

Illinois Anti-Predatory  
Lending Database  
Program



Doc#: 1409029005 Fee: \$102.00  
RHSP Fee:\$9.00 RPRF Fee: \$1.00  
Karen A.Yarbrough  
Cook County Recorder of Deeds  
Date: 03/31/2014 03:25 PM Pg: 1 of 33

Certificate of Exemption

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 16-22-209-023-0000

Address:

Street: 1318 S. Kildare Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60623

Lender: Mario D'Agostino

Borrower: 1318 S. Kildare Inc

Loan / Mortgage Amount: \$138,125.07

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

Certificate number: DCEE6F66-F4A8-4F9D-8C60-A642ECC765E6

Execution date: 03/28/2014

**UNOFFICIAL COPY****After Recording Please Return To:**

Noonan & Lieberman, Ltd.  
 105 W. Adams St., Suite 1800  
 Chicago, Illinois 60603

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[Space Above This Line for Recording Data]

**THE MORTGAGEE UNDER THIS MORTGAGE DOES NOT CONSENT TO ANY GRANT, CREATION, OR ATTACHMENT OF A SUBORDINATE LIEN, ENCUMBRANCE, OR SECURITY INTEREST (WHETHER VOLUNTARY, INVOLUNTARY OR BY OPERATION OF LAW) ON THE MORTGAGED PROPERTY DESCRIBED BELOW. THE GRANT, CREATION, OR ATTACHMENT OF A SUBORDINATE LIEN, ENCUMBRANCE, OR SECURITY INTEREST (WHETHER VOLUNTARY, INVOLUNTARY OR BY OPERATION OF LAW) ON THE MORTGAGED PROPERTY FOLLOWING THE EXECUTION OF THIS MORTGAGE CONSTITUTES AN EVENT OF DEFAULT UNDER THIS MORTGAGE AND WILL ENTITLE THE MORTGAGEE TO ALL OF ITS REMEDIES HEREUNDER, INCLUDING FORECLOSURE.**

**MORTGAGE  
 ASSIGNMENT OF LEASES AND RENTS  
 AND SECURITY AGREEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT ("Mortgage") is made and entered into as of this 10th day of March, 2013, by and between 1318 S Kildare Inc., a corporation organized and existing under the laws of the State of Illinois, whose address is 4441 N. Milwaukee Ave., Chicago, IL 60630 (the "Mortgagor"), and Mario D'Agostino, having an office at 400 South Street, Elmhurst, Illinois 61026 (the "Mortgagee").

**RECITAL**

Mortgagor is indebted to the Mortgagee in the principal amount of ONE HUNDRED THIRTY-EIGHT THOUSAND ONE HUNDRED TWENTY FIVE AND 07/100 DOLLARS (\$138,125.07), as evidenced by Mortgagor's Note payable to the Mortgagee, dated as of the date of this Mortgage, and maturing on April 10, 2023 ("Maturity Date"). The Note bears interest at the rate of eight percent (8.000%), and requires a balloon payment at Maturity Date pursuant to the terms of the Note.

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## AGREEMENT

TO SECURE TO MORTGAGEE the repayment of the Indebtedness, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Mortgagor contained in the Loan Agreement or any other Loan Documents, Mortgagor mortgages, warrants, grants, conveys and assigns to Mortgagee the Mortgaged Property, including the Land described in Exhibit A attached to this Mortgage.

**Covenants.** In consideration of the mutual promises, representations and warranties set forth in this Mortgage and in the Loan Documents, Mortgagor and Mortgagee covenant and agree as follows:

### ARTICLE I DEFINITIONS

**Section 1.01 Definitions.** The following terms, when used in this Mortgage (including when used in the above recitals), will have the following meanings and any capitalized term not specifically defined in this Mortgage will have the meaning ascribed to that term in the Loan Agreement:

(a) “**Business Day**” means any day other than a Saturday, a Sunday or any other day on which Mortgagee or the national banking associations are not open for business.

(b) “**Collateral Agreement**” means any separate loan agreement or note to which Mario D’Agostino and Cristian Luput are named as parties to, and any mortgage or security instrument securing the payments and covenants of such Collateral Agreements, whether or not Cristian Luput is a party thereto. Cristian Luput shall mean also his successors and/or permitted assigns.

(c) “**Deed in Lieu of Foreclosure**” means the Deed in Lieu of Foreclosure executed and delivered to the Escrow Agent by the Mortgagor, concurrently with the execution of this Mortgage, granting fee simple title to the Mortgaged Property to the Mortgagee or the Mortgagee’s nominee as directed by the Mortgagee pursuant to the Escrow Agreement.

(d) “**Escrow Agent**” means the Person with whom the Mortgagor and Mortgagee entered into an Escrow Agreement, and including such Person’s agents, contractors and employees.

(e) “**Escrow Agreement**” means the agreement entered into by and between the Mortgagor, Mortgagee and Escrow Agent which governs the duties and authority of the Escrow Agent with regards to the Deed in Lieu of Foreclosure.

(f) “**Environmental Permit**” means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(g) “**Event of Default**” means the occurrence of any event described in Section 3.01 of this Mortgage.

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(h) “**Fixtures**” means all property owned by the Mortgagor which is attached to the Land or the Improvements so as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools, and exercise equipment.

(i) “**Governmental Authority**” means any board, commission, department, agency or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property, or the use, operation or improvement of the Mortgaged Property, or over Mortgagor.

(j) “**Hazardous Materials**” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any Hazardous Materials Law.

(k) “**Hazardous Materials Laws**” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Mortgagor or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*, and their state analogs.

(l) “**Improvements**” means the buildings, structures, improvements now constructed or at any time in the future constructed or placed upon the Land, including any future alterations, replacements and additions.

(m) “**Indebtedness**” means the principal of, interest at the fixed or variable rate set forth in the Note on, and all other amounts due at any time under, the Note, this Mortgage or any

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other Loan Documents, including but not limited to: late charges, default interest, and advances made by Mortgagee to protect the security of this Mortgage.

(n) “**Land**” means the land described in Exhibit A.

(o) “**Leases**” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Mortgagor is a cooperative housing corporation), and all modifications, extensions or renewals.

(p) “**Loan Agreement**” means the Loan Agreement executed by Mortgagor in favor of Mortgagee and dated as of the date of this Mortgage, as such agreement may be amended from time to time.

(q) “**Loan Documents**” means the Note, this Mortgage, the Loan Agreement, all Collateral Agreements, all Escrow Agreements all guaranties, all indemnity agreements and any other documents now or in the future executed by Mortgagor, any guarantor or any other Person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

(r) “**Loan Servicer**” means the entity that from time to time may be designated by Mortgagee or its designee to collect payments and deposits and receive Notices **under the Note**, this Mortgage and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Mortgagee, as notified to the Mortgagor in writing by the Mortgagee.

(s) “**Mortgaged Property**” means all of Mortgagor’s present and future right, title and interest in and to all of the following:

- (i) The Land.
- (ii) The Improvements.
- (iii) The Fixtures.
- (iv) The Personalty.

(v) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights of way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated.

(vi) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Mortgagor obtained the insurance pursuant to Mortgagee’s requirement.

(vii) All awards, payments and other compensation made or to be made by any

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municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof.

(viii) All contracts, options and other agreements for the sale of the Land the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Mortgagor now or in the future, including cash or securities deposited to secure performance by parties of their obligations.

(ix) All proceeds from the conversion, voluntary or involuntary, of any of the items described in subsections (a) through (h) inclusive into cash or liquidated claims, and the right to collect such proceeds.

(x) All Rents and Leases.

(xi) All earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Mortgage.

(xii) All refunds or rebates of impositions by Governmental Authority or insurance company.

(xiii) All tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits.

(xiv) All names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

(t) **“Mortgagee”** means the Person identified as Mortgagee in the first paragraph of this Mortgage (or the Payee as defined on the Note), its successors, assigns, any subsequent holder of the Note, or any Loan Servicer acting on the Mortgagee’s behalf.

(u) **“Mortgagor”** means all Persons identified as Mortgagor in the first paragraph of this Mortgage, together with their successors and assigns.

(v) **“Note”** means the Balloon Note (including any amendments, restatements, forbearances, or extensions to the Note) executed by Mortgagor in favor of Mortgagee and dated as of the date of this Mortgage, including all schedules, riders, allonges and addenda, as such Balloon Note may be amended, modified and/or restated from time to time.

(w) **“Notice”** means any and all notices, demands and other communication required under the Loan Documents, provided in accordance with the requirements of Section 4.03 of the Loan Agreement.

(x) **“Person”** means any natural person, sole proprietorship, corporation, general

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partnership, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

(y) **“Personalty”** means all of the following:

(i) Accounts (including deposit accounts) of Mortgagor related to the Mortgaged Property.

(ii) Equipment and inventory owned by Mortgagor, which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery, building materials, goods, supplies, tools, books, records (whether in written or electronic form) and computer equipment (hardware and software).

(iii) Other tangible personal property owned by Mortgagor which is used now or in the future in connection with the ownership, management or operation of the Land or Improvements or is located on the Land or in the Improvements, including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures).

(iv) Any operating agreements relating to the Land or the Improvements.

(v) Any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements.

(vi) All other intangible property, general intangibles and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a Governmental Authority.

(vii) Any rights of Mortgagor in or under letters of credit.

(z) **“Property Jurisdiction”** is defined in Section 4.07 .

(aa) **“Rents”** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due or to become due, and deposits forfeited by tenants, and, if Mortgagor is a cooperative housing corporation or association, maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements, whether now due, past due, or to become due.

(bb) **“Taxes”** means all taxes, assessments, vault rentals and other charges, if any, whether general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a Lien on the Land or the

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Improvements.

(cc) “**Transfer**” means (A) a sale, assignment, transfer, or other disposition (whether voluntary, involuntary or by operation of law); (B) the grant, creation, or attachment of a lien, encumbrance, or security interest (whether voluntary, involuntary or by operation of law); (C) the issuance or other creation of a direct or indirect ownership interest; or (D) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity.

## ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS OF MORTGAGOR

### Section 2.01 Title.

(a) Mortgagor represents and warrants that Mortgagor has good and marketable title to an indefeasible fee estate in the Mortgaged Property; that Mortgagor is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered except as shown on the schedule of exceptions to coverage in the title policy issued to and accepted by the Mortgagee contemporaneously with the execution and recordation of this Mortgage and insuring Mortgagee’s interest in the Mortgaged Property. Mortgagor covenants that Mortgagor will warrant and defend generally the title to the Mortgaged Property against all claims and demands.

(b) Mortgagor is not obligated under and the Mortgaged Property is not bound by or subject to, any right, of first refusal, option or other contractual right to sell, assign or otherwise dispose of any Mortgaged Property or any interest therein.

(c) This Mortgage has been duly executed and delivered by Mortgagor and constitutes a legal, valid and binding obligation of Mortgagor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) This Mortgage, when duly recorded in the public records, will create a valid, perfected and enforceable lien upon and security interest in all the Mortgaged Property. As of the date hereof, there are no defenses or offsets to this Mortgage that will be asserted by Mortgagor (or any third party defense or offset now known to Mortgagor) or to any of the obligations secured hereby for so long as any portion of the Indebtedness is outstanding. Mortgagor will forever warrant and defend its title to the Mortgaged Property, the rights of Mortgagee therein under this Mortgage and the validity and priority of the lien of this Mortgage therein against the claims of all persons and parties.

**Section 2.02 Uniform Commercial Code Security Agreement.** This Mortgage is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, “UCC Collateral”), and Mortgagor hereby grants to Mortgagee a security interest in the UCC Collateral. Mortgagor hereby authorizes Mortgagee to file financing statements, continuation statements and financing statement amendments in such form as Mortgagee may



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require to perfect or continue the perfection of this security interest and Mortgagor agrees, if Mortgagee so requests, to execute and deliver to Mortgagee such financing statements, continuation statements and amendments. Mortgagor shall pay all filing costs and all costs and expenses of any record searches for financing statements that Mortgagee may require. Without the prior written consent of Mortgagee, Mortgagor shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Mortgage or existing under applicable law. In exercising any remedies, Mortgagee may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Mortgagee's other remedies. This Mortgage constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

## **Section 2.03 Payment of Indebtedness; Performance under Loan Documents.**

Mortgagor shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents.

**Section 2.04 Application of Payments.** If at any time Mortgagee receives, from Mortgagor or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Mortgagor may apply that payment to amounts then due and payable in any manner and in any order determined by Mortgagee, in Mortgagee's discretion. Neither Mortgagee's acceptance of an amount that is less than all amounts then due and payable nor Mortgagee's application of such payment in the manner authorized will constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Mortgagor's obligations under this Mortgage, the Note and all other Loan Documents will remain unchanged.

**Section 2.05 Certain Amounts.** If Mortgagee exercises any of its rights or remedies under this Mortgage, or if any actions or proceedings (including any bankruptcy, insolvency or reorganization proceedings) are commenced in which Mortgagee is obliged to defend or uphold or enforce this Mortgage or the rights of Mortgagee hereunder or the terms of any Lease, or if a condemnation proceeding is instituted affecting the Mortgaged Property, Mortgagor will pay all reasonable sums, including reasonable attorneys' fees and disbursements, incurred by Mortgagee related to the exercise of any remedy or right of Mortgagee pursuant hereto and the reasonable expenses of any such action or proceeding together with all statutory or other costs, disbursements and allowances, interest thereon from the date of demand for payment thereof, to the extent permissible by law, be a lien on the Mortgaged Property prior to any right, title to, interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the recording of this Mortgage and shall be secured by this Mortgage to the extent permitted by law. Any payment of amounts due under this Mortgage not made on or before the due date for such payments shall be immediately due upon written demand by Mortgagee.

## **Section 2.06 Payment of Taxes, Liens and Charges.**

(a) Mortgagors will pay and discharge from time to time prior to the time when the same shall become delinquent, and before any interest or penalty accrues thereon or attaches

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thereto, all taxes of every kind and nature, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents, all vault charges, and all other public charges, and all service charges, common area charges, private maintenance charges, utility charges and all other private charges, whether created or evidenced by recorded or unrecorded documents or of a like or different nature, imposed upon or assessed against the Mortgaged Property or any part thereof or upon the Rents from the Mortgaged Property or arising in respect of the occupancy, use or possession thereof.

(b) At any time that an Event of Default shall occur hereunder and be continuing, or if required by any law applicable to Mortgagors or to Mortgagee, Mortgagee shall have the right to direct Mortgagors to make an initial deposit on account of real estate taxes and assessments, insurance premiums and common area charges, levied against or payable in respect of the Mortgaged Property in advance and thereafter on a quarterly basis, each such deposit to be equal to one-quarter of any such annual charges estimated in a reasonable manner by Mortgagee in order to accumulate with Mortgagee sufficient funds to pay such taxes, assessments, insurance premiums and charges.

## **Section 2.07 Plans, Alterations and Waste; Repairs.**

(a) To the extent the same exist on the date hereof or are obtained in connection with future permitted alterations, Mortgagor shall maintain a complete set of final plans, specifications, blueprints and drawings for the Mortgaged Property either at the Mortgaged Property or in a particular office at the headquarters of Mortgagor to which Mortgagee shall have access upon reasonable advance notice and at reasonable times.

(b) Mortgagor shall not:

(i) demolish or remove all or any material portion of the Improvements which would diminish in any material respect the utility of the Mortgaged Property in the conduct of the activities of the Mortgagor as conducted thereon on the date hereof;

(ii) erect any additions to the Improvements or any other structures on the Premises which would interfere in any material respect with the use and operation of the Improvements as conducted on the date hereof;

(iii) commit any waste on the Mortgaged Property or make any alterations to the Mortgaged Property which would diminish in any material respect the utility of Mortgaged Property in the conduct of the activities of the Mortgagor as conducted thereon on the date hereof;

(iv) change the use of the Mortgaged Property or take any other action with respect to the Mortgaged Property if it would materially increase the risk of fire or any other hazard or violate the terms of any insurance policy required by Section 2.08 and Section 2.19 hereof; without the consent of the Mortgagee in each instance which consent shall not be unreasonably withheld, conditioned or delayed.

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(c) Mortgagor will keep and maintain the Improvements and the Personalty in good repair, working order and condition, reasonable wear and tear excepted, and will schedule and perform preventive maintenance thereon in accordance with the current and prior practice of the Mortgagor.

**Section 2.08 Insurance.** Mortgagor will keep or cause to be kept the Improvements and Personalty insured against such risks and shall purchase such additional insurance as may be required by this Mortgage, or as may be required from time to time in Mortgagee's discretion, reasonably exercised, to protect and preserve the Mortgaged Property.

**Section 2.09 Filing and Recording.** Mortgagor will cause this Mortgage, any other security instrument creating a security interest in or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the security interest of Mortgagee in, the Mortgaged Property. Mortgagors will pay all filing, registration and recording fees, all federal, state, county and municipal recording, documentary or intangible taxes and other taxes, duties, imposts, assessments and charges, and all reasonable expenses incidental to or arising out of or in connection with the execution, delivery and recording of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Personalty or any instrument of further assurance.

**Section 2.10 Further Assurances** Upon demand by Mortgagee, Mortgagor will, at the cost of Mortgagor and without expense to Mortgagee, execute, acknowledge and deliver all such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall from time to time reasonably require for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage, and on demand, Mortgagors will also execute and deliver and hereby appoints Mortgagee as its true and lawful attorney-in-fact and agent, for Mortgagors and in its name, place and stead, in any and all capacities, to execute and file to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments reasonably requested by Mortgagee to evidence more effectively the lien hereof upon the Personalty and to perform each and every act and thing requisite and necessary to be done to accomplish the same.

**Section 2.11 Additions to Mortgaged Property.** All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by or released to Mortgagor or constructed, assembled or placed by Mortgagors upon the Premises or the Improvements, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance, assignment or other act by Mortgagors, shall become subject to the lien and security interest of this Mortgage as fully and completely and with the same effect as though now owned by Mortgagor and specifically described in the grant of the Mortgaged Property above, but at any and all times

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Mortgagors will execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien and security interest of this Mortgage.

**Section 2.12 No Claims Against Mortgagee.** Nothing contained in this Mortgage shall constitute any consent or request by Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, nor as giving Mortgagors any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Mortgagee in respect thereof.

**Section 2.13 Compliance with Laws.** Mortgagor shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases. Mortgagor also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Mortgagor shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 2.13. Mortgagor shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Mortgage or Mortgagee's interest in the Mortgaged Property. Mortgagor represents and warrants to Mortgagee that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

**Section 2.14 Use of the Mortgaged Property.** Unless required by applicable law, Mortgagor shall not (a) except for any change in use approved in writing by Mortgagee, allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Mortgage was executed, (b) convert any individual dwelling units, if any, to commercial use, convert any commercial use, if any, to individual dwelling units (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (d) establish any condominium or cooperative regime with respect to the Mortgaged Property.

**Section 2.15 Protection of Mortgagee's Security.**

(a) If Mortgagor fails to perform any of its obligations under this Mortgage or any other Loan Document, or if any action or proceeding (including a bankruptcy) is commenced which purports to affect the Mortgaged Property, Mortgagee's security or Mortgagee's rights under this Mortgage, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option may make such appearances, disburse such sums and take such actions as Mortgagee reasonably deems necessary to perform such obligations of Mortgagor and to protect Mortgagee's interest, including (1) payment of fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged

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Property, (3) procurement of the insurance, and (4) payment of amounts which Mortgagor has failed to pay required by this Mortgage and the Loan Documents. Mortgagee shall be the judge using reasonable discretion of the necessity for any such actions and of the amounts to be paid. Upon Notice to the Mortgagor, Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgage Property, or any part thereof, for the purpose of performing or observing any such defaulted term, covenant or condition without having any obligation to so perform or observe and without thereby becoming liable to Mortgagors, to any person in possession holding under Mortgagors or to any other person.

(b) Any amounts disbursed by Mortgagee under this Section 2.15 , or under any other provision of this Mortgage that treats such disbursement as being made under this Section 2.15 , shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "Default Rate" as defined in the Note.

(c) Nothing in this Section 2.15 shall require Mortgagee to incur any expense or take any action.

**Section 2.16 Inspection.** Mortgagee, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time.

## **Section 2.17 Restrictions on Transfers and Encumbrances.**

(a) Mortgagor shall not directly or indirectly sell, convey, alienate, assign, lease, sublease, license, mortgage, pledge, encumber or otherwise Transfer, create, consent to or suffer the creation of any lien, charges or any form of encumbrance upon any interest in or any part of the Mortgaged Property, or be divested of its title to the Mortgaged Property or any interest therein in any manner or way, whether voluntarily or involuntarily, or engage in any common, cooperative, joint, time-sharing or other congregate ownership of all or part thereof.

