

Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption

Report Mortgage Fraud  
800-532-8785

The property identified as: **PIN:** 09-33-104-092

**Address:**

**Street:** 1696 Buckingham Drive

**Street line 2:**

**City:** Des Plaines

**State:** IL

**ZIP Code:** 60018

**Lender:** Archetype Credit Opportunites Funding I L.P.

**Borrower:** Abbasi Real Estate, LLC, an Illinois limited liability company

**Loan / Mortgage Amount:** \$1,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is not owner-occupied.

**Certificate number:** 774FD6A7-5E97-472D-B307-F9C894B33DDB

**Execution date:** 11/05/2014

**UNOFFICIAL COPY**

This instrument prepared by:

Anne E. Klokow, Esq.  
 Allen Matkins Leck Gamble Mallory & Natsis LLP  
 1900 Main Street, 5th Floor  
 Irvine, CA 92614-7321

Record and return to:

Novare National Settlement Services, LLC  
 25400 US Highway 19 North  
 Clearwater, FL 33763  
 Attention: John Innes

---

(Space Above For Recorder's Use)

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

Loan No. 61201200141

THIS MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS (as the same may from time to time hereafter be modified, supplemented or amended, this "Mortgage") is made as of November 5<sup>th</sup>, 2014, by ABBASI REAL ESTATE, LLC, an Illinois limited liability company, having its principal place of business and post office address at 635 Dara James Rd., Des Plaines, IL 60116, as "Borrower" ("Borrower" to be construed as "Borrowers" if the context so requires), to and for the benefit of ARCHETYPE CREDIT OPPORTUNITIES FUNDING I L.P., a Delaware limited partnership, having a principal place of business at 1601 Washington Avenue, Suite 700, Miami Beach, Florida 33139, as "Lender"

**WITNESSETH:**

This Mortgage is given to secure that certain loan (the "Loan") in the maximum principal sum of One Million Dollars (\$1,000,000.00) as evidenced by that certain Loan Agreement of even date with the Note (as the same may have been or may be modified, amended, supplemented and/or restated from time to time, the "Loan Agreement"), by and between Borrower and Lender, as further evidenced by Borrower's Secured Promissory Note dated as of October 10, 2013, made payable and delivered to Lender (as the same may have been or may be modified, amended, supplemented, extended or consolidated in writing from time to time and any note(s) issued in exchange therefore or replacement thereof, the "Note"). Borrower desires

# UNOFFICIAL COPY

to secure the payment of the outstanding principal amount of the Loan set forth in, and evidenced by, the Loan Agreement and the Note (including, without limitation, all Advances advanced or hereafter advanced under the Loan Agreement and any and all other amounts advanced under the Loan Agreement), together with all accrued and unpaid interest thereon, interest accrued at the Default Rate (as defined in the Note), Late Charges (as defined in the Note), and all other obligations and liabilities due or to become due to Lender in respect of the Loan and/or pursuant to the Note, the Loan Agreement, this Mortgage, each and every other Mortgage (whether now or hereafter executed) and/or any of the other Loan Documents (excluding the Guaranty which is not secured by this Mortgage or any other Mortgage), and all other amounts, sums and expenses paid by or payable to Lender pursuant to the Loan Documents (excluding the Guaranty which is not secured by this Mortgage or any other Mortgage) and any and all obligations and liabilities of Borrower, including without limitation, any increases in the maximum principal amount of the Loan, contained in any written renewal, extension, amendment, modification, consolidation, restatement of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any of the other Loan Documents (expressly excluding the Guaranty) (collectively the "Indebtedness") until the Indebtedness has been paid, but in any event, the unpaid balance (if any) remaining due on the Note shall be due and payable on the Maturity Date, as defined in the Note, or such earlier date resulting from the acceleration of the Indebtedness by Lender. Lender has made the Loan to Borrower upon the security of the collective interest in the Premises (as defined herein and each other Mortgage given by Borrower to Lender) and in reliance upon the aggregate of the Premises taken together being of greater value as collateral security than the sum of each Premises taken separately. This Mortgage and each other Mortgage are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default under this Mortgage and the Loan Documents shall constitute an Event of Default under such other Mortgages, (ii) an Event of Default under any of such other Mortgages shall constitute an Event of Default under this Mortgage; and (iii) this Mortgage and each of the other Mortgages constitute security for the Note as if a single blanket lien were placed on each of the Premises as security for the Note.

Capitalized terms used herein and not otherwise defined shall have those meanings given to them in the Loan Agreement.

