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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

CTT-VL-3880583M
LWD 3/2/14

Report Mortgage Fraud
800-532-8785



Doc#: 1421918017 Fee: \$80.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/07/2014 09:37 AM Pg: 1 of 22

The property identified as: **PIN: 08-15-400-049-0000**

Address:

Street: 1450 S. BUSSE HIGHWAY

Street line 2:

City: MOUNT PROSPECT

State: IL

ZIP Code: 60056

Lender: FORTRESS CREDIT CO LLC, A DELAWARE LIMITED LIABILITY COMPANY

Borrower: BWIP 1450 OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY

Loan / Mortgage Amount: \$17,766,000.00

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: 639CD6D7-049B-43DF-A9C7-4A1315A1BF55

Execution date: 07/31/2014

CTT-VL-3880583M

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BWIP 1450 OWNER LLC
(Mortgagor)

To

FORTRESS CREDIT CO LLC
(Mortgagee)

**MORTGAGE, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FINANCING STATEMENT**

Dated: As of July 31, 2014

Property Location: Mount Prospect, Cook County, Illinois

DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:

Jaffe Raitt Heuer & Weiss, P.C.
27777 Franklin Road, Suite 2500
Southfield, Michigan 48034
Attention: Ingrid Szura, Esq.

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MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "**Mortgage**"), made as of July 31, 2014, by **BWIP 1450 OWNER LLC**, a Delaware limited liability company, having an office at 30195 Chagrin Boulevard, Suite 320N, Pepper Pike, Ohio 44124 (together with its successors and permitted assigns, "**Mortgagor**"), to **FORTRESS CREDIT CO LLC**, a Delaware limited liability company (together with its successors and assigns, "**Mortgagee**"), having an address 1345 Avenue of the Americas, 46th Floor, New York, New York 10105.

Mortgagee, as lender, and Mortgagor, as borrower, have entered into a Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated, replaced or supplemented from time to time, the "**Loan Agreement**") pursuant to which Mortgagee is making a secured loan to Mortgagor in the original principal amount of up to \$17,766,000.00 (the "**Loan**"). Capitalized terms used herein without definition are defined in the Loan Agreement. The Loan is evidenced by a Promissory Note dated the date hereof made by Mortgagor to Mortgagee in such original principal amount (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "**Note**").

To secure the payment of the Note and all sums which may or shall become due thereunder or under any of the other documents evidencing or securing the Loan or executed in favor of Mortgagee in connection with the Loan (the Note, this Mortgage, the Loan Agreement and such other documents, as any of the same may, from time to time, be modified, amended, restated, replaced or supplemented, being hereinafter collectively referred to as the "**Loan Documents**"), including (i) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Mortgagor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code (the "**Bankruptcy Code**"), and (ii) the costs and expenses of enforcing any provision of any Loan Document (all such sums being hereinafter collectively referred to as the "**Obligations**"), Mortgagor hereby irrevocably mortgages, grants, bargains, sells, conveys, transfers, pledges, sets over and assigns, and grants a security interest, to and in favor of Mortgagee, WITH POWER OF SALE, in all of Mortgagor's right, title and interest in and to the land described in Exhibit A (the "**Property**"), and the buildings, structures, fixtures and other improvements now or hereafter located thereon (the "**Improvements**");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Property, the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "**Mortgaged Property**");

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Property and the Improvements; and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or

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adjoining the Property, 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 Property and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory, materials, supplies and other articles of personal property and accessions thereof, renewals and replacements thereof and substitutions therefor, and other property of every kind and nature, tangible or intangible, owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Property or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Property and the Improvements (hereinafter collectively referred to as the "**Equipment**"), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interest" as defined in the Uniform Commercial Code, as in effect in the State where the Mortgaged Property is located (the "**UCC**") and to the Permitted Encumbrances, superior in lien to the lien of this Mortgage. Notwithstanding the foregoing, "Equipment" should not include any property of any Tenant or any Property Manager under the Management Agreement;

(c) all awards or payments including interest thereon, that may heretofore or hereafter be made with respect to the Property or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property or Improvements;

(d) to the extent assignable, all leases, subleases and other agreements or arrangements heretofore or hereafter entered into or assumed by Mortgagor affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Property or the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the "**Leases**") and all consideration paid under any Lease by or on behalf of any Tenant, and all other revenue, income, issues, profits, deposits [(including **Security Deposits**)] and proceeds arising from the Leases or from the use or occupancy of the Property or any portion thereof (including but not limited to all oil, gas and other mineral royalties, Insurance Proceeds, Condemnation Proceeds, and proceeds of sale), and all compensation received for the rendering of services by Mortgagor, and all proceeds of all of the foregoing, without limitation, "Rents" includes all payments to Mortgagor by any Tenant as reimbursement for or on account of operating expenses, common area maintenance charges, taxes or insurance premiums¹ (hereinafter collectively referred to as the "**Rents**"), together with all proceeds from the sale or other disposition of the Leases and, subject to the terms and conditions of the Loan Agreement, the right to receive and apply the Rents to the payment of the Obligations;

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(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(f) the right, following the occurrence and during the continuance of an Event of Default, 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 in the Mortgaged Property, but subject to the terms and conditions of the Loan Agreement;

(g) all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, contract rights (including any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair or other work upon the Mortgaged Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Mortgaged Property) and causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "*Intangibles*");

(h) any interest rate protection arrangement to which Mortgagor is a party, including the Interest Rate Protection Agreement, and all agreements, instruments, documents and contracts now or hereafter entered into by Mortgagor with respect to any such interest rate protection arrangement, including the Interest Rate Protection Agreement; and

(i) all proceeds, products, offspring, rents and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

Without limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Mortgagor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Mortgage shall automatically extend to all Rents acquired by Mortgagor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee, and its heirs, successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Obligations at the time and in the manner provided in the Loan Documents and shall well and truly abide by and comply with each and every covenant and condition set forth in the Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

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AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

1. **Payment of Obligations and Incorporation of Covenants, Conditions and Agreements.** Mortgagor shall pay the Obligations at the time and in the manner provided in the Loan Documents. All the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage to the Mortgaged Property, pay Taxes and other charges, and in all material respects comply with Legal Requirements, in accordance with and to the extent required by the Loan Agreement, and (ii) agrees that the Insurance Proceeds and Condemnation Proceeds shall be settled, held and applied in accordance with the Loan Agreement.

2. **Leases and Rents.**

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Except as expressly stated in the Loan Documents, such assignment shall not be construed to bind Mortgagee to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Mortgagee. Nevertheless, subject to the terms of this paragraph, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect and enjoy the Rents subject to the requirements of the Loan Agreement (including the deposit of Rents in to the Clearing Account) prior to an Event of Default after all applicable notice and cure periods. Upon an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents in (or required by the terms of the Loan Documents to be deposited in) the Clearing Account and the Deposit Account (including all Subaccounts thereof) and all Rents collected thereafter (including Rents past due and unpaid), whether or not Mortgagee enters upon or takes control of the Mortgaged Property; provided, however, that such license shall automatically be reinstated upon the curing of any such Event of Default or Lender's waiver of such Event of Default. Mortgagor hereby grants and assigns to Mortgagee the right, at Mortgagee's option, upon revocation of the license granted herein, to enter upon the Mortgaged Property, subject to the rights of any Tenant under a Lease, in person, by agent or by court-appointed receiver to collect the Rents. Subject to the terms and conditions of the Loan Agreement, any Rents collected after the revocation and prior to the reinstatement of such license may be applied toward payment of the Obligations in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) Mortgagor shall not enter into, modify, amend, cancel, terminate or renew any Lease except as provided in Section 7.9 of the Loan Agreement.

3. **Use of Mortgaged Property.** Mortgagor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged

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Property without the prior written consent of Mortgagee. If under applicable zoning provisions the use of the Mortgaged Property is or shall become a nonconforming use, Mortgagor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Mortgagee, which consent, provided no Event of Default then exists, shall not be unreasonably withheld, conditioned or delayed. Mortgagor shall not (i) change the use of the Mortgaged Property without the prior written consent of Mortgagee, (ii) permit or suffer to occur any waste on or to the Mortgaged Property or (iii) take any steps to convert the Mortgaged Property to a condominium or cooperative form of ownership.

4. Transfer or Encumbrance of the Mortgaged Property.

(a) Mortgagor acknowledges that (i) Mortgagee has examined and relied on the creditworthiness and experience of the principals of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan, (ii) Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for the Obligations, and (iii) Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Obligations, Mortgagee can recover the Obligations by a sale of the Mortgaged Property. Mortgagor shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or suffer or permit any Transfer to occur, other than as permitted in accordance with the terms of the Loan Agreement.

(b) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default under the Loan Documents in order to declare the Obligations immediately due and payable upon any Transfer in violation of this Paragraph 4. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property (and every other Transfer) in violation of this Paragraph 4, regardless of whether voluntary or not. Any Transfer made in contravention of this Paragraph 4 shall be null and void and of no force and effect. Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any Transfer permitted by the Loan Agreement.

5. Changes in Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Obligations from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Obligations or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. If the payment of such tax or interest and penalties by Mortgagor would be unlawful, taxable to Mortgagee or unenforceable, then Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Obligations immediately due and payable, without any Make Whole Payment, prepayment penalty or premium due.

6. No Credits on Account of the Obligations. Mortgagor shall not claim or demand or be entitled to any credit on account of the Obligations for any part of the Taxes or

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other charges assessed against the Mortgaged Property, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property for real estate tax purposes by reason of this Mortgage or the Obligations. If such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Obligations immediately due and payable, without any Make Whole Payment, prepayment penalty or premium due.

7. **Further Acts, Etc.** Mortgagor shall, at no material cost or expense to Mortgagor, perform, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage; provided, however, that any such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers or assurances shall not reduce the rights of Mortgagor or increase the Obligations of Mortgagor under any of the Loan Documents. Upon foreclosure or the appointment of a receiver, Mortgagor shall, at its sole cost, reasonably cooperate to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Mortgaged Property.

8. **Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, shall cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Except as otherwise provided in the Loan Agreement, Mortgagor shall pay all filing, registration or recording fees, all reasonable and documented out-of-pocket expenses incident to the preparation, execution and acknowledgment of and all federal, state, county and municipal, taxes, duties, imposts, documentary stamps, assessments and charges arising out of or in connection with the execution and delivery of, this Mortgage, any Mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance reasonably required in connection therewith, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee and its successors and assigns against any liability incurred by reason of the imposition of any tax on the making or recording of this Mortgage.

9. **Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to (except as expressly required under the Loan Documents) or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, perform the obligations in Default in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Mortgaged

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Property or to foreclose this Mortgage or collect the Obligations, and the reasonable, out-of-pocket cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Obligations, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

10. Remedies.

(a) Upon the occurrence and during the continuance of any Event of Default and subject to the express terms and provisions of the Loan Agreement, Mortgagee may take such action, without notice or demand to Mortgagor (except as otherwise expressly required by the Loan Documents), as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, by Mortgagee itself or otherwise, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire unpaid Obligations to be immediately due and payable;
- (ii) institute a proceeding or proceedings, judicial or nonjudicial, to the extent permitted by law, by advertisement or otherwise, for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Obligations then due and payable, subject to the continuing lien of this Mortgage for the balance of the Obligations not then due;
- (iv) sell for cash or upon credit the Mortgaged Property and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale, to the extent permitted by law, or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any other Loan Document;
- (vi) recover judgment on the Note either before, during or after any proceeding for the enforcement of this Mortgage;
- (vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice (except as otherwise expressly

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required by the Loan Documents) and without regard for the adequacy of the security for the Obligations and without regard for the solvency of the Mortgagor or of any Person liable for the payment of the Obligations;

(viii) subject to the terms of the Assignment of Leases and Rents from Mortgagor to Mortgagee dated as of the date hereof, enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and employees therefrom but subject to the rights of any Tenant under any Lease, and Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property as Mortgagee deems advisable; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive Rents, provided, however, in no event shall Mortgagee have the power or authority to expand the obligations of Mortgagor as set forth in the Loan Documents; and (E) apply the receipts from the Mortgaged Property to the payment of the Obligations, after deducting therefrom all reasonable and documented out-of-pocket expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other reasonable and documented out-of-pocket charges in connection with the Mortgaged Property, as well as reasonable compensation for the services of Mortgagee, and its counsel, agents and employees;

(ix) if Mortgagee requires in writing that Mortgagor vacate the Property and Mortgagor fails to do so, require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Improvements actually occupied by Mortgagor, and require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver, and, in default thereof, evict Mortgagor by summary proceedings or otherwise; or

(x) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all Rents and proceeds from the Intangibles and any other receivables or rights to payments of Mortgagor relating to the Mortgaged Property.

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this Paragraph 10, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by

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Mortgagee to the payment of the Obligations in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. During the existence of an Event of Default, Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, which appointment is coupled with an interest, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this Paragraph 10, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this Paragraph 10, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations the net sales price after deducting therefrom the reasonable, out-of-pocket expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage or any other Loan Document.

(f) No recovery of any judgment by Mortgagee, and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor, other than the consummation of a foreclosure sale, shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Paragraph 10 at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

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(h) Mortgagee may resort to any remedies and the security given by this Mortgage or in any other Loan Document in whole or in part, and in such portions and in such order as determined in Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by any Loan Document. The failure of Mortgagee to exercise any right, remedy or option provided in any Loan Document shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by any Loan Document. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable under the Loan Documents shall be deemed to waive or cure any Event of Default, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee and no extension of time for the payment of the whole or any portion of the Obligations or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Mortgagor to pay the Obligations. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All reasonable costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 10 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee, and such costs and expenses shall constitute a portion of the Obligations and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Loan Documents shall not be impaired by any indulgence, including (x) any renewal, extension or modification which Mortgagee may grant with respect to any of the Obligations, (y) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof or (z) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Obligations.

11. Right of Entry. In addition to any other rights or remedies granted under this Mortgage, Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at any reasonable time during the term of this Mortgage upon reasonable advance notice and subject to the rights of the Tenants and other occupants of the Property. The cost of such inspections or audits shall be borne by Mortgagor should an Event of Default exist, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor following five (5) days after written demand, may be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate.

12. Security Agreement. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the UCC. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Obligations, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the UCC (such portion of the Mortgaged Property so subject to the UCC being called in this paragraph the "*Collateral*") and subject to Permitted Encumbrances. This Mortgage shall also

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constitute a "fixture filing" for the purposes of the UCC. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur and be continuing, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand (except as expressly required by the Loan Documents), any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may reasonably deem necessary for the care, protection and preservation of the Collateral, subject to the terms and provisions of the Loan Documents. Upon request or demand of Mortgagee, after the occurrence and during the continuance of an Event of Default, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place reasonably acceptable to Mortgagee. Mortgagor shall pay to Mortgagee within five (5) days of written demand any and all reasonable and documented out-of-pocket expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral, sent to Mortgagor in accordance with the provisions hereof at least ten days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Obligations in such priority and proportions as Mortgagee in its sole discretion shall deem proper. In the event of any change in name, identity, structure or place of incorporation, organization or formation of Mortgagor, Mortgagor shall notify Mortgagee thereof and promptly after written request shall file and record such UCC forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all actual, out-of-pocket expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional UCC forms or continuation statements, Mortgagor shall, promptly after request, file and record such UCC forms or continuation statements as Mortgagee shall deem reasonably necessary, and shall pay all reasonable, out-of-pocket expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, effective after the occurrence and during the continuance of an Event of Default for the purpose set forth in this Section 12; provided, however, in no event shall the Mortgagee have the power or authority to expand the obligations of Mortgagor as set forth in the Loan Documents.

13. Actions and Proceedings. Upon the occurrence and continuance of an Event of Default, Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its sole discretion, decides should be brought to protect its interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

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14. **Marshaling and Other Matters.** Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every Person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all Persons to the extent permitted by applicable law. The lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (i) any acceptance by Mortgagee of any other security for any portion of the Obligations, (ii) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any portion of the Obligations or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any portion of the Obligations or of any of the collateral security therefor; and Mortgagee may foreclose or exercise any other remedy available to Mortgagee under the other Loan Documents without first exercising or enforcing any of its remedies under this Mortgage, and any exercise of the rights and remedies of Mortgagee hereunder shall not in any manner impair the Obligations or the liens of any other Loan Document or any of Mortgagee's rights and remedies thereunder.

