



1421316051

Illinois Anti-Predatory
Lending Database
Program

Doc#: 1421316051 Fee: \$84.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/01/2014 02:47 PM Pg: 1 of 24

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

NG1140454 1 2 2 NNN

The property identified as: **PIN:** 14-21-100-002-0000

Address:

Street: 3937 N CLARENDON, 718 W IRVING PARK ROAD

Street line 2: AND 725 W IRVING PARK ROAD

City: CHICAGO

State: IL

ZIP Code: 60613

Lender: WELLS FARGO BANK, NATIONAL ASSOCIATION

Borrower: KEYHOLE LLC, PINBALL LLC, TEOCALLI BOWL LLC

Loan / Mortgage Amount: \$17,500,000.00

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: 39A6A326-AA98-4CF4-A57C-F8E7A28651A8

Execution date: 07/31/2014

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Property of Cook County Clerk's Office

ND1170454 1 2 2 5 2 NNN

PREPARED BY:

Barack Ferrazzano Kirschbaum & Nagelberg LLP
200 W. Madison Street, Suite 3900
Chicago, Illinois 60606
Attn: T. Randall Graeb

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Wells Fargo Bank, National Association
Commercial Real Estate (AU 55252)
MAC: N8405-321
10 South Wacker Drive, Suite 3200
Chicago, Illinois 60606
Attn: Jennifer Hansen
Loan No. 1011985

(Space Above For Recorder's Use)

MORTGAGE

NAME AND ADDRESS OF MORTGAGOR(S)/ BORROWER(S):	<p>Keyhole LLC Pinball LLC Teocalli Bowl LLC 150 North Michigan Avenue, Suite 3610 Chicago, IL 60601 Attention: Kent A. Swanson</p> <p>Keyhole LLC Organizational Number: 03826538 Pinball LLC Organizational Number: 03825531 Teocalli Bowl LLC Organizational Number: 03825566</p>
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LOAN NUMBER 1011985

NAME AND ADDRESS OF LENDER:	Wells Fargo Bank, National Association Commercial Real Estate MAC: N8405-321 10 South Wacker Drive, Suite 3200 Chicago, IL 60606 Attention: Jeffrey Goodman and Jennifer Hansen Loan #: 1011985
PROPERTY ADDRESS / ABBREVIATED LEGAL DESCRIPTION:	3937 N. Clarendon, Chicago, Illinois (" Keyhole Property ") 718 W. Irving Park Road, Chicago, Illinois (" Pinball Property ") 725 W. Irving Park Road, Chicago, Illinois (" Teocalli Bowl Property ") Additional legal description on <u>Exhibit A</u> of this document.
ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S):	Keyhole Property: 14-21-100-002-0000 14-21-100-003-0000 Pinball Property: 14-16-305-017-0000 Teocalli Bowl Property: 14-21-100-001-0000

THIS INSTRUMENT COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE MORTGAGES AND DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY, THE MAILING ADDRESSES OF THE SECURED PARTY AND THE DEBTOR ARE WITHIN.

THIS INSTRUMENT SECURES FUTURE ADVANCES.

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LOAN NUMBER 1011985

THIS MORTGAGE SECURES A NOTE WHICH PROVIDES FOR A VARIABLE INTEREST RATE

MORTGAGE (Illinois)

Term or Maturity Date (exclusive of any renewal or extension rights): July 31, 2019

THIS MORTGAGE ("**Mortgage**") (hereinafter referred to as "**Security Instrument**"), made as of July 31, 2014, is granted by Keyhole LLC, an Illinois limited liability company ("**Keyhole Mortgagor**"), Pinball LLC, an Illinois limited liability company ("**Pinball Mortgagor**"), and Teocalli Bowl LLC, an Illinois limited liability company ("**Teocalli Bowl Mortgagor**") (Keyhole Mortgagor, Pinball Mortgagor and Teocalli Bowl Mortgagor, on a joint and several basis, collectively "**Mortgagor**" or individually each a "**Mortgagor**" as the context requires as determined by Lender), for the benefit of Wells Fargo Bank, National Association (collectively with its successors or assigns, "**Mortgagee**") (hereinafter referred to as "**Lender**"). Lender is the mortgagee hereunder for indexing purposes by the Recorder of Deeds.

ARTICLE 1. GRANT

- 1.1 **GRANT.** For the purpose of and upon the terms and conditions in this Security Instrument, Mortgagor irrevocably bargains, conveys, mortgages, encumbers, transfers, hypothecates, pledges, sets over, assigns and grants a security interest and assigns to Lender, its successors and assigns, all of that real property located in the County of Cook, Illinois, described on Exhibit A attached hereto and made a part hereof, together with the Collateral (as defined herein), all buildings and other improvements, fixtures and equipment now or hereafter located on the real property and all right, title, interest, and privileges of Mortgagor now owned or hereafter acquired in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, licenses and permits, air rights, water, water rights and water stock related to the real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, estates, tenements, hereditaments, privileges, rights and rights of way appurtenant or related thereto; any and all rights of Mortgagor, as a declarant, under any covenants, conditions, and restrictions now or hereafter pertaining to the real property described on Exhibit A, hereto, provided, however, that Mortgagee shall have no liability under such covenants, conditions, and restrictions unless and until Mortgagee forecloses on the real property; all buildings and other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property ("**Improvements**"); all interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "**Property**"). The listing of specific rights or property shall not be interpreted as a limit of general terms. Notwithstanding any other provision of this Security Instrument, the Property and other collateral of every sort encumbered by this Security Instrument shall not include any tenant security deposits which are subject to any applicable law, ordinance, rule or regulation which prohibits Mortgagor from encumbering such tenant security deposits.
- 1.2 **ADDRESS.** The address of the Keyhole Property is 3937 N. Clarendon, Chicago, Illinois. The address of the Pinball Property is 718 W. Irving Park Road, Chicago, Illinois. The address of the Teocalli Bowl Property is 725 W. Irving Park Road, Chicago, Illinois. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Security Instrument on the Property as described on Exhibit A.

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LOAN NUMBER 1011985

- 1.3 **WARRANTY OF TITLE; USE OF PROPERTY.** Mortgagor represents and warrants that Mortgagor lawfully holds and possesses fee simple title absolute to the Property without limitation on the right to convey and encumber, and that this Security Instrument is a first and prior lien on the Property subject only to those exceptions which are expressly permitted to exist under the terms of the Security Instrument, the Loan Agreement defined below or the other Loan Documents (as defined in the Loan Agreement), or which are otherwise approved by Lender in writing. Mortgagor further warrants that the Property is not used principally for agricultural or farming purposes.
- 1.4 **USE OF PROCEEDS.** Mortgagor represents and warrants to Lender that the proceeds of the obligations secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligations secured by this Security Instrument 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).

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Security Instrument for the purpose of securing the payment and performance of the following obligations (collectively "**Secured Obligations**"):
- (a) Payment to Lender of all sums at any time owing with interest thereon, according to the terms of that certain Promissory Note Secured by Mortgage (as the same may be amended, supplemented, replaced or modified from time to time, "**Note**") of even date herewith, in the principal amount of Seventeen Million Five Hundred Thousand and No/100 Dollars (\$17,500,000.00) executed by Mortgagor, as "**Borrower**" (individually and collectively, as the context requires as determined by Lender), and payable to the order of Lender; and
 - (b) Payment and performance of all covenants and obligations of Mortgagor under this Security Instrument; and
 - (c) Payment and performance of all covenants and obligations on the part of Borrower under that certain Loan Agreement ("**Loan Agreement**") of even date herewith by and between Borrower and Lender, which Loan Agreement provides for the construction of the Improvements on the Property; and
 - (d) Payment and performance of all covenants and obligations, if any, of any rider attached as an Exhibit to this Security Instrument; and
 - (e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when such future advance or obligation is evidenced by an instrument in writing, which recites that it is secured by this Security Instrument including any and all advances or disbursements of Lender with respect to the Property for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Property; and
 - (f) Payment and performance of all obligations of Borrower under or in connection with any "Swap Agreement", as defined in the Loan Agreement, at any time entered into between Borrower and Lender, together with all modifications, extensions, renewals and replacements thereof; and

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LOAN NUMBER 1011985

- (g) All modifications, extensions, novations and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.
- 2.1 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations together with all costs of collecting the Secured Obligations.
- 2.2 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.
- 2.3 **MAXIMUM INDEBTEDNESS.** This Security Instrument secures the payment of the entire indebtedness secured hereby, provided, however, that the total amount secured by this Security Instrument (excluding interest, costs, expenses, charges, fees, protective advances and indemnification obligations, all of any type or nature) shall not exceed an amount equal to 200% of the face amount of the Note.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Mortgagor hereby absolutely and irrevocably assigns and transfers to Lender all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases, subleases, licenses or occupancy agreements of the Property or any portion thereof, and all other agreements of any kind relating to the management, leasing, operation, use or occupancy of the Property or any portion thereof, whether now existing or entered into after the date hereof ("**Leases**"); and (b) the rents, revenue, income, receipts, reserves, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("**Payments**"). The term "Leases", as referred to herein, shall also include all subleases and other agreements for the use or occupancy of the Property, options, rights of first refusal or guarantees of and security for the tenant's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This assignment is intended to be and constitutes a present, unconditional and absolute assignment, not an assignment for security purposes only, and, except as may be prohibited by applicable law, Lender's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property. Notwithstanding the foregoing provisions, the foregoing assignment and transfer shall not include any tenant security deposits which are subject to any applicable law, ordinance, rule or regulation which prohibits Mortgagor from encumbering such tenant security deposits.
- 3.2 **GRANT OF LICENSE.** Lender confers upon Mortgagor a revocable license ("**License**") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default (as defined in Section 6.1 hereof), the License shall be automatically revoked and, except as may be prohibited by applicable law, Lender may collect and apply the Payments pursuant to that certain Section hereof entitled Application of Other Sums without notice and without taking possession of the Property. All payments thereafter

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LOAN NUMBER 1011985

collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Lender. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Lender for the payment to Lender of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Lender. Lender may apply, in its sole discretion, any Payments so collected by Lender against any Secured Obligation under the Loan Documents (as defined in the Loan Agreement), whether existing on the date hereof or hereafter arising. Collection of any Payments by Lender shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.

- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Lender to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or under any duty to produce rents or profits. Lender shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise by Lender, or any of its respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Lender hereunder; or (ii) the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.
- 3.4 **REPRESENTATIONS AND WARRANTIES** Mortgagor represents and warrants that Mortgagor has delivered to Lender a true, accurate and complete list of all Leases, and that, except as disclosed to Lender in writing prior to the date hereof, (a) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and to the best of Mortgagor's knowledge, no material breach or default, or event which would constitute a material breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (b) no rent or other payment under any existing Lease has been paid by any tenant for more than one (1) month in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised; and (c) none of the landlord's interests under any of the Leases has been transferred or assigned.
- 3.5 **COVENANTS.** Mortgagor covenants and agrees, at Mortgagor's sole cost and expense, to: (a) perform all of the obligations of landlord contained in the Leases and enforce by all available remedies performance by the tenants of the obligations of the tenants contained in the Leases; (b) exercise Mortgagor's best efforts to keep all portions of the Property that are currently subject to Leases leased at all times at rentals not less than the fair market rental value or as otherwise may be required under the Loan Agreement; (c) deliver to Lender fully executed, counterpart original(s) of each and every Lease and any modifications or amendments thereto if requested to do so; and (d) execute and record such additional assignments of any Lease as Lender may request or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the landlord and tenant) of any Lease of commercial space to the Security Instrument, in form and substance acceptable to Lender, as Lender may request. Mortgagor shall not, without Lender's prior written consent or as otherwise permitted by any provision of the Loan Agreement: (i) enter into any Leases after the date hereof; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rentals one (1) month in advance of the time when it becomes due under any of the Leases; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the tenants from any obligations thereunder, unless Mortgagor reasonably determines that it is in the best interest of the Property

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LOAN NUMBER 1011985

to do so; (v) consent to any assignment or subletting by any tenant under any Lease, unless Mortgagor is obligated by the Lease to do so or reasonably determines that it is in the best interest of the Property to do so; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust, mortgage, deed to secure debt or encumbrance. Any such attempted amendment, cancellation, modification or other action in violation of the provisions of this Section without the prior written consent of Lender shall be null and void. Without in any way limiting the requirement of Lender's consent hereunder, any sums received by Mortgagor in consideration of any termination (or the release or discharge of any tenant), modification or amendment of any Lease of commercial space shall be applied to reduce the outstanding Secured Obligations and any such sums received by Mortgagor shall be held in trust by Mortgagor for such purpose.

- 3.6 **ESTOPPEL CERTIFICATES.** Within thirty (30) days after written request by Lender, Mortgagor shall obtain and shall deliver to Lender and to any party designated by Lender estoppel certificates executed by Mortgagor and by each of the tenants under Leases of commercial space, in recordable form, certifying (if such be the case) to certain matters relating to such Leases, including, without limitation: (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date and amount of each tenant's most recent payment of rent and other charges; (c) that there are no uncured defaults, defenses or offsets outstanding, or stating those claimed by Mortgagor or tenants under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Lender.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Mortgagor hereby grants and assigns to Lender as of the Effective Date (as defined in the Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "**Collateral**"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all Payments and other rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts (including impound accounts, if any), accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Mortgagor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Lender, whether or not disbursed; all funds deposited with Lender pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of

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LOAN NUMBER 1011985

any kind related to the Property or any portion thereof; all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Lender to Mortgagor under any Swap Agreement; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, it is intended by Mortgagor and Lender that this Security Instrument constitutes a fixture filing filed with the real estate records of Cook County, Illinois, under the Uniform Commercial Code, as amended or recodified from time to time, from the state wherein the Property is located ("**UCC**"), and is acknowledged and agreed to be a "construction mortgage" under the UCC. For purposes of this fixture filing, the "**Debtor**" is the Mortgagor and the "**Secured Party**" is the Lender. A description of the land which relates to the fixtures is set forth in Exhibit A attached hereto. Keyhole Mortgagor is the record owner of the Keyhole Property. Pinball Mortgagor is the record owner of the Pinball Property. Teocalli Bowl LLC is the record owner of the Teocalli Bowl Property.

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) Mortgagor has, or will have, good title to the Collateral; (b) Mortgagor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity, other than in connection with existing mortgage financing that is being repaid in full with the proceeds of the Note and released of record; and (c) Mortgagor's principal place of business is located at the address set forth on the cover page of this Security Instrument.
- 4.3 **COVENANTS.** Mortgagor agrees: (a) to execute and deliver such documents as Lender deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Lender prior written notice thereof; (c) to cooperate with Lender in perfecting all security interests granted herein and in obtaining such agreements from third parties as Lender deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Lender is authorized to file financing statements in the name of Mortgagor to perfect Lender's security interest in the Collateral.
- 4.4 **RIGHTS OF LENDER.** In addition to Lender's rights as a "**Secured Party**" under the UCC, Lender may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Lender's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Lender therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral.

Upon the occurrence of a Default (hereinafter defined) under this Security Instrument, then in addition to all of Lender's rights as a "**Secured Party**" under the UCC or otherwise at law and in addition to Lender's rights under the Loan Documents:

- (a) Lender may (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Lender at a place designated by Lender; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license or otherwise dispose of any or all of the Collateral, and store the same at locations acceptable to Lender at Mortgagor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and

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LOAN NUMBER 1011985

- (b) Lender may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Lender deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Lender may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Collateral; and
- (c) Any proceeds of any disposition of any Collateral may be applied by Lender to the payment of expenses incurred by Lender in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Lender toward the payment of the Secured Obligations in such order of application as Lender may from time to time elect.

Notwithstanding any other provision hereof, Lender shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Lender unless Mortgagor shall make an express written election of said remedy under the UCC or other applicable law. Mortgagor agrees that Lender shall have no obligation to process or prepare any Collateral for sale or other disposition. Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Lender's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) days prior notice of such disposition is commercially reasonable notice.

- 4.5 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Lender as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Lender may, without the obligation to do so, in Lender's name, or in the name of Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Lender's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Mortgagor; provided, however, that Lender as such attorney-in-fact shall be accountable only for such funds as are actually received by Lender.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor shall promptly pay and perform each Secured Obligation for which it is responsible hereunder or under the Loan Agreement when due. If Mortgagor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may adversely affect Lender's rights in the Property, then Lender may (but is not obligated to), at Mortgagor's expense, take such action as it considers to be necessary to protect the value of the Property and Lender's rights in the Property, including the retaining of counsel, and any amount so expended by Lender will be added to the Secured Obligations and will be payable by Mortgagor to Lender on demand, together with interest thereon from the date of demand until paid at the default rate provided in the Note.
- 5.2 **TAXES AND ASSESSMENTS.** Subject to Mortgagor's rights to contest payment of taxes or assessments as may be provided in the Loan Agreement, Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Property or any interest therein. Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Lender by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Lender pursuant to any Secured Obligation; provided, however, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Lender and which are

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LOAN NUMBER 1011985

measured by and imposed upon Lender's net income. If the Property or any lot or parcel thereof is part of a larger tax or assessment parcel, Mortgagor shall, as soon after recordation of this Security Instrument as is reasonably possible, cause the tax or assessment parcel to be split or amended so that its boundaries correspond to the boundaries of the Property and its lots or parcels.

5.3 **LIENS, ENCUMBRANCES AND CHARGES.** Subject to the provisions of the Loan Agreement regarding Mortgagor's right of contest, Mortgagor shall immediately discharge all liens, claims and encumbrances not approved by Lender in writing that has or may attain priority over this Security Instrument. Subject to the provisions of the Loan Agreement regarding mechanics' liens, Trustor shall pay when due all obligations secured by, or which may become, liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or Collateral, or any interest therein, whether senior or subordinate hereto.

5.4 **DAMAGES, INSURANCE AND CONDEMNATION PROCEEDS.**

(a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Lender and, at the request of Lender, shall be paid directly to Lender: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Lender to be maintained by Mortgagor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Security Instrument, Lender may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and, subject to the provisions of paragraph (b) of this Section, may apply the balance to the Secured Obligations in such order and amounts as Lender in its sole discretion may choose, and/or Lender may release all or any part of the proceeds to Mortgagor upon any conditions Lender may impose. Lender may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Lender; provided, however, in no event shall Lender be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Lender or its employees or agents.

(b) Lender will permit insurance or condemnation proceeds held by Lender to be used for repair or restoration provided that no Default then exists and each of the following conditions are satisfied, as determined by Lender: (i) the deposit with Lender of such additional funds which Lender determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Lender (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Lender of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Lender, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Lender; and (iv) the delivery to Lender of evidence acceptable to Lender (aa) that after completion of the work the income from the Property will be sufficient to pay all expenses and debt service for the Property; (bb) of the continuation of Leases acceptable to and required by Lender; (cc) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or

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LOAN NUMBER 1011985

condemnation occurred and the legal non-conforming uses existing as of the date hereof will continue to exist; (dd) that there has been no material adverse change in the financial condition or credit of Mortgagor and Borrower and any guarantors since the date of this Security Instrument; (ee) that there is sufficient time to complete the work not less than ninety (90) days prior to the Maturity Date; and (ff) of the satisfaction of any additional conditions that Lender may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within sixty (60) days of receipt by Lender of such insurance or condemnation proceeds, then Lender may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Lender in its sole discretion may choose.

- 5.5 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Subject to the provisions of the Loan Agreement, Mortgagor covenants: (a) to insure the Property and Collateral against such risks as Lender may require as set forth in the Loan Agreement and any supplemental insurance provisions or requirements provided to Mortgagor by Lender, and, at Lender's request, to provide evidence of such insurance to Lender, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Property and Collateral in good condition and repair; (c) except in connection with Improvements being made in accordance with the Loan Documents or in the usual and ordinary course of operating the Property in a commercially reasonable manner, not to remove or demolish the Property or Collateral or any part thereof, not to alter or add to the Property or Collateral; (d) to complete or restore promptly and in good and workmanlike manner the Property and Collateral, or any part thereof which may be damaged or destroyed, without regard to whether Lender elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in that certain Section hereof entitled Damages; Insurance and Condemnation Proceeds; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Property or Collateral; and (g) to do all other acts which from the character or use of the Property or Collateral may be reasonably necessary to maintain and preserve its value.
- 5.6 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Lender hereunder against all adverse claims. Mortgagor shall give Lender prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any material damage to the Property or Collateral and of any condemnation or action with respect to the Property or Collateral.
- 5.7 **DUE ON SALE; ENCUMBRANCE.** If the Property or any interest therein or if any direct or indirect ownership interest in Mortgagor shall be sold, under contract to sell, transferred, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, or if there shall be any change in the management of the Property or Mortgagor, in each case without the prior written consent of Lender or as expressly permitted by or in accordance with the Loan Agreement, THEN Lender, in its sole discretion, may at any time thereafter declare all Secured Obligations immediately due and payable.
- 5.8 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property and Collateral or in any manner obligated under the Secured Obligations ("Interested Parties"), Lender may, from time to time and without notice to Mortgagor or Borrower (i) release any person or entity from liability for the payment or performance of any

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LOAN NUMBER 1011985

Secured Obligation; (ii) take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation; or (iii) accept additional security or release all or a portion of the Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Security Instrument upon the Property, the Collateral or any other security provided herein or in the other Loan Documents.

- 5.9 **SUBROGATION.** Lender shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Lender pursuant to the Loan Documents or by the proceeds of any loan secured by this Security Instrument.
- 5.10 **RIGHT OF INSPECTION.** Lender, its agents, representatives and employees, may enter any part of the Property upon reasonable prior notice to Borrower, at reasonable times during normal business hours and without unreasonable disturbance of tenants, for the purpose of inspecting the Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof and the other Loan Documents.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "**Default**" shall mean (a) at Lender's option, the failure of Mortgagor or any other person liable to make any payment of principal or interest on the Note or to pay any other amount due hereunder or under the Note when the same is due and payable, whether at maturity, by acceleration or otherwise; or (b) the occurrence of any Default as defined in any one or more of the Loan Agreement, any other Loan Document or any Other Related Document, or an "Event of Default" under any Swap Agreement (as defined therein) between Borrower and Lender, which Default is not cured within the applicable grace period, if any.
- 6.2 **RIGHTS AND REMEDIES.** At any time after Default, Lender shall have each and every one of the following rights and remedies in addition to Lender's rights under the other Loan Documents or under any Swap Agreement between Borrower and Lender:
- (a) With or without notice, to declare all Secured Obligations (other than Swap Agreements) immediately due and payable.
 - (b) Pursuant to the terms of a Swap Agreement between Borrower and Lender, terminate such Swap Agreement.
 - (c) With or without notice, and without releasing Mortgagor or Borrower from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor or Borrower and, in connection therewith to enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Security Instrument or the rights or powers of Lender under this Security Instrument; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Lender, is or may be senior in priority to this Security Instrument, the judgment of Lender being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Security Instrument; or (iv) to employ counsel, accountants, contractors and other appropriate persons.
 - (d) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a deed of trust or mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants

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LOAN NUMBER 1011985

shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations.

- (e) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such appointment.
- (f) To enter upon, possess, control, lease, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property, to make, terminate, enforce or modify Leases of the Property upon such terms and conditions as Lender deems proper, to make repairs, alterations and improvements to the Property as necessary, in Lender's sole judgment, to protect or enhance the security hereof and to continue and complete construction of the Improvements of the Property as necessary in Lender's sole judgment.
- (g) To resort to and realize upon the security hereunder and any other security now or later held by Lender concurrently or successively and in one or several consolidated or independent actions, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Lender determines in its sole discretion.
- (h) Upon sale of the Property at any foreclosure sale, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, to the extent permitted by law, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Lender; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Lender; and (z) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Lender, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Lender under the

