

# UNOFFICIAL COPY

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption

NCS 661729  
3 of 4



1420445087

**Doc#:** 1420445087 **Fee:** \$80.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 07/23/2014 03:03 PM Pg: 1 of 22

**Report Mortgage Fraud**  
**800-532-8785**

The property identified as: **PIN:** 17-16-202-013-0000

**Address:**

**Street:** 230 West Monroe St

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60606

**Lender:** GENERAL ELECTRIC CAPITAL CORPORATION

**Borrower:** BRI 1864 230 W MONROE LLC

**Loan / Mortgage Amount:** \$79,750,000.00

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

**Certificate number:** 3C73DB55-F5D5-46D9-86C2-F30EFFDAD4AD

**Execution date:** 07/22/2014

# UNOFFICIAL COPY

**THIS DOCUMENT WAS  
PREPARED BY, AND AFTER  
RECORDING, RETURN TO:**

Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, Illinois 60661  
Attention: David R. Dlugie, Esq.

**Cook County:**

Address: 230 West Monroe St  
Chicago, Illinois

PIN: 17-16-202-013-0000  
17-16-202-014-0000

NCS-661729  
3 of 4

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

by

**BRI 1864 230 W MONROE LLC,  
a Delaware limited liability company,  
as Mortgagor**

to and for the benefit of

**GENERAL ELECTRIC CAPITAL CORPORATION,  
a Delaware corporation,  
as Mortgagee**

# UNOFFICIAL COPY

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

This Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (this "**Mortgage**") is executed as of July 22, 2014, by **BRI 1864 230 W MONROE LLC**, a Delaware limited liability company ("**Mortgagor**"), whose address for notice hereunder is 1140 East Hallandale Beach Boulevard, Hallandale Beach, Florida 33009, for the benefit of **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation, as Administrative Agent for the Lenders (as hereinafter defined) and in such capacity, together with its successors and assigns in such capacity, "**Mortgagee**", whose address is c/o GE Capital Real Estate, 500 West Monroe, Chicago, Illinois, 60661, Attention: Asset Manager/230 W Monroe, Loan Number 690018687.

### ARTICLE 1

#### DEFINITIONS

Section 1.1 **Definitions.** As used herein, the following terms shall have the following meanings:

"**Lender**" means, individually, and "**Lenders**" means, collectively, all of the "Lenders" from time to time a party to the Loan Agreement.

"**Loan Documents**" means (1) the Loan Agreement of even date by and among Mortgagor, Mortgagee and the Lenders (the "**Loan Agreement**"), (2) one or more promissory notes having an initial aggregate stated principal amount of \$79,750,000.00, each now or hereafter executed and delivered by Mortgagor to the order of one or more of the Lenders in accordance with the Loan Agreement (collectively, together with all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, severed, split, modified, amended or extended from time to time, the "**Notes**"), which mature on July 31, 2018, but the maturity thereof may be extended to July 31, 2019, as provided in the Loan Agreement, (3) this Mortgage, (4) all other documents now or hereafter executed by Mortgagor, or any other Person to evidence or secure the payment and performance of the Obligations and (5) all amendments, modifications, restatements, extensions, renewals and replacements of the foregoing.

"**Mortgaged Property**" means all estate, right, title, interest, claim and demand whatsoever which Mortgagor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof (the "**Land**"), and all additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Mortgage, (2) all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and other improvements, now or at any time situated, placed or constructed upon

# UNOFFICIAL COPY

the Land (the "**Improvements**"), (3) all materials, supplies, appliances, equipment (as such term is defined in the UCC), apparatus and other items of personal property now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Mortgaged Property, construction equipment, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, pollution control equipment, security systems and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (the "**Fixtures**"), (4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is presently or hereafter defined in the UCC, and all other personal property of any kind or character, now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including furniture, furnishings, objects of art, machinery, tools, appliances, including, but not limited to, disposals, dishwashers, refrigerators and ranges, recreational equipment electronic data-processing and other office equipment, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, books and records, websites and domain names, payment intangibles, documents, trade names, service marks, logos, copyrights, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Personalty**"), but the foregoing Personalty not include any property belonging to tenants under leases, except to the extent that Mortgagor shall have any right or interest therein, (5) all reserves, escrows or impounds maintained by Mortgagor with respect to the Mortgaged Property, including, without limitation, all accounts required under the Loan Agreement and all deposit accounts (including accounts holding security deposits, but subject to the rights of tenants therein) maintained by Mortgagor with respect to the Mortgaged Property, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof, (6) all plans, specifications, shop drawings and other technical descriptions prepared for

# UNOFFICIAL COPY

construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "**Plans**"), (7) all leases, subleases, licenses, franchises, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property whether now or hereafter existing or entered into (including, without limitation, any use or occupancy arrangements created pursuant to Section 365(d) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Mortgaged Property), and all amendments, modifications, supplements, extensions or renewals thereof, whether now or hereafter existing, together with all related security and other deposits (the "**Leases**"), (8) all of the rents, including without limitation percentage rent and additional rent (including tenant tax and operating expense reimbursements), moneys payable as damages or in lieu of rent, revenues, income, proceeds, profits, cash, issues, profits, charges for services rendered, income, receipts, royalties, receivables, termination payments, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Mortgaged Property (the "**Rents**"), (9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates, instruments and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property and any part thereof and any of the Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder (the "**Property Agreements**"), (10) all easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto, (11) all present and future accessories, additions, attachments, replacements and substitutions of, for or to any of the foregoing and all proceeds and products thereof, (12) all insurance policies (regardless of whether required by Mortgagee), unearned premiums therefor and proceeds from such policies, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, covering any of the above property now or hereafter acquired by Mortgagor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, (14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty, including any interest thereon, whether from

# UNOFFICIAL COPY

the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property, (15) all refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Mortgaged Property as a result of tax certiorari or any applications or proceedings for reduction, (16) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee and Lenders in the Mortgaged Property, (17) all rights, claims, interests, proceeds or other benefits of Mortgagor under any agreement, device or arrangement providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, or equity prices, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants, and any agreement pertaining to equity derivative transactions (e.g., equity or equity index swaps, options, caps, floors, collars and forwards), including without limitation any such agreement between Mortgagor and Mortgagee and/or the Lenders, any affiliate of Mortgagee and/or the Lenders, or any other Person, and any schedules, confirmations and documents and other confirming evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising and in each case, as amended, modified or supplemented from time to time, and (18) all present and future accessories, additions, attachments, replacements and substitutions of, for or to any of the foregoing and all proceeds and products thereof. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein, wherever located.

**"Obligations"** means, collectively, all (1) principal, interest and other amounts due under or secured by the Loan Documents, excluding the Hazardous Materials Indemnity Agreement, (2) principal, interest and other amounts which may hereafter be loaned by Lenders or Mortgagee, or their respective successors or assigns, to or for the benefit of the owner of the Mortgaged Property, when evidenced by a promissory note or other instrument which, by its terms, is secured hereby, (3) other indebtedness, obligations and liabilities now or hereafter existing of any kind of Mortgagor to Lenders or Mortgagee under documents which recite that they are intended to be secured by this Mortgage, and (4) covenants, agreements, conditions, warranties, representations and other obligations made or undertaken by Mortgagor to Lenders or Mortgagee under the Loan Documents, excluding the Hazardous Materials Indemnity Agreement. Notwithstanding anything contained in this Mortgage to the contrary, the term "Obligations" shall not include, and this Mortgage shall not secure, Mortgagor's obligations under the Hazardous Materials Indemnity Agreement.

**"UCC"** means the Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern for purposes of this Mortgage; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term "UCC" shall mean the Uniform Commercial Code

# UNOFFICIAL COPY

as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions in this Agreement.

All other capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Loan Agreement.

## ARTICLE 2

### GRANT

Section 2.1 **Grant.** To secure the full and timely payment and performance of the Obligations, Mortgagor does hereby irrevocably MORTGAGE, GIVE, GRANT, BARGAIN, SELL, ALIEN, PLEDGE, ASSIGN, WARRANT, TRANSFER, CONFIRM, HYPOTHECATE and CONVEY a security interest in and to the Mortgaged Property to Mortgagee, TO HAVE AND TO HOLD, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee..