15. **Consent to Jurisdiction.** ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST MORTGAGEE OR MORTGAGOR ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT MAY AT MORTGAGEE'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND MORTGAGOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. MORTGAGOR AGREES THAT SERVICE OF PROCESS BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS SET FORTH ABOVE SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON MORTGAGOR (UNLESS LOCAL LAW REQUIRES ANOTHER METHOD OF SERVICE), IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF MORTGAGEE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. MORTGAGOR (i) SHALL GIVE PROMPT NOTICE TO MORTGAGEE OF ANY CHANGED ADDRESS OF MORTGAGOR, (ii) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE AN AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH OFFICE SHALL BE DESIGNATED AS THE ADDRESS FOR SERVICE OF PROCESS), AND (iii) SHALL PROMPTLY DESIGNATE AN AUTHORIZED AGENT IF MORTGAGOR CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK. NOTWITHSTANDING THE FOREGOING, MORTGAGEE SHALL HAVE THE RIGHT TO INSTITUTE ANY LEGAL SUIT, ACTION OR PROCEEDING FOR THE ENFORCEMENT

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OR FORECLOSURE OF ANY LIEN ON ANY COLLATERAL FOR THE LOAN IN ANY FEDERAL OR STATE COURT IN ANY JURISDICTION(S) WITHIN THE STATES OF NEW YORK OR ILLINOIS THAT MORTGAGEE MAY ELECT IN ITS SOLE AND ABSOLUTE DISCRETION, AND MORTGAGOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

16. **Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be in writing, and shall be sent, and shall be deemed effective, as provided in the Loan Agreement.

17. **Inapplicable Provisions.** If any term, covenant or condition of this Mortgage is held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

18. **Headings.** The paragraph headings in this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

19. **Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

20. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form; and the word "**Mortgagor**" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "**Mortgagee**" shall mean "Mortgagee and any subsequent holder of the Note," the words "**Mortgaged Property**" shall include any portion of the Mortgaged Property and any interest therein, the word "**including**" means "including but not limited to" and the words "**attorneys' fees**" shall include any and all attorneys' fees, paralegal and law clerk fees, including, fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder.

21. **Homestead.** Mortgagor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Obligations, or any part thereof.

22. **Assignments.** Subject to the provisions of the Loan Agreement, Mortgagee shall have the right to assign, delegate, pledge, participate or transfer its rights and obligations under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage. Mortgagor shall not be permitted to assign or delegate any of its rights or duties under this Mortgage, except as otherwise expressly provided in the Loan Agreement.

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23. **Waiver of Jury Trial.** MORTGAGOR AND MORTGAGEE HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR AND MORTGAGEE, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR. MORTGAGOR IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGEE.

24. **Consents.** Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date and, except to the extent the Loan Documents expressly provide Lender's consent to be deemed to be given, the failure of Mortgagee to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party. If Mortgagee deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Mortgagee for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

25. **[Intentionally Omitted]**

26. **Loan Repayment.** This Mortgage will be satisfied and discharged of record by Mortgagee prior to the Maturity Date (as hereinafter defined) only in accordance with the terms and provisions set forth in Article II of the Loan Agreement.

27. **[Intentionally Omitted]**

28. **Governing Law.** With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the Liens created pursuant to this Mortgage, this Mortgage shall be governed by, and construed in accordance with, the laws of the State in which the Property is located (without regard to conflict of law provisions thereof), it being understood that, except as expressly set forth in this paragraph and to the fullest extent permitted by the law of such State, the law of the State of New York (without regard to conflict of law provisions thereof) shall govern all matters relating to this Mortgage and the other Loan

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Documents and all of the indebtedness or obligations arising hereunder or thereunder. All provisions of the Loan Agreement incorporated herein by reference shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to conflict of law provisions thereof).

29. Exculpation. The liability of Mortgagor hereunder is limited pursuant to Article XII of the Loan Agreement.

30. Illinois Specific Provisions.

(a) Conflicts with this Section. In the event of any conflict between the provisions of this Section 30 and any other Section of this Mortgage, then the provisions of this Section 30 shall control and be binding.

(b) Maximum Principal Sum. Notwithstanding anything herein to the contrary, it is agreed that the maximum principal indebtedness secured by this Mortgage at any one time shall not exceed Seventeen Million Seven Hundred Sixty Six Thousand Dollars (\$17,766,000.00).

(c) Illinois Mortgage Foreclosure Law. It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with all of the provisions of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101, et seq.), as amended from time to time (the "*IMFL*") and, with respect to thereto, Mortgagor agrees and covenants that:

(i) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the IMFL, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMFL which is specifically referred to herein may be repealed, Mortgagee 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;

(ii) Wherever provision is made in this Mortgage, the Loan Agreement or the other Loan Documents for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale;

(iii) Subject to, and to the maximum extent allowed under, the IMFL, all advances, disbursements and expenditures (i) made or incurred by Mortgagee 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, authorized by this Mortgage, (ii) of the type contemplated under Subsection b(5) of Section 15-1302 of the IMFL or (iii) made by Mortgagee for: (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,

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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 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 (collectively "*IMFL Protective Advances*"), shall have the benefit of all applicable provisions of the IMFL. To the maximum extent allowed under the IMFL, all IMFL Protective Advances shall be 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 of interest payable after default under the terms of the Loan Documents. To the maximum extent allowed under the IMFL, this Mortgage shall be a lien for all IMFL Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 15-1302 of the IMFL. The total amount outstanding at any one time which is secured by this Mortgage, excluding any interest and any amounts advanced by Mortgagee in accordance with the terms of this Mortgage to (i) preserve or restore the Mortgaged Property, (ii) preserve the lien of the Mortgage or the priority thereof, or (iii) enforce this Mortgage, shall not exceed two hundred percent (200%) of the sum of (i) the total face amount of the Note, plus (ii) the total interest which may hereafter accrue under the Note on such face amount. Mortgagor covenants and agrees that the recording of this Mortgage in the Official Records of the County where the Property is located shall also operate from the date of such recording as a financing statement filed as a fixture filing in accordance with Section 9-502(c) of the UCC. The addresses of Mortgagor (debtor) and Mortgagee (secured party) are set forth above;

(iv) In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with, and subject to, Sections 15-1701 and 15-1702 of the IMFL, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMFL;

(v) Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the IMFL or residential real estate as defined in Section 15-1219 of the IMFL. To the fullest extent permitted by the IMFL and any other applicable law, pursuant to Section 15-1601(b) of the IMFL, Mortgagor hereby waives any and all right of redemption;

(vi) In addition to the prior grant of a security interest set forth above, Mortgagor hereby grants to Mortgagee a continuing security interest in all chattels and articles of personal property described in the GRANTING CLAUSES of this Mortgage, including all existing and future equipment, general intangibles, accounts, instruments, chattel paper, documents, and other items so included therein, now owed or hereafter acquired by Mortgagor or in which Mortgagor has or shall acquire an interest in

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any way belonging, relating or pertaining to, or used in connection with, or located on, the properties referenced in the GRANTING CLAUSES, or placed on any part thereof, and in all accessories, parts and accessions attached to or used in connection therewith and in cash and in non-cash proceeds thereof;

(vii) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee 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 or not enumerated in this Mortgage, shall be added to the Obligations;

(viii) Upon the occurrence and continuance of an Event of Default, Mortgagee shall, at its option and without notice or demand, be entitled to enter upon the Property to take immediate possession of any personal property. Upon request, Mortgagor shall assemble and make such personal property available to Mortgagee at a place designated by Mortgagee which is reasonably convenient to both parties. Mortgagee may sell all or any portion of such personal property at public or private sale in accordance with the UCC or in accordance with the foreclosure sale provisions under this Mortgage. Mortgagor agrees that a commercially reasonable manner of disposition of such personal property upon the occurrence of an Event of Default shall include, without limitation and at the option of Mortgagee, the sale of such personal property, in whole or in part, concurrently with a foreclosure sale of the Property in accordance with the provisions of this Mortgage; and

(ix) Except to the extent contrary to law, Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any valuation or appraisal before sale of any portion of the Property, (ii) any exemption, under and by virtue of any statute of the State of Illinois or the United States, (iii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement and collection of the Obligations or creating or extending a period of redemption from any sale made in collecting the Obligations, and (iv) any rights and remedies which Mortgagor may have or be able to assert by reason of (a) the laws of the State of Illinois pertaining to the rights and remedies of sureties, (b) any statute of limitations as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or other obligations, or (c) any rights, legal or equitable, to require marshaling of assets or to require foreclosure sales in a particular order. If any law now or hereafter in force referred to in this paragraph of which Mortgagor or Mortgagor's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph.

Notwithstanding anything contained in this Mortgage to the contrary, if any provision in this Mortgage shall be inconsistent with any provision of the IMFL, the provisions of the IMFL shall take precedence over the provisions of this Mortgage with respect to such inconsistent provision, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMFL.

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(d) Use of Loan Proceeds. Mortgagor covenants that the proceeds of the loan evidenced by the Note and secured by this Mortgage will be used solely for business purposes as specified in 815 ILCS 205/4, as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of such Section.

(e) Stated Maturity Date. The Stated Maturity Date of the Loan is August 1, 2017, as the same may be extended pursuant to the Loan Agreement.

31. Conflicts. Wherever there is a conflict or inconsistency between any terms or provisions of this Mortgage and the Loan Agreement, the terms and provisions of the Loan Agreement shall control.

[Remainder of Page Intentionally Left Blank; Signature Page to Follow]

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IN WITNESS WHEREOF, Mortgagor has executed this instrument as of the day and year first above written.

BWIP 1450 OWNER LLC, a Delaware limited liability company

By: 

Name: _____

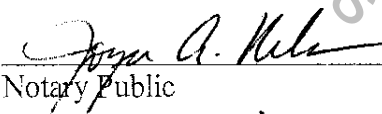
Its: Paul E. Kiebler IV
Authorized Representative

STATE OF Ohio)
) SS.
COUNTY OF Cuyahoga)

On July 25th 2014, before me, the undersigned, Notary Public personally appeared Paul E. Kiebler IV the authorized representative of BWIP 1450 Owner LLC a Limited Liability Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Ohio that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Notary Public

Joyce A Nelson
Notary Public, State of Ohio
Recorded in Geauga County
My Commission Expires
April 21, 2018

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EXHIBIT A

Legal Description

THAT PART OF THE NORTH 759.54 FEET OF LOT 2 (AS MEASURED ON THE EAST AND WEST LINES OF SAID LOT 2) LYING SOUTH OF THE NORTH 388.70 FEET OF SAID LOT 2, OF THAT PART OF THE WEST 1,435.16 FEET OF SAID LOT 2 AS MEASURED ON THE NORTH LINE OF SAID LOT 2, LYING EAST OF THE WEST 692.45 FEET THEREOF AS MEASURED ON THE NORTH LINE OF SAID LOT 2, ALSO THE SOUTH 150 FEET OF THE WEST 100 FEET OF THAT PART OF THE NORTH 759.54 FEET OF LOT 2 (AS MEASURED ON THE EAST AND WEST LINES OF SAID LOT 2) LYING SOUTH OF THE NORTH 388.70 FEET OF SAID LOT 2 AND LYING EAST OF THE WEST 1,435.16 FEET THEREOF AS MEASURED ON THE NORTH LINE OF SAID LOT 2, ALSO THAT PART OF THE NORTH 759.54 FEET OF LOT 2 (AS MEASURED ON THE EAST AND WEST LINES OF SAID LOT 2) LYING SOUTH OF THE NORTH 388.70 FEET OF SAID LOT 2 AND LYING EAST OF THE WEST 1,435.16 FEET THEREOF AS MEASURED ON THE NORTH LINE OF SAID LOT 2 (EXCEPTING FROM SAID PART OF LOT 2 THE SOUTH 150.0 FEET OF THE WEST 100.0 FEET THEREOF)

ALL IN EDWARD BUSSE'S DIVISION OF THAT PART OF THE SOUTHEAST 1/4 OF SECTION 15, AND THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS DECEMBER 17, 1919 AS DOCUMENT NUMBER 6696216, IN COOK COUNTY, ILLINOIS.