

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1403801007 Fee: \$84.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 02/07/2014 09:29 AM Pg: 1 of 24

Report Mortgage Fraud
800-532-8785

The property identified as: **Parcel:** 17-22-100-010-0000

Address:

Street: 1224 South Wabash Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60605

Lender: Bank of America, N.A.

Borrower: ASP Realty, Inc.

Loan / Mortgage Amount: \$6,000,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/10 et seq. because it is commercial property.

Certificate number: 59337F86-D736-4C7D-A50C-AF36EA2742E7

Execution date: 01/22/2014

Y
24
N
Y
RPT 10

24

NL 643466 IL 59 8 of 15

UNOFFICIAL COPY

This instrument prepared in consultation with counsel in the state in which the Mortgaged Property is located by the attorney described below and after recording return to:

Athy O'Keeffe, Esq.
Cahill Gordon & Reindel LLP
80 Pine Street
New York, NY 10005
(212) 701-3000

Store No.: 3345

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (Cook County, Illinois (the "State"))

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Mortgage**"), dated as of January 24, 2014, is made and executed by ASP REALTY, INC., a Delaware corporation ("**Mortgagor**"), having its principal offices at c/o New Albertson's Inc., 250 Parkcenter Boulevard, P.O. Box 20, Boise, ID 83706, in favor of BANK OF AMERICA, N.A., a national banking association, having an office at 100 Federal Street, 9th Floor, Boston, Massachusetts 02110, as Collateral Agent for the benefit of the Credit Parties (as each such term is defined in the Credit Agreement defined below) (and, to the extent provided for in Section 6.1 of this Mortgage, for the benefit of the 2037 ASC Debentures Holders (as such term is defined in the Security Agreement)).

RECITALS

A. Pursuant to that certain Asset-Based Revolving Credit Agreement dated as of January 24, 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among New Albertson's Inc., an Ohio corporation (the "**Lead Borrower**"), the Persons (such term and each other capitalized term used and not defined herein having the meaning given to it in the Credit Agreement) named on Schedule 1.01 thereto or which become Borrowers hereafter in accordance with the terms thereof (together with the Lead Borrower, collectively, the "**Borrowers**"), NAI Holdings LLC ("**Holdco**"), the Guarantors, each lender from time to time party thereto (collectively, the "**Lenders**" and individually, a "**Lender**"), Bank of America, N.A. as Administrative Agent and Collateral Agent; and the Co-Syndication Agents and Co-Documentation Agents, the Lenders have agreed to make to or for the account of the Borrowers certain Loans and issue certain Letters of Credit.

B. The Borrowers, the other grantors from time to time party thereto, and the Collateral Agent have also entered into the Security Agreement pursuant to the Credit Agreement.

UNOFFICIAL COPY

C. The Mortgagor has, pursuant to the Facility Guaranty agreed to, among other things, unconditionally guarantee the Guaranteed Obligations (as defined in the Facility Guaranty).

D. The Mortgagor will receive substantial benefits from the execution, delivery and performance of the Secured Obligations (as such term is defined in the Security Agreement) and is, therefore, willing to enter into this Mortgage.

E. It is a condition to the obligations of the Lenders to make the Loans under the Credit Agreement and a condition to the L/C Issuer issuing Letters of Credit under the Credit Agreement that the Mortgagor execute and deliver the applicable Loan Documents, including this Mortgage.

F. This Mortgage is made by the Mortgagor in favor of the Collateral Agent for its benefit and the benefit of the Credit Parties (and, to the extent provided for in Section 6.1 of this Mortgage, for the benefit of the 2037 ASC Debentures Holders) to secure the payment and performance of all of the Secured Obligations (as such term is defined in the Security Agreement) (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations (as such term is defined in the Security Agreement)).

GRANTING CLAUSES

To secure the payment and performance in full of all the Secured Obligations (and, to the extent provided for in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations), Mortgagor does hereby convey, mortgage, warrant, grant, assign, transfer pledge and deliver unto Collateral Agent with statutory power of sale (subject to applicable law) for its benefit and for the benefit of the other Credit Parties (and, to the extent provided for in Section 6.1 of this Mortgage, for the benefit of the 2037 ASC Debentures Holders), and does hereby grant to Collateral Agent for its benefit and for the benefit of the other Credit Parties (and, to the extent provided for in Section 6.1 of this Mortgage, for the benefit of the 2037 ASC Debentures Holders) a security interest in and lien upon, all of Mortgagor's right, title and interest in, to and under the following described property, whether now owned or held or hereafter acquired from time to time:

(A) The land legally described in attached **Exhibit A ("Land")**;

(B) All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land and all machinery, appliances, equipment, furniture and all other personal property of every kind or nature which constitute fixtures with respect to the Land, together with all extensions, additions, improvements, substitutions and replacements of the foregoing ("**Improvements**");

(C) All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired ("**Appurtenances**");

UNOFFICIAL COPY

(D)(i) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land, Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto;

(ii) All compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage to or taking of all or any portion of the Land, Improvements or Appurtenances by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Land, Improvements, Appurtenances or of other property, or (b) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances or any part thereof; and, except as otherwise provided herein or in the Credit Agreement, Collateral Agent is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and, except as otherwise provided herein or in the Credit Agreement, to apply the same toward the payment of the indebtedness and other sums secured hereby; and

(iii) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements or Appurtenances;

(E) All rents, issues, profits, income and other benefits now or hereafter arising from or in respect of the Land, Improvements or Appurtenances (the “Rents”);

(F) Any and all leases, licenses and other occupancy agreements now or hereafter affecting the Land, Improvements or Appurtenances, together with all security therefor and guaranties thereof and all monies payable thereunder, and all books and records owned by Mortgagor which contain evidence of payments made under the leases and all security given therefor (collectively, the “Leases”);

(G) Any and all after-acquired right, title or interest of Mortgagor in and to any of the property described in the preceding Granting Clauses; and

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

All of the mortgaged property described in the Granting Clauses is hereinafter referred to as the “**Mortgaged Property.**”

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Collateral Agent, its successors and assigns forever, for its benefit and for the benefit of the other Credit Parties (and, to the extent provided for in Section 6.1 of this Mortgage, for the benefit of the 2037 ASC Debentures Holders) for purposes of securing the payment and performance in full of all the Secured Obligations (and, to the extent provided for in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations), and hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State of Illinois.