## ARTICLE 3

### WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee and Lenders as follows:

Section 3.1 **Cooperation.** Where any of the Mortgaged Property is in the possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's security interest and obtaining an acknowledgment from the third party that it is holding such Mortgaged Property for the benefit of Mortgagee. Mortgagor will cooperate with Mortgagee in obtaining control (for lien perfection purposes under the UCC) with respect to any Mortgaged Property consisting of deposit accounts, investment property, letter-of-credit rights or electronic chattel paper.

Section 3.2 **Payment and Performance.** Mortgagor shall pay and perform the Obligations when due under the Loan Documents.

Section 3.3 **Replacement of Fixtures and Personalty.** Mortgagor shall not incorporate into the Mortgaged Property any item of Personalty, Fixtures or other property that is not owned by Mortgagor free and clear of all liens or security interests except the liens and security interests in favor of Mortgagee created by the Loan Documents.

Section 3.4 **Mortgagee Approval of Restrictions.** Mortgagor shall not, without the prior consent of Mortgagee, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property.

Section 3.5 **Other Covenants.** All of the covenants in the Loan Agreement are incorporated herein by reference. The covenants set forth in the Loan Agreement include the

# UNOFFICIAL COPY

prohibition against the further sale, transfer or encumbering of any of the Mortgaged Property, and restrictions on transfers and encumbrances of direct and indirect interests in Mortgagor except as expressly permitted in Section 6.1 therein.

Section 3.6 **Condemnation Awards and Insurance Proceeds.** Mortgagor assigns to Mortgagee all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, and all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. All such awards, compensation and proceeds shall be governed by and subject to the provisions of the Loan Agreement governing the same.

## ARTICLE 4

### **DEFAULT AND FORECLOSURE**

Section 4.1 **Remedies.** If an Event of Default exists, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof, subject to the rights of the tenants thereof, and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.7.

(d) **Foreclosure and Sale.** Institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notices required or permitted under the UCC, Mortgagor agrees that five (5) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Any Person, including Mortgagor or Mortgagee, may be a purchaser at such sale. If Mortgagee is the highest bidder, Mortgagee may



# UNOFFICIAL COPY

credit the portion of the purchase price that would be distributed to Mortgagee against the Obligations in lieu of paying cash. In connection with any foreclosure sale: (i) Mortgagee shall have no obligation to clean up, repair or otherwise prepare the Mortgaged Property for sale; (ii) Mortgagor waives any right it may have to require Mortgagee or any Lender to pursue any third party for any of the Obligations; (iii) Mortgagee may comply with any applicable state or federal law requirements in connection with a disposition of the Mortgaged Property; (iv) Mortgagee may specifically disclaim any warranties of title or the like; (v) if Mortgagee sells any of the Mortgaged Property on credit, Mortgagor will be credited only with payments actually made by purchaser, received by Mortgagee and applied to the indebtedness of the purchaser; and (vi) Mortgagee may apply any noncash proceeds of a disposition of the Mortgaged Property in any commercially reasonable manner selected by Mortgagee. Compliance by Mortgagee with the standards set forth in the foregoing sentence shall not be deemed to adversely affect the commercial reasonableness of any sale of the Mortgaged Property or portion thereof.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the Obligations secured hereby, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7.

(f) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Notes either before, during or after any proceeding to enforce this Mortgage).

Section 4.2 **Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3 **Remedies Cumulative, Concurrent and Nonexclusive.** Subject to Article 12 of the Loan Agreement, Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Notes and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee or any Lender in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4 **Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to

# UNOFFICIAL COPY

the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment and performance of the Obligations, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 4.5 **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except as otherwise expressly provided in the Loan Agreement, all notices of any Event of Default or of Mortgagee's or any Lender's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6 **Discontinuance of Proceedings.** If Mortgagee and/or the Lenders shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee and the Lenders shall have the unqualified right to do so and, in such an event, Mortgagor, Mortgagee and the Lenders shall be restored to their former positions with respect to the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee and the Lenders shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee or the Lenders thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 4.7 **Application of Proceeds.** After an Event of Default, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, operating, maintaining, using, leasing, repairing, improving and selling the same, including (1) receiver's fees and expenses, (2) court costs, (3) attorneys' and accountants' fees and expenses, (4) costs of advertisement, (5) utility costs and charges, (6) insurance premiums, (7) costs and expenses with respect to any litigation affecting the Mortgaged Property, (8) wages and salaries of employees and commissions of agents, (9) all ground rent, real estate taxes and assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold, and (10) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the Mortgaged Property.

