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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1406316095 **Fee:** \$108.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 03/04/2014 03:54 PM Pg: 1 of 36

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 17-03-221-010-0000

Address:

Street: 860 North DeWitt Place

Street line 2:

City: Chicago

State: IL

ZIP Code: 60611

Lender: The PrivateBank and Trust Company

Borrower: Gold Coast City Apartments LLC

Loan / Mortgage Amount: \$19,050,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: C6082468-EB40-4FA2-B42D-5EB7E743E5F2

Execution date: 02/28/2014

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16821003.4
02-27-14

(3)

This Instrument Prepared by and to be Returned to:

Alvin L. Kruse
Seyfarth Shaw LLP
131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603

Permanent Tax Index Number and Address:

See Exhibit A

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

from

GOLD COAST CITY APARTMENTS LLC,
a Delaware limited liability company

to

THE PRIVATEBANK AND TRUST COMPANY
an Illinois banking corporation,
as Administrative Agent for Lenders

Dated as of February 28, 2014

Property of Cook County Clerk's Office

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

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Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing
and is only for convenience of reference.)

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Exhibit A - Legal Description of the Premises

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

THIS LEASEHOLD MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING dated as of February 28, 2014 (this "**Mortgage**"), is from **GOLD COAST CITY APARTMENTS LLC**, a Delaware limited liability company (the "**Mortgagor**"), whose address is c/o Village Green Companies, 30833 Northwestern Highway, Suite 300, Farmington Hills, Michigan 48334, to **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois banking corporation ("**PrivateBank**"), as Administrative Agent for the Lenders under the Loan Agreement referred to below (PrivateBank in its capacity as such Agent, the "**Mortgagee**", and PrivateBank and such other Lenders being referred to herein collectively as the "**Lenders**"), whose address is 120 South LaSalle Street, Chicago, Illinois 60603.

RECITALS

A. Pursuant to the terms and conditions of a Construction Loan Agreement of even date herewith (the "**Loan Agreement**") by and among the Mortgagor, the Lenders and the Mortgagee, the Lenders have agreed to make loans to the Mortgagor in the maximum principal amount of \$19,050,000 (the "**Loans**").

B. The Loans will be evidenced by separate Promissory Notes executed by the Mortgagor and made payable to the order of the respective Lenders totaling the amount of the Loans (the "**Notes**"), the terms of which are described in Section 2.1 hereof.

C. The Loans are being made by the Lenders to the Mortgagor for the purpose of providing mortgage financing for the real estate described in **Exhibit A** attached hereto and the improvements located thereon.

AGREEMENTS

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness hereby secured, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby grants, bargains, sells, conveys and mortgages to the Mortgagee and its successors and assigns forever, under and subject to the terms and conditions hereinafter set forth, all of the Mortgagor's right, title and interest in and to the real estate located in the City of Chicago, County of Cook, State of Illinois, described in **Exhibit A** attached hereto and by this reference incorporated herein, including all improvements now and hereafter located thereon;

TOGETHER WITH all right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to the following:

(a) All rents, issues, profits, royalties and income with respect to the said real estate and improvements and other benefits derived therefrom, subject to the right, power and authority given to the Mortgagor to collect and apply same; and

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(b) All leases or subleases covering the said real estate and improvements or any portion thereof now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature, and any and all guarantees of the lessee's obligations under any of such leases and subleases; and

(c) All privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said real estate and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which the Mortgagor now has or may hereafter acquire in the said real estate and improvements; and

(d) All easements, rights-of-way and rights used in connection with the said real estate and improvements or as a means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; and

(e) Any land lying within the right-of-way of any street, open or proposed, adjoining the said real estate and improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said real estate and improvements; and

(f) Any and all buildings and improvements now or hereafter erected on the said real estate, including, but not limited to, all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements; and

(g) All materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately upon the delivery thereof to the said real estate; and

(h) All fixtures attached to or contained in and used in connection with the said real estate and improvements, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property used or useful in the operation of the said real estate and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said real estate and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property placed by the Mortgagor on and in the said real estate and improvements shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the "**Code**" as defined in Section 1.1 hereof), this Mortgage is intended to be a

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security agreement under the Code for the purpose of creating hereby a security interest in such property, which the Mortgagor hereby grants to the Mortgagee as secured party; and

(i) All the estate, interest, right, title and other claims and demands, including claims or demands with respect to any proceeds of insurance related thereto, which the Mortgagor now has or may hereafter acquire in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said real estate and improvements or personal property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages; and

(j) All of the following which relate to the said real estate and improvements: All present and future plans, specifications, licenses, permits and approvals, all present and future management, supply and other contracts and agreements of every sort, and all present and future obligations and indebtedness owed to the Mortgagor thereunder, all present and future intellectual property, and all other present and future general intangibles; and

(k) All right, title and interest of the Mortgagor (but not its obligations) in, to and under the Ground Lease (as defined in Section 1.1 hereof) as modified and amended from time to time, and the leasehold estate created thereunder, and any extension thereof; and

(l) All proceeds of all of the foregoing;

the said real estate and improvements and the property and interests described in paragraphs (a) through (l) above being collectively referred to herein as the "Premises"; and as to any portion of the Premises constituting property subject to the Code, this Mortgage is intended to be a security agreement under the Code for the purpose of creating hereby a security interest in such portion of the Premises, which the Mortgagor hereby grants to the Mortgagee as secured party; provided, however, that notwithstanding any provision of this Mortgage, including, without limitation paragraph (b) above, or any provision of any of the other Loan Documents (as defined in Section 1.1 hereof), the Premises and other collateral of every sort encumbered by this Mortgage and such other Loan Documents shall not include any tenant security deposits which are subject to any applicable law, ordinance, rule or regulation which prohibits the Mortgagor from encumbering such tenant security deposits.