ARTICLE I. COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees with Collateral Agent as follows:

UNOFFICIAL COPY

SECTION 1.1. **Performance under Credit Agreement and Mortgage.**

Mortgagor shall perform, observe and comply with or cause to be performed, observed and complied with in a complete and timely manner, so as not to cause an Event of Default (as defined herein), all provisions hereof, of the Credit Agreement, and every instrument evidencing or securing the Secured Obligations (and, to the extent provided for in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations).

SECTION 1.2. **General Covenants and Representations.** Mortgagor covenants, represents and warrants that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor owns in fee simple that portion of the Mortgaged Property which is real property, and has good and valid title to it and the balance of the Mortgaged Property free and clear of all liens, security interests, charges and encumbrances whatsoever, except for Permitted Encumbrances; and (b) Mortgagor will maintain and preserve the lien of this Mortgage as a lien on the Mortgaged Property, subject only to (x) the Permitted Encumbrances or (y) as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, until the Secured Obligations (and, to the extent provided for in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) have been paid in full and this Mortgage has been released in whole pursuant to Section 4.11 hereof.

SECTION 1.3. **Compliance with Laws and Other Restrictions.** Mortgagor covenants and represents that the Land and the Improvements and the use thereof presently comply with all Laws in accordance with Section 6.08 of the Credit Agreement.

SECTION 1.4. **Taxes and Other Charges.** Except for failures that could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, Mortgagor shall pay promptly when due and payable all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or in connection with this Mortgage (including any mortgage recording taxes) or the Credit Agreement; provided, however, that Mortgagor may in good faith contest the validity, applicability or amount of any tax, assessment or other charge, in accordance with the terms of the Credit Agreement.

SECTION 1.5. **Mechanic's and Other Liens.** Except as otherwise may be provided by the Credit Agreement, Mortgagor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due or payable) to be created upon or against the Mortgaged Property; provided, however, that Mortgagor may in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted lien, in accordance with the terms of the Credit Agreement.

SECTION 1.6. **Insurance and Condemnation.**

(a) **Insurance Policies.** Mortgagor shall obtain and keep in full force and effect the policies of insurance required by Section 6.07 of the Credit Agreement pursuant to the terms thereof.

UNOFFICIAL COPY

(b) **Adjustment of Loss; Application of Proceeds.** Except as otherwise may be provided by the Credit Agreement, Collateral Agent is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies covering the Mortgaged Property and to collect and receive the proceeds from any such policy or policies. The entire amount of such proceeds, awards or compensation shall be applied in accordance with Section 2.05 of the Credit Agreement.

(c) **Condemnation Awards.** Except as otherwise may be provided by the Credit Agreement, Collateral Agent shall be entitled to all compensation, awards, damages, claims, rights of action and proceeds of, or on account of, (i) any damage or taking, pursuant to the power of eminent domain, of the Mortgaged Property or any part thereof, (ii) damage to the Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of other property, or (iii) the alteration of the grade of any street or highway on or about the Mortgaged Property. Except as may otherwise be provided by the Credit Agreement, Collateral Agent is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith. Mortgagor shall pay all out-of-pocket reasonable fees, costs and expenses, including reasonable and documented attorney's fees, incurred by the Collateral Agent in connection therewith and in seeking and obtaining any award or payment on account thereof. The entire amount of such proceeds, awards or compensation shall be applied in accordance with Section 2.05 of the Credit Agreement.

(d) **Obligation to Repair.** In the event the Mortgagor is permitted or required to perform any restoration in accordance with the provisions of Section 2.05 of the Credit Agreement, the Mortgagor shall perform such restoration in accordance with the provisions thereof.

SECTION 1.7. Inspection. The Mortgagor shall permit the Collateral Agent, and its agents, representatives and employees to inspect the Mortgaged Property in accordance with Section 6.10 of the Credit Agreement.

SECTION 1.8. Intentionally Omitted.

SECTION 1.9. Care of the Mortgaged Property.

(i) Mortgagor shall preserve and maintain the Mortgaged Property in the condition required by the Credit Agreement.

(ii) Mortgagor represents and warrants that no portion of the Land is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts promulgated by the Federal Emergency Management Agency or any successor thereto or, if any portion of the Land is located within such area, the Mortgagor has obtained the flood insurance prescribed in the Credit Agreement.

SECTION 1.10. Transfer or Encumbrance of the Mortgaged Property. Except as permitted by the Credit Agreement, Mortgagor shall not permit or suffer to occur any

UNOFFICIAL COPY

sale, assignment, conveyance, transfer, mortgage, lease or encumbrance of the Mortgaged Property, any part thereof, or any interest therein, without the prior written consent of Collateral Agent not to be unreasonably withheld, conditioned or delayed.

SECTION 1.11. Further Assurances. At any time and from time to time, upon Collateral Agent's reasonable request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Collateral Agent, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and refiled at such time and in such offices and places as shall be deemed desirable by Collateral Agent, any and all such further mortgages or deeds of trust, security agreements, financing statements, instruments of further assurance, certificates and other documents as Collateral Agent may reasonably require in order to effectuate or perfect, or to continue and preserve the obligations under, this Mortgage.

SECTION 1.12. Assignment of Rents. Mortgagor absolutely and unconditionally grants, bargains, sells and conveys the Rents to Collateral Agent to provide a source of payment of the Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) subject to the license granted to Mortgagor below. Mortgagor and Collateral Agent intend that this conveyance be presently and immediately effective without any further action on the part of either party, and, specifically, Collateral Agent shall be entitled, at its option, upon the occurrence and during the continuance of an Event of Default, to all Rents, whether or not Collateral Agent takes possession of the Mortgaged Property. Such assignment and grant shall continue in effect during the continuance of an Event of Default until the Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) are paid in full and this Mortgage has been released in whole pursuant to Section 4.11 hereof, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor during the continuance of an Event of Default to the entry by Collateral Agent upon and taking possession of the Mortgaged Property by Collateral Agent pursuant to such grant, whether or not foreclosure proceedings have been instituted. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Mortgagor shall have the right and authority to continue to collect the Rents as they become due and payable in accordance with the provisions of the applicable Lease; provided, however, that no prepayment of Rent shall in any event result, individually or in the aggregate, in a Material Adverse Effect on the value of the Mortgaged Property.