(b) to the payment of all amounts (including interest thereon), other than the unpaid principal balance of the Notes and accrued but unpaid interest thereon, which may be due to Mortgagee and/or the Lenders under the Loan Documents;

# UNOFFICIAL COPY

(c) to the payment and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

**Section 4.8 Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Mortgaged Property. Subject to applicable law, all occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

**Section 4.9 Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Mortgagee and the Lenders shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee or the Lenders under this Section 4.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee and/or the Lenders in respect thereof, by litigation or otherwise.

**Section 4.10 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee and/or the Lenders under the Loan Documents, at law or in equity shall cause Mortgagee or any Lender to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee or any Lender to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

## ARTICLE 5

### ASSIGNMENT OF RENTS AND LEASES

**Section 5.1 Assignment.** Mortgagor unconditionally and absolutely assigns to Mortgagee all of Mortgagor's right, title and interest in and to the Leases and Rents. This

# UNOFFICIAL COPY

assignment is an absolute assignment to Mortgagee and not an assignment as security for the payment and performance of the Obligations.

Section 5.2 **Rights of Mortgagee.** Subject to the provisions of Section 5.5 below, upon the occurrence of any Event of Default, Mortgagee shall have the right, power and authority to: (a) notify any Person that the Leases have been assigned to Mortgagee and that all Rents are to be paid directly to Mortgagee, whether or not Mortgagee has commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Mortgaged Property; (e) lease all or any part of the Mortgaged Property; and/or (f) perform any and all obligations of Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Mortgagee's request, Mortgagor shall deliver a copy of this Agreement to each tenant under a Lease and to each manager and managing agent or operator of the Mortgaged Property. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Mortgaged Property, without any requirement for notice to or consent by Mortgagor, to comply with all demands of Mortgagee under this Agreement and to turn over to Mortgagee on demand all Rents which it receives.

Section 5.3 **No Obligation.** Notwithstanding Mortgagee's rights hereunder, Mortgagee shall not be obligated to perform, and Mortgagee does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Mortgaged Property on account of this Mortgage. Mortgagee shall have no responsibility on account of this Mortgage for the control, care, maintenance or repair of the Mortgaged Property, for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property.

Section 5.4 **Right to Apply Rents.** After an Event of Default, Mortgagee shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with Section 4.7 hereof.

Section 5.5 **Revocable License.** Notwithstanding that the assignment of the Rents and Leases under this Article 5 is an absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, Mortgagee grants to Mortgagor a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents and the Leases prior to the occurrence of an Event of Default. Upon the occurrence of any Event of Default, such license may be revoked by Mortgagee, without notice to or demand upon Mortgagor, and Mortgagee immediately shall be entitled to receive and apply all Rents, whether or not Mortgagee enters upon and takes control of the Mortgaged Property. Prior to such revocation, Mortgagor shall apply any Rents which it receives in accordance with the Loan Agreement.

# UNOFFICIAL COPY

Section 5.6 **Liability of Mortgagee.** Neither Mortgagee nor any Lender shall in any way be liable to Mortgagor for any action or inaction of Mortgagee, its employees or agents under this Article 5.

Section 5.7 **No Merger of Estates.** So long as any part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

## ARTICLE 6

### **SECURITY AGREEMENT**

Section 6.1 **Security Interest.** This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least five (5) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.2 **Financing Statements.** Mortgagor hereby irrevocably authorizes Mortgagee, at any time and from time to time, to file in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Mortgagor where permitted by law. Mortgagor agrees to furnish Mortgagee, promptly upon request, with any information required by Mortgagee to complete such financing or continuation statements. If Mortgagee has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Mortgagor ratifies and confirms its authorization of all such filings. Mortgagor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Mortgagee, and agrees that it will not do so without Mortgagee's prior written consent, subject to Mortgagor's rights under Section 9-509(d)(2) of the UCC. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such additional financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

Section 6.3 **Fixture Filing.** This Mortgage shall also constitute a "fixture filing" for the purposes of UCC Section 9-502(c), as amended or recodified from time to time, against all of the Mortgaged Property which is or is to become fixtures.