TO HAVE AND TO HOLD the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

FOR THE PURPOSE OF SECURING the following (but not exceeding \$38,100,000 in the aggregate):

(a) Payment of the indebtedness evidenced by the Notes, and including the principal thereof and interest thereon and any and all modifications, extensions and renewals thereof, and performance of all obligations of the Mortgagor under the Notes; and

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(b) Performance and observance by the Mortgagor of all of the terms, covenants and provisions of this Mortgage; and

(c) Performance and observance by the parties thereto, other than the Mortgagee, of all of the terms, covenants and provisions of the other "Loan Documents" (as defined in Section 1.1 hereof); and

(d) Payment of all sums advanced by the Mortgagee to perform any of the terms, covenants and provisions of this Mortgage or any of the other Loan Documents, or otherwise advanced by the Mortgagee pursuant to the provisions hereof or any of such other documents to protect the property hereby mortgaged and pledged; and

(e) Performance and observance of all of the terms, covenants and provisions of any other instrument given to evidence or further secure the payment and performance of any indebtedness hereby secured or any obligation secured hereby; and

(f) Payment of any future or further advances which may be made by the Lenders at their sole option to and for the benefit of the Mortgagor, its successors, assigns and legal representatives; and

(g) Any and all obligations, contingent or otherwise, whether now existing or hereafter arising, of the Mortgagor arising under or in connection with all Bank Product Obligations and all Bank Product Agreements (as each capitalized term used in this paragraph is defined in Section 1.1 hereof).

(h) Any and all obligations, contingent or otherwise, whether now existing or hereafter arising, of the Mortgagor arising under or in connection with all Hedging Transactions and Hedging Agreements in connection with the Loans to which all of the Lenders are a party, or to which PrivateBank (on its own behalf and not as Agent for the Lenders) is a party (as each capitalized term used in this paragraph is defined in Section 1.1 hereof).

PROVIDED, HOWEVER, that if the Mortgagor shall pay the principal and all interest as provided in the Notes, and shall pay and perform all obligations arising under all such Bank Product Obligations, Bank Product Agreements, Hedging Transactions and Hedging Agreements, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

TO PROTECT THE SECURITY OF THIS MORTGAGE, THE MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

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ARTICLE I

DEFINITIONS

Section 1.1. Definitions. The terms defined in this Section (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Mortgage shall have the respective meanings specified in this Section.

“Affiliate” means, as to a person or entity, any other person or entity which, directly or indirectly, Controls, is Controlled by or is under common Control with such first person or entity.

“Assignment of Rents” means the Assignment of Rents and Leases dated as of February 28, 2014, from the Mortgagor to the Mortgagee.

“Bank Product Agreements” means those certain cash management service agreements entered into from time to time between the Mortgagor and PrivateBank (on its own behalf and not as Agent for the Lenders) or its Affiliates in connection with any of the Bank Products.

“Bank Product Obligations” means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by the Mortgagor to PrivateBank (on its own behalf and not as Agent for the Lenders) or its Affiliates pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all such amounts that the Mortgagor is obligated to reimburse to PrivateBank (on its own behalf and not as Agent for the Lenders) as a result of PrivateBank (on its own behalf and not as Agent for the Lenders) purchasing participations or executing indemnities or reimbursement obligations with respect to the Bank Products provided to the Mortgagor pursuant to the Bank Product Agreements.

“Bank Products” means any service or facility extended to the Mortgagor by the PrivateBank (on its own behalf and not as Agent for the Lenders) or its Affiliates, including, without limitation, (i) deposit accounts, (ii) cash management services, including, without limitation, controlled disbursement, lockbox, electronic funds transfers (including, without limitation, book transfers, fedwire transfers, ACH transfers), online reporting and other services relating to accounts maintained with PrivateBank or its Affiliates, (iii) debit cards, and (iv) Hedging Agreements.

“Code” means the Uniform Commercial Code of the State of Illinois as from time to time in effect; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, the Bank's security interest in any collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Illinois, the term “Code” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions of this Mortgage or the other Loan Documents relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

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“Control” means possession by a person or an entity, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by contract, ownership of voting securities, membership or partnership interests or otherwise.

“Default” means, when used in reference to this Mortgage or any other document, or in reference to any provision of or obligation under this Mortgage or any other document, the occurrence of an event or the existence of a condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default under this Mortgage or such other document, as the case may be.

“Environmental Laws” means the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called “Superfund” or “Superlien” law, and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material, in each case as now or hereafter in force and effect.

“Event of Default” means --

(i) when used in reference to this Mortgage, an Event of Default specified in Section 4.1 hereof; and

(ii) when used in reference to any other document, a default or event of default under such document that has continued after the giving of any applicable notice and the expiration of any applicable grace or cure periods.

“Ground Lease” means the following:

(i) Indenture of Lease dated March 1, 1960, by and between 199 Lake Shore Drive, Inc., a Delaware corporation, as original Lessor, and American National Bank and Trust Company of Chicago, a national banking association, as Trustee under Trust Agreement dated February 10, 1960, and known as Trust No. 15196, as original Lessee, and recorded with the Recorder of Deeds of Cook County, Illinois, on March 1, 1960, as Document No. 17792948, which as from time to time assigned is now by and between Chicago Title Land Trust Company, as Successor Trustee under a Trust Agreement Dated July 28, 1986, and known as Trust No. 43663, as current Lessor, and Chicago Title Land Trust Company, as Successor Trustee under a Trust Agreement dated September 17, 1990, and known as Trust No. 112671-01, as current Lessee.

(ii) Modification of Lease Agreement for Annual Rent Increases dated August 31, 1984, and recorded with the Recorder of Deeds of Cook County, Illinois, on August 12, 1984, as Document No. 27250541.

(iii) Acknowledgement of Annual Rent Increases dated as of November 6, 2009, and recorded with the Recorder of Deeds of Cook County, Illinois, on January 4, 2010, as Document No. 1000429043.

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(iv) The agreements in the Wall Encroachment Lease dated December 31, 2010, recorded with the Recorder of Deeds of Cook County, Illinois, on March 3, 2011, as Document No. 1106210019.

“Ground Lessor” means Chicago Title Land Trust Company, as Successor Trustee under a Trust Agreement Dated July 28, 1986, and known as Trust No. 43663.

“Guarantor” means Jonathan Holtzman.

“Guaranty” means the Guaranty of Payment and Performance dated as of February 28, 2014, from the Guarantor to the Mortgagee.

“Hazardous Material” means any hazardous substance or any pollutant or contaminant defined as such in, or for purposes of, any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, in each case as now or hereafter in force and effect; asbestos or any substance or compound containing asbestos; polychlorinated biphenyls or any substance or compound containing any polychlorinated biphenyl; petroleum and petroleum products; pesticides; and any other hazardous, toxic or dangerous waste, substance or material.

