sells one or more Units, following receipt of Mortgagee's written consent to each such sale, one hundred percent (100%) of the "Net Proceeds" otherwise payable to Mortgagee shall be paid to Mortgagor as partial repayment of the amounts due under the Loan Documents. Such Net Proceeds shall be allocated to (i) that portion of the prepayment premium due under the Note equal to Forty-Seven Thousand, Two Hundred Fifty Dollars (\$47,250.00) multiplied by a fraction, the numerator of which is the number of Units being sold and the denominator of which is the aggregate number of Units initially constituting the Property, (ii) the then accrued but unpaid interest due under the Note and (iii) the unpaid principal balance then due under the Note.

For purposes hereof, "Net Proceeds" shall mean the proceeds otherwise payable to Mortgagee from such sale(s) as reported on the HUD-1 Settlement Statement, or Disbursement Statement, as the case may be, before and excluding customary deductions or reductions for (i) any closing or other credits afforded to the applicable purchaser, or payable by, Mortgagee for the benefit of the applicable purchaser (excluding real estate tax proration not to exceed one hundred five percent (105%) of the most recent ascertainable real estate tax bill), (ii) reasonable attorneys' fees, (iii) repayment of any obligations of Mortgagee, other than to Mortgagor, and (iv) repayment of any amounts due under the Note.

Upon receipt of such Net Proceeds, Mortgagor, at the sole cost of Mortgagee, shall cause to be filed with the county recorder's office in which this Mortgage shall be filed, a partial release of the Collateral attributable to the Unit or Units sold by Mortgagee from which such Net Proceeds were received.

(b) Upon punctual payment in full of the Indebtedness Hereby Secured and the performance by Mortgagor of all of the obligations imposed on Mortgagor herein, including, without limitation, the full performance of all obligations to be performed under the Loan Documents, then this Mortgage shall be released at the cost of Mortgagor, but otherwise shall remain in full force and effect.

20. Notices. Any notice which either party hereto may desire or be required to give to the other shall be deemed to be an adequate and sufficient notice if given in writing, and service is made by personal delivery or by the mailing of such notice by registered or certified mail, return receipt requested, postage prepaid, addressed to Mortgagor at its address given on the first page hereof or to Mortgagee at its address given on the first page hereof with a copy to Keith A. Zerman, Gardi & Haught, 939 Plum Grove Road, Suite



# UNOFFICIAL COPY

C, Schaumburg, Illinois 60173, or to such other place as either party hereto may by notice in writing to the other party designate as a place for service of notice. Any such notice, demand, request or other communication shall be deemed given when personally delivered or three (3) days after mailing, if mailed.

21. Surrender of Possession. In any case in which, under the provisions of this Mortgage, Mortgagee has a right to declare any or all sums secured hereby to be immediately due and payable, either before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, or in any case where Mortgagee has a right to commence proceedings for the sale of some or all of the Property independent of any foreclosure proceedings, then Mortgagor shall forthwith, upon demand of Mortgagee, surrender to Mortgagee the possession of the Property and Mortgagee shall be entitled to take actual possession of the Property, including, without limitation, each Unit within the Property, or any part thereof personally or by its agents or attorneys, as for condition broken, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Property, including, without limitation, any one or more Units within the Property, together with all documents, books, records, papers and account of Mortgagor or the then owner of the Property relating thereto, and may exclude Mortgagor, its agents or assigns wholly therefrom, and may, as attorney-in-fact or agent of Mortgagor or in its own name as Mortgagee and under the powers herein granted, operate, manage or control the Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the income, rents, issues and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rents, hereby granting full power and authority to exercise each and every of the rights and privileges herein granted at any and all times hereafter, without notice to Mortgagor, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the any or all of the Property as may seem judicious, to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all of such income, rents, issues and profits. Prior to taking possession of the Property, Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease, and unless caused by the gross negligence or willful misconduct of Mortgagee Mortgagor shall and does hereby agree to indemnify and to hold Mortgagee harmless from all liability, loss or damage which it might incur under said leases or under or by reason of the assignment thereof, and of and from any and all claims or demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should Mortgagee incur any such liability, loss, or damage under any of said leases, or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount hereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as Mortgagee may determine:

- (a) to the payment of the operating expenses of some or all of the Property, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions (but not with respect to the renewal of existing leases unless provided for therein)) and other compensation and expenses of seeking and procuring tenants and entering into leases, established claims for damages, if any, and premiums on insurance hereinabove authorized;

# UNOFFICIAL COPY

- (b) to the payment of taxes and special assessments now due or which may hereafter become due on some or all of the Property; and, if this is a leasehold mortgage, of all rents due or which may become hereafter due under the underlying lease;
- (c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of some or all of the Property, including, without limitation, one or more Units therein, and of placing some or all of the Property in such condition as will, in the judgment of Mortgagee, make it readily rentable; and
- (d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

22. Legal Rate of Interest. Notwithstanding anything herein or in the Note contained to the contrary, no provision contained herein and no provision contained in the Note shall be valid to the extent that it would require Mortgagor to pay any amount of interest or any fees, costs or expenses in excess of the legal maximum.

23. Copies of Leases and Facilities for Mortgagee's Inspection. Within forty-eight (48) hours of Mortgagee's request, Mortgagor will furnish to Mortgagee executed counterparts of any such leases and convenient facilities for the audit and verification of any statements required to be furnished by Mortgagor hereunder.

24. Environmental Matters. Without limiting any provision of any environmental indemnity agreement or other document executed in connection herewith:

- (a) Mortgagor, , covenants, represents and warrants that, except as set forth in any environmental survey or other study copies of which have been delivered to, and received by, Mortgagee
  - (i) To the best of Mortgagor's knowledge, no substances, including without limitation, asbestos or any substance containing more than 0.1 percent asbestos, the group of compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances ("Hazardous Material(s)") (any mixture of a Hazardous Material, regardless of concentration, with other materials shall be considered a Hazardous Material) under any Environmental Law (as defined below) have been or shall be installed, used, generated, manufactured, treated, handled, refined, produced, processed, stored or disposed of, or otherwise present in, on or under any part of the Property except as otherwise properly remediated and for which appropriate documentation has been received by Mortgagor and delivered to Mortgagee, including, without limitation, so-called "no further remediation" letters. This provision does not prohibit: (A) the use of unrecycled fuel oil as a boiler fuel; (B) the normal use of consumer products; or (C) the normal use of materials such as cleaning products, copier toner and similar materials routinely used in offices. "Environmental Law(s)" means any law, regulation, order or decree relating to environmental conditions and industrial hygiene, including without limitation, the Resource Conservative

# UNOFFICIAL COPY

and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901 et seq., the comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Toxic Substances Control Act, 15 U.S.C. §§26-1-2629, the Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and all similar federal, state and local environmental statutes and ordinances and the regulations, orders and decrees now or hereafter promulgated thereunder.