SECTION 1.13. After-Acquired Property. To the extent permitted by, and subject to, applicable law, the lien of this Mortgage shall automatically attach, without further act, to all property hereafter acquired by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof.

SECTION 1.14. Leases Affecting Mortgaged Property. Mortgagor shall comply with and perform in a complete and timely manner in all material respects all of its obligations as landlord under all Leases affecting the Mortgaged Property or any part thereof. The assignment contained in Section 1.12 shall not be deemed to impose upon Collateral Agent any of the obligations or duties of the landlord or Mortgagor provided in any Lease.

UNOFFICIAL COPY

SECTION 1.15. Execution of Leases. Except as permitted by the Credit Agreement, Mortgagor shall not permit any Leases to be made of the Mortgaged Property, or to be modified, terminated, extended or renewed, without the prior written consent of Collateral Agent.

SECTION 1.16. Security Agreement and Fixture Filing. This Mortgage is both a real property mortgage and a security agreement (as "security agreement" is defined in the Uniform Commercial Code as enacted and in effect in the State (the "UCC")). The information contained in this Section 1.16 is provided in order that this Mortgage shall comply with the requirements of the UCC for a mortgage to be effective as a financing statement filed as a fixture filing. Capitalized terms not otherwise defined in this Section 1.16 shall have the meaning ascribed to them in the UCC. The Debtor is Mortgagor, the Secured Party is Collateral Agent, Mortgagor is the record owner of the Land, and the mailing addresses of Mortgagor/Debtor and Collateral Agent/Secured Party are as set forth in the preamble to this Mortgage. The types, or the items, of collateral covered hereby include goods that are or are to become fixtures with respect to the Land and Improvements located thereon. The filing of this Mortgage in the real estate records of the county in which the Land is located shall operate from the time of filing as a "fixture filing" within the meaning of Section 9-102(a)(40) and under Section 9-502(c) of the UCC with respect to all portions of the Mortgaged Property that are or are to become fixtures related to the Land and Improvements located thereon.

SECTION 1.17. Secured Obligations. This Mortgage secures, and the Mortgaged Property is collateral security for, the payment and performance in full when due of the Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations).

Notwithstanding any of the other provisions set forth in this Section 1.17 or anything else contained in this Mortgage or any other Loan Document, for so long as the New Alberston's Indenture is in effect or includes any limitation on the amount of Indebtedness of the NAI Group that may be secured by the NAI Restricted Collateral, the aggregate amount of all Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) secured under the Security Documents by NAI Restricted Collateral shall not, at any time, exceed the Maximum NAI Credit Facility Amount (as such term is defined in the Security Agreement). It is understood and acknowledged by the parties hereto (including, by its acceptance of the benefit of this Mortgage, each Credit Party and, to the extent applicable pursuant to Section 6.1 of this Mortgage, each 2037 ASC Debenture Holder) that (w) from time to time after the Closing Date, the total amount of the Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) may be in excess of the Maximum NAI Credit Facility Amount then in effect, (x) as of the Closing Date, the Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) in excess of the Maximum NAI Credit Facility Amount are not secured by any NAI Restricted Collateral hereunder or under any other Security Document, (y) at any time after the Closing Date, any Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) in excess of the Maximum NAI Credit Facility Amount in effect at such time shall not be secured by any NAI Restricted Collateral hereunder or under any other Security Document and (z) in no event shall any Lien (as defined in the New Alberston's Indenture) on any NAI Restricted Collateral in favor of any Credit Party (or

UNOFFICIAL COPY

to the extent applicable pursuant to Section 6.1 of this Mortgage, any 2037 ASC Debenture Holder) created hereunder or under any other Security Document at any time secure any Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) in excess of the Maximum NAI Credit Facility Amount then in effect.

ARTICLE II. DEFAULTS

SECTION 2.1. **Event of Default.** The term “Event of Default,” wherever used in this Mortgage, shall mean the occurrence of an “Event of Default” under and as defined in the Credit Agreement.

ARTICLE III. REMEDIES

SECTION 3.1. **Acceleration of Maturity.** If an Event of Default shall have occurred and be continuing, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon in accordance with the Default Rate, and all other Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) (or such parts as Collateral Agent may elect) shall, at the option of Collateral Agent, become due and payable without notice or demand, time being of the essence.

SECTION 3.2. **Right of Collateral Agent to Enter and Take Possession.** If an Event of Default should have occurred and be continuing, Mortgagor, upon demand of Collateral Agent, shall forthwith surrender to Collateral Agent the actual possession of the Mortgaged Property, and if and to the extent permitted by law, Collateral Agent may enter and take possession of all the Mortgaged Property, and may exclude Mortgagor and its agents and employees wholly therefrom. Upon every such entering upon or taking of possession, Collateral Agent may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and Collateral Agent may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property, including those past due as well as those accruing thereafter, and, after deducting (i) all reasonable expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (ii) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions reasonably necessary; (iii) the cost of such insurance; (iv) such taxes, assessments and other charges prior to the lien of this Mortgage as Collateral Agent may determine to pay; (v) other proper charges upon the Mortgaged Property or any part thereof; and (vi) the reasonable compensation and documented out-of-pocket expenses and disbursements of the attorneys and agents of Collateral Agent, shall apply the remainder of the monies so received by Collateral Agent, in accordance with the provisions of the Credit Agreement.

SECTION 3.3. **Receiver.** If an Event of Default shall have occurred and be continuing, upon application to a court of competent jurisdiction, Collateral Agent shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, prof-

UNOFFICIAL COPY

its, issues, and revenues thereof. Mortgagor will pay to Collateral Agent upon demand all reasonable and documented out-of-pocket expenses incurred by Collateral Agent, including receiver's fees, attorneys' fees, costs and agents' compensation, incurred pursuant to the provisions contained in this Section 3.3; and all such expenses shall be secured by this Mortgage.