NOW, THEREFORE, to secure the payment of the Indebtedness in accordance with the terms and conditions of the Note, the Loan Agreement and the other Loan Documents, and any and all extensions, modifications, increases, and renewals thereof and the performance of the covenants and agreements contained therein, and also to secure the payment of any and all other Indebtedness, direct or contingent, that may now or hereafter become owing from Borrower to Lender in connection with the Loan Documents, and in consideration of the making of the Loan and the Advances made and to be made pursuant to the Loan Agreement, and other valuable consideration, receipt of which is hereby acknowledged, Borrower does by these presents irrevocably grant, mortgage, bargain, sell, release, warrant, pledge, convey and assign unto Lender, and its successors and assigns, forever:

A. That certain real estate and all of Borrower's estate, right, title and interest therein, located in the County of Cook, State of Illinois, more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), which Land, together with the following described property, rights and interests, whether now owned or held or hereafter acquired, is collectively referred to herein as the "Premises";

B. Together with Borrower's interest as lessor in and to all Leases and all Rents, which are pledged primarily and on a parity with the Land and not secondarily;

C. Together with all tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, direct flow, ditch, reservoir, well and other water rights, whether or not adjudicated, whether tributary or nontributary and whether evidenced by deed, water stock, permit or otherwise, sewer rights, rights in trade names, licenses, permits and contracts, and all other rights, liberties and privileges of any kind or character in any way now or hereafter appertaining to the Land, including but not limited to, homestead and any other claim at law or in equity as well as any after acquired title, franchise or license and the reversion and reversions and remainder and remainders thereof;

D. Together with the right in the case of foreclosure hereunder of the encumbered property for Lender to take and use the name by which the buildings and all other improvements situated on the Premises are commonly known and the right to manage and operate the said buildings under any such name and variants thereof;

E. Together with all right, title and interest of Borrower in any and all buildings and improvements of every kind and description now or hereafter erected or placed on the said Land and all materials intended for construction, reconstruction, alteration and repairs of such buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the Premises, and all fixtures now or hereafter owned by Borrower and attached to or contained in and used in connection with the Premises including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, all gas and electric

# UNOFFICIAL COPY

fixtures, appliances (including without limitation, ranges, rangetops, ovens, stoves, cooking apparatus and appurtenances, dishwashers, refrigerators, trash compactors, microwaves, washers, dryers, and garbage disposals), water heaters, mirrors, mantels, carpeting and all other floor coverings, window coverings and treatments, cable television equipment, water softeners, storm sashes, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property owned by Borrower used or useful in the operation of the Premises or situated on the Premises; and all renewals or replacements of all of the aforesaid property owned by Borrower or articles in substitution therefore, whether or not the same are or shall be attached to said buildings or improvements in any manner (collectively, the "Improvements"); it being mutually agreed, intended and declared that all the aforesaid property owned by Borrower and placed by it on the Land or used in connection with the operation or maintenance of the Premises shall, so far as permitted by law, be deemed to form a part and parcel of the Land and for the purpose of this Mortgage to be Land and covered by this Mortgage, and as to any of the property aforesaid which does not form a part and parcel of the Land or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code ("UCC")) this Mortgage and the other Loan Documents (the terms of which grant a security interest in personal property or real property, the proceeds of which may become personal property) are each hereby deemed to be, as well, a security agreement under the UCC for the purpose of creating a security interest in all items, including, but not limited to, all property and rights which Borrower may grant, assign, bargain, sell, transfer, set over, deliver, or otherwise convey to Lender, as secured party, under the terms of this Mortgage or any of the other Loan Documents, including any and all proceeds thereof (as used herein, Borrower shall mean "Debtor" under the UCC and Lender shall mean "Secured Party" under the UCC). Borrower hereby appoints Lender as its attorney-in-fact to execute such documents necessary to perfect Lender's security interest and Borrower authorizes Lender at any time until the Indebtedness is paid in full, to prepare and file, at Borrower's expense, any and all UCC financing statements, amendments, assignments, terminations and the like, necessary to create and/or maintain a prior security interest in such property all without Borrower's execution of the same. Furthermore, upon a default under the Loan Documents, Lender will, in addition to all other remedies provided for in the Loan Documents, have the remedies provided for under the UCC in effect in the state in which the Premises is located;

F. Together with all right, title and interest of Borrower, now or hereafter acquired, in and to any and all strips and gores of land adjacent to and used in connection with the Premises and all right, title and interest of Borrower, now owned or hereafter acquired, in, to, over and under the ways, streets, sidewalks and alleys adjoining the Premises;