(b) Mortgagor acknowledges that violation of Section 2.17 (a) or the creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance on the Mortgaged Property (other than the lien of this Mortgage) or changes ownership interests in Mortgagor, whether voluntary, involuntary or by operation of law, and whether or not such lien has priority over the lien of this Mortgage, constitutes an Event of Default.

## **Section 2.18 Environmental Hazards.**

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Mortgagee (an "O&M Program") or matters described in Section 2.18 (b), Mortgagor shall not cause or permit any of the following: (1) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Mortgagor that is adjacent to the Mortgaged Property; (2) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property; (3) any occurrence or condition on the Mortgaged Property or any other property of Mortgagor that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or

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(4) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Mortgagor that is adjacent to the Mortgaged Property. The matters described in clauses (1) through (4) above are referred to collectively in this Section 2.18 as "Prohibited Activities or Conditions".

(b) Prohibited Activities and Conditions shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable properties, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Mortgagor shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Mortgage) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Mortgagor shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential or commercial use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) If an O&M Program has been established with respect to Hazardous Materials, Mortgagor shall comply in a timely manner with, and cause all employees, agents, and contractors of Mortgagor and any other persons present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Mortgagor's obligations under any O&M Program shall be paid by Mortgagor, and Mortgagee's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Mortgagor's performance shall be paid by Mortgagor upon demand by Mortgagee. Any such out-of-pocket costs of Mortgagee which Mortgagor fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 2.15.

(e) Mortgagor represents and warrants to Mortgagee that, except as previously disclosed by Mortgagor to Mortgagee in writing: (1) Mortgagor has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions; (2) to the best of Mortgagor's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed; (3) except to the extent previously disclosed by Mortgagor to Mortgagee in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Mortgagor's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Mortgagor to Mortgagee in writing, that tank complies with all requirements of Hazardous Materials Laws; (4) Mortgagor has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Mortgagor has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect; (5) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit; (6) there are no actions, suits, claims or proceedings pending or, to the best

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of Mortgagor's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and (7) Mortgagor has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Mortgagor that is adjacent to the Mortgaged Property. The representations and warranties in this Section 2.18 shall be continuing representations and warranties that shall be deemed to be made by Mortgagor throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full.

(f) Mortgagor shall promptly notify Mortgagee in writing upon the occurrence of any of the following events: (1) Mortgagor's discovery of any Prohibited Activity or Condition; (2) Mortgagor's receipt of or knowledge of any complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Mortgagor that is adjacent to the Mortgaged Property; and (3) any representation or warranty in this Section 2.18 becomes untrue after the date of this Agreement. Any such notice given by Mortgagor shall not relieve Mortgagor of, or result in a waiver of, any obligation under this Mortgage, the Note, or any other Loan Document.

(g) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("Remedial Work") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Mortgagor shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 30 days after notice from Mortgagee demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Mortgagor fails to begin on a timely basis or diligently prosecute any required Remedial Work, Mortgagee may, at its option, cause the Remedial Work to be completed, in which case Mortgagor shall reimburse Mortgagee on demand for the cost of doing so. Any reimbursement due from Mortgagor to Mortgagee shall become part of the Indebtedness as provided in Section 2.15.

(h) Mortgagor shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

(i) Mortgagor shall indemnify, hold harmless and defend (i) Mortgagee, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "Indemnitees") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following: (1) any breach of any representation or warranty of Mortgagor

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in this Section 2.18 ; (2) any failure by Mortgagor to perform any of its obligations under this Section 2.18 ; (3) the existence or alleged existence of any Prohibited Activity or Condition; (4) the presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or any property of Mortgagor that is adjacent to the Mortgaged Property; and (5) the actual or alleged violation of any Hazardous Materials Law.

(j) Counsel selected by Mortgagor to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at the Mortgagor's expense.

(k) Mortgagor shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "Claim"), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Mortgagee of a written release of those Indemnitees satisfactory in form and substance to Mortgagee; or (2) may materially and adversely affect Mortgagee, as determined by Mortgagee in its discretion.

(l) Mortgagee agrees that the indemnity under this Section 18 shall be limited to the assets of Mortgagor and Mortgagee shall not seek to recover any deficiency from any natural persons who are general partners of Mortgagor.

(m) Mortgagor shall, at its own cost and expense, do all of the following: (1) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 2.18 ; (2) reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 2.18 ; and (3) reimburse Indemnitees for any and all expenses, including fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 2.18 , or in monitoring and participating in any legal or administrative proceeding.

(n) In any circumstances in which the indemnity under this Section 2.18 applies, Mortgagee may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Mortgagee, with the prior written consent of Mortgagor (which shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any action or legal or administrative proceeding. Mortgagor shall reimburse Mortgagee upon demand for all costs and expenses incurred by Mortgagee, including all costs of settlements entered into in good faith, and the fees and out-of-pocket expenses of such attorneys and consultants.

(o) The provisions of this Section 2.18 shall be in addition to any and all other obligations and liabilities that Mortgagor may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 18 without regard to whether Mortgagee or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Mortgagor consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 2.18 shall be joint and several. The obligation of Mortgagor to indemnify the Indemnitees



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under this Section 2.18 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Mortgage.

## **Section 2.19 Property and Liability Insurance.**

(a) Mortgagor shall keep the Improvements insured at all times against such hazards as Mortgagee may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, and business income coverage.

(b) All premiums on insurance policies required under Section 2.19 (a) shall be paid by the Mortgagor, unless Mortgagee has designated in writing another method of payment. All such policies shall also be in a form approved by Mortgagee. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Mortgagee. Mortgagee shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 2.19 (a). Mortgagor shall upon Mortgagee's written request promptly deliver to Mortgagee a copy of all renewal and other notices received by Mortgagor with respect to the policies and all receipts for paid premiums. At least thirty (30) days prior to the expiration date of a policy at Mortgagee's written request, Mortgagor shall deliver to Mortgagee the original (or a duplicate original) of a renewal policy in form reasonably satisfactory to Mortgagee.

(c) Mortgagor shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Mortgagee may from time to time require.

(d) All insurance policies and renewals of insurance policies required by this Section 2.19 shall be in such amounts and for such periods as Mortgagee may from time to time require, and shall be issued by insurance companies satisfactory to Mortgagee.

(e) Mortgagor shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Mortgage requires Mortgagor to maintain.

(f) In the event of loss, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee.

(g) Mortgagee shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Mortgagee determines, in its discretion, that there will be sufficient funds to complete the Restoration; (3) Mortgagee determines, in its discretion, that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to support a debt service coverage ratio not less than the greater of (A) the debt service coverage ratio as of the date of this Mortgage or (B) the debt service coverage ratio immediately prior to the loss (in each case, Mortgagee's determination shall include all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the

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Mortgaged Property); (4) Mortgagee determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (5) upon Mortgagee's request, Mortgagor provides Mortgagee evidence of the availability during and after the Restoration of the insurance required to be maintained by Mortgagor pursuant to this Section 2.19 .

(h) If the Mortgaged Property is sold at a foreclosure sale or Mortgagee acquires title to the Mortgaged Property, Mortgagee shall automatically succeed to all rights of Mortgagor in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

## **Section 2.20 Condemnation.**

(a) Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"). Mortgagor shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Mortgagee in writing. Mortgagor authorizes and appoints Mortgagee as attorney-in-fact for Mortgagor to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 2.20 shall require Mortgagee to incur any expense or take any action. Mortgagor hereby transfers and assigns to Mortgagee all right, title and interest of Mortgagor in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Mortgagee may apply such awards or proceeds, after the deduction of Mortgagee's expenses incurred in the collection of such amounts, at Mortgagee's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Mortgagor. Unless Mortgagee otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, any other payments required under this Mortgage or any Loan Documents, or change the amount of such installments. Mortgagor agrees to execute such further evidence of assignment of any awards or proceeds as Mortgagee may require.

## **ARTICLE III DEFAULTS AND REMEDIES**

**ANY EVENT OF DEFAULT DESCRIBED BELOW AND AFTER EXPIRATION OF THE CURE PERIOD WILL RESULT IN THE IMMEDIATE RECORDING OF THE PREVIOUSLY EXECUTED DEED IN LIEU OF FORECLOSURE PURSUANT TO THE COLLATERAL AGREEMENTS BETWEEN THE PARTIES.**

**Section 3.01 Events of Default.** The occurrence of any of the following events shall constitute after the expiration of the cure period an Event of Default under this Mortgage and the other Loan Documents:

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(a) Failure to pay any principal, interest or other monies due under this Mortgage or any of the other Loan Documents within ten (10) days after such amount is due, and 10 days after written demand to cure is sent, provided that not more than once in any calendar year Mortgagor shall be entitled to written notice of such failure before the calculation of such ten (10) day period.

(b) The Transfer of the Mortgaged Property without payment in full of the Indebtedness in accordance with the terms of the Loan Documents.

(c) The grant of any subordinate lien or security interest by the Mortgagor on or in the Mortgaged Property, or any voluntary or involuntary judgment being placed on the Mortgaged Property excluding the recording of a Mechanics Lien, or a City, Municipal or Administrative Lien.

(d) The occurrence of an Event of Default under any of the other Collateral Agreements, as defined in such Collateral Agreements.

(e) Mortgagor's failure to perform or comply or initiate the work necessary to comply with any term, obligation or condition contained in this Mortgage or any of the other Loan Documents required to be performed by it within fifteen (15) days after the delivery of written notice from Mortgagee of such failure.

(f) Any representation, warranty, certification or other statement made by Mortgagor or in any other Loan Document or in any state ment or certificate at any time given by Mortgagor to Mortgagee in writing in connection with the Indebtedness shall be materially false or misleading.

(g) Involuntary Bankruptcy; Appointment of Receiver, Etc.

(i) A court having proper jurisdiction shall enter a decree or order for relief with respect to Mortgagor in an involuntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, which decree or order is not stayed within fifteen (15) days after entry and dismissed within ninety (90) days after the entry of such order; or

(ii) An involuntary case is commenced against Mortgagor under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or a decree or order of a court for the appointment of a receiver, liquidator, trustee, custodian or other officer having similar powers over Mortgagor or over all or a substantial part of the Mortgaged Property, shall be entered; or the involuntary appointment of an interim receiver, trustee or other custodian of Mortgagor for all or a substantial part of the Mortgaged Property; or the issuance of a warrant of attachment, execution or similar process against any substantial part of the Mortgaged Property and the continuance of any such event in this clause (i) for ninety (90) days unless dismissed or discharged.

(h) Voluntary Bankruptcy; Appointment of Receiver, Etc.

(i) Mortgagor shall initiate or commence a voluntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter

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in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of the Mortgaged Property; the making by Mortgagor of any assignment for the benefit of creditors; or

(ii) The admission by Mortgagor in writing of its inability to pay its debts as such debts become due.

(i) The occurrence of an Event of Default under any of the other Loan Documents.

The forgoing Events of Default are not an exclusive list of Events of Default and they are in addition to any other events stated in this Mortgage or in the Loan Documents each of which constitute an Event of Default.

**Section 3.02 Demand for Payment.** If an Event of Default shall occur and be continuing, then, upon written demand of Mortgagee, Mortgagor will pay to Mortgagee all amounts due hereunder and under the Note and such further amount as shall be sufficient to cover the reasonable costs and expenses of collection, including attorneys' fees, disbursements and expenses incurred by Mortgagee, and Mortgagee shall be entitled to direct the Escrow Agent to immediately record any and all Deeds in Lieu of Foreclosure, and empowered to institute an action or proceedings at law or in equity for the collection of the sums so due and unpaid, to prosecute any such action or proceedings to judgment or final decree, to enforce any such judgment or final decree against Mortgagor and to collect, in any manner provided by law, all moneys adjudged or decreed to be payable.

### **Section 3.03 AUTOMATIC DEED IN LIEU OF FORECLOSURE UPON FAILURE TO CURE EVENT OF DEFAULT.**

(a) THE MORTGAGOR SPECIFICALLY AGREES that if an Event of Default occurs and the Mortgagor fails to cure such Event of Default within the period of time stated in the demand for payment or notice to cure from the Mortgagee then the Deed in Lieu of Foreclosures shall be immediately recorded by the Escrow Agent as required by the Escrow Agreement and the other Loan Documents. The Mortgagee, in its absolute discretion, may elect to foreclose and sell the Mortgaged Property or any part of the Mortgaged Property by exercise of the power of foreclosure or of sale granted to Mortgagee by applicable law and/or this Mortgage. In such case, Mortgagee may commence a civil action to foreclose this Mortgage, or it may proceed and sell the Mortgaged Property to satisfy any obligation. Mortgagee or an officer appointed by a judgment of foreclosure to sell the Mortgaged Property, may sell all or such parts of the Mortgaged Property as may be chosen by Mortgagee at the time and place of sale fixed by it in a notice of sale, either as a whole or in separate lots, parcels or items as the Mortgagee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder. Mortgagee or an officer appointed by a judgment of foreclosure to sell the Mortgaged Property may postpone any foreclosure or other sale of all or any portion of the Mortgaged Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale. Without further notice, Mortgagee or an officer appointed to sell the Mortgaged Property may make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale. Any person,

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including Mortgagors or Mortgagee or any nominee, designee or affiliate thereof, may purchase at such sale.

(b) The Mortgaged Property may be sold subject to unpaid taxes, and, after deducting all costs, fees and expenses of Mortgagee (including costs of evidence of title in connection with the sale), Mortgagee or an officer that makes any sale shall apply the proceeds of sale in the manner set forth in Section 3.06 .

(c) Any foreclosure or other sale of less than the whole of the Mortgaged Property or any defective or irregular sale made hereunder shall not exhaust the power of foreclosure or of sale provided for herein; and subsequent sales may be made hereunder until the Indebtedness have been satisfied, or the entirety of the Mortgaged Property has been sold.

(d) If an Event of Default shall occur and be continuing, Mortgagee may instead of, or in addition to, exercising the rights described in Section 3.05 Section 3.05 (a) above and either with or without entry or taking possession as herein permitted, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to specifically enforce payment of some or all of the Indebtedness, or the performance of any term, covenant, condition or agreement of this Mortgage or any other Loan Document or any other right, or (ii) to pursue any other remedy available to Mortgagee, all as Mortgagee shall determine most effectual for such purposes.

**Section 3.04 Acceleration; Remedies.** At any time during the existence of an Event of Default, the Mortgagee, at Mortgagee's option, may elect to declare all of the Indebtedness to be immediately due and payable without further demand, and may foreclose this Mortgage by judicial proceeding and may invoke any other remedies permitted by Illinois law or provided in this Mortgage, the Loan Agreement or in any other Loan Document. The Indebtedness will include, Mortgagee will be entitled to collect, and any decree which adjudicates the amount secured by this Mortgage will include, all reasonable costs and expenses incurred in pursuing such remedies, including Attorneys' Fees and Costs, costs of documentary evidence, abstracts and title reports, any of which may be estimated to reflect the costs and expenses to be incurred after the entry of such a decree.

### **Section 3.05 Other Remedies.**

(a) In case an Event of Default shall occur and be continuing, Mortgagee may also exercise, to the extent not prohibited by law, any or all of the remedies available to a secured party.

(b) In connection with a sale of the Mortgaged Property or any Personalty and the application of the proceeds of sale as provided in Section 3.06 , Mortgagee shall be entitled to enforce payment of and to receive up to the principal amount of the Indebtedness, plus all other charges, payments and costs due under this Mortgage, and to recover a deficiency judgment for any portion of the aggregate principal amount of the Loan remaining unpaid, with interest.

**Section 3.06 Application of Sale Proceeds and Rents.** If Mortgagee elects to foreclose; after any foreclosure sale of all or any of the Mortgaged Property, Mortgagee shall

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receive and apply the proceeds of the sale together with any Rents that may have been collected and any other sums that then may be held by Mortgagee under this Mortgage as follows:

(a) **FIRST**, to the payment of the costs and expenses of such sale, including compensation to Mortgagee's attorneys and agents, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, together with interest at the Default Rate on all advances made by Mortgagee, including all taxes or assessments (except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold) and the cost of removing any lien;

(b) **SECOND**, to the Mortgagee for the distribution to the Mortgagee for the satisfaction of the Loan owed to the Mortgagee; and

(c) **THIRD**, to the Mortgagor, its successors or permitted assigns, or as a court of competent jurisdiction may otherwise direct, the Mortgagee shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Mortgage. Upon any sale of the Mortgaged Property by the Mortgagee (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Mortgagee or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Mortgaged Property so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Mortgagee or such officer or be answerable in any way for the misapplication thereof.

**Section 3.07 Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws.** Mortgagor waives, to the extent not prohibited by law, (i) the benefit of all laws now existing or that hereafter may be enacted providing for any appraisement or valuation of any portion of the Mortgaged Property and/or in any way extending the time for the enforcement or the collection of amounts due under any of the Indebtedness or creating or extending a period of redemption from any sale made in collecting said debt or any other amounts due Mortgagee, (ii) any right to at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any homestead exemption, stay, statute of limitations, extension or redemption, or sale of the Mortgaged Property as separate tracts, units or estates or as a single parcel in the event of foreclosure or notice of deficiency, and (iii) all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of or each of the Indebtedness and marshaling in the event of foreclosure of this Mortgage.

**Section 3.08 Discontinuance of Proceedings.** If the Mortgagee elects to proceed to enforce any right, power or remedy under this Mortgage by foreclosure and such foreclosure proceedings are discontinued or abandoned for any reason, or the foreclosure is determined adversely against the Mortgagee for any reason, then and in every such case the Mortgagors and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken.

**Section 3.09 Suits to Protect the Mortgaged Property.** Mortgagee shall have power (a) to institute and maintain suits and proceedings to prevent any impairment of the Mortgaged Property by any acts that may be unlawful or in violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the Rents arising therefrom and (c) to

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restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of or compliance with such enactment, rule or order would impair the security or be prejudicial to the interest of Mortgagee hereunder.

**Section 3.10 Filing Proofs of Claim.** In case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, Mortgagee shall, to the extent permitted by law, be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the Loan secured by this Mortgage at the date of the institution of such proceedings and for any interest accrued, late charges and additional interest or other amounts due or that may become due and payable hereunder after such date.

**Section 3.11 Possession by Mortgagee.** Notwithstanding the appointment of any receiver, liquidator or trustee of Mortgagor, any of its property or the Mortgaged Property, Mortgagee shall be entitled, to the extent not prohibited by law, to possession and control of all parts of the Mortgaged Property now or hereafter granted under this Mortgage to Mortgagee in accordance with the terms hereof and applicable law.

**Section 3.12 Assignment of Rents.**

(a) As part of the consideration for the Indebtedness, Mortgagor absolutely and unconditionally assigns and transfers to Mortgagee all Rents. It is the intention of Mortgagor to establish a present, absolute and irrevocable transfer and assignment to Mortgagee of all Rents and to authorize and empower Mortgagee to collect and receive all Rents without the necessity of further action on the part of Mortgagor. Promptly upon request by Mortgagee, Mortgagor agrees to execute and deliver such further assignments as Mortgagor may from time to time require. Mortgagor and Mortgagee intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in this Mortgage. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Mortgagor that in this circumstance this Mortgage create and perfect a lien on Rents in favor of Mortgagee, which lien shall be effective as of the date of this Mortgage.

(b) After the occurrence of an Event of Default, Mortgagor authorizes Mortgagee to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Mortgagee, and Mortgagor shall, upon Mortgagor's receipt of any Rents from any sources, pay the total amount of such receipts to the Mortgagee. However, until the occurrence of an Event of Default, Mortgagee hereby grants to Mortgagor a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Mortgagee and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums, tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to

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the preceding sentence may be retained by Mortgagor free and clear of, and released from, Mortgagee's rights with respect to Rents under this Mortgage. From and after the occurrence of an Event of Default, and without the necessity of Mortgagee entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Mortgagor's license to collect Rents shall automatically terminate and Mortgagee shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Mortgagor shall pay to Mortgagee upon demand all Rents to which Mortgagee is entitled. At any time on or after the date of Mortgagee's demand for Rents, Mortgagee may give, and Mortgagor hereby irrevocably authorizes Mortgagee to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Mortgagee, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Mortgagor any amounts which are actually paid to Mortgagee in response to such a notice. Any such notice by Mortgagee shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Mortgagor shall not interfere with and shall cooperate with Mortgagee's collection of such Rents.