- (ii) To the best of Mortgagor's knowledge, no activity has been or shall be undertaken on any part of the Property which would cause: (A) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the any of the Property within the ambit of, RCRA or any other Environmental Law; (B) a release or threatened release of Hazardous Material from the Property within the meaning of, or otherwise bring any part of the Property within the ambit of, CERCLA or SARA or any Environmental Law; or (C) the discharge of Hazardous Material into any watercourse, body of surface or subsurface water or wetland, or the discharge into the atmosphere of any Hazardous Material which would require a permit under any Environmental Law.
- (iii) To the best of Mortgagor's knowledge, no activity has been or shall be undertaken with respect to any or all of the Property which would cause a violation of or support a claim under any Environmental Law except as otherwise properly remediated and for which appropriate documentation has been received by Mortgagor and delivered to Mortgagee, including, without limitation, so-called "no further remediation" letters
- (iv) To the best of Mortgagor's knowledge, no underground storage tanks or underground Hazardous Material deposits are or were located on any part of the Property and subsequently removed or filed except as otherwise properly remediated and for which appropriate documentation has been received by Mortgagor and delivered to Mortgagee, including, without limitation, so-called "no further remediation" letters
- (v) To the best of Mortgagor's knowledge, no investigation, administrative order, litigation or settlement with respect to any Hazardous Material is threatened or in existence with respect to any part of the Property except as otherwise properly remediated and for which appropriate documentation has been received by Mortgagor and delivered to Mortgagee, including, without limitation, so-called "no further remediation" letters.
- (vi) No notice has been served on Mortgagor from any entity, governmental body or individual claiming any violation of any Environmental Law or requiring compliance with any Environmental Law, or demanding payment or contribution for environmental damage or injury to natural resources except as otherwise properly remediated and for which appropriate documentation has been received by Mortgagor and delivered to Mortgagee, including, without limitation, so-called "no further remediation" letters

# UNOFFICIAL COPY

- (b) Mortgagor, agrees unconditionally to indemnify, defend and hold Mortgagee harmless against any:
- (i) loss, liability, damage, expense (including without limitation attorney's fees, legal costs and expenses and time charges of attorneys who may be employees of Mortgagee, whether in or out of court, in original or appellate proceedings or in bankruptcy), claim or defect in title arising from the imposition or recording of a lien, the incurring of costs of required repairs, clean up or detoxification and removal under any Environmental Law with respect to any or all of the Property or liability to any third party arising out of any violation of any Environmental Law; and
  - (ii) other loss, liability, damage, expense (including without limitation, attorney's fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, in each and every case whether in or out of court, in original or appellate proceeds or in bankruptcy) or claim which may be incurred by or asserted against Mortgagee, including without limitation, loss of value of any part of the Property directly or indirectly resulting from the presence on or under, or the discharge, emission or release from, any part of the Property into or upon the land, atmosphere, or any watercourse, body of surface or subsurface water or wetland, arising from the installation, use, generation, manufacture, treatment, handling, refining, production, processing, storage, removal, clean up or disposal of any Hazardous Material, whether or not caused by Mortgagor.
- (c) Mortgagor shall pay, when due, any judgments or claims for damages, penalties or otherwise against Mortgagee and shall assume the burden and expense of defending all suits and administrative proceedings of any description with all persons, political subdivisions or government agencies arising out of the occurrences set forth in (b) of this Section 24. In the event that such payment is not made, Mortgagee, at its sole discretion, may proceed to file suit against Mortgagor to compel such payment.
- (d) THIS SECTION 24 SHALL APPLY TO ANY CLAIM, DEMAND OR CHARGE CONTEMPLATED BY THIS MORTGAGE MADE OR ASSERTED AT ANY TIME AND, WITHOUT LIMITATION, SHALL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THAT ALL OBLIGATIONS OF THE MORTGAGOR OR ANY OTHER PERSON OR ENTITY UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY OTHER RELATED DOCUMENT OR MATTER HAVE BEEN PAID, RELEASED OR FULFILLED IN FULL. Any claim, demand or charge asserted at any time relating to the period for time set forth in this paragraph shall be subject to the terms and conditions of this mortgage. Notwithstanding the above, this Mortgage shall not be construed to impose any liability on Mortgagor for divisible loss or damage resulting solely from Hazardous Material placed, released or disposed on any part of the Property after foreclosure or sale of some or all of the Property pursuant to the Mortgage or acceptance by Mortgagee of a deed in lieu of foreclosure.
- (e) Mortgagor shall immediately advise Mortgagee in writing of:



# UNOFFICIAL COPY

- (i) any governmental or regulatory actions instituted or threatened under any Environmental Law affecting any part of the Property or the matters identified hereunder including, without limitation, any notice of inspection, abatement or noncompliance;
- (ii) all claims made or threatened by any third party against Mortgagor or some or all of the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material;
- (iii) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any part of the Property that could cause any part of the Property to be classified in a manner which may support a claim under any Hazardous Material Law; and
- (iv) Mortgagor's discovery of any occurrence or condition on any part of the Property or any real property adjoining or in the vicinity of any part of the Property which could subject Mortgagor or any part of the Property to any restrictions on ownership, occupancy, transferability or use of any part of the Property under any Hazardous Material Law. Mortgagor shall immediately deliver to Mortgagee any documentation or records as Mortgagee may request in connection with all such notices, inquiries and communications and shall advise Mortgagee promptly in writing of any subsequent developments.
- (v) Mortgagee shall give written notice to Mortgagor of any action against Mortgagee which might give rise to a claim by Mortgagee against Mortgagor under this Mortgage. If any action is brought against Mortgagee, Mortgagor, at Mortgagee's sole option and Mortgagor's expense, may be required to defend against such action with counsel reasonably satisfactory to Mortgagee and, with Mortgagee's sole consent and approval, to settle and compromise any such action. However, Mortgagee may elect to be represented by separate counsel, at Mortgagee's expense, and if Mortgagee so elects any settlement or compromise shall be effected only with the consent of Mortgagee. Mortgagee may elect to join and participate in any settlements, remedial actions, legal proceedings or other actions included in connection with any claims under this Mortgage.

25. Additional Documents. Mortgagor will, at Mortgagor's expense, at any time upon request by Mortgagee, execute and deliver all further assurances of title and all pertinent additional papers, information, records and instruments as may be reasonably required by Mortgagee for effectually carrying out the intentions of the parties hereto.

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

# UNOFFICIAL COPY

27. Amendments in Writing. This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

28. Business Loan. Mortgagor represents and agrees that the loan evidenced by the Note and secured hereby is a business loan within the purview of Section 815 ILCS 205/4 (or any substitute, amended, or replacement statutes) and is transacted solely for the purpose of carrying on or acquiring the business of Mortgagor as contemplated by said Section.

29. Deposits for Taxes and Insurance Premiums[INTENTIONALLY OMITTED]

30. Financial Reporting. Mortgagor covenants and agrees with Lender that, so long as this Mortgage remains in effect, Borrower will furnish Lender with such financial statements and other related information at such frequencies and in such detail as Lender may reasonably request, including, without limitation, as set forth in this Mortgage.

31. Restrictions on Transfer. Except as set forth in Section 19(a) above, and subject to the provisions of Section 32 hereof, it shall be an immediate Event of Default hereunder if, without the prior written consent of Mortgagee, any of the following shall occur, and in any event Mortgagee may condition its consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may in its sole discretion require:

- (a) If Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the Property or any part thereof, or interest therein; provided that prior to the sale or other disposition thereof, such Obsolete Collateral shall have been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility;
- (b) If any partner, shareholder, member, parent, subsidiary or affiliate of Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, mortgage, security interest or other encumbrance or alienation of any such partner's, shareholder's, member's, parent's, subsidiary's or affiliate's interest in Mortgagor to a person who is not a partner, shareholder, parent, subsidiary or affiliate of Mortgagor as of the date of this Mortgage;
- (c) If a new member shall be admitted to Mortgagor or if a current member of Mortgagor transfers his, her or its equity interest in Mortgagor to a person who is not a member of Mortgagor as of the date of this Mortgage;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that provisions of this Section 31 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Property, or such member's interest in Mortgagor; and provided further that no consent by Mortgagee to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section 31, shall constitute a consent to or waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Mortgagee consequent thereon

32. Permitted Transfers The provisions of Section 31 hereof shall not apply to any of the following:

# UNOFFICIAL COPY

- (a) Liens in favor of Mortgagees securing the Indebtedness Hereby Secured including, without limitation, liens created and existing under this Mortgage and the Existing Mortgages; and
- (b) The lien of current real estate taxes and assessments not in default