# UNOFFICIAL COPY

## ARTICLE 7

### MISCELLANEOUS

Section 7.1 **Notices.** Any notice required or permitted to be given under this Mortgage shall be sent, deemed given and received, and otherwise governed in accordance with the notice provisions set forth in the Loan Agreement.

Section 7.2 **Covenants Running with the Land.** All of the covenants in the Loan Agreement and in Article 3 of this Mortgage, and all other Obligations contained in this Mortgage, are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3 **Attorney-in-Fact.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's and the Lenders' interests, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) after an Event of Default, to execute any or all of the rights or powers described in Article 5 with the same force and effect as if executed by Mortgagor, and Mortgagor ratifies and confirms any and all acts done or omitted to be done by Mortgagee, its agents, servants, employees or attorneys in, to or about the Mortgaged Property, (c) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (d) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the collateral, and (e) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; however: (1) neither Mortgagee nor any Lender shall under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee or the Lenders in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) neither Mortgagee nor any Lender shall be liable to Mortgagor or any other Person for any failure to take any action which it is empowered to take under this Section.

Section 7.4 **Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee, the Lenders and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

# UNOFFICIAL COPY

Section 7.5 **No Waiver**. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6 **Subrogation**. To the extent proceeds of the Notes have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

Section 7.7 **Loan Agreement**. If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern.

Section 7.8 **Release**. Upon full payment and performance of the Obligations, Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage.

Section 7.9 **Waiver of Stay, Moratorium and Similar Rights**. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee and/or the Lenders or any rights or remedies of Mortgagee and/or the Lenders.

Section 7.10 **Limitation on Liability**. Mortgagor's liability hereunder is subject to the limitation on liability provisions of Article 12 of the Loan Agreement.

Section 7.11 **Obligations of Mortgagor, Joint and Several**. If more than one Person has executed this Mortgage as "Mortgagor," the obligations of all such Persons hereunder shall be joint and several.

Section 7.12 **Governing Law**. THIS MORTGAGE SHALL BE CONSTRUED, INTERPRETED, ENFORCED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT THAT (A) THE CREATION, VALIDITY, PRIORITY AND PERFECTION OF THE LIEN GRANTED HEREBY THAT ENCUMBERS ANY PORTION OF THE MORTGAGED PROPERTY THAT CONSTITUTES REAL PROPERTY OR FIXTURES, (B) THE REMEDIES GRANTED HEREIN (INCLUDING THE RIGHT GIVEN THE MORTGAGEE TO ADVERTISE AND SELL THE MORTGAGED PROPERTY FOLLOWING AN EVENT OF DEFAULT) THAT RELATE TO SUCH REAL PROPERTY OR FIXTURES, (C) THE METHOD AND EFFECT OF TRANSFERS OF, AND MATTERS RELATING TO TITLE TO, SUCH REAL PROPERTY OR FIXTURES, AND (D) ANY OTHER MANDATORY PROVISIONS OF THE LAW OF ITS LOCATION APPLICABLE TO SUCH REAL PROPERTY OR FIXTURES, SHALL BE GOVERNED BY THE APPLICABLE

# UNOFFICIAL COPY

LOCAL LAWS OF THE JURISDICTION IN WHICH THE LAND IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH JURISDICTION, THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN THE VALIDITY, CONSTRUCTION, INTERPRETATION, ENFORCEMENT AND PERFORMANCE OF THIS MORTGAGE, THE OTHER LOAN DOCUMENTS AND ALL OF THE RIGHTS AND OBLIGATIONS ARISING HEREUNDER AND THEREUNDER IN ACCORDANCE WITH SECTION 13.17 OF THE LOAN AGREEMENT.

Section 7.13 **Interpretation.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections. When used in this Mortgage, "include(s)" shall mean "include(s), without limitation," and "including" shall mean "including, but not limited to."

Section 7.14 **Counterparts.** This Mortgage may be executed in any number of counterparts, all which shall be deemed one in the same instrument. Copies of originals, including copies delivered by facsimile, PDF or other electronic means, shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Mortgage. For purposes of recordation, original, executed counterpart signature pages may be attached to one copy of this Mortgage to form one document.

Section 7.15 **Entire Agreement.** This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee, the Lenders and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

## ARTICLE 8

### STATE SPECIFIC PROVISIONS

Section 8.1 **Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article 8 and the other terms and conditions of this Mortgage or the other Loan Documents, the terms and conditions of this Article 8 shall control and be binding, except that the terms of Article 12 of the Loan Agreement shall always control.

#### Section 8.2 **Illinois Mortgage Foreclosure.**

(a) It is the express intention of Mortgagor, Mortgagee and Lenders that the rights, remedies, powers and authorities conferred upon the Mortgagee and Lenders pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Illinois Mortgage Foreclosure Law (735 ILCS § 5/15-1101 *et seq.*) (herein called the "IMFL") and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Mortgage shall be inconsistent with any provision in the IMFL, the provisions of the IMFL shall take precedent over the provisions of this Mortgage, but



# UNOFFICIAL COPY

shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMFL.

(b) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee and/or Lenders to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether provided for in this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

(c) The powers, authorities and duties conferred upon the Mortgagee and/or Lenders, in the event that the Mortgagee and/or Lenders take possession of the Mortgaged Property, and upon a receiver hereunder, shall also include all such powers, authority and duties as may be conferred upon a mortgagee in possession or receiver under and pursuant to the IMFL. To the extent the IMFL may limit the powers, authorities and duties purportedly conferred hereby, such power, authorities and duties shall include those allowed, and be limited as proscribed by IMFL at the time of their exercise or discharge.

(d) MORTGAGOR KNOWINGLY AND VOLUNTARILY WAIVES, ON BEHALF OF ITSELF AND ALL PERSONS OR ENTITIES NOW OR HEREAFTER INTERESTED IN THE MORTGAGED PROPERTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW INCLUDING IMFL, (I) ALL RIGHTS UNDER ALL APPRAISEMENT, HOMESTEAD, MORATORIUM, VALUATION, EXEMPTION, STAY, EXTENSION, REDEMPTION, SINGLE ACTION, ELECTION OF REMEDIES AND MARSHALING STATUTES, LAWS OR EQUITIES NOW OR HEREAFTER EXISTING, (II) ANY AND ALL REQUIREMENTS THAT AT ANY TIME ANY ACTION MAY BE TAKEN AGAINST ANY OTHER PERSON OR ENTITY AND MORTGAGOR AGREES THAT NO DEFENSE BASED ON ANY THEREOF WILL BE ASSERTED IN ANY ACTION ENFORCING THIS MORTGAGE, AND (III) ANY AND ALL RIGHTS TO REINSTATEMENT AND REDEMPTION AS ALLOWED UNDER SECTION 15-1601(B) OF THE IMFL OR TO CURE ANY DEFAULTS, EXCEPT SUCH RIGHTS OF REINSTATEMENT AND CURE AS MAY BE EXPRESSLY PROVIDED BY THE TERMS OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS.

(e) MORTGAGOR HEREBY KNOWINGLY AND VOLUNTARILY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS OF REDEMPTION FROM SALE OR OTHERWISE UNDER ANY ORDER OR DECREE OF FORECLOSURE, DISCLAIMS ANY STATUS WHICH IT MAY HAVE AS AN "OWNER OF REDEMPTION" AS THAT TERM MAY BE DEFINED IN SECTION 15-1212 OF THE IMFL, PURSUANT TO RIGHTS HEREIN GRANTED, ON BEHALF OF MORTGAGOR AND ALL PERSONS BENEFICIALLY INTERESTED THEREIN, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN, OR TITLE TO, THE MORTGAGED PROPERTY DESCRIBED HEREIN SUBSEQUENT TO THE DATE OF THIS MORTGAGE, AND ON BEHALF OF ALL OTHER PERSONS TO THE FULLEST EXTENT PERMITTED BY THE PROVISIONS OF THE ILLINOIS STATUTES.