(c) Mortgagor represents and warrants to Mortgagee that Mortgagor has not executed any prior assignment of Rents, that Mortgagor has not performed, and Mortgagor covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Mortgagee from exercising its rights under this Section 3.12, and that at the time of execution of this Mortgage there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Mortgagor shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

### **Section 3.13 Mortgagee's Right of Possession in Case of Default.**

(a) At any time after an Event of Default has occurred and during its continuance, after the expiration of applicable notice and cure periods, Mortgagor shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Mortgaged Property, or any part thereof. Mortgagee, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Mortgage Property, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, Rents, issues, and profits of the Mortgaged Property, including actions for the recovery of Rent, actions in forcible detainer and actions in distress for Rent. Without limiting the generality of the foregoing, Mortgagee shall have full power to:

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

(ii) cause any tenant to subordinate its Lease or sublease to the lien of Mortgagee's Mortgage (in addition to such tenant's agreement to automatically subordinate its Lease or sublease as provided therein);

(iii) 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



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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 other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the Mortgage hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, if any, discharge of the Note, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(iv) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property as Mortgagee reasonably deems are necessary;

(v) insure and reinsure the Mortgaged Property and all risks incidental to Mortgagee's possession, operation and management thereof; and

(vi) receive all of such avails, Rents, issues and profits.

(b) If Mortgagee enters the Mortgaged Property, Mortgagee shall be liable to account only to Mortgagor and only for those Rents actually received. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Mortgagee under this Section 3.14, and Mortgagor hereby releases and discharges Mortgagee from any such liability to the fullest extent permitted by law.

(c) Any entering upon and taking of control of the Mortgaged Property by Mortgagee or the receiver, as the case may be, and any application of Rents as provided in this Mortgage shall not cure or waive any Event of Default or invalidate any other right or remedy of Mortgagee under applicable law or provided for in this Mortgage.

### **Section 3.14 Assignment of Leases; Leases Affecting the Mortgaged Property.**

(a) As part of the consideration for the Indebtedness, Mortgagor absolutely and unconditionally assigns and transfers to Mortgagee all of Mortgagor's right, title and interest in, to and under the Leases, including Mortgagor's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Mortgagor to establish a present, absolute and irrevocable transfer and assignment to Mortgagee of all of Mortgagor's right, title and interest in, to and under the Leases. Mortgagor and Mortgagee intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of the Mortgagor that in this circumstance this Mortgage create and perfect a lien on the Leases in favor of Mortgagee, which lien shall be effective as of the date of this Mortgage.

(b) Until Mortgagee gives notice to Mortgagor of Mortgagee's exercise of its rights under this Section 3.14 Mortgagor shall have all rights, power and authority granted to Mortgagor

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under any Lease (except as otherwise limited by this Section or any other provision of this Mortgage), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Mortgagor pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Mortgagor shall comply with and observe Mortgagor's obligations under all Leases, including Mortgagor's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Mortgagor acknowledges and agrees that the exercise by Mortgagee, either directly or by a receiver, of any of the rights conferred under this Section 3.14 shall not be construed to make Mortgagee a mortgagee-in-possession of the Mortgaged Property so long as Mortgagee has not itself entered into actual possession of the Land and the Improvements. The acceptance by Mortgagee of the assignment of the Leases pursuant to (a)Section 3.14 (a) shall not at any time or in any event obligate Mortgagee to take any action under this Mortgage or to expend any money or to incur any expenses. Mortgagee shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property. Prior to Mortgagee's actual entry into and taking possession of the Mortgaged Property, Mortgagee shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Mortgage by Mortgagor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Mortgagor, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Mortgagee to Mortgagor of Mortgagee's exercise of Mortgagee's rights under this Section 3.14 at any time after the occurrence of an Event of Default, and without the necessity of Mortgagee entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Mortgagee immediately shall have all rights, powers and authority granted to Mortgagor under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

**Section 3.15 Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the Mortgaged Property, or any part thereof, in accordance with the Act. Such appointment may be made at any time either before or after judgment of foreclosure or sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Mortgaged Property (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights

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that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during said period, including, to the extent permitted by law, the right to lease all or any portion of the Mortgaged Property for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Note, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale. and (b) any deficiency upon a sale and deficiency.

## **Section 3.16 Waiver.**

(a) No delay or failure by Mortgagee to exercise any right, power or remedy accruing upon any breach or Event of Default shall exhaust or impair any such right, power or remedy or be construed to be a waiver of any such breach or Event of Default or acquiescence therein; and every right, power and remedy given by this Mortgage to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. No consent or waiver by Mortgagee to or of a particular breach or Event of Default by Mortgagor in the performance of the Indebtedness shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same under this Indebtedness or any other loan between the Mortgagee and Mortgagor. No failure on the part of Mortgagee to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies consequent on any future Event of Default by Mortgagor. No action for the enforcement of this Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action of law on the Note.

(b) Even if Mortgagee (i) grants some forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security for the payment of any sums secured hereby, (iii) waives or does not exercise some right granted herein or under the other Loan Documents, (iv) releases a part of the Mortgaged Property from this Mortgage, (v) agrees to change some of the terms, covenants, conditions or agreements of any of the other Loan Documents, (vi) consents to the filing of a map, plat or replat affecting the Mortgaged Property, (vii) consents to the granting of an easement or other right affecting the Mortgaged Property or (viii) makes or consents to an agreement subordinating Mortgagee's lien on the Mortgaged Property hereunder; no such act or omission shall preclude Mortgagee from exercising any other right, power or privilege herein granted or intended to be granted in the event of any breach or Event of Default then made or of any subsequent default; nor, except as otherwise expressly provided in an instrument executed by Mortgagee, shall this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or part of the Mortgaged Property, Mortgagee is hereby authorized and empowered to deal with any vendee or transferee with reference to the Mortgaged Property secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, Indebtedness or undertakings.

**Section 3.17 WAIVER OF DEFENSES.** Mortgagor acknowledges and agrees that as of the date of execution of this Mortgage hereof, the Mortgage is good, valid, enforceable and

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free of any and all defenses whatsoever, known or unknown currently or in the future, whether in law or equity, and constitutes the legally binding obligation of the Mortgagor to the Mortgagee. No event or act has occurred which might or could impair the enforceability thereof or result in the discharge of the Mortgagor thereunder or under any pledge, agreement, promise, covenant, or any undertaking whatsoever which the Mortgagor has made or given to the Mortgagee. In addition, the Mortgagor waives and releases any causes of action it might have or claims to have against the Mortgagee arising out of or in any way related to the execution and enforcement of the Mortgage or transaction to which it relates.