G. Together with all funds now or hereafter held by Lender under any property reserves agreement (including any proceeds derived from any letter of credit) or escrow security agreement or under any of the terms hereof or of the Loan Documents, including but not limited to funds held under the provisions of the Loan Agreement;

H. Together with all of Borrower's payment intangibles, letter of credit rights, interest rate cap agreements, tenant in common agreement rights, and any other contract rights of Borrower related in any manner to the ownership, operation, or management of the Premises, as well as any and all supporting obligations, and all proceeds, renewals, replacements and substitutions thereof;

I. Together with all funds, accounts and proceeds thereof relating to the Premises whether or not such funds, accounts or proceeds thereof are held by Lender under the terms of any of the Loan Documents, including, but not limited to bankruptcy claims of Borrower against any tenant at the Premises, and any proceeds thereof; proceeds of any Rents, insurance proceeds from all insurance policies covering the Premises, whether or not required to be maintained by Borrower under the Loan Documents, and all awards, decrees, proceeds, settlements or claims for damage now or hereafter made to or for the benefit of Borrower by reason of any damage to, destruction of or taking of the Premises or any part thereof, whether the same shall be made by reason of the exercise of the right of eminent domain or by condemnation or otherwise (a "Taking");

J. TO HAVE AND TO HOLD the same unto Lender, and its successors and assigns, upon the trusts, covenants and agreements herein expressed.

Borrower represents that it shall forever warrant and defend the title to the Premises against all claims and demands of all persons whomsoever and will on demand execute any additional instrument which may be required to give Lender a valid first lien and security interest on all of the Premises, subject only to the "Permitted Encumbrances" (as defined in the Loan Agreement), and will not permit to be created or to exist in respect of the Premises or any part thereof any lien or security interest on parity with, superior to, or inferior to any of the liens or security interests hereof.

Borrower further represents that (i) the Premises is not subject to any casualty damage; (ii) Borrower has not received any written notice of any eminent domain or condemnation proceeding affecting the Premises; (iii) to the best of Borrower's knowledge, following due and diligent inquiry, there are no actions, suits or proceedings pending, completed or threatened against or affecting Borrower or any person or entity owning an interest (directly or indirectly) in Borrower ("Interest

# UNOFFICIAL COPY

Owner(s)") or any property of Borrower or any Interest Owner in any court or before any arbitrator of any kind or before or by any governmental authority (whether local, state, federal or foreign) that, individually or in the aggregate, could reasonably be expected by Lender to be material to the transaction contemplated hereby and (iv) the Premises and the intended uses thereof are in compliance with all applicable laws, regulations and ordinances, including without limitation, the Americans with Disabilities Act of 1990 (42 U.S.C. §12101, et seq.), the Federal Architectural Barriers Act (42 U.S.C. §3601, et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §3601, et seq.), and the Rehabilitation Act of 1973 (29 U.S.C. §794) and any amendments, modifications or supplements thereto.