SECTION 3.4. Collateral Agent's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Collateral Agent may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations); (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law; and (c) to pursue any other remedy available to it, all as Collateral Agent shall deem most effectual for such purposes.

SECTION 3.5. Power of Sale. If an Event of Default shall have occurred and be continuing, to the extent allowed by State law, Collateral Agent may sell the Mortgaged Property to the highest bidder at public auction in front of the Courthouse door in the county where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold all according to the laws of the State governing sales of land under mortgages, and, upon payment of the purchase money, Collateral Agent or any person conducting the sale for Collateral Agent is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Collateral Agent may bid at said sale and purchase the Mortgaged Property, or any part thereof, if Collateral Agent is the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any manner Collateral Agent may elect.

SECTION 3.6. Application of Foreclosure Proceeds. (i) The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Mortgaged Property pursuant to the exercise by the Collateral Agent of its remedies shall be applied, together with any other sums then held by the Collateral Agent pursuant to this Mortgage, in accordance with and as set forth in Section 8.03 of the Credit Agreement.

(ii) In making the determination and allocations required by this Section 3.6, the Collateral Agent may conclusively rely upon information supplied by the 2037 ASC Debentures Trustee (as such term is defined in the Security Agreement) as to the amounts of unpaid principal and interest and other amounts outstanding with respect to the 2037 ASC Debentures Obligations and the Collateral Agent shall have no liability to any of the Credit Parties for actions taken in reliance on such information; provided that nothing in this sentence shall prevent Mortgagor from contesting any amounts claimed by any Credit Party in any information so supplied. All distributions made by the Collateral Agent pursuant to this Section 3.6 shall be (subject to any decree of any court of competent jurisdiction) final (absent manifest error), and the Collateral Agent shall have no duty to inquire as to the application by the 2037 ASC Debentures Trustee of any amounts distributed to the 2037 ASC Debentures Trustee.

(iii) If, despite the provisions of this Mortgage, any Credit Party shall receive any payment or other recovery in excess of its portion of payments on account of the Secured Obliga-

UNOFFICIAL COPY

tions to which it is then entitled in accordance with this Mortgage, such Credit Party shall hold such payment or other recovery in trust for the benefit of all Credit Party hereunder for distribution in accordance with this Section 3.6.

SECTION 3.7. Collateral Agent's Option on Foreclosure. Upon the occurrence and during the continuance of an Event of Default, at the option of Collateral Agent, this Mortgage may be foreclosed as provided by law, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Collateral Agent exercises its option to foreclose this Mortgage, Collateral Agent may at its option, foreclose this Mortgage subject to or prior to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceedings instituted by Collateral Agent to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

SECTION 3.8. Waiver of Exemption and Redemption. Upon the occurrence and during the continuance of an Event of Default, Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby. Mortgagor hereby waives all rights of appraisal, sale and redemption allowed under any law or laws of the State, or the laws of any other state or jurisdiction.

SECTION 3.9. Remedies Cumulative. No right, power or remedy conferred upon or reserved to Collateral Agent by the Credit Agreement, this Mortgage or any other instrument evidencing or securing the Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Credit Agreement or any instrument evidencing or securing the Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations), or now or hereafter existing at law, in equity or by statute.

ARTICLE IV. MISCELLANEOUS PROVISIONS

SECTION 4.1. Successors and Assigns Included in Parties. Whenever Mortgagor or Collateral Agent are named or referred to herein, successors and assigns of such person or entity shall be included, and all covenants and agreements contained in this Mortgage shall bind the successors and assigns of Mortgagor, including any subsequent owner of all or any part of the Mortgaged Property and inure to the benefit of the successors and assigns of Collateral Agent for the benefit of the Credit Parties (and, to the extent provided in Section 6.1 of this Mortgage, for the benefit of the 2037 ASC Debentures Holders).

SECTION 4.2. Notices. Unless otherwise provided herein or in the Credit Agreement, any notice or other communication herein required or permitted to be given shall be

UNOFFICIAL COPY

given in the manner and become effective as set forth in the Credit Agreement, as to the Mortgagor, addressed to it at the address of the Lead Borrower set forth in the Credit Agreement and as to the Collateral Agent, addressed to it at the address set forth in the Credit Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other parties hereto complying as to delivery with the terms of this Section 4.2; provided that (i) any notice to the 2037 ASC Debentures Trustee may be made to its address as set forth in the most recent copy of the ASC Indenture provided to the Collateral Agent by the Borrowers or in a written notice of such address provided to the Collateral Agent by the 2037 ASC Debentures Trustee and (ii) notice to any 2037 ASC Debentures Trustee shall be deemed sufficient notice to the 2037 ASC Debentures Holders for all purposes hereunder.

SECTION 4.3. Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

SECTION 4.4. Invalid Provisions. In the event that any of the covenants, agreements, terms or provisions contained in this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

SECTION 4.5. Changes. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Credit Agreement; provided, however, that the requisite written consent of the 2037 ASC Debentures Holders and/or the 2037 ASC Debentures Trustee under the 2037 ASC Debentures shall be required with respect to any release, waiver, amendment or other modification of this Mortgage that would materially and adversely affect the rights of the 2037 ASC Debentures Holders to equally and ratably share in the security provided for herein with respect to the Mortgaged Property. Except as set forth in this Section 4.5, neither the 2037 ASC Debentures Holders nor any 2037 ASC Debentures Trustee shall have any rights to approve any release, waiver, amendment, modification, charge, discharge or termination with respect to this Mortgage. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by Mortgagor from the terms of any provision hereof in each case shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Mortgage or any other document evidencing the Secured Obligations, no notice to or demand on Mortgagor in any case shall entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by the Mortgagor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Mortgage or any other document evidencing the Secured Obligations (or, to the extent applicable pursuant to Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations), no notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

UNOFFICIAL COPY

SECTION 4.6. Governing Law. Except with respect to the creation, perfection, priority and enforcement of the lien and security interest created hereunder, all of which shall be construed, interpreted, enforced and governed by the laws of the State, the validity and interpretation of this Mortgage shall be governed by and in accordance with the internal laws of the State of New York, without giving effect to any conflict of law principles that would result in the application of the laws of any other state (but giving effect to federal laws relating to national banks).

SECTION 4.7. Limitation of Interest. The provisions of the Credit Agreement regarding the payment of lawful interest are hereby incorporated herein by reference.

SECTION 4.8. Revolving Credit; Future Advances. This Mortgage is given to secure revolving credit and shall secure all of the Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) including, without limitation, future advances whenever hereafter made with respect to or under the Credit Agreement (and, to the extent applicable pursuant to Section 6.1 of this Mortgage, the ASC Indenture) and shall secure not only Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) with respect to presently existing indebtedness under the Credit Agreement (and, to the extent applicable pursuant to Section 6.1 of this Mortgage, the ASC Indenture), but also any and all other indebtedness which may hereafter be owing by the Mortgagor to the Credit Parties (and, to the extent applicable pursuant to Section 6.1 of this Mortgage, the 2037 ASC Debentures Holders) under the Credit Agreement (and, to the extent applicable pursuant to Section 6.1 of this Mortgage, the ASC Indenture) and other Security Documents, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances and re-advances, pursuant to the Credit Agreement (and, to the extent applicable pursuant to Section 6.1 of this Mortgage, the ASC Indenture) or the other Security Documents, whenever such advances are obligatory or to be made at the option of the Credit Parties (and, to the extent applicable pursuant to Section 6.1 of this Mortgage, the 2037 ASC Debentures Holders), or otherwise, and any extensions, refinancings, modifications or renewals of all such Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) whether or not the Mortgagor executes any extension agreement or renewal instrument and, in each case, to the same extent as if such future advances were made on the date of the execution of this Mortgage.

SECTION 4.9. Maximum Amount of Indebtedness. The total amount of indebtedness that may be secured by this Mortgage may increase or decrease from time to time, but the total unpaid balance so secured at any one time shall not exceed the maximum principal amount of \$6,000,000,000.00, plus, to the extent permitted by applicable law, collection costs, sums advanced for the payment of taxes, assessments, maintenance and repair charges, insurance premiums and any other costs incurred to protect the security encumbered hereby or the lien hereof, expenses incurred by the Collateral Agent by reason of any default by the Mortgagor under the terms hereof, together with interest thereon, all of which amount shall be secured hereby.

SECTION 4.10. Last Dollar. The lien of this Mortgage shall remain in effect until the last dollar of the Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) is paid in full and this Mortgage has been released in whole pursuant to Section 4.11 hereof.

UNOFFICIAL COPY

SECTION 4.11. Release.

(a) This Mortgage, the security and lien in favor of the Collateral Agent (for the benefit of itself and the other Credit Parties (and, to the extent provided in Section 6.1 of this Mortgage, the benefit of the 2037 ASC Debentures Holders)) and all other security interests granted hereby shall terminate with respect to all Secured Obligations when (i) the Commitments shall have expired or been terminated, (ii) the principal of and interest on each Loan and all fees and other Secured Obligations shall have been paid in full in cash, (iii) all Letters of Credit shall have (A) expired or terminated and have been reduced to zero, (B) been Cash Collateralized to the extent required by the Credit Agreement, or (C) been supported by another letter of credit in a manner reasonably satisfactory to the applicable L/C Issuer and the Administrative Agent, and (iv) all Unreimbursed Amounts shall have been indefeasibly paid in full in cash, provided, however, that in connection with the termination of this Mortgage, the Collateral Agent may require such indemnities as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Secured Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities, and (z) any Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) that may thereafter arise under Section 10.04 of the Credit Agreement, provided, further, that the 2037 ASC Debentures Obligations shall no longer be secured hereby and this Mortgage shall be deemed terminated in the event the Secured Obligations are no longer required to be secured hereby as a result of the release of the Mortgaged Property by the Collateral Agent as permitted hereunder and under the Credit Agreement. Upon termination of this Mortgage the Mortgaged Property shall be released from the Lien of this Mortgage. Upon such release or any release of Mortgaged Property or any part thereof in accordance with the provisions of the Credit Agreement, the Collateral Agent shall, upon the request and at the sole cost and expense of Mortgagor, assign, transfer and deliver to Mortgagor, against receipt and without recourse to or warranty by the Collateral Agent except as to the fact that the Collateral Agent has not encumbered the released assets, such of the Mortgaged Property or any part thereof to be released (in the case of a release) as may be in possession of the Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Mortgaged Property, proper documents and instruments acknowledging the termination hereof or the release of such Mortgaged Property, as the case may be.

(b) Provided that no Event of Default is then occurring, the Mortgage shall automatically be released from its obligations hereunder and the lien and security interest in favor of the Collateral Agent on the Mortgaged Property shall be automatically released if (i) the Mortgagor ceases to be a Restricted Subsidiary as a result of a transaction permitted under the Credit Agreement or becomes an Excluded Subsidiary or (ii) is the parent holding company of a Real Estate Subsidiary party to a Qualified Real Estate Financing Facility if such Mortgage is prohibited by the terms of such Qualified Real Estate Financing Facility; provided that no such release shall occur if Mortgagor continues to be a guarantor in respect of any Permitted Ratio Debt or any Permitted Refinancing thereof.

(c) The Mortgaged Property shall be released from the lien of this Mortgage in accordance with the provisions of this Mortgage and the Credit Agreement. Upon termination hereof or any release of Mortgaged Property in accordance with the provisions of this Mortgage

UNOFFICIAL COPY

or the Credit Agreement, the Collateral Agent shall, upon the request and at the sole cost and expense of the Mortgagor, assign, transfer and deliver to the Mortgagor, against receipt and without recourse to or warranty by the Collateral Agent, such portion of the Mortgaged Property to be released as may be in possession of the Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Mortgaged Property to be released, proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Mortgaged Property, as the case may be.

(d) At any time that the Mortgagor desires that the Collateral Agent take any action described in clause (c) of this Section 4.11, the Mortgagor shall, upon request of the Collateral Agent, deliver to the Collateral Agent an officer's certificate certifying that the release of the respective Mortgaged Property is permitted pursuant to this Section 4.11. The Collateral Agent shall have no liability whatsoever to any other Credit Party or any 2037 ASC Debentures Holder as the result of any release of the Mortgaged Property by it as permitted (or which the Collateral Agent in good faith believes to be permitted) by this Section 4.11.

SECTION 4.12. Collateral Agent May Perform; Collateral Agent Appointed Attorney in Fact. If the Mortgagor shall fail to perform any covenants contained in this Mortgage after giving effect to applicable notice and cure periods (including, without limitation, the Mortgagor's covenants to (i) pay the premiums in respect of all required insurance policies, (ii) pay charges, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any obligations of the Mortgagor under any Mortgaged Property) or if any representation or warranty on the part of the Mortgagor contained herein shall be breached, the Collateral Agent may (but shall not be obligated to), during the continuance of such breach, do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that the Collateral Agent shall in no event be bound to inquire into the validity of any tax, Lien, imposition or other obligation which the Mortgagor fails to pay or perform as and when required hereby and which the Mortgagor does not contest in accordance with the provisions of the Credit Agreement. Any and all amounts so expended by the Collateral Agent shall be paid by the Mortgagor in accordance with the provisions of the Credit Agreement and repayment shall be secured by this Mortgage. Neither the provisions of this Section 4.12 nor any action taken by the Collateral Agent pursuant to the provisions of this Section 4.12 shall prevent any such failure to observe any covenant contained in this Mortgage nor any breach of warranty from constituting an Event of Default. Upon the occurrence and during the continuance of an Event of Default, the Mortgagor hereby appoints the Collateral Agent its attorney-in-fact, with full power and authority in the place and stead of the Mortgagor and in the name of the Mortgagor, or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument consistent with the terms hereof and the terms of the Credit Agreement and the other Security Documents which the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof (but the Collateral Agent shall not be obligated to and shall have no liability to the Mortgagor or any third party for failure to so do or take action). The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof in accordance with the terms hereof. The Mortgagor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

UNOFFICIAL COPY

SECTION 4.13. **Credit Agreement.** In the event of any conflict between the terms of this Mortgage and the terms of the Credit Agreement, the terms of the Credit Agreement shall control.

ARTICLE V. [RESERVED]

ARTICLE VI.

SECTION 6.1. **(a) Equal and Ratable Security.** This Mortgage and the other Security Documents (i) shall secure the 2037 ASC Debentures Obligations to the extent required by Section 3.7 of the ASC Indenture and (ii) shall be construed and enforced accordingly.

(b) Limitation on Collateral Agent's Responsibilities with Respect to 2037 ASC Debentures Holders. The obligations of the Collateral Agent to the 2037 ASC Debentures Holders and the 2037 ASC Debentures Trustee hereunder shall be limited solely to (i) holding the Mortgaged Property for the ratable benefit of the 2037 ASC Debentures Holders and 2037 ASC Debentures Trustee for so long as (A) any Secured Obligations remain outstanding and (B) any 2037 ASC Debentures Obligations are secured by the Mortgaged Property pursuant to Section 6.1, (ii) subject to the instructions of the Required Lenders, enforcing the rights of the 2037 ASC Debentures Holders in their capacities as secured parties and (iii) distributing any proceeds received by the Collateral Agent from the sale, collection or realization of the Mortgaged Property to the 2037 ASC Debentures Holders and the 2037 ASC Debentures Trustee in respect of the 2037 ASC Debentures Obligations in accordance with Section 8.03 of the Credit Agreement. Neither the 2037 ASC Debentures Holders nor the 2037 ASC Debentures Trustee shall be entitled to exercise (or direct the Collateral Agent to exercise) any rights or remedies hereunder with respect to the 2037 ASC Debentures Obligations, including without limitation the right to receive any payments, enforce the Lien on Mortgaged Property, request any action, institute proceedings, give any instructions, make any election, make collections, sell or otherwise foreclose on any portion of the Mortgaged Property or execute any amendment, supplement, or acknowledgment hereof. This Mortgage shall not create any liability of the Collateral Agent or the Credit Parties to any 2037 ASC Debentures Holders or to the 2037 ASC Debentures Trustee by reason of actions taken with respect to the creation, perfection or continuation of the Lien on Mortgaged Property, actions with respect to the occurrence of an Event of Default (under, and as defined in, the Credit Agreement or the ASC Indenture), actions with respect to the foreclosure upon, sale, release, or depreciation of, or failure to realize upon, any of the Mortgaged Property or action with respect to the collection of any claim for all or any part of the 2037 ASC Debentures Obligations, guarantor or any other party or the valuation, use or protection of the Mortgaged Property. By acceptance of the benefits under this Mortgage and the other Loan Documents, the 2037 ASC Debentures Holders and the 2037 ASC Debentures Trustee will be deemed to have acknowledged and agreed that the provisions of the preceding sentence are intended to induce the Lenders to permit such Persons to be secured parties under this Mortgage and certain of the other Loan Documents and are being relied upon by the Lenders as consideration therefor.

(c) Notwithstanding anything to the contrary herein, nothing in this Mortgage shall or shall be construed to (i) result in the security interest in the collateral securing the 2037 ASC Debentures Obligations less than equally and ratably with the Secured Obligations pursuant to the

UNOFFICIAL COPY

2037 ASC Debentures to the extent required or (ii) modify or affect the rights of the 2037 ASC Debentures Holders to receive the pro rata share specified in Section 3.6 of any proceeds of any collection or sale of Mortgaged Property.

(d) The parties hereto agree that the 2037 ASC Debentures Obligations and the Secured Obligations are, and will be, equally and ratably secured with each other by the Liens on the Mortgaged Property, and that it is their intention to give full effect to the equal and ratable provisions of the 2037 ASC Debentures, as in effect on the date hereof. To the extent that the rights and benefits herein or in any other Security Document conferred on the 2037 ASC Debentures Holders shall be held to exceed the rights and benefits required so to be conferred by such provisions, such rights and benefits shall be limited so as to provide such 2037 ASC Debentures Holders only those rights and benefits that are required by such provisions. Any and all rights not herein expressly given to the 2037 ASC Debentures Trustee are expressly reserved to the Collateral Agent and the Credit Parties other than the 2037 ASC Debentures Holders.

(e) **Termination.** This Article VI shall cease to apply if and when (i) all of the 2037 ASC Debentures Obligations have been fully satisfied and discharged (including in accordance with Article Ten of the ASC Indenture) or (ii) the ASC Indenture shall have been amended such that the 2037 ASC Debentures Obligations are no longer required to be secured equally and ratably with the Secured Obligations.

ARTICLE VII. LOCAL LAW PROVISIONS

This Mortgage is subject to the following provisions relating to the particular laws of the state wherein the Mortgaged Property is located:

SECTION 7.1. **Certain Particular Provisions.** The terms and provisions set forth in Appendix A attached hereto are hereby incorporated by reference as though fully set forth herein. In the event of any conflict between the terms and provisions contained in the body of this Mortgage and the terms and provisions set forth in Appendix A, the terms and provisions set forth in Appendix A shall govern and control.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by its duly authorized officer as of the day and year first above written.

MORTGAGOR:

ASP REALTY, INC.,

a Delaware corporation

By: [Signature]

Name: Justin Dye

Its: COO

Property of Cook County Notary Public Office

ACKNOWLEDGMENT

STATE OF new york)
) SS
COUNTY OF new york)

I, [Signature], a Notary Public in and for the said County, in the aforesaid State, DO HEREBY CERTIFY that Justin Dye, personally known to be the COO of ASP REALTY, INC., a Delaware Corporation, and personally known to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such he/she signed and delivered the said instrument pursuant to authority of said corporation as his/her own free and voluntary act, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

WITNESS MY HAND and Notary seal this 2nd day of January, 2014.

[Signature]
Notary Public

OLGA IVORAPIEVA
NOTARY PUBLIC, State of New York
No. 01EVE021033
Qualified in New York County
Commission Expires March 6, 2015

My commission expires:

UNOFFICIAL COPY

EXHIBIT A

Legal Description

Tax Parcel Number(s):

17-22-100-010-0000 (affects Parcel 4)
 17-22-100-011-0000 (affects Parcel 5)
 17-22-100-012-0000 (affects Lot 4 Parcel 6)
 17-22-100-013-0000 (affects Lot 5 Parcel 6)
 17-22-100-014-0000 (affects Lot 6 Parcel 6)
 17-22-100-015-0000 (affects Parcel 7)
 17-22-100-016-0000 (affects Lot 1 - Parcel 8)
 17-22-100-017-0000 (affects Lot 2 - Parcel 8)
 17-22-100-018-0000 (affects Lot 3 - Parcel 8)
 17-22-100-019-0000 (affects part of Parcel 9)
 17-22-100-020-0000 (affects the remainder of Parcel 9)
 17-22-100-021-0000 (affects part of Parcel 10)
 17-22-100-022-0000 (affects part of Parcel 10)
 17-22-100-023-0000 (affects the remainder of Parcel 10)
 17-22-100-024-0000 (affects Parcel 11)
 17-22-100-025-0000 (affects part of Lot 6 - Parcel 12)
 17-22-100-026-0000 (affects the remainder of Lot 6 - Parcel 12)
 17-22-100-027-0000 (affects Lot 7 - Parcel 12)
 17-22-100-031-0000 (affects Parcel 3)
 17-22-100-034-0000 (affects Parcel 1)
 17-22-100-035-0000 (affects Parcel 2)
 17-22-100-036-8001
 17-22-100-036-8002

Real property in the City of Chicago, County of Cook, State of Illinois, described as follows:

Parcel 1:

The West 1/2 of Block 3 in Assessor's Division of part of the Northwest Fractional 1/4 of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian in Cook County, Illinois (excepting from said parcel that part described as follows: That part falling within 12th Street (also known as Roosevelt Road)).

Parcel 2:

Lot 1 in Seaman's Subdivision of Block 5 of the West 1/2 of Block 4 and the West 148 feet of Block 6 of Assessor's Division of part of the Northwest Fractional 1/4 of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3:

Lots 2 and 3 (except the East 10 feet and except the West 27 feet of said lots) in the West 1/2 of Block 4 in Seaman's Subdivision of Block 5 of the West 1/4 of Block 4 and the West 148 feet of

UNOFFICIAL COPY

Block 6 in the Assessor's Division of the Northwest Fractional Quarter of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 4:

Lot 2 (except the West 30 feet thereof and except that part condemned for widening 12th Street) in Assessor's Division of the East 1/2 of Block 3 with the North 7 feet of the East 1/2 of Block 4 in Assessor's Division of the Northwest Fractional 1/4 of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 5:

Lot 3 (except that part falling in alley and except that part thereof falling in the right of way of the Chicago Transit Authority) in Assessor's Division of the East 1/2 of Block 3 in with the North 7 feet of the East 1/2 of Block 4 in Assessor's Division of the Northwest Fractional 1/4 of Section 22, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 6:

Lots 4 and 5 (except the West 32 feet thereof) and Lot 6 (except the West 25 feet thereof) in Assessor's Division of the East 1/2 of Block 3 and the North 7 feet of the East 1/2 of Block 4 in Assessor's Division of a part of the Northwest Fractional 1/4 of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 7:

Lot 7 (except the West 25 feet thereof) in Assessor's Division of the East 1/2 of Block 3 and the North 7 feet of the East 1/2 of Block 4 in the Assessor's Division of the Northwest 1/4 of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 8:

Lots 1, 2 and 3 (except the West 25 feet of said premises taken for elevated railroad) in the Assessor's Division of the East 1/2 of Block 4 in the Assessor's Division of the Northwest Fractional 1/4 of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 9:

The North 51.5 feet of Lot 4 (except the West 25 feet of said premises taken for elevated railroad) in the Assessor's Division (except the North 7 feet) of the East 1/2 of Block 4 in the Assessor's Division of the Northwest 1/4 of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 10:

Lot 4 (except the North 51 1/2 feet thereof) and the North 25 feet of Lot 5 in the Assessor's Division (except the North 7 feet) of the East Half of Block 4 in the Assessor's Division of the Northwest Fractional Quarter of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois (excepting from said premises that part thereof conveyed to the Chicago and South Side Rapid Transit Railroad Company).