**Section 3.18 Illinois Collateral Protection Act.** Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor may make or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may 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 Mortgaged Property, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges that Mortgagee may impose in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. Without limitation of any other provision of this Mortgage, the cost of such insurance will be added to the cost of the Indebtedness secured hereby. The cost of such insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

## ARTICLE IV MISCELLANEOUS

**Section 4.01 Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, and each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**Section 4.02 Partial Invalidity; Amendments.** In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such validity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

**Section 4.03 Notices.** Any Notice, or other document or demand required or permitted under this Mortgage or any of the other Loan Documents shall be in writing addressed to the appropriate address set forth on the first page of this Mortgage and shall be deemed delivered upon the earliest of (a) actual receipt, (b) the next Business Day after the date when sent by recognized overnight courier, or (c) the second Business Day after the date when sent by registered or certified mail, postage prepaid. Any party may, from time to time, change the

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address at which such written Notice or other documents or demands are to be sent, by giving the other party written Notice of such change in the manner hereinabove provided.

**Section 4.04 Successors and Assigns.** All of the grants, covenants, terms, provisions and conditions herein shall run with the Mortgaged Property and shall apply to, bind and inure to, the benefit of the permitted successors and assigns of Mortgagor and the successors and assigns of Mortgagee. However, a Transfer by Mortgagor that is not permitted shall be an Event of Default.

**Section 4.05 Sale of Note; Change in Servicer.** The Note or a partial interest in the Note (together with this Mortgage and the other Loan Documents) may be sold one or more times with 30 day prior notice to Mortgagor. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Mortgagor will be given notice of the change.

## **Section 4.06 Satisfaction and Cancellation.**

(a) The conveyance to the Mortgagee of the Mortgaged Property as security created and consummated by this Mortgage shall be null, void, and released when the Indebtedness has been paid in full in accordance with the terms of the Note and the Loan Documents and the Mortgagee has no further commitment to provide the Indebtedness.

(b) Any Transfer or financing by Mortgagors of all or any portion of the Mortgaged Property shall be permitted by the Mortgagee only if the Indebtedness will be paid in full, in accordance with the terms of the Note and the Loan Documents and the Mortgagee has no further commitment to provide the Indebtedness, as a result of such Transfer or financing. Mortgagor shall give the Mortgagee at least ten (10) days written Notice of any sale or financing of the Mortgaged Property prior to the closing of such sale or financing.

(c) In connection with any termination or release pursuant to Section 4.06 (a) above, the Mortgage shall be marked "satisfied" by the Mortgagee, and this Mortgage shall be canceled of record at the request and at the expense of the Mortgagors. Mortgagee shall execute any documents reasonably requested by Mortgagor to accomplish the foregoing or to accomplish any release contemplated by this Section 4.06

**Section 4.07 Applicable Law.** This Mortgage shall be governed by and construed in accordance with the internal law of the State of Illinois (the "Property Jurisdiction"); provided that the provisions of this Mortgage relating to the creation, perfection and enforcement of the lien and security interest created by this Mortgage in respect of the Mortgaged Property and the exercise of each remedy provided hereby, including the power of foreclosure or power of sale procedures set forth in this Mortgage, shall be governed by and construed in accordance with the internal law of the state where the Mortgaged Property is located, and Mortgagor and Mortgagee agrees to submit to jurisdiction and the laying of venue for any suit on this Mortgage in such state.

## **Section 4.08 WAIVER OF TRIAL BY JURY.**

(a) MORTGAGOR AND MORTGAGEE EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF

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THIS MORTGAGE OR THE RELATIONSHIP BETWEEN THE PARTIES AS MORTGAGOR AND MORTGAGEE THAT IS TRIABLE OF RIGHT BY A JURY.

(b) MORTGAGOR AND MORTGAGEE EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

## Section 4.09 Construction.

(a) The captions and headings of the sections of this Mortgage are for convenience only and shall be disregarded in construing this Mortgage. Any reference in this Mortgage to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Mortgage or to a Section of this Mortgage. All Exhibits attached to or referred to in this Mortgage are incorporated by reference into this Mortgage. Any reference in this Mortgage to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Mortgage, the following words and phrases shall have the following meanings: "including" means "including, but not limited to"; "provisions" shall mean "provisions, terms, covenants and/or conditions"; "lien" shall mean "lien, charge, encumbrance, security interest, mortgage or deed of trust (either voluntary or involuntary)"; "obligation" shall mean "obligation, duty, covenant and/or condition"; and "any of the Mortgaged Property" shall mean "the Mortgaged Property or any part thereof or interest therein"; any "consent", "approval" or "permission" and inflictions of such words, required by the Mortgagee under the Mortgage or Loan Documents, whether stated or not that it shall be in writing shall be construed to be required in writing.

(b) Any act that Mortgagee is permitted to perform hereunder may be performed at any time and from time to time by Mortgagee or any person or entity designated by Mortgagee. Any act that is prohibited to Mortgagor hereunder is also prohibited to all lessees of any part of the Mortgaged Property. Each appointment of Mortgagee as attorney-in-fact for Mortgagor under the Mortgage is irrevocable, with power of substitution and coupled with an interest. Subject to the applicable provisions hereof, Mortgagee has the right to refuse to grant its consent, approval or acceptance or to indicate its satisfaction, in its sole discretion, whenever such consent, approval, acceptance or satisfaction is required hereunder.

**IN WITNESS WHEREOF**, this Mortgage has been duly executed and delivered to Mortgagee by Mortgagor on the date of the acknowledgment attached hereto.

MORTGAGOR:  
1318 S KILDARE INC.

By: Cristian Luput [Signature]

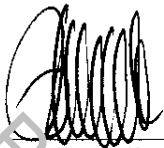
Name: Cristian Luput

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Title: President

STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

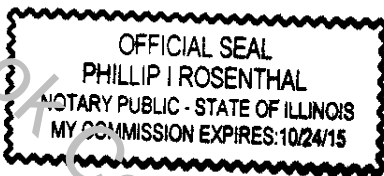
the foregoing Mortgage was executed and acknowledged before me on 11/18/13 (date) by Cristian Luput (name/s of person/s) as the President (type of authority, e.g., Manager, President, etc.) of 1318 S Kildare Inc. (name of entity on behalf of whom instrument was executed).



\_\_\_\_\_  
Signature Notary Public

{SEAL}

My Commission Expires: 10/24/15

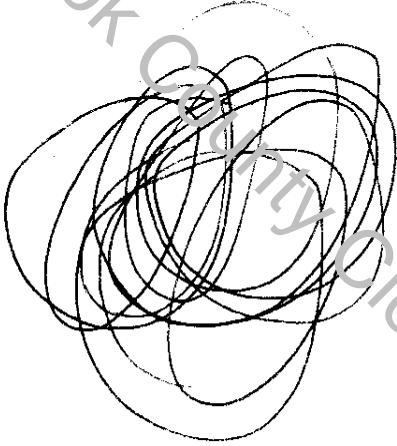


Property of Cook County Clerk's Office

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## EXHIBIT A

Property of Cook County Clerk's Office





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## LEGAL DESCRIPTION

LOT 8 IN BLOCK 4 IN THE SUBDIVISION BY FRED A. REHKOPF OF BLOCKS 13 TO 16 OF THE SEYMOUR ESTATE SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN.

Tax ID: 16-22-209-023-0000

Commonly known as: 1318 S. Kildare Avenue, Chicago, IL 60623

Property of Cook County Clerk's Office