33. Uniform Commercial Code This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois (herein called the "Code") with respect to any part of the Property which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all herein called "Collateral") provided such Collateral is owned by Mortgagor; all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property; and the following provisions of this Section 33 shall not limit the generality or applicability of any other provision of this Mortgage, but shall be in addition thereto:

- (a) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than (i) the lien hereof; and (ii) those items identified on Schedule B of title commitment number 2013-02223-PT issued by Premier Title as agent for Chicago Title Insurance Company (the "Title Company") that are not to be insured over by the Title Company (collectively, the "Permitted Exceptions");
- (b) The Collateral is to be used by Mortgagor solely for business purposes, being installed upon the Property for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Property;
- (c) The Collateral will be kept at the Property and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagor or any other person; and the Collateral may be affixed to the Property but will not be affixed to any other real estate;
- (d) The only persons having any interest in the Property are Mortgagor, Mortgagee and persons occupying the portions of the Property as tenants only;
- (e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statement and other documents in form satisfactory to Mortgagee, and will do all such acts and things as Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances; and Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices whenever filing or recording is deemed by Mortgagee to be necessary or desirable;
- (f) Upon the occurrence of any Event of Default hereunder and at any time thereafter (such Event of Default not having previously been cured), Mortgagee, at its option, may declare the Indebtedness Hereby Secured immediately due and payable, all as

# UNOFFICIAL COPY

more fully set forth in Section 13 hereof, and thereupon Mortgagee shall have the remedies of a Secured Party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefore, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code);

- (g) Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral, subject to Mortgagor's right of redemption, if any, in satisfaction of Mortgagor's obligations as provided in the Code; provided that (i) Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on any or all of the Property, and (ii) Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties;
- (h) Mortgagee will give Mortgagor at least ten (10) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of Mortgagor determined as provided in Section 20 hereof, at least ten (10) days before the time of the sale or disposition;
- (i) Mortgagee may buy at any public sale, and if the Collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at any private sale, and any such sale may be held as part of and in conjunction with any foreclosure sale of any or all of the Property, the Collateral and any portion of the Property to be sold as one lot if Mortgagee so elects;
- (j) The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness Hereby Secured; and Mortgagee will account to Mortgagor for any surplus realized on such disposition;
- (k) The remedies of Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of Mortgagee, including having the Collateral deemed part of the Property upon any foreclosure thereof, so long as any part of the Indebtedness Hereby Secured remains unsatisfied;
- (l) The terms and provisions contained in this Section 33 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code;
- (m) Mortgagor hereby waives for itself and, to the fullest extent not prohibited by applicable law, for any subsequent lienor, any right to apply for an order, decree, judgment, or ruling requiring or providing for a marshalling of assets which would require Mortgagee to proceed against certain of the Property before proceeding



# UNOFFICIAL COPY

against any of the other Property. Mortgagee shall have the right to proceed, in its sole discretion, against some or all of the Property in such order and in such portions as Mortgagee may determine, without regard to the adequacy of value or other liens on any such Property. No such action shall in any way be considered as a waiver of any of the rights, benefits, liens or security interests created hereby or by any of the Loan Documents; and

- (n) If the indebtedness hereby secured or any part thereof, including any amounts advanced by Mortgagee, are used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon any part of the Property or any part thereof, then Mortgagee shall be subrogated to such other liens or encumbrances and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same, whether or not any such lien, encumbrance or additional security is canceled of record upon such payment or advancement or otherwise, and in addition to the security afforded by this Mortgage and the other Loan Documents.

## 34. Effect of Extensions of Time and Amendments. Mortgagor covenants and agrees that:

- (a) If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in any part of the Property, shall be held to assent to such extension, variation or release, and the liability, if any, and the lien and all provisions hereof shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release; and
- (b) Nothing in this Section contained shall be construed as waiving any provision of Section 32 hereof which provides, among other things, that it shall constitute an Event of Default if any of the Property be sold, conveyed or encumbered.