“Hedging Agreements” means (i) any ISDA Master Agreement between the Mortgagor and PrivateBank (on its own behalf and not as Agent for the Lenders) or any other provider, (ii) any Schedule to Master Agreement between the Mortgagor and PrivateBank (on its own behalf and not as Agent for the Lenders) or any other provider, and (iii) all other agreements entered into from time to time by the Mortgagor and PrivateBank (on its own behalf and not as Agent for the Lenders) or any other provider relating to Hedging Transactions.

“Hedging Transaction” means any transaction (including an agreement with respect thereto) now existing or hereafter entered into between the Mortgagor and PrivateBank (on its own behalf and not as Agent for the Lenders) or any other provider which is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures.

“IMFL” means Illinois Mortgage Foreclosure Law (73 ILCS 5/15-1101 et seq.), as amended from time to time.

“Impositions” means Impositions as defined in Section 2.6(a) hereof.

“Indemnity Agreement” means the Indemnity Agreement dated as of February 28, 2014, from the Mortgagor and the Guarantor to the Mortgagee.

“Lenders” means PrivateBank and the other financial institutions that are or may from time to time become parties to the Loan Agreement, together with their respective successors and assigns.

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“**Loan Agreement**” means the Construction Loan Agreement dated as of February 28, 2014, by and among the Mortgagor, the Lenders and the Mortgagee.

“**Loan Documents**” means the Loan Agreement, the Note, this Mortgage, the Assignment of Rents, the Indemnity Agreement, the Guaranty, any Bank Product Agreements, any Hedging Agreements to which all of the Lenders are a party, or to which PrivateBank (on its own behalf and not as Agent for the Lenders) is a party, and all other documents and instruments at any time evidencing and securing the indebtedness secured by this Mortgage.

“**Loans**” means the loans to be made by the Lenders to the Mortgagor in accordance with the terms and conditions of the Loan Agreement.

“**Mortgage**” means this Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of February 28, 2014, from the Mortgagor to the Mortgagee.

“**Mortgagee**” means The PrivateBank and Trust Company, an Illinois banking corporation, in its capacity as Agent for the Lenders under the Loan Agreement.

“**Mortgagor**” means Gold Coast City Apartments LLC, a Delaware limited liability company.

“**Notes**” means the Promissory Notes of the Mortgagor in the aggregate principal amount of \$19,050,000, made payable to the order of the Lenders, issued under the Loan Agreement to evidence the Loans.

“**Permitted Encumbrances**” means Permitted Encumbrances as defined in the Loan Agreement.

“**Permitted Lease**” means a lease of an apartment in the Premises which (i) is prepared on a lease form approved by the Mortgagee, (ii) is with a tenant that is not an Affiliate of the Mortgagor; except that at any time, a number of apartments may be leased to Affiliates, so long as such number of apartments together with the number of other apartments leased to corporate housing providers does not exceed 10% of the number of apartments in the Building; (iii) is for an initial term of not less than six months, and not more than two years including any options granted to the tenant to extend the term of the lease, (iv) does not grant the tenant any option or right to purchase the leased apartment, or the Premises or any portion thereof, (v) at the time entered into or amended, provides for rent which is consistent with the rent being charged for other comparable apartments in the vicinity of the Premises, and (vi) is for use of the apartment as a residential unit and not for a commercial use.

“**Permitted Materials**” means materials customarily used in the construction and maintenance of buildings, and cleaning materials, office products and other materials customarily used in the operation of properties such as the Premises, provided that, in each case, such materials are stored, handled, used and disposed of in compliance with applicable laws and regulations and are individually and in the aggregate not in such quantities as may result in contamination of the Premises or any part thereof.

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“**Premises**” means the real estate described in Exhibit A attached hereto and all improvements now and hereafter located thereon, and all other property, rights and interests described in the foregoing granting clauses of this Mortgage.

“**PrivateBank**” means The PrivateBank and Trust Company, an Illinois banking corporation.

ARTICLE II

COVENANTS AND AGREEMENTS OF MORTGAGOR

Section 2.1. Payment of Indebtedness. The Mortgagor covenants and agrees that it will pay when due the principal of and interest on the indebtedness hereby secured evidenced by the Notes, all other sums which may become due pursuant thereto or hereto, and all other indebtedness hereby secured as described in the foregoing granting clauses of this Mortgage, including, but not limited to, all charges, fees and all other sums to be paid by the Mortgagor as provided in the Loan Documents, and that it will duly and punctually perform, observe and comply with all of the terms, provisions and conditions herein and in the other Loan Documents provided to be performed and observed by the Mortgagor. All amounts payable under this Mortgage shall be paid by the Mortgagor without offset or other reduction. The Notes secured hereby, which are hereby incorporated into this Mortgage by reference with the same effect as if set forth in full herein, are in the aggregate principal amount of \$19,050,000 and bear interest at variable rates of interest based on various published rates as set forth in the Loan Agreement. Interest is payable on the Notes in arrears on the first day of each month commencing as provided in the Loan Agreement. All of the unpaid principal of and accrued and unpaid interest on the Notes shall be due and payable on February 28, 2017, subject to extension to February 28, 2018, and to February 28, 2019, on the terms and subject to the conditions provided in the Loan Agreement.

Section 2.2. Escrow Deposits. In order to provide moneys for the payment of the Impositions on the Premises required to be paid by the Mortgagor pursuant to Section 2.6 hereof, the premiums on the insurance required to be carried by the Mortgagor pursuant to Section 2.4 hereof, and the payments of rent and other amounts due under the Ground Lease, the Mortgagor shall pay to the Mortgagee with each monthly payment on the Notes such amount as the Mortgagee shall reasonably estimate will be required to accumulate, by the date 30 days prior to the due date of the next installment of such Impositions, insurance premiums and Ground Lease payments, through substantially equal monthly payments by the Mortgagor to the Mortgagee, amounts sufficient to pay such next installment of Impositions, insurance premiums and Ground Lease payments. All such payments shall be held by the Mortgagee in escrow, and the Mortgagee shall not be obligated to pay interest thereon. Amounts held in such escrow shall be made available by the Mortgagee to the Mortgagor for the payment of the Impositions, insurance premiums and Ground Lease payments on the Premises when due, or may be applied thereto by the Mortgagee if it in its sole discretion so elects. The Mortgagee may at any time and from time to time waive the requirement for the escrow deposits provided for in this Section. In the event of any such waiver, the Mortgagee may thereafter in its sole discretion elect to require that the Mortgagor commence making such escrow deposits by giving the Mortgagor not less than 10

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days' written notice of such election. No such waiver shall impair the right of the Mortgagee thereafter to require that such escrow deposits be made.

Section 2.3. Maintenance, Repair, Alterations. The Mortgagor shall --

- (i) Keep the Premises in good condition and repair;
- (ii) Not remove, demolish or substantially alter any of the improvements which are a part of the Premises, except to the extent contemplated by the Loan Agreement;
- (iii) Complete the Improvements (as defined in the Loan Agreement) within the time and in the manner required by the Loan Agreement, and complete promptly and in a good and workmanlike manner the construction of any other improvements which may be constructed on or at the Premises;
- (iv) Promptly repair and restore any portion of the Premises which may become damaged or be destroyed so as to be of at least equal value and of substantially the same character as prior to such damage or destruction;
- (v) Subject to Section 2.13(b) hereof, pay when due all claims for labor performed and materials furnished to and for the Premises;
- (vi) Comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Premises or any part thereof or requiring any alterations or improvements;
- (vii) Not commit or permit any waste or deterioration of the Premises or any portion thereof;
- (viii) Keep and maintain the Premises in good and neat order and repair and free of nuisance;
- (ix) Not commit, suffer or permit any act to be done in or upon the Premises in violation of any law, ordinance or regulation;
- (x) Not initiate or acquiesce in any zoning change or reclassification of the Premises; and
- (xi) Subject to Section 2.13(b) hereof, keep the Premises free and clear of all liens and encumbrances of every sort except Permitted Encumbrances.

Section 2.4. Required Insurance.

- (a) The Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by the Mortgagee, in

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accordance with the terms, coverages and provisions described in the Loan Agreement, and maintain all other insurance required by the Loan Agreement.

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

Section 2.5. Delivery of Policies; Payment of Premiums. The Mortgagor shall furnish the Mortgagee with the original of all required policies of insurance or certificates satisfactory to the Mortgagee. At least 30 days prior to the expiration of each such policy, the Mortgagor shall furnish the Mortgagee with evidence satisfactory to the Mortgagee in its reasonable judgment of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this Mortgage.

Section 2.6. Taxes and Other Impositions.

(a) The Mortgagor shall pay or cause to be paid, at least 10 days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including, without limitation, any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Premises, which are assessed or imposed upon the Premises, or become due and payable, and which create, may create or appear to create a lien upon the Premises, or any part thereof (all of which taxes, assessments and other governmental charges and non-governmental charges of the above-described or like nature are hereinafter referred to as "**Impositions**"); provided however, that if, by law, any such Imposition is payable, or at the option of the taxpayer may be paid, in installments, the Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

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

(c) The Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings properly

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

Section 2.7. Utilities. The Mortgagor shall pay or cause to be paid when due all utility charges which are incurred by the Mortgagor or others for the benefit of or service to the Premises or which may become a charge or lien against the Premises for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting the Premises or any portion thereof, whether or not such assessments or charges are liens thereon.

Section 2.8. Actions by Mortgagee to Preserve Premises. Should the Mortgagor fail to make any payment or to do any act as and in the manner provided herein or in any of the other Loan Documents, the Mortgagee in its own discretion, without obligation so to do and without releasing the Mortgagor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith, without limiting its general powers, to the extent permitted by applicable law, the Mortgagee shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Premises; (ii) to make additions, alterations, repairs and improvements to the Premises which it may consider necessary and proper to keep the Premises in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the Premises, the security hereof or the rights or powers of the Mortgagee; (iv) to pay any Impositions asserted against the Premises and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition, and to pay any rents and other amounts payable under or in connection with the Ground Lease; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of the Mortgagee may affect or appears to affect the Premises or the security of this Mortgage or which may be prior or superior hereto; and (vi) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to counsel or other necessary or desirable consultants, contractors, agents and other employees. The Mortgagor irrevocably appoints the Mortgagee its true and lawful attorney in fact, at the Mortgagee's election, to do and cause to be done all or any of the foregoing in the event the Mortgagee shall be entitled to take any or all of the action provided for in this Section. The Mortgagor shall immediately, upon demand therefor by the Mortgagee, pay all costs and expenses incurred by the Mortgagee in

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connection with the exercise by the Mortgagee of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys and reasonable attorneys fees and expenses, all of which shall constitute so much additional indebtedness secured by this Mortgage immediately due and payable, with interest thereon from the date of such demand until paid at the Default Rate (as defined in the Loan Agreement). The Mortgagee shall give notice to the Mortgagor prior to taking such action unless the Mortgagee determines that immediate action is required in order to protect the security hereof.

Section 2.9. Damage and Destruction.

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

(b) In the case of loss covered by policies of insurance, provided that no Default or Event of Default under this Mortgage has occurred and is continuing, the Mortgagor shall be entitled to settle and adjust any claim under such policies which does not exceed \$350,000. In the case of any claim under such policies which exceeds \$350,000, provided that no Default or Event of Default under this Mortgage has occurred and is continuing, the Mortgagor and the Mortgagee shall jointly settle and adjust such claim. If any Default or Event of Default under this Mortgage has occurred and is continuing, the Mortgagee is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagor, or (ii) to allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. In all cases the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional indebtedness secured by this Mortgage, and shall be reimbursed to the Mortgagee upon demand.

(c) Subject to the provisions of paragraph (e) of this Section, in the event of any insured damage to or destruction of the Premises or any part thereof the proceeds of insurance payable as a result of such loss shall be applied upon the indebtedness secured by this Mortgage or applied to the repair and restoration of the Premises, as the Mortgagee in its sole discretion shall elect.

(d) In the event that under the provisions hereof the proceeds of insurance are to be applied to the repair and restoration of the Premises, the Mortgagor hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration, upon the Mortgagee's being furnished with satisfactory evidence of the estimated cost of such repair and restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as the Mortgagee may require and approve, and if the estimated cost of the work exceeds 10% of the original principal amount of the indebtedness secured hereby, with all plans and specifications for such repair or restoration as the Mortgagee may require and approve in its reasonable judgment. No payment made prior to the final completion of the work shall exceed 90% of the value of the work performed from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of the Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens.