# UNOFFICIAL COPY

## Section 8.3 Protective Advances.

- (a) All advances, disbursements and expenditures made by Mortgagee and/or Lenders before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Loan Documents or by the IMFL (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the IMFL, including those provisions of the IMFL hereinbelow referred to:
- (i) all advances by Mortgagee and/or Lenders in accordance with the terms of the Loan Documents to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority hereof; or (C) enforce this Mortgage, each as referred to in subsection (b)(5) of Section 5/15-1302 of the IMFL;
  - (ii) payments by Mortgagee and/or Lenders of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the IMFL;
  - (iii) advances by Mortgagee and/or Lenders in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;
  - (iv) attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 5/15-1504(d)(2) and 5/15-1510 of the IMFL; (B) in connection with any action, suit or proceeding brought by or against the Mortgagee and/or Lenders for the enforcement of this Mortgage or arising from the interest of the Mortgagee and/or Lenders hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action related to this Mortgage or the Mortgaged Property;
  - (v) Mortgagee's and/or Lenders' fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the IMFL;
  - (vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the IMFL;
  - (vii) expenses incurred and expenditures made by Mortgagee and/or Lenders for any one or more of the following: (A) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid;

# UNOFFICIAL COPY

(B) if Mortgagor's interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Mortgagee and/or Lenders whether or not Mortgagee is a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Mortgaged Property imposed by subsection (c)(1) of Section 5/15-1704 of the IMFL; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Mortgagee and/or Lenders to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (G) if the Loan is a construction loan, costs incurred by Mortgagee and/or Lenders for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; and (H) pursuant to any lease or other agreement for occupancy of the Mortgaged Property for amounts required to be paid by Mortgagor;

(viii) all Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Loan Documents;

(ix) this Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 5/15-1302 of the IMFL; and

(x) all Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the IMFL, apply to and be included in:

- A. determination of the amount of indebtedness secured by this Mortgage at any time;
- B. the indebtedness found due and owing to the Mortgagee and/or Lenders in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

# UNOFFICIAL COPY

- C. determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the IMFL;
- D. application of income in the hands of any receiver or mortgagee in possession; and
- E. computation of any deficiency judgment pursuant to Section 5/15-1511 of the IMFL.

Section 8.4 **Agricultural or Residential Real Estate.** Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the IMFL) or residential real estate (as defined in Section 15-1219 of the IMFL).

Section 8.5 **Use of Proceeds.** Mortgagor represents and warrants to Mortgagee and Lenders that the proceeds of the obligations secured hereby shall be used solely for business purpose, and the entire principal obligations secured by this Mortgage constitute (i) a "business loan" as that term is defined in and for all purposes of, 815 ILCS 205/4(1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

Section 8.6 **Maximum Principal Amount.** The maximum indebtedness secured by this Mortgage shall not exceed two hundred percent (200%) of the aggregate, original principal amount of the Loan.

*[Remainder of page intentionally left blank.]*

# UNOFFICIAL COPY

EXECUTED as of the date first written above.

**MORTGAGOR:**

**BRI 1864 230 W MONROE LLC**, a Delaware limited liability company

By: Sole Member BRI 1864 230 W Monroe LLC, a Delaware limited liability company, its Manager

By: *Moises Benzaquen*  
Name: Moises Benzaquen  
Title: Vice president

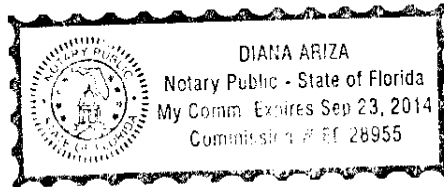
STATE OF Florida )

COUNTY OF Broward )

On July 21, 2014, before me, Diana Ariza, a Notary Public in and for said County and State, personally appeared Moises Benzaquen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is/are) subscribed to the within instrument, and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacit(-y/-ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

*Diana Ariza*  
Signature of Notary Public  
Print Name: Diana Ariza



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF THE LAND

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

ALL OF LOT 7 AND ALL OF LOT 8 (EXCEPT THE WEST 40 FEET THEREOF TAKEN FOR WIDENING OF FRANKLIN STREET) IN BLOCK 94 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING FROM SAID PREMISES THE NORTH 9 FEET THEREOF TAKEN FOR ALLEY), IN COOK COUNTY, ILLINOIS.

Address: 230 W Monroe Street, Chicago, Illinois

Tax Identification Numbers:

17-16-202-013-0000 Vol. 511 (affects the West ½ of Lot 7 and all of Lot 8)

17-16-202-014-0000 Vol. 511 (affects the East ½ of Lot 7)

EXHIBIT A