## 35. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct; and:

- (a) In the case of foreclosure of this Mortgage, the court, in its decree, may provide that Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the purchaser at foreclosure sale may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said purchaser and any such foreclosure decree may further provide that in case of a redemption under said decree as provided by statute, such redeemer may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer; and
- (b) In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

# UNOFFICIAL COPY

36. Waiver. To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decrees, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that some or all of the Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption under the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101, et seq., (1987) (the "Act"), on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to some or all of the Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor acknowledges that no part of the Property constitutes agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-219 of the Act.

**MORTGAGOR HEREBY, AND MORTGAGEE BY ITS ACCEPTANCE HEREOF, EACH WAIVES THE RIGHT OF A JURY TRIAL IN EACH AND EVERY ACTION ON THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS, IT BEING ACKNOWLEDGED AND AGREED THAT ANY ISSUES OF FACT IN ANY SUCH ACTION ARE MORE APPROPRIATELY DETERMINED BY THE COURTS; FURTHER, MORTGAGOR HEREBY CONSENTS AND SUBJECTS ITSELF TO THE JURISDICTION OF COURTS OF THE STATE OF ILLINOIS AND, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE VENUE OF SUCH COURTS IN THE COUNTY IN WHICH THE MORTGAGED PROPERTY IS LOCATED.**

37. Indemnification. Mortgagor does hereby covenant and agree that, except for Mortgagee's gross negligence or acts of wilful misconduct:

- (a) Mortgagee shall have no responsibility for the control, care, management or repair of any or all of the Property and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of any or all of the Property resulting in loss, injury or death to any tenant, licensee, immediate stranger or other person;
- (b) No liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers hereby granted to Mortgagee; and Mortgagor hereby expressly waives and releases any such liability;

# UNOFFICIAL COPY

- (c) Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of (i) exercise by Mortgagee of any right hereunder, and (ii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any violation of, or liability under any Environmental Regulation (other than due solely to an act or omission of Mortgagee after obtaining possession or control of the Property) or of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the Indebtedness Hereby Secured or in any contracts, agreements or other instruments relating to or affecting the Property; any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefore (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefore on demand, together with interest thereon at the then applicable rate of interest accruing under the Note from the date of demand to the date of payment.

38. Mortgagor Not a Joint Venturer or Partner. Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor; and without limiting the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness Hereby Secured, or otherwise.

39. Title in Mortgagor's Successors. In the event that the ownership of any or all of the Property or any part thereof becomes vested in a person or persons other than Mortgagor:

- (a) Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with Mortgagor; and
- (b) Mortgagor will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Property; but nothing in this Section 39 contained shall vary or negate the provisions of Section 32 hereof.

40. Costs and Attorneys' Fees. Mortgagor agrees that all costs, charges and expenses, including all reasonable attorneys' fees incurred by Mortgagee arising out of or in connection with any action, proceeding or hearing, legal or quasi legal, or the preparation therefore, in any way affecting or pertaining to the Mortgage, the Note, any of the Loan Documents, the Indebtedness Hereby Secured or the Property, shall be promptly paid by Mortgagor. If funds for same are advanced by Mortgagee, all such sums so advanced shall be added to the Indebtedness Hereby Secured and shall bear interest at the Default Rate payable under the Note from the date of said advance, and shall be due and payable on demand.

41. Waiver of Defense. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good or available to the party interposing same in an action at law upon the Note hereby secured.

42. Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every, from time to time, record owner of any or all of the Property or any other

# UNOFFICIAL COPY

person having an interest therein) and shall inure to the benefit of Mortgagee and its successors and assigns and (a) wherever herein Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and (b) each such from time to time holder of the Note shall have and enjoy all of the rights, privileges, powers, options, benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated Mortgagee.

43. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.
44. Time. Time is of the essence hereof and of the Note and all other instruments or loan documents delivered in connection with the Indebtedness Hereby Secured, and no waiver of any obligation or option hereunder or thereunder hereby shall at any time thereafter be held to be a waiver of such other terms hereof or of the instruments delivered in connection with the Indebtedness Hereby Secured.
45. Governing Laws. This Mortgage shall be governed by, and construed in accordance with the laws of the state of Illinois.
46. Mortgagor Will Not Discriminate. Mortgagor covenants and agrees at all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed or national origin including, but not limited to, the requirements of Title VIII of the 1968 Civil Rights Act, or any substitute, amended or replacement Acts.
47. Interest at the Default Rate. Without limiting the generality of any provision herein or in the Note contained, from and after the occurrence of any Event of Default hereunder, all of the indebtedness Hereby Secured shall bear interest at the Default Rate.
48. Estoppel Certificate. Mortgagor, within fifteen (15) days after receipt of a written request by Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the Indebtedness Hereby Secured and whether or not any default, offset or defense then is alleged to exist against the Indebtedness Hereby Secured and, if so, specifying the nature thereof.
49. Captions and Pronouns. The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof; and whenever the context requires or permits, the singular number shall include the plural, the plural shall include the singular and the masculine, feminine and neuter genders shall be freely interchangeable.
50. Municipal and Zoning Requirements. Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Property or any interest therein to be so used. Similarly, no building or other improvement on the Property, or any part thereof, shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Except for the contemplated unification of contiguous Units to be owned by Mortgagor, which combined Units shall include some or all of the Property, Mortgagor shall not by act or omission impair the integrity of any of the Property as a single zoning lot separate and apart from all other premises. Any act or omission by



# UNOFFICIAL COPY

Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

51. Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of any portion or Unit within the Property having an interest in the Property prior to that of Mortgagee. The failure to join any such tenant or tenants of any part of the Property as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness Hereby Secured, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of any part of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.
52. Option of Mortgagee to Subordinate. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county wherein the Property is situated, of a unilateral declaration to that effect.
53. Use of Proceeds. Mortgagor warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulations G, T, U and X issued by the Board of Governors of the Federal Reserve System.
54. Mortgagee in Possession. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of any or all of the Property by Mortgagee pursuant to this Mortgage.
55. No Merger. It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to any or all of the Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to any or all of the Property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.
56. Subordination of Property Manager's Lien. Any property management agreement for any or all of the Property entered into hereafter by Mortgagor with a property manager, shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have pursuant to 770 ILCS 60/0.01 (1994) of the Illinois Compiled Statutes. Such property management agreement or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the county where the Property is located. In addition, Mortgagor shall cause the property manager to enter into a Subordination of Management Agreement with Mortgagee, in recordable form, whereby the property manager subordinates present and future lien rights and those of any party claiming by, through or under the property manager to the lien of this Mortgage.

## UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has executed these presents as of the day and year first above written.

GENESIS 1, LLC, an Illinois limited liability company

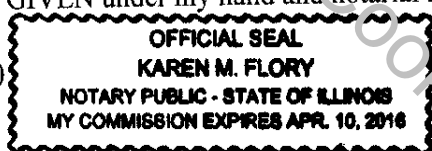
BY: [Signature]  
ITS: MEMBER

STATE OF ILLINOIS )  
) ss:  
COUNTY OF DePue

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Ronald A. Flours, as a member of GENESIS 1, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of him., for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 5th day of July, 2013.

(SEAL)



Karen M. Flory  
Notary Public

My commission expires: April 10, 2016

PREMIER TITLE  
1350 W. NORTHWEST HIGHWAY  
ARLINGTON HEIGHTS, IL 60004  
(847) 255-7100

# UNOFFICIAL COPY

## EXHIBIT "A" Legal Description

File No.: 2013-02223-PT

LOT 14 IN LYNWOOD TERRACE UNIT NUMBER 5 BEING A SUBDIVISION OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 35 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 2450 Terrace Avenue, Lynwood, IL 60411

PERMANENT INDEX NO.: 33-07-111-014-0000

Property of Cook County Clerk's Office