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(e) Notwithstanding any provision herein to the contrary and in particular Section 2.9(c) hereof, in the event of any such damage or destruction, any proceeds of insurance payable to or received by the Mortgagee on account of any damage, injury, destruction to any building or improvement, or item of personal property, shall be held by the Mortgagee and expended as provided in Section 2.9(d) hereof solely for the repair, restoration or rebuilding of such building, improvements or personal property, in accordance and compliance with the terms and conditions of the Ground Lease, and shall in no event be retained by or forfeited to the Mortgagee, and if the said building, improvements or personal property shall not be repaired, restored or rebuilt or a new building or buildings constructed in place thereof, in accordance and compliance with the terms and conditions of the Ground Lease, then and in such case the insurance proceeds paid or payable to the Mortgagee may be applied by the Ground Lessor for such repair, restoration or rebuilding, and such insurance proceeds may be applied by the Mortgagee to the reduction of the debt secured by this Mortgage only in the event that neither the Mortgagor nor the Ground Lessor shall repair, restore, or rebuild said building as provided in the Ground Lease.

Section 2.10. Eminent Domain.

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

(b) The provisions of Section 2.9(b) of this Mortgage relating to settlement and adjustment of insurance claims shall also apply to compromise or settlement in connection with such taking or damage. The Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. All proceeds of compensation, awards, damages, rights of action and proceeds awarded to the Mortgagor are hereby assigned to the Mortgagee and the Mortgagor shall execute such further assignments of such proceeds as the Mortgagee may require.

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

(d) In the event that the Mortgagee shall elect that such proceeds are to be applied to the repair and restoration of the Premises, the Mortgagor hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration on the terms provided for in Section 2.9(d) hereof with respect to insurance proceeds.

Section 2.11. Inspection of Premises. The Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage or any of the other Loan Documents. The Mortgagee shall give prior notice to the Mortgagor of any such entry unless the Mortgagee

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determines that immediate action is required in order to protect the security hereof, and shall use reasonable efforts in such entry not to interfere in any material respect with the use of the Premises by tenants of the Premises.

Section 2.12. Inspection of Books and Records.

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

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

Section 2.13. Title, Liens and Conveyances.

(a) The Mortgagor represents and warrants that it holds good and marketable title to the Premises, subject only to Permitted Encumbrances.

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

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

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(d) With the exception of any of the following which is expressly permitted by the Loan Agreement (if any), and with the exception of any contract to sell the Premises at a price sufficient to repay the Loans in full, and written notice of which is given to the Mortgagee promptly after being entered into, in the event that the Mortgagor shall sell, transfer, convey or assign the title to all or any portion of the Premises, whether by operation of law, voluntarily, or otherwise, or the Mortgagor shall contract to do any of the foregoing, the Lenders, at their option, shall have the unqualified right to accelerate the maturity of the Notes causing the full principal balance and accrued interest on the Notes to become immediately due and payable without notice to the Mortgagor.

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

Section 2.14. Taxes Affecting Mortgage.

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

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

Section 2.15. Environmental Matters.

(a) The Mortgagor hereby represents and warrants to the Mortgagee that, except as disclosed in the environmental site assessment referred to in the Loan Agreement, and with the

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exception of Permitted Materials, (i) neither the Mortgagor nor any of its affiliates or subsidiaries, nor, to the best of the Mortgagor's knowledge, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Premises or any part thereof; (ii) none of the property described above has ever been used by the Mortgagor or any of its affiliates or subsidiaries, or to the best of the Mortgagor's knowledge, by any other person or entity, as a treatment, storage or disposal site, whether permanent or temporary, for any Hazardous Material; (iii) there are no above ground or underground storage tanks located on the Premises; and (iv) neither the Mortgagor nor the Premises are subject to any private or governmental lien or judicial or administrative notice or action pending, or to the best of the Mortgagor's knowledge, threatened, relating to Hazardous Materials or the environmental condition of the Premises.

(b) The Mortgagor shall not allow any Hazardous Materials other than Permitted Materials to be stored, located, discharged, possessed, managed, processed or otherwise handled on the Premises, and shall comply with all Environmental Laws affecting the Premises.

(c) Without limitation on any other provision hereof, the Mortgagor hereby agrees to indemnify and hold the Mortgagee and the Lenders harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever, including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law, paid, incurred or suffered by or asserted against the Mortgagee or any Lender as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of, the Mortgagor (but subject to the provisions of paragraph (d) of this Section): (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release of any Hazardous Material from the Premises or any part thereof, or (ii) any liens against the Premises permitted or imposed by any Environmental Law, or any actual or asserted liability or obligations of the Mortgagor or any of its affiliates or subsidiaries under any Environmental Law, or (iii) any actual or asserted liability or obligations of the Mortgagee or any of its affiliates or subsidiaries under any Environmental Law relating to the Premises.

(d) The representations, warranties, covenants, indemnities and obligations provided for in this Section 2.15 shall be continuing and shall survive the payment, performance, satisfaction, discharge, cancellation, termination, release and foreclosure of this Mortgage; provided, however, that such representations, warranties, covenants, indemnities and obligations shall not apply with respect to Hazardous Materials which are first placed on the Premises on or after the date on which the Mortgagee or any other party obtains title to and possession of the Premises as a result of an exercise by the Mortgagee of its remedies under this Mortgage or any of the other Loan Documents or as a result of a conveyance of title to the Premises by the Mortgagor to the Mortgagee or such other party in lieu of such exercise of remedies.

Section 2.16. Concerning the Ground Lease.

(a) The Mortgagor hereby represents and warrants to the Mortgagee as of the date hereof as follows:

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(i) The Ground Lease is in full force and effect and has not been modified or amended, other than as stated in the definition of the term "Ground Lease" in Section 1.1 of this Mortgage.

(ii) No Default or Event of Default on the part of either the Mortgagor or the Ground Lessor has occurred and is continuing under the Ground Lease.

(iii) The Mortgagor owns and holds a good and valid leasehold estate in the Premises under the Ground Lease subject to no liens or encumbrances other than Permitted Encumbrances.

(b) All of the provisions of the Loan Agreement relating to the Ground Lease, including, without limitation, Section 7.24 of the Loan Agreement, are hereby incorporated into and made a part of this Mortgage and are made terms, covenants, conditions and restrictions to be observed and performed by the Mortgagor under this Mortgage, with the same effect as if set forth in full herein.

(c) To the extent permitted by applicable law, the price payable by the Mortgagor or by any other party in the exercise of the right of redemption, if any, from any order or decree of foreclosure of this Mortgage shall include all rents paid and other sums advanced by the Mortgagee, on behalf of the Mortgagor, as lessee under the Ground Lease.

(d) So long as any of the indebtedness secured by this Mortgage shall remain unpaid, unless the Mortgagee shall otherwise consent in writing, the fee title and the leasehold estate in the Premises shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee, or in a third-party, by purchase or otherwise; and the Mortgagor covenants and agrees that, in case it shall acquire the fee title, or any other estate, title or interest in the premises covered by the Ground Lease, this Mortgage shall attach to and be a first lien upon such other estate so acquired and such other estate so acquired by the Mortgagor shall be considered as mortgaged, assigned or conveyed to the Mortgagee and the lien hereof spread to cover such estate with the same force and effect as though specifically herein mortgaged, assigned or conveyed and spread. The provisions of this paragraph shall not apply in the event the holder of the Notes acquires the fee of the Premises except if the Mortgagee shall so elect.

(e) In accordance with Section 6.6 of the Ground Lease, the Mortgagee and the holder or owner of the indebtedness secured by this Mortgage, shall not become personally liable upon the covenants of the Ground Lease unless and until they shall become the owners of the legal and equitable title to the leasehold estate created by the Ground Lease.

Section 2.17. Estoppel Letters. The Mortgagor shall furnish from time to time within 15 days after the Mortgagee's request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

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ARTICLE III

LEASES; DECLARATION OF SUBORDINATION TO LEASES

Section 3.1. Leases. The Mortgagor agrees (i) that it will not enter into any lease of the Premises or any portion thereof other than Permitted Leases; (ii) that it will at all times duly perform and observe all of the terms, provisions, conditions and agreements on its part to be performed and observed under any and all leases of the Premises, and shall not suffer or permit any material Default or Event of Default on the part of the lessor to exist thereunder; (iii) that it will not agree or consent to, or suffer or permit, any modification or amendment of any lease of the Premises which would cause such lease to no longer be a Permitted Lease; and (iv) except for security deposits not to exceed one month's rent for any one lessee, that it will not collect any rent for more than one month in advance of the date same is due. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of the lessor under any lease of the Premises, and the Mortgagor shall and does hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur under any leases of the Premises or by reason of the Assignment of Rents; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys fees and expenses, incurred by the Mortgagee in the defense of any claims or demands therefor, whether successful or not, shall be so much additional indebtedness secured by this Mortgage, and the Mortgagor shall reimburse the Mortgagee therefor on demand.

Section 3.2. Declaration of Subordination to Leases. At the option of the 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 and subleases of all or any part of the Premises upon the execution by the Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of the county wherein the Premises are situated, of a unilateral declaration to that effect.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

Section 4.1. Events of Default. Any one or more of the following shall constitute an Event of Default under this Mortgage:

- (a) Failure of the Mortgagor to make payment when due of any of the principal of or interest on any of the Notes, or failure of the Mortgagor to make payment when due of any other amount required to be paid by the Mortgagor to the Mortgagee or the Lenders under this Mortgage or under any of the other Loan Documents, or payment when due of any other indebtedness secured by this Mortgage, and in each case such failure shall continue for a period of five days; or

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(b) A Default by the Mortgagor shall occur under any provision of this Mortgage or of any of the other Loan Documents, relating to the payment by the Mortgagor of any amount payable to a party other than the Mortgagee and such payment is not made prior to the expiration of any cure period granted by the party to which it is due; or

(c) Default shall occur in the performance, observance or compliance with any term, covenant, condition, agreement or provision contained in this Mortgage other than as described in paragraphs (a) and (b) above, and such Default shall continue for a period of 30 days after written notice to the Mortgagor; or

(d) Any Event of Default shall occur under any of the other Loan Documents; or

(e) Any Event of Default shall occur under any other mortgage or trust deed on the Premises; or

(f) Any Event of Default on the part of the Borrower shall occur under the Ground Lease or the Ground Lease shall terminate or be cancelled or surrendered.

Section 4.2. Acceleration Upon Event of Default; Additional Remedies. Upon or at any time after the occurrence and during the continuance of any Event of Default under this Mortgage, the Lenders may declare the Note and all indebtedness secured by this Mortgage to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, subject to the provisions of Section 4.11 hereof, the Mortgagee and the Lenders may --

(a) Either in person or by agent, with or without bringing any action or proceeding, if applicable law permits, enter upon and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Premises, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same to the payment of taxes, insurance premiums and other charges against the Premises or in reduction of the indebtedness secured by this Mortgage; and the entering upon and taking possession of the Premises, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of Event of Default and, notwithstanding the continuance in possession of the Premises or the collection, receipt and application of rents, issues or profits, the Mortgagee and the Lenders shall be entitled to exercise every right provided for in this Mortgage or any of the other Loan Documents or by law upon occurrence of any Event of Default; or

(b) Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; or

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(c) Sell the Premises, or any part thereof, or cause the same to be sold, and convey the same to the purchaser thereof, pursuant to the statute in such case made and provided, and out of the proceeds of such sale retain all of the indebtedness secured by this Mortgage including, without limitation, principal, accrued interest, costs and charges of such sale, the attorneys fees provided by such statute, or in the event of a suit to foreclose by court action, a reasonable attorneys fee, rendering the surplus moneys, if any, to the Mortgagor; provided, that in the event of public sale, such property may, at the option of the Mortgagee, be sold in one parcel or in several parcels as the Mortgagee, in its sole discretion, may elect; or

(d) Exercise any or all of the remedies available to a secured party under the Code and any notice of sale, disposition or other intended action by the Mortgagee, sent to the Mortgagor at the address specified in Section 5.13 hereof, at least 10 days prior to such action, shall constitute reasonable notice to the Mortgagor; or

(e) Exercise any of the rights and remedies provided for in this Mortgage, in any of the other Loan Documents or by applicable law, including, without limitation, the right of set off.

Section 4.3. Foreclosure, Expense of Litigation. When the indebtedness secured by this Mortgage, or any part thereof, shall become due, whether by acceleration or otherwise, subject to the provisions of Section 4.11 hereof, the Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of the Mortgagee or the Lenders under this Mortgage or the Notes, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for 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 the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, any of the other Loan Documents or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage, immediately due and payable, with interest thereon from the date due until paid at the Default Rate (as defined in the Loan Agreement). Without limiting the generality of the foregoing, all expenses incurred by the Mortgagee to the extent reimbursable under Sections 15 1510 and 15 1512 of IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated elsewhere in this Mortgage, shall be added to the obligations secured by this Mortgage or by the judgment of foreclosure. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. The Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

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Section 4.4. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in Section 4.3 hereof; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage additional to that evidenced by the Notes, with interest thereon as therein provided; third, all principal and interest remaining unpaid on the Notes; and fourth, any remainder to the Mortgagor, its successors or assigns, as their rights may appear.

Section 4.5. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the Mortgagee shall be entitled to the appointment of a receiver of the Premises or any portion thereof. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the then value of the Premises and the Mortgagee or any holder of the Notes may be appointed as such receiver. Such receiver shall have power (i) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (ii) to extend or modify any then existing leases and to make new leases, which extension, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured by this Mortgage and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Mortgage, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of the indebtedness secured by this Mortgage, or found due or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such deed, provided such application is made prior to foreclosure sale.

Section 4.6. Insurance After 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 repairing and restoring the Premises, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

Section 4.7. Remedies Not Exclusive; No Waiver of Remedies.

(a) The Mortgagee and the Lenders shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the other Loan Documents or other agreement or

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any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect the Mortgagee's or any Lender's right to realize upon or enforce any other security now or hereafter held by the Mortgagee or any Lender, it being agreed that the Mortgagee and the Lenders shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee or any Lender in such order and manner as they may in their absolute discretion determine. No remedy herein conferred upon or reserved to the Mortgagee or the Lenders is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Without limiting the generality of the foregoing, if any provision of this Mortgage shall grant to the Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in the Mortgagee under IMFL in the absence of said provision, the Mortgagee shall be vested with the rights granted in IMFL to the full extent permitted by law. Every power or remedy given by any of the Loan Documents to the Mortgagee or the Lenders or to which they may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by the Mortgagee and the Lenders and the Mortgagee and the Lenders may pursue inconsistent remedies. Failure by the Mortgagee or the Lenders to exercise any right which they may exercise hereunder, or the acceptance by the Mortgagee or the Lenders of partial payments, shall not be deemed a waiver by the Mortgagee or the Lenders of any Default or Event of Default hereunder or of its right to exercise any such rights thereafter.

(b) In the event the Mortgagee or any Lender at any time holds additional security for any of the indebtedness secured by this Mortgage, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently with exercising remedies under this Mortgage or after a sale is made hereunder.

Section 4.8. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession.

Section 4.9. Waiver of Certain Rights. The Mortgagor shall not and will not apply for or avail itself of any appraisal, 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 rather waives the benefit of such laws. The Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. The Mortgagor hereby waives any and all rights of redemption under any applicable law, including, without limitation, redemption from sale or from or under any order, judgment or decree of foreclosure, pursuant to rights herein granted, on behalf of the Mortgagor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the

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Premises are located, including, without limitation, any and all rights of redemption under Section 15 1601(b) of IMFL.

Section 4.10. Mortgagee's Use of Deposits. With respect to any deposits made with or held by the Mortgagee or any depository pursuant to any of the provisions of this Mortgage, when any Event of Default shall exist under this Mortgage, the Notes or any of the other Loan Documents, the Mortgagee may, at its option, without being required to do so, apply any moneys or securities which constitute such deposits on any of the obligations under this Mortgage, the Notes or the other Loan Documents, in such order and manner as the Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to the Mortgagor. Such deposits are hereby pledged as additional security for the prompt payment of the Notes and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

Section 4.11. Rights of Ground Lessor Upon Default. Notwithstanding any other provision of this Mortgage or any of the other Loan Documents, it is a condition of this Mortgage that this Mortgage may be foreclosed only if (1) written notice of the Mortgagor's default hereunder shall first be mailed to the Ground Lessor on the same day as mailing of such notice to the Mortgagor; (2) the Mortgagor shall have a period of not less than 30 days thereafter during which to cure such default; (3) if the Mortgagor fails to cure such default within such 30-day period, written notice of the Mortgagor's failure to cure such default within such 30-day period shall be mailed to the Ground Lessor; and (4) the Ground Lessor shall have the right, at its election, to cure such default of the Mortgagor within a further period of not less than 30 days after mailing of such second notice, and, in the event of the forfeiture of the Mortgagor interest in the Ground Lease, in accordance with Article Ninth of the Ground Lease, that the Ground Lessor shall thereafter be subrogated and succeed to all rights and privileges of the Mortgagor under this Mortgage, and the Ground Lessor shall have the right, but shall not be required, thereafter to make all payments and discharge all other obligations of the Mortgagor hereunder.

ARTICLE V

MISCELLANEOUS

Section 5.1. Recitals. The recitals hereto are hereby incorporated into and made a part of this Mortgage.

Section 5.2. Time of Essence. Time is of the essence of this Mortgage and of each and every provision hereof.

Section 5.3. Usury. The Mortgagor hereby represents and covenants that the proceeds of the Notes will be used for the purposes specified in subparagraph 1(c) contained in Section 205/4 of Chapter 815 of the Illinois Compiled Statutes, as amended, and that the indebtedness secured hereby constitutes a "business loan" within the meaning of that Section.

Section 5.4. Lien for Service Charges and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures, in addition to any loan

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proceeds disbursed from time to time, the payment of any and all origination fees, loan commissions, service charges, liquidated damages, expense and advances due to or incurred by the Mortgagee in connection with the loan to be secured hereby, all in accordance with the Loan Agreement and the other Loan Documents.

Section 5.5. Subrogation. To the extent that proceeds of the indebtedness secured by this Mortgage are used to pay any outstanding lien, charge or prior encumbrance against the Premises, the Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, and shall have the benefit of the priority thereof, irrespective of whether said liens, charges or encumbrances are released.

Section 5.6. Recording; Fixture Filing. The Mortgagor shall cause this Mortgage and all other documents securing the indebtedness secured by this Mortgage at all times to be properly filed and/or recorded at the Mortgagor's own expense and in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Mortgagee. This Mortgage is intended to be effective, from the date of recording of this Mortgage in the Office of the Recorder of Deeds of the county in which the Premises are located, as a financing statement filed as a fixture filing pursuant to Section 9-502(c) of the Code. For purposes of such fixture filing, (i) the Mortgagor is the "debtor" and Mortgagee is the "Secured party", as such terms are used in the Code, (ii) the organizational identification number of the Mortgagor in the State of Delaware is 5477924, (iii) the mailing address of the Mortgagor and the Mortgagee are as set forth in Section 5.13 hereof, and (iv) a statement indicating the types, or describing the items, of collateral is set forth in this Mortgage.

Section 5.7. Further Assurances. The Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the reasonable judgment of the Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired.

Section 5.8. No Defenses. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Notes.

Section 5.9. Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured by this Mortgage, or if such lien is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the indebtedness secured by this Mortgage shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the indebtedness secured by this Mortgage, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Mortgage. Without limiting the generality of the foregoing, in the event that any provision in this Mortgage shall be inconsistent with any provision of IMFL, the provisions of IMFL 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 IMFL.

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Section 5.10. Illegality of Terms. Nothing herein or in the Notes contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (i) to require the Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (ii) to require the Mortgagor to make any payment or do any act contrary to law. If any provision contained in this Mortgage shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and the Mortgagee shall be given a reasonable time to correct any such error.

Section 5.11. Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, the Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with the Mortgagor, without in any way releasing or discharging the Mortgagor from the covenants and/or undertakings hereunder, specifically including Section 2.13(d) hereof, and without the Mortgagee waiving its rights to accelerate the Notes as set forth in Section 2.13(d).

Section 5.12. Releases. The Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Premises, or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Notes, this Mortgage, the Guaranty, or any other guaranty given as additional security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage.

Section 5.13. Notices. All notices hereunder shall be in writing (including facsimile transmission) and shall be sent to the applicable party at its address shown on below or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by facsimile transmission shall be deemed to have been given when sent; notices sent by mail shall be deemed to have been given three business days after the date when sent by registered or certified mail, postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when received. The addresses of the parties for purposes of this Section are as follows:

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The Mortgagor: Gold Coast City Apartments LLC
c/o Village Green Companies
30833 Northwestern Highway
Suite 300
Farmington Hills, Michigan 48334
Attention: Jonathan Holtzman

With a copy to: Honigman Miller Schwartz and Cohn LLP
39400 Woodward Avenue
Suite 101
Bloomfield Hills, Michigan 48304-5151
Attention: Jonathan R. Borenstein, Esq.

And to the Ground Lessor: Chicago Title Land Trust Company, as Successor
Trustee under a Trust Agreement Dated July 28,
1986, and known as Trust No. 43663
171 North Clark Street
Suite 575
Chicago, Illinois 60601

The Mortgagee: The PrivateBank and Trust Company
129 South LaSalle Street
Chicago, Illinois 60603
Attention: Maria K. Alexakis

With a copy to: Seyfarth Shaw LLP
131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603
Attention: Alvin L. Kruse

Section 5.14. Binding Effect. 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 the Premises or any other person having an interest therein, and shall inure to the benefit of the Mortgagee and its successors and assigns. Wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holders from time to time of the Notes, whether so expressed or not; and each such holder of the Notes shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every 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 were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated the Mortgagee.

Section 5.15. Covenants to Run with the Land. All the covenants hereof shall run with the land.

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Section 5.16. Entire Agreement; No Reliance. This Mortgage, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such parties, verbal or written, relating to the subject matter hereof and thereof and any prior arrangements made with respect to the payment of (or any indemnification for) any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of the Mortgagee. The Mortgagor acknowledges that it is executing this Mortgage without relying on any statements, representations or warranties, either oral or written, that are not expressly set forth herein.

Section 5.17. Counterparts; Electronic Signatures. This Mortgage may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same document. Receipt of an executed signature page to this Mortgage by facsimile or other electronic transmission shall constitute effective delivery thereof. An electronic record of this executed Mortgage maintained by the Mortgagee shall be deemed to be an original.

Section 5.18. GOVERNING LAW. THIS MORTGAGE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

Section 5.19. Severability; Construction.

(a) Whenever possible each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage. All obligations of the Mortgagor and rights of the Mortgagee expressed herein shall be in addition to and not in limitation of those provided by applicable law.

(b) Each party to this Mortgage and legal counsel to each party have participated in the drafting of this Mortgage, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Mortgage.

Section 5.20. Waiver; Amendments. No delay on the part of the Mortgagee in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by the Mortgagee of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy. No amendment, modification or waiver of, or consent with respect to, any provision of this Mortgage shall in any event be effective unless the same shall be in writing and acknowledged by the Mortgagee, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

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Section 5.21. Captions. Article, Section and paragraph captions used in this Mortgage are for convenience only and shall not affect the construction of this Mortgage.

Section 5.22. Approval or Consent of Mortgagee.

(a) Wherever in this Mortgage provision is made for the approval or consent of the Mortgagee, or that any matter is to be to the Mortgagee's satisfaction, or that any matter is to be as estimated or determined by the Mortgagee, or the like, unless specifically stated to the contrary, such approval, consent, satisfaction, estimate, determination or the like shall be made, given or determined by the Mortgagee in its sole and absolute discretion.

(b) Notwithstanding any other provision of this Mortgage or any of the other Loan Documents, wherever in this Mortgage provision is made for the approval or consent of the Mortgagee with respect to a matter, if the Mortgagee elects to grant such approval or consent, it shall not be unreasonable for the Mortgagee to make such approval or consent subject to the condition that such matter must also be approved or consented to in writing by any one or more of the Guarantors, any other guarantors of the Loans and any parties other than the Mortgagor that have provided collateral for the Loans.

Section 5.23. WAIVER OF JURY TRIAL. THE MORTGAGOR AND THE MORTGAGEE HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]

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EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

Lot 34 (except the West 15 1/2 feet) and all of Lots 35 and 36 in Lake Shore Drive Addition to Chicago, a Subdivision of part of Blocks 14 and 20 in Canal Trustee's Subdivision of South Fractional 1/4 of Section 3, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Index Number: 17-03-221-010-0000

Address: 860 North De Witt Place, Chicago, Illinois

Property of Cook County Clerk's Office