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LOAN NUMBER 1011985

terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

- 6.4 **APPLICATION OF OTHER SUMS.** Except as may be otherwise required by applicable law, all sums received by Lender under this Security Instrument other than those described in that certain Section hereof entitled Rights and Remedies or that certain Section hereof entitled Grant of License, less all costs and expenses incurred by Lender or any receiver, including, without limitation, reasonable attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Lender shall determine in its sole discretion; provided, however, Lender shall have no liability for funds not actually received by Lender.
- 6.5 **NO CURE OR WAIVER.** Neither Lender's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Lender or any receiver shall cure or waive any breach, Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other defaults), or limit or impair the status of the security, or prejudice Lender in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of or security interests created by this Security Instrument.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Lender immediately and without demand all costs and expenses of any kind incurred by Lender pursuant to this Article (including, without limitation, court costs and reasonable attorneys' fees, whether incurred in litigation or not, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property) with interest from the date of demand for payment until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein or as allowed by applicable law. In addition, Mortgagor will pay a reasonable fee for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit. All of the foregoing amounts must be paid to Lender as part of any reinstatement tendered hereunder. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Lender.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Lender 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 cessation of labor, commencement or completion of construction of the Improvements or any other notices that Lender deems appropriate to protect Lender's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Lender's security interests and rights in or to any of the Property and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Lender may perform any obligation of Mortgagor hereunder; provided, however, that: (i) Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by Lender; and (ii) Lender shall not be liable to Mortgagor or any

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LOAN NUMBER 1011985

other person or entity for any failure to act (whether such failure constitutes negligence) by Lender under this Section.

- 6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Lender provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Mortgagor and Lender. No failure on the part of Lender to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Lender in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Lender may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Lender shall not waive the agreement contained herein that time is of the essence, nor shall Lender waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.
- 6.9 **ILLINOIS MORTGAGE FORECLOSURE LAW.** It is the intention of Mortgagor and Lender that the enforcement of the terms and provisions of this Security Instrument shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "**Act**"), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Mortgagor agrees and covenants that:
- (a) Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Security Instrument shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act. If any provision of this Security Instrument shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of that certain Section hereof entitled Rights and Remedies of this Security Instrument any powers, rights or remedies prior to, upon or following the occurrence of a Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Security Instrument, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.
 - (b) Wherever provision is made in this Security Instrument or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Lender shall continue in Lender as judgment creditor or mortgagee until confirmation of sale.
 - (c) In addition to any provision of this Security Instrument authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such

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LOAN NUMBER 1011985

receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities, and duties and provisions for in Sections 15-1701 and 15-1703 of the Act.

- (d) Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.
- (e) Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **NOTICES.** All notices, demands, or other communications under this Security Instrument and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Security Instrument). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor:	Keyhole LLC Pinball LLC Teocalli Bowl LLC 150 North Michigan Avenue, Suite 3610 Chicago, IL 60601 Attention: Kent A. Swanson
With a copy to:	Seyfarth Shaw LLP 131 South Dearborn Street, Suite 2400 Chicago, IL 60603 Attention: Alvin L. Kruse, Esq.
Lender:	Wells Fargo Bank, National Association Commercial Real Estate MAC: N8405-321 10 South Wacker Drive, Suite 3200 Chicago, IL 60606 Attention: Jeffrey Goodman and Jennifer Hansen Loan #: 1011985
With a copy to:	Wells Fargo Bank, National Association 608 2nd Ave South , 11th Floor Minneapolis, MN 55402

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LOAN NUMBER 1011985

	Attention: Jason Ringquist Loan #: 1011985
With a copy to:	Barack Ferrazzano Kirschbaum & Nagelberg LLP 200 West Madison, Suite 3900 Chicago, IL 60606 Attention: T. Randall Graeb, Esq.

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Mortgagor shall forward to Lender, without delay, any notices, letters or other communications delivered to the Property or to Mortgagor naming Lender or the "**Construction Lender**" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Mortgagor to perform its obligations to Lender under the Loan Documents.

- 7.2 **ATTORNEYS' FEES AND EXPENSES; ENFORCEMENT.** If the Note is placed with an attorney for collection or if an attorney is engaged by Lender to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, reinforcement of rights and remedies, then in all events, Mortgagor agrees to pay to Lender all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.
- 7.3 **NO WAIVER.** No previous waiver and no failure or delay by Lender in acting with respect to the terms of the Note or this Security Instrument shall constitute a waiver of any breach, default, or failure of condition under the Note, this Security Instrument or the obligations secured thereby. A waiver of any term of the Note, this Security Instrument or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.
- 7.4 **SEVERABILITY.** If any provision or obligation under this Security Instrument shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from this Security Instrument and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of this Security Instrument.
- 7.5 **HEIRS, SUCCESSORS AND ASSIGNS.** Except as otherwise expressly provided under the terms and conditions herein, the terms of this Security Instrument shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto, including, without limitation, subsequent owners of the Property or any part thereof; provided, however, that this Section does not waive or modify the provisions of that certain Section entitled Due on Sale or Encumbrance.
- 7.6 **ATTORNEY-IN-FACT.** Mortgagor hereby irrevocably appoints and authorizes Lender as Mortgagor's attorney-in-fact, which agency is coupled with an interest, and as such attorney-in-fact Lender may, without the obligation to do so, execute and/or record in Lender's or Mortgagor's name any notices, instruments or documents that Lender deems appropriate to protect Lender's interest under any of the Loan Documents.
- 7.7 **TIME.** Time is of the essence of each and every term herein.
- 7.8 **GOVERNING LAW AND CONSENT TO JURISDICTION.** With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the liens created pursuant to this Security Instrument, this Security Instrument shall be governed by, and construed in

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LOAN NUMBER 1011985

accordance with, the laws of Illinois, it being understood that, except as expressly set forth above in this paragraph and to the fullest extent permitted by the laws of Illinois, the laws of Illinois shall govern any and all matters, claims, controversies or disputes arising under or related to this Security Instrument, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties relating to this Security Instrument, the Loan Agreement and the other Loan Documents and all of the indebtedness or obligations arising thereunder or hereunder. Mortgagor hereby consents to the jurisdiction of any federal or state court within Illinois having proper venue and also consent to service of process by any means authorized by Illinois or federal law.

- 7.9 **JOINT AND SEVERAL LIABILITY.** The liability of all persons and entities obligated in any manner hereunder and under any of the Loan Documents shall be joint and several.
- 7.10 **HEADINGS.** All article, section or other headings appearing in this Security Instrument are for convenience of reference only and shall be disregarded in construing this Security Instrument.
- 7.11 **COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- 7.12 **DEFINED TERMS.** Unless otherwise defined herein, capitalized terms used in this Security Instrument shall have the meanings attributed to such terms in the Loan Agreement.
- 7.13 **RULES OF CONSTRUCTION.** The word "**Borrower**" as used herein shall include both the named Borrower and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Borrower under the Note and the other Loan Documents. The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Security instrument is executed by more than one person, the term "**Mortgagor**" shall include all such persons. The word "**Lender**" as used herein shall include Lender, its successors, assigns and affiliates. The term "**Property**" and "**Collateral**" means all and any part of the Property and Collateral, respectively, and any interest in the Property and Collateral, respectively.
- 7.14 **USE OF SINGULAR AND PLURAL; GENDER.** When the identity of the parties or other circumstances make it appropriate, the singular number includes the plural, and the masculine gender includes the feminine and/or neuter.
- 7.15 **EXHIBITS, SCHEDULES AND RIDERS.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Security Instrument by such attachment for all purposes.
- 7.16 **INCONSISTENCIES.** In the event of any inconsistencies between the terms of this Security Instrument and the terms of the Loan Agreement or Note, including without limitation, provisions regarding collection and application of Property revenue, required insurance, tax impounds, and transfers of the Property, the terms of the Loan Agreement or Note, as applicable, shall prevail.
- 7.17 **MERGER.** No merger shall occur as a result of Lender's acquiring any other estate in, or any other lien on, the Property unless Lender consents to a merger in writing and in accordance with the terms of the Loan Agreement.

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LOAN NUMBER 1011985

- 7.18 **WAIVER OF MARSHALLING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property and Collateral, hereby waives all rights to have the Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation marshalled upon any foreclosure of the lien of this Security Instrument or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Lender shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or other property as a whole or in separate parcels, in any order that Lender may designate.
- 7.19 **ADVERTISING.** In connection with the Loan, Mortgagor hereby agrees that Wells Fargo & Company and its subsidiaries ("**Wells Fargo**") may publicly identify details of the Loan in Wells Fargo advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail, or internet advertising or communications. Such details may include the name of the Property, the address of the Property, the amount of the Loan, the date of the closing and a description of the size/location of the Property. To the extent reasonably practical under the circumstances, Lender will endeavor to obtain Mortgagor's prior written approval of such details, which approval shall not be unreasonably withheld, conditioned or delayed.
- 7.20 **SUBORDINATION OF PROPERTY MANAGER'S LIEN.** Any property management agreement for the Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Property shall be subject and subordinate to the lien of this Security Instrument and shall provide that Lender may terminate such agreement at any time after the occurrence of a Default hereunder. Such property management agreement or a short form thereof, at Lender's request, shall be recorded with the County Recorder of the county where the Property is located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Lender, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Security Instrument.
- 7.21 **INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing. The Loan Documents grant further rights to Lender and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Security Instrument and to the Property and Collateral and such further rights and agreements are incorporated herein by this reference. Where Mortgagor and Borrower are not the same, "**Mortgagor**" means the owner of the Property in any provision dealing with the Property, "**Borrower**" means the obligor in any provision dealing with the Secured Obligations.

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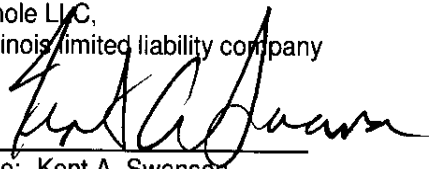
UNOFFICIAL COPY

LOAN NUMBER 1011985

IN WITNESS WHEREOF, Mortgagor has executed this Security Instrument as of the date set forth above.

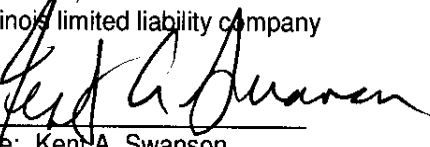
"MORTGAGOR"

Keyhole LLC,
an Illinois limited liability company

By: 

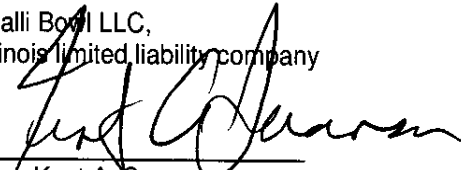
Name: Kent A. Swanson
Title: Senior Vice President

Pinball LLC,
an Illinois limited liability company

By: 

Name: Kent A. Swanson
Title: Senior Vice President

Teocalli Bowl LLC,
an Illinois limited liability company

By: 

Name: Kent A. Swanson
Title: Senior Vice President

Property of Cook County Clerk's Office

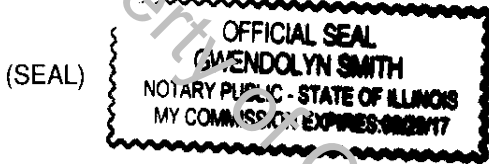
UNOFFICIAL COPY

LOAN NUMBER 1011985

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Gwendolyn Smith, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kent A. Swanson, the Senior Vice President of Keyhole LLC, an Illinois limited liability company, a party to the foregoing instrument, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act on behalf of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30 day of July, 2014.



Gwendolyn Smith
Notary Public
My Commission Expires: 8-29-17

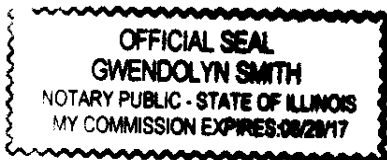
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Gwendolyn Smith, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kent A. Swanson, the Senior Vice President of Pinball LLC, an Illinois limited liability company, a party to the foregoing instrument, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act on behalf of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30 day of July, 2014.

(SEAL)

Gwendolyn Smith
Notary Public
My Commission Expires: 8-29-17



UNOFFICIAL COPY

LOAN NUMBER 1011985

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

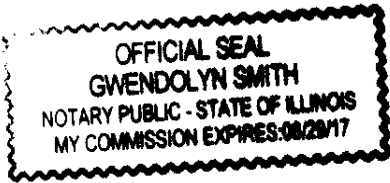
I, Gwendolyn Smith, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kent A. Swanson, the Senior Vice President of Teocalli Bowl LLC, an Illinois limited liability company, a party to the foregoing instrument, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary action on behalf of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30 day of July, 2014.

(SEAL)

Gwendolyn Smith
Notary Public

My Commission Expires: 8-29-17



UNOFFICIAL COPY

LOAN NUMBER 1011985

EXHIBIT A - DESCRIPTION OF PROPERTY

Exhibit A to Mortgage between Keyhole LLC, an Illinois limited liability company, Pinball LLC, an Illinois limited liability company, and Teocalli Bowl LLC, an Illinois limited liability company (on a joint and several basis, collectively "**Mortgagor**" or individually each a "**Mortgagor**" as the context requires as determined by Lender), and Wells Fargo Bank, National Association, as "**Lender**", dated as of July 31, 2014.

All that certain real property located in the County of Cook, State of Illinois, described as follows:

PARCEL 1:

LOTS 2, 3, AND 4 IN SNYDER'S SUBDIVISION OF LOT 15 IN SCHOOL TRUSTEES SUBDIVISION OF FRACTIONAL SECTION 16, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 6 IN BLOCK 2 IN EQUITABLE TRUST COMPANY'S SUBDIVISION OF PARTS OF SECTIONS 20 AND 21, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE NORTH 50 FEET OF LOT 5 IN BLOCK 2 IN EQUITABLE TRUST COMPANY'S SUBDIVISION OF PARTS OF SECTIONS 20 AND 21, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

FOR INFORMATION ONLY:

PERMANENT INDEX NO.(S):	14-16-305-017-0000
	14-21-100-001-0000
	14-21-100-002-0000
	14-21-100-003-0000

ADDRESS(ES):	718-756 WEST IRVING PARK ROAD, CHICAGO, ILLINOIS
	725-747 WEST IRVING PARK ROAD, CHICAGO, ILLINOIS
	3937-3939 NORTH CLARENDON AVENUE, CHICAGO, ILLINOIS