## BORROWER COVENANTS AND AGREES AS FOLLOWS:

- I. Borrower shall:
  - (a) pay each item of Indebtedness secured by this Mortgage when due according to the terms of the Loan Documents;
  - (b) pay a Late Charge on any payment of principal, interest, or Indebtedness which is not paid on or before the due date hereof to cover the expense involved in handling such late payment;
  - (c) pay on or before the due date thereof any indebtedness permitted to be incurred by Borrower pursuant to the Loan Documents and any other claims which could become a lien on the Premises (unless otherwise specifically addressed in paragraph 1(e) hereof or in the Loan Agreement), and upon request of Lender exhibit satisfactory evidence of the discharge thereof;
  - (d) complete within a reasonable time, the construction of any Improvements now or at any time in process of construction upon the Land;
  - (e) manage, operate and maintain the Premises and keep the Premises, including but not limited to, the Improvements, in good condition and repair and free from mechanics' liens or other liens or claims for liens, provided however, that Borrower may in good faith, with reasonable diligence and upon written Notice to Lender within twenty (20) days after Borrower has knowledge of such lien or claim, contest the validity or amount of any such lien or claim and defer payment and discharge thereof during the pendency of such contest in the manner provided by law, provided that (i) such contest may be made without the payment thereof; (ii) such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such lien or claim; (iii) Borrower shall have obtained a bond over such lien or claim from a bonding company acceptable to Lender which has the effect of removing such lien or collection of the claim or lien so contested or Borrower provides a cash deposit or letter of credit in an amount acceptable to Lender; and (iv) Borrower shall pay all costs and expenses incidental to such contest; and further provided, that in the event of a final, non-appealable ruling or adjudication adverse to Borrower, Borrower shall promptly pay such claim or lien, shall indemnify and hold Lender and the Premises harmless from any loss for damage arising from such contest and shall take whatever action necessary to prevent sale, forfeiture or any other loss or damage to the Premises or to the Lender;
  - (f) comply, and cause each lessee or other user of the Premises to comply, with all requirements of law and ordinance, and all rules and regulations, now or hereafter enacted, by authorities having jurisdiction of the Premises and the use thereof, including but not limited to all covenants, conditions and restrictions of record pertaining to the Premises, the Improvements, and the use thereof (collectively, "**Legal Requirements**");
  - (g) promptly repair, restore or rebuild any Improvements, now or hereafter a part of the Premises which may become damaged or be destroyed by any cause whatsoever, so that upon completion of the repair, restoration and rebuilding of such Improvements, there will be no liens of any nature arising out of the construction and the Premises will be of substantially the same character and quality as it was prior to the damage or destruction;
  - (h) if other than a natural person, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its formation and, if other than its state of formation, the state where the Premises is located. Borrower shall notify Lender at least thirty (30) days prior to (i) any relocation of Borrower's principal place of business to a different state or any change in Borrower's state of formation, and/or (ii) if Borrower is an individual, any relocation of Borrower's principal residence to a different state;
  - (i) do all things necessary to preserve and keep in full force and effect Lender's title insurance coverage insuring the lien of this Mortgage as a first and prior lien and mortgage, subject only to the Permitted Encumbrances stated in the title insurance policy issued to Lender and any other exceptions after the date of this Mortgage approved in writing by

# UNOFFICIAL COPY

Lender, including without limitation, delivering to Lender not less than 30 days prior to the effective date of any rate adjustment, modification or extension of the Note or any other Loan Document, any new policy or endorsement which may be reasonably required to assure Lender of such continuing coverage;

(j) comply and cause the Premises and the intended uses thereof to comply with all laws, rules, and regulations affecting the Premises or any portion thereof or any use thereof and, upon request by Lender, provide Lender with such evidence as may be reasonably required by Lender to confirm such compliance, such evidence to include, without limitation, letters, licenses, permits, certificates and other correspondence from the appropriate governmental authorities, and opinions or certifications from architects or engineers. The laws, regulations and ordinances with which compliance should be evidenced include, in addition to the foregoing and without limitation, the following: building codes, health and environmental protection laws, erosion control ordinances, federal statutes, doing business and/or licensing laws and zoning laws (the evidence submitted as to zoning should include the zoning designation made for the Premises, the permitted uses of the Premises under such zoning designation and zoning requirements as to parking, lot size, ingress, egress and building setbacks); and

(k) execute any and all documents which may be required to perfect the security interest granted by this Mortgage.

2. Borrower shall not:

(a) except as required by applicable Legal Requirements, construct any building or structure nor make any alteration or addition (other than normal repair and maintenance) to (i) the roof or any structural component of any Improvements on the Premises, or (ii) the building operating systems, including but not limited to, the mechanical, electrical, heating, cooling, or ventilation systems (other than replacement with equal or better quality and capacity), without the prior written consent of Lender not to be unreasonably withheld;

(b) remove or demolish any material Improvements, or any portion thereof, which at any time constitutes a part of the Premises.

(c) Notwithstanding anything hereinabove to the contrary, Borrower may construct, remove or demolish tenant improvements within the then existing building(s) or other structures to the extent such work is required solely under the terms of any Leases approved by Lender provided (i) no Event of Default exists under the Loan Documents; (ii) the work is completed on a timely basis, in a good, workmanlike, lien-free manner and in accordance with all Legal Requirements, and (iii) such work does not negatively affect the structural integrity of the improvements or the value of the Premises;

(d) cause or permit any change to be made in the general use of the Premises without Lender's prior written consent;

(e) initiate any or acquiesce to a zoning reclassification or material change in zoning without Lender's prior written consent. Borrower shall use all reasonable efforts to contest any such zoning reclassification or change;

(f) make or permit any use of the Premises that could with the passage of time result in the creation of any right of use, or any claim of adverse possession or easement on, to or against any part of the Premises in favor of any person or entity or the public;

(g) permit any Transfer except in accordance with the terms and conditions of the Loan Agreement.

(h) allow all or any portion of the Premises to be operated as or converted to a cooperative or condominium form of ownership; or

(i) enter into any written or oral agreements concerning the leasing or management of the Premises.