UNOFFICIAL COPY

Parcel 11:

The South 25 feet of Lot 5 (except the West 25 feet thereof) in Assessor's Subdivision (except the North 7 feet) of the East 1/2 of Block 4 of Assessor's Division of the Northwest Fractional 1/4 of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 12:

Lots 6 and 7 (except the West 25 feet of each of said lots) in Assessor's Division (except the North 7 feet) of the East 1/2 of Block 4 in Assessor's Division of the Northwest Fractional Quarter of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

FOR INFORMATIONAL PURPOSES ONLY, THE LAND IS KNOWN AS: 1224 SOUTH WABASH AVENUE, CHICAGO, IL 60605

Property of Cook County Clerk's Office

UNOFFICIAL COPY

APPENDIX A LOCAL LAW PROVISIONS

SECTION A-1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Appendix A and the other terms and conditions of this Mortgage, the terms and conditions of this Appendix A shall control and be binding.

SECTION A-2. Type of Real Estate. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.; "Foreclosure Act") or residential real estate (as defined in Section 15-1219 of the Foreclosure Act).

SECTION A-3. Interest Rate. To the extent the provisions of the Illinois Interest Act (815 ILCS §205/4(1)) apply, the Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) constitute business loans which come within the purview of 815 Section 205/4(1)(c), as well as loans secured by a mortgage on real estate which comes within the purview of 815 ILCS 205/4(1)(l).

SECTION A-4. Illinois Mortgage Foreclosure Law.

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

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

(c) Without limiting the generality of the foregoing, all reasonable expenses incurred by Collateral Agent to the extent reimbursable under Sections 15-1510(b) and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

(d) In addition to any provision of this Mortgage authorizing the Collateral Agent to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Collateral Agent shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Foreclosure Act, to be placed in possession of the Mortgaged Property or, at its request, to have a receiver appointed, and such receiver, or Collateral Agent, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties, as provided for in Sections 5/15-1701 and 5/15-1703 of the Foreclosure Act

UNOFFICIAL COPY

(e) MORTGAGOR SHALL NOT AND WILL NOT APPLY FOR OR AVAIL ITSELF OF ANY APPRAISEMENT, VALUATION, STAY, EXTENSION OR EXEMPTION LAWS, OR ANY SO-CALLED "MORATORIUM LAWS," NOW EXISTING OR HEREAFTER ENACTED IN ORDER TO PREVENT OR HINDER THE ENFORCEMENT OR FORECLOSURE OF THIS MORTGAGE, BUT HEREBY WAIVES THE BENEFIT OF SUCH LAWS. MORTGAGOR FOR ITSELF AND ALL WHO MAY CLAIM THROUGH OR UNDER IT WAIVES ANY AND ALL RIGHT TO HAVE THE MORTGAGED PROPERTY AND ESTATES COMPRISING THE PROPERTY MARSHALLED UPON ANY FORECLOSURE OF THE LIEN HEREOF AND AGREES THAT ANY COURT HAVING JURISDICTION TO FORECLOSE SUCH LIEN MAY ORDER THE PROPERTY SOLD AS AN ENTIRETY. IN THE EVENT OF ANY SALE MADE UNDER OR BY VIRTUE OF THIS MORTGAGE, THE WHOLE OF THE MORTGAGED PROPERTY MAY BE SOLD IN ONE PARCEL AS AN ENTIRETY OR IN SEPARATE LOTS OR PARCELS AT THE SAME OR DIFFERENT TIMES, ALL AS COLLATERAL AGENT MAY DETERMINE. COLLATERAL AGENT SHALL HAVE THE RIGHT TO BECOME THE PURCHASER AT ANY SALE MADE UNDER OR BY VIRTUE OF THIS MORTGAGE AND COLLATERAL AGENT SHALL BE ENTITLED TO CREDIT BID THE INDEBTEDNESS OR ANY PORTION THEREOF IN COLLATERAL AGENT'S SOLE DISCRETION.

(f) THE MORTGAGOR, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS MORTGAGE, HEREBY IRREVOCABLY WAIVES PURSUANT TO 735 ILCS 5/15-1601 OF THE FORECLOSURE ACT ANY AND ALL RIGHTS OF REINSTATEMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15 1602) AND REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS MORTGAGE (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15 1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT.

SECTION A-5. Insurance Disclosure. The following notice is provided pursuant to paragraph (3) of 815 ILCS 180/10: Unless the Mortgagor provides evidence of the insurance coverage required by the Credit Agreement (and, to the extent applicable pursuant to Section 6.1 of this Mortgage, the ASC Indenture) or the Loan Documents, the Collateral Agent may purchase such insurance at the Mortgagor's expense to protect the Collateral Agent's interests in the Mortgagor's collateral. This insurance may, but need not, protect the Mortgagor's interests. The coverage that the Collateral Agent purchases may not pay any claim that the Mortgagor may make or any claim that is made against the Mortgagor in connection with the collateral. The Mortgagor may later cancel any insurance purchased by the Collateral Agent, but only after providing evidence that the Mortgagor has obtained insurance as required by the Credit Agreement (and, to the extent applicable pursuant to Section 6.1 of this Mortgage, the ASC Indenture) or the Loan Documents. If the Collateral Agent purchases insurance for the collateral, the Mortgagor will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges that the Collateral Agent may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The

UNOFFICIAL COPY

costs of the insurance may be added to the Secured Obligations (and, to the extent provided in Section 6.1 of this Mortgage, the 2037 ASC Debentures Obligations) of the Mortgagor. The costs of the insurance may be more than the cost of insurance that the Mortgagor may be able to obtain on the Mortgagor's own.

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

Property of Cook County Clerk's Office