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Illinois Anti-Predatory Lending Database Program



1408039016

Doc#: 1408039016 Fee: \$74.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 03/21/2014 09:22 AM Pg: 1 of 19

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN: 17-09-419-011-0000**

145011 SW

Address:

Street: 221 N. LaSalle Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60601

Lender: Pinnacle Bank

Borrower: Buckhead Investments, LLC

Loan / Mortgage Amount: \$1,470,000.00

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.

Old Republic National Title Insurance Company
20 South Clark Street
Suite 2000
Chicago, IL 60603

Certificate number: 02D75237-21BC-4F13-8D75-C2CCF88A4CA6

Execution date: 03/20/2014

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This Document Prepared by
and after Recording Return to:

Andrew R. Andreasik
Barnes & Thornburg LLP
1 North Wacker Drive, Ste. 4400
Chicago, IL 60606

This space reserved for Recorder's use only.

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (the "Mortgage") is made effective as of the 20th day of March, 2014, by BUCKHEAD INVESTMENTS, LLC, a Tennessee limited liability company ("Mortgagor"), to PINNACLE BANK ("Mortgagee").

Recitals

A. Mortgagee has made a loan to Mortgagor in the principal amount of One Million Four Hundred Seventy Thousand and No/100 Dollars (\$1,470,000.00) (the "Loan"). The Loan shall be evidenced by that certain Loan Agreement of even date herewith by and between Mortgagor and Mortgagee (as amended, restated, replaced or supplemented from time to time, the "Loan Agreement") and that certain Promissory Note of even date herewith (as amended, restated, replaced or supplemented from time to time, the "Note"), executed by Mortgagor and made payable to the order of Mortgagee in the maximum principal amount of the Loan, with all outstanding principal and accrued interest thereon due on the date (the "Maturity Date") set forth in the Note, except as may be accelerated pursuant to the terms hereof, of the Loan Agreement, of the Note or of any other document or instrument now or hereafter given to evidence or secure the payment of the Note or delivered to induce Mortgagee to disburse the proceeds of the Loan (the Loan Agreement, the Note and such other documents, as amended, restated, replaced or supplemented from time to time, being collectively referred to herein as the "Loan Documents"). The Loan bears interest at a fixed rate of Four and 60/100 percent (4.60%) per annum.

B. As security for the Loan and as a condition precedent to Mortgagee's extension of the Loan to Mortgagor, Mortgagor shall execute and deliver to Mortgagee this Mortgage of the real property legally described in Exhibit A attached hereto (the "Real Estate").

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Agreements

NOW, THEREFORE, Mortgagor, in consideration of said debt and the Recitals set forth above and to secure the timely payment of both principal and interest thereof, in accordance with the terms and provisions of the Loan Documents and in accordance with the terms, provisions and limitations of this Mortgage, and to secure the performance of the covenants and agreements herein and in the Loan Documents contained and to be performed by Mortgagor, does by these presents MORTGAGE, WARRANT, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto Mortgagee, its successors and assigns, the Real Estate and all of its right, title and interest therein;

TOGETHER with all and singular the easements, rights-of-way, licenses, privileges, tenements, appurtenances, hereditaments, waters, water courses, riparian rights, appurtenances, other rights, liberties and privileges thereunto belonging or in any wise appertaining, including without limitation any claim at law or in equity as well as any after-acquired title, franchise or license and the reversions and remainders thereof; and also all the rents, issues, proceeds and profits now or hereafter accruing therefrom;

TOGETHER with all of Mortgagor's interest in contracts or options for the sale of all or any part of the Real Estate, and all leases of all or any part of the Real Estate, whether now existing or hereafter arising, and all amendments thereto and renewals thereof, and all rents, issues, profits, revenues, royalties, bonuses, receipts, rights and benefits due, payable or accruing or to accrue (including without limitation all deposits of money as advanced rent or for security) under any and all such leases or subleases and renewals thereof of, or under any contracts or options for the sale of all or any part of the Real Estate (including without limitation those accruing during any period allowed by law for the redemption of the Real Estate after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness secured hereby and to demand, sue for and recover the same when due or payable, provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee;

TOGETHER with all the estate, right, title and interest, if any, of Mortgagor (including without limitation any after-acquired title, franchise or license and the reversions and remainders thereof), in and to the land lying within any alley, way, street, roadway, strips and gores, or beds adjoining the Real Estate;

TOGETHER with all property and rights, if any, which by the express provisions of this instrument are required to be subjected to the lien hereof and any additional property and rights that from time to time hereafter, by installation or writing of any kind, may be subjected to the lien hereof by Mortgagor or by anyone on Mortgagor's behalf;

TOGETHER with all rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion with respect thereto;

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TOGETHER with all buildings, structures and improvements now or hereafter erected or placed on the Real Estate, and all materials intended for construction, reconstruction, alteration and repair thereof, all of which materials shall be included with the Real Estate and subjected to the lien hereof immediately upon the delivery thereof to the Real Estate, and, also, together with all machinery, equipment, apparatus, goods, systems, fixtures and items of personal property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Real Estate or the buildings or improvements located thereon and that are owned by Mortgagor, or any part thereof, and used or usable in connection with any present or future operation of the Real Estate, including without limitation all heating, lighting, incinerating, refrigerating, ventilating, air-conditioning, air-cooling, lifting, fire extinguishing, plumbing, cleaning, electrical, communication and power equipment, systems and apparatus; all gas, water and electrical equipment, systems, fixtures and apparatus; and all elevators, escalators, switchboards, computers, engines, motors, tanks, pumps, screens, storm doors, storm windows, shades, blinds, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing (all such machinery, equipment, apparatus, goods, systems, fixtures, renewals, additions, accessories, replacements and substitutions are a part of the Real Estate and are declared to be a portion of the security for the indebtedness secured hereby whether in single units or centrally controlled, and whether physically attached to the Real Estate or the buildings or improvements thereon, or not; and the enumeration of any specific items of property shall in no wise exclude or be held to exclude any items of property not specifically enumerated); and all revenues, receivables, income and accounts now or hereafter acquired and arising from any or all of the foregoing; and the proceeds of any and all of the foregoing;

TOGETHER with all judgments, settlements, awards and other compensation heretofore made or hereafter to be made to the present and all subsequent owners of the Real Estate for any taking by eminent domain, either permanent or temporary, of all or any part of the Real Estate or any easement or appurtenance thereof, including without limitation for severance and consequential damage therefor or for change in grade of streets. All of the foregoing enumerated in this and the preceding six paragraphs, together with the Real Estate, are herein sometimes collectively referred to as the "Premises". All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby. As to any of the property aforesaid which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as Secured Party (as said term is defined in the Uniform Commercial Code), securing said indebtedness and obligations. Mortgagor covenants that it is lawfully seized of the Premises, that the same are unencumbered (except as herein provided in Section 1 below), and that it has good right, full power and lawful authority to convey and mortgage the same.

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

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REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF MORTGAGOR

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

1. Title. Mortgagor has good and marketable fee simple title to the Premises, subject only to those title exceptions appearing in Schedule B of the loan title insurance policy issued to Mortgagee with respect to this Mortgage, and is lawfully seized and possessed of the same, and has the full power, authority and right to convey the same and to execute and deliver this Mortgage.
2. Mortgagor's Covenants. Mortgagor shall (i) indemnify and hold Mortgagee harmless from and against all liability, costs and expenses, including without limitation reasonable attorneys' fees, arising from the failure of Mortgagor to keep the Premises in material compliance with all requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof; and (ii) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note.
3. Payment of Taxes. Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments provided: (a) that such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy the same; (b) that Mortgagor has, before such taxes or assessments shall have been increased by any interest, penalties or costs, notified Mortgagee in writing of the intention of Mortgagor to contest the same; and (c) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and, in the absence of such appointment, then at the place of payment designated in the Note, a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such contested taxes and assessments and all penalties and interest that might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional penalties and interest whenever, in the judgment of Mortgagee, such increase is necessary. In case Mortgagor shall fail to prosecute such objections with reasonable diligence or shall fail to maintain sufficient funds or deposit as hereinabove provided, Mortgagee may at its option apply the money so deposited in payment of or on account of such taxes and assessments, or that part thereof then unpaid, together with all penalties and interest thereon, and promptly return any remaining portion of such deposit to Mortgagor. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money on deposit. If the amount of the money so deposited shall be insufficient for the payment in full of such taxes and assessments, together with all penalties and interest thereon, Mortgagor shall forthwith upon demand either (i) deposit with Mortgagee a sum which when added to the funds then on deposit shall be sufficient to make such payment in full, or (ii) in case Mortgagee shall have applied funds on deposit on account of such taxes and assessments, restore said deposit to a sufficient amount. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such taxes and assessments or that part thereof then unpaid, together

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with all penalties and interest thereon (provided Mortgagor is not then in default) when so requested in writing by Mortgagor and furnished with any additional funds necessary to make such payment in full and with an official bill for such taxes.

4. Mortgage as Fixture Filing Financing Statement. This Mortgage is intended to serve as a fixture filing with respect to personal property and fixtures described in this Mortgage pursuant to the terms of the applicable provisions of the Uniform Commercial Code of the State of Illinois. The filing is to be recorded with the Recorder of Deeds of Cook County, Illinois. In that regard, the following information is provided:

Name of Debtor:	Buckhead Investments, LLC
Type of Organization:	limited liability company
State of Organization:	Tennessee
Identification Number:	000445565
Address of Debtor:	1181 Northmoor Court Atlanta, Georgia 30327
Name of Secured Party:	Pinnacle Bank
Address of Secured Party:	150 Third Avenue South, Suite 800 Nashville, Tennessee 37201

5. Insurance; Casualty Loss.

(a) 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 Mortgagee. Unless Mortgagor provides Mortgagee evidence of the insurance coverage required hereunder, Mortgagee may purchase insurance at Mortgagor's expense to cover Mortgagee's interest in the Premises. The insurance may, but need not, protect Mortgagor's interest. The coverages that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the Premises, Mortgagor will be responsible for the costs of such insurance, including, without limitation, interest and any other charges which Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The cost of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

(b) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee

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is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to Mortgagee and such separate insurance is otherwise acceptable to Mortgagee.

(c) In the event of loss, Mortgagor shall give prompt notice thereof to Mortgagee, who, if such loss exceeds Fifty Thousand and No/100 Dollars (\$50,000.00) ("Threshold"), shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i), (ii) and (iii) of the immediately succeeding sentence are not satisfied, then Mortgagee, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) such loss is equal to or less than the Threshold, (ii) no Event of Default or event which, with the passage of time or giving of notice or both would constitute an Event of Default, then exists, and (iii) Mortgagee determines that the work required to complete the repair or restoration of the Premises necessitated by such loss can be completed no later than six (6) months prior to the Maturity Date, then Mortgagee shall endorse to Mortgagor any such payment and Mortgagor may collect such payment directly. Mortgagee shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Mortgagee pursuant to the terms of this section, after the payment of all of Mortgagee's expenses, either (A) on account of the indebtedness secured hereby, irrespective of whether such principal balance is then due and payable, when upon Mortgagee may declare the whole of the balance of indebtedness secured hereby to be due and payable, or (B) to the restoration or repair of the portion of the Premises damaged as provided in subparagraph (d) below; provided, however, that Mortgagee hereby agrees to permit the application of such proceeds to the restoration or repair of the damaged property, subject to the provisions of subparagraph (d) below, if (x) Mortgagee has received satisfactory evidence that such restoration or repair shall be completed no later than the date that is six (6) months prior to the Maturity Date, and (y) no Event of Default or Incipient Event of Default, then exists. If insurance proceeds are made available to Mortgagor by Mortgagee as hereinafter provided, Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

(d) If insurance proceeds are made available by Mortgagee to Mortgagor, Mortgagor shall comply with the following conditions:

(i) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(ii) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Premises to the extent permitted in subsection (c) above (which payment or application may be made, at Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be satisfied as to the following:

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(A) no Event of Default or any event which, with the passage of time or giving of notice or both would constitute an Event of Default, has occurred;

(B) either such Improvements have been fully restored, or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Exceptions, or, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Premises, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Premises; and

(C) prior to each disbursement of any such proceeds, Mortgagee shall be furnished with a statement of Mortgagee's architect (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(iii) If Mortgagor shall fail to restore, repair or rebuild the Improvements within a time deemed satisfactory by Mortgagee, then Mortgagee, at its option, may (A) commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of Mortgagor, or (B) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the indebtedness secured hereby irrespective of whether such indebtedness is then due and payable without payment of any premium or penalty.

6. Assignment of Rents and Leases. Mortgagor acknowledges that concurrently herewith, Mortgagor has executed and delivered to Mortgagee, as additional security for the repayment of the Loan, an Assignment of Rents and Leases pursuant to which Mortgagor has assigned to Mortgagee the interests in the leases of the Premises and the rents and income from the Premises. All of the provisions of the Assignment of Rents and Leases are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. Mortgagor agrees to abide by all of the provisions of the Assignment of Rents and Leases.

7. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, or recording of this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note, or recording of this Mortgage.

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8. Prepayment of Note. Mortgagor shall at any time and from time to time have the right to prepay the Note (in addition to the required payments) in accordance with the terms and conditions set forth in the Note.

9. Effect of Extensions of Time and Amendments. If the payment of the indebtedness secured by this Mortgage or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release. Any person or entity taking a junior mortgage or other lien upon the Premises or any interest therein, shall take said lien subject to the rights of Mortgagee herein to amend, modify, and supplement this Mortgage or the Note, and to impose additional fees and other charges, and to extend the maturity of said indebtedness, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Section 9 contained shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed, or encumbered.

10. Effect of Changes in Laws Regarding Taxation. In the event of the enactment after this date of any law of the State of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or 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 of the Note, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable 90 days from the giving of such notice.

11. Mortgagee's Performance of Defaulted Acts; Subrogation. In case an Event of Default (as hereinafter defined) shall occur, Mortgagee may but need not make any payment or perform any act herein required of Mortgagor, in any form and manner deemed expedient, and may but need not make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale of forfeiture affecting the Premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable upon demand and with interest thereon at the maximum rate allowed by law (the "Default Rate"). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any

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default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

12. Mortgagee's Reliance on Tax Bills, Etc. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

13. Acceleration of Indebtedness in Case of Default. Each of the following shall constitute an Event of Default under this Mortgage: (a) the occurrence of an "Event of Default" as defined in any of the terms and provisions of the Loan Agreement or the Note; or (b) if default shall be made in the due observance or performance of the monetary covenants and agreements to be kept or observed by Mortgagor under the provisions of this Mortgage which does not constitute an Event of Default under the Loan Agreement or the Note, and such default continues for ten (10) days after written notice thereof; or (c) if Mortgagor fails to comply with the provisions of Section 5 of this Mortgage; or (d) if default shall be made in the due observance or performance of any other of the non-monetary covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor and such default shall continue for ten (10) days after service of written notice thereof or, where Mortgagee's security is not impaired by such non-monetary default and if such non-monetary default cannot reasonably be cured within said 10-day period, the failure to commence curing said default within said 10-day period, to proceed with such cure thereafter in a reasonably diligent manner, and to complete such cure within twenty (20) days after expiration of such 10-day period; or (e) any event described in Section 29 hereof shall occur, then and in every such case the whole of said principal sum hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable, together with accrued interest thereon, without notice to Mortgagor.

14. Foreclosure; Expense of Litigation. If an Event of Default has occurred hereunder, or when the indebtedness hereby secured, or any part thereof, shall become due, either (a) by lapse of time; (b) by acceleration under any of the provisions of the Note or this Mortgage; or (c) otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and to exercise any one or more of the remedies provided in the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as in effect from time to time (the "Act").

In connection with any foreclosure of the lien hereof or to enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional

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indebtedness in the decree for sale or other judgment or decree all reasonable expenditures and expenses which may be paid or incurred, whether by force or after the entry of any decree or judgment of foreclosure, by or on behalf of Mortgagee for reasonable attorneys' fees and expenses, 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 and value as 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 fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note 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 immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

15. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order:

First, on account of all reasonable costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Section hereof; Second, whether incurred before or after the entry of any decree or judgment of foreclosure, the reasonable expenses of securing possession before sale, holding, maintaining and preparing the real estate for sale including, without limitation, payment of taxes and other governmental charges, premiums on hazard and liability insurance, receiver's and management fees, reasonable attorneys' fees and other legal expenses incurred by Mortgagee, and all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; Third, all principal and interest remaining unpaid on the Note; Fourth, satisfaction of claims in order of priority adjudicated in the judgment of foreclosure or order confirming the sale; and Fifth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

16. Appointment of Receiver. After the occurrence of an Event of Default, prior to, upon, or at any time after, the filing of a complaint to foreclose this Mortgage, whenever Mortgagee is entitled to possession of the Premises, at Mortgagee's request, the court in which such complaint is filed shall appoint a receiver of the Premises. Mortgagee shall be entitled to designate the receiver. Such appointment may be made either before or after sale, without notice to the extent permitted by law, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee may be appointed as such receiver. Such receiver shall have possession of the Premises and other property subject to this Mortgage during the foreclosure, shall have the full power and authority to operate, manage and conserve such property, and shall have the usual powers of receivers in like cases as provided in the Act.

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17. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agent or attorneys, as for condition broken, to the extent permitted by the Act. Without limiting the generality of the foregoing, Mortgagee shall have full power to:

(a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;

(b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

(c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date 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 such other provisions to be contained therein, shall be binding upon 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 any redemption from sale, discharge of indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee deems are necessary;

(e) insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof; and

(f) receive all of such avails, rents, issues and profits.

18. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 17 hereof, shall have full power to use and apply the avails, rents, issues and profits of the Premises in accordance with the Act.

19. Protective Advances. All reasonable advances, disbursements and expenditures made by Mortgagee after any applicable notice and cure periods, both before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act shall have the benefit of all applicable provisions of the Act.

20. Condemnation. Mortgagor shall give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Premises, including

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damages to grade. The proceeds of any such Taking shall be paid to Mortgagor. Mortgagor may apply such proceeds toward payment of the cost of demolition of all or any part of the improvements on the Premises, or the cost of repair and restoration thereof. Proceeds of a Taking not used for such purposes shall be applied toward payment of the Note.

21. Release upon Payment and Discharge of Mortgagor's Obligations. If Mortgagor shall fully pay all principal and interest on the Note, and all other indebtedness secured hereby and comply with all of the other terms and provisions hereof to be performed and complied with by Mortgagor, then Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby, at no additional cost to Mortgagor.

22. Giving of Notice. All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received as provided in the Loan Agreement.

23. Remedies Not Exclusive. Mortgagee shall be entitled to enforce this Mortgage and 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. Every power or remedy given hereby to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time, and as often as it may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies. No waiver of any default of Mortgagor hereunder shall be implied from any omission by Mortgagee to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the penalty or Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee at any time thereafter to demand and collect payment of interest at such post maturity or penalty rate or of late charges, if any.

24. Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. 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 marshaled 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. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisalment, homestead, exemption, stay, redemption and moratorium laws under any state or federal law

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25. Binding on Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the successors and assigns of Mortgagee.

26. Captions. The captions and headings of various Sections of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

27. Partial Invalidity; Maximum Allowable Rate of Interest. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage and the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. All agreements herein and in the Note are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to Mortgagee for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance Mortgagee shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

28. Mortgagee's Lien for Service Charge and Expenses. This Mortgage secures (in addition to the Note) the payment of any and all liquidated damages, expenses and advances due to or incurred by Mortgagee in connection with the indebtedness secured hereby; provided, however, that in no event shall the total amount of the Note plus such additional amounts exceed 200% of the face amount of the Note.

29. Maintenance of Mortgagor's Interests. In the event that Mortgagor shall, without Mortgagee's prior written consent, transfer, convey, alien, pledge, hypothecate or mortgage (or permit the same by another person or entity) the Premises or any part thereof, such action or failure to act shall constitute an Event of Default under this Mortgage and Mortgagee shall have the right, at its election under Section 13 hereof, to declare immediately due and payable the entire indebtedness secured hereby.

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30. Environmental Matters.

(a) Mortgagee shall not have any, and Mortgagor shall without further action by Mortgagor or Mortgagee assume all, responsibility, liability and obligation for the physical, structural and environmental condition and status of the Premises, including, without limitation, responsibility, liability and obligations imposed by law with respect to the existence or toxic or hazardous materials, substances or wastes, petroleum or storage tanks in, on, under or affecting the Premises on or before the date of this Mortgage or at any time after the date of this Mortgage. Without limiting the generality above, Mortgagor hereby waives any right, whether at law or in equity, to seek contribution, cost recover, damages or any other recourse or remedy from Mortgagee and hereby releases Mortgagee with respect to any claim, demand or liability concerning any environmental, health or safety matter relating to the Premises, including without limitation, any matter relating to hazardous material or arising under any environmental laws, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act any similar state law, or the common law.

(b) Mortgagor will not cause or commit, with respect to the Premises, a violation of any federal or state environmental law, rule, regulation or ordinance. Mortgagor will not place, install, dispose of or release, or cause the placing, installation, disposal, spilling, leaking, dumping or release of, any Hazardous Material (as hereinafter defined) on the Premises. Mortgagee acknowledges that the Premises contain asbestos, and Mortgagor's obligations with respect to such asbestos shall be that, in the event Mortgagor demolishes all or any part of the improvements on the Premises, Mortgagor shall remove such asbestos in accordance with applicable environmental laws, rules, regulations and ordinances.

(c) Mortgagor hereby agrees to protect, indemnify, defend and hold (i) Mortgagee and any persons owning or controlling Mortgagee; (ii) the directors, officers, partners, employees and agents of Mortgagee, and/or such persons or entities; and (iii) the heirs, personal representatives, successors and assigns of each of the foregoing persons or entities (each an "Indemnified Party") harmless from and against, and, if and to the extent paid, reimburse them on demand for, any and all Environmental Damages (hereinafter defined). Such indemnity shall not apply to a particular Indemnified Party to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of that particular Indemnified Party or its directors, officers, partners, employees or agents.

(d) As used in this Mortgage, the term "Environmental Damages" means all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including fees, costs and expenses of attorneys, consultants, contractors, experts and laboratories), of any and every kind or character, contingent or otherwise, matured or unmatured, known or unknown, foreseeable or unforeseeable, made, incurred, suffered, brought, or imposed at any time and from time to time, and arising in whole or in part from the breach by Mortgagor of the covenants set forth in Section 30(b) of this Mortgage.

(e) As used in this Mortgage, "Hazardous Material" means any substance, whether solid, liquid or gaseous: which is listed, defined or regulated as a "hazardous substance", "hazardous waste" or "solid waste", or otherwise classified as hazardous or toxic, in or pursuant

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to any environmental law, rule, regulation or ordinance, or which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or which causes or poses a threat to cause a contamination or environmental nuisance on the Premises or any adjacent property or a hazard to the environment or to the environmental health or safety of persons on the Premises. Notwithstanding the foregoing, hazardous substances used by Mortgagor and its tenants in minor amounts and as are customarily used in connection with the operation and maintenance of property similar to the Premises, such as paint and cleaning fluids, shall not constitute "Hazardous Material," provided that such hazardous substances are used and disposed of in accordance with environmental laws, rules, regulations and ordinances.

31. Applicable Law. This Mortgage, the Note and all other instruments evidencing and securing the loan secured hereby shall be construed, interpreted and governed by the laws of the State of Illinois.

32. Compliance with Illinois Mortgage Foreclosure Law.

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

(b) If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 16 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the indebtedness of Mortgagor and/or by the judgment of foreclosure.

33. Expenses Relating to Note and Mortgage.

(a) Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Loan Agreement, the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Loan Agreement, the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties,

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imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage.

(b) All expenses, charges, costs and fees described in this Section shall be so much additional indebtedness secured hereby, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed the day and year first above written.

MORTGAGOR:

BUCKHEAD INVESTMENTS, LLC, a Tennessee limited liability company

By: *Alexander S. Fulton*
 Name: *Alexander S. FULTON*
 Title: *Chief Manager*

Property of Cook County Clerk's Office

STATE OF *Georgia*)
) SS.
 COUNTY OF *Fulton*)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that *Alexander S. FULTON*, the *Chief Manager* of Buckhead Investments, LLC, a Tennessee limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such *Chief Manager*, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and the free and voluntary act of such limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this *19th* day of March, 2014.

Shelley B. Hughes
 Notary Public

My Commission Expires: *9/13/16*



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EXHIBIT A

Legal Description of the Real Estate

Parcel 1: Lots B1C1, B1P1, B2P1, B1C7, B1C2 and B1C8 in the LaSalle-Wacker Subdivision recorded with the Cook County Recorder of Deeds on September 4, 2008 as document number 0824816018, and corrected by the Letter of Corrections recorded August 1, 2011 as document number 1121345032, being a subdivision of part of Lots 3 and 4 in Block 18 in Original Town of Chicago, in the Southeast $\frac{1}{4}$ of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2: Non-exclusive, permanent and perpetual easements for the benefit of Parcel 1, over and upon the Common Properties, as created by Declaration of Covenants, Restrictions and Easements, made by 221 North LaSalle Partners, LLC dated August 11, 2008 and recorded September 4, 2008 as document number 0824816018, as amended in Cook County, Illinois.

Property Address: Lots B1C1, B1P1, B2P1, B1C7, B1C8 and B1C2 located at 221 N. LaSalle Street, Chicago, Illinois 60601

Permanent Index Numbers: 17-09-419-011-0000; 17-09-419-037-0000, 17-09-419-038-0000; 17-09-419-041-0000; 17-09-419-042-0000; 17-09-419-045-0000