If any of such events occur, it shall be null and void and shall constitute an Event of Default under the Loan Documents.

3. (a) Borrower shall pay or cause to be paid when due and before any penalty attaches or interest accrues all general taxes, special taxes, assessments (including assessments for benefits from public works or improvements whenever begun or completed), utility charges, water charges, sewer service charges, common area maintenance charges, if any, vault or space charges and all other like charges against or affecting the Premises or against any property or equipment located on the

# UNOFFICIAL COPY

Premises, or which might become a lien on the Premises, and shall, within 10 days following Lender's request, furnish to Lender a duplicate receipt of such payment. If any such tax, assessment or charge may legally be paid in installments, Borrower may, at its option, pay such tax, assessment or charge in installments.

(b) If Borrower desires to contest any tax, assessment or charge relating to the Premises, Borrower may do so by paying the same in full, under protest, in the manner provided by law; provided, however, that

(i) if contest of any tax, assessment or charge may be made without the payment thereof, and

(ii) such contest shall have the effect of preventing the collection of the tax, assessment or charge so contested and the sale or forfeiture of the Premises or any part thereof or any interest therein to satisfy the same,

then Borrower may in its discretion and upon the giving of written notice to Lender of its intended action and upon the furnishing to Lender of such security or bond as Lender may require, contest any such tax, assessment or charge in good faith and in the manner provided by law. All costs and expenses incidental to such contest shall be paid by Borrower. In the event of a ruling or adjudication adverse to Borrower, Borrower shall promptly pay such tax, assessment or charge. Borrower shall indemnify and save harmless the Lender and the Premises from any loss or damage arising from any such contest and shall, if necessary to prevent sale, forfeiture or any other loss or damage to the Premises or to Lender, pay such tax, assessment or charge or take whatever action is necessary to prevent any sale, forfeiture or loss.

4. Borrower shall at all times keep or cause to be kept in full force and effect the insurance required by the Loan Agreement.

5. Borrower shall deposit with and pay to Lender the estimated taxes and assessments assessed or levied against and next due on the Premises and the estimated premiums for the insurance required pursuant to the Loan Documents, all in accordance with and subject to the requirements of the Loan Agreement.

6. If by the laws of the United States of America or of any state or governmental subdivision having jurisdiction over Borrower or of the Premises or of the Loan evidenced by the Loan Documents or any amendments or modifications thereof, any tax or fee is due or becomes due or is imposed upon Lender in respect of the issuance of the Note hereby secured or the making, recording and registration of this Mortgage or otherwise in connection with the Loan Documents or the Loan, except for Lender's income or franchise tax, Borrower covenants and agrees to pay such tax or fee in the manner required by such law, and to hold harmless and indemnify Lender, and its successors and assigns, against any liability incurred by reason of the imposition of any such tax or fee.

7. (a) Upon the occurrence of any Event of Default, Lender may, but need not, make any payment or perform any act herein required of Borrower, in any form and manner deemed expedient and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises, or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all reasonable expenses paid or incurred in connection therewith, including but not limited to, reasonable attorneys' fees and costs and reasonable attorneys' fees and costs on appeal, and any other money advanced by Lender to protect the Premises and the lien hereof, shall be additional Indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the Default Rate from the date of expenditure or advance until paid.

(b) In making any payment hereby authorized relating to taxes or assessments or for the purchase, discharge, compromise or settlement of any prior lien, Lender may make such payment according to any bill, statement or estimate secured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof or without inquiry as to the validity or amount of any claim for lien which may be asserted.

8. An Event of Default under the Loan Agreement, this Mortgage or any other Loan Document shall constitute an Event of Default hereunder.

9. Upon the occurrence of any Event of Default, in addition to any other rights or remedies provided in the Loan Documents, at law, in equity or otherwise, Lender shall have the right to foreclose the lien hereof, and to the extent permitted herein and by applicable law to sell the Premises by sale independent of the foreclosure proceedings. In any suit to foreclose the lien hereof, and in any sale of the Premises, there shall be allowed and included as additional Indebtedness payable by Borrower to Lender and secured hereby all expenditures and expenses which may be paid or incurred by or on

# UNOFFICIAL COPY

behalf of Lender for attorneys' fees and costs, including attorneys' fees and costs on appeal, appraisers' fees, expenditures for documentary and expert evidence, stenographer's charges, publication and advertising costs, survey costs, environmental audits and costs (which may be estimated as to items to be expended after the entry of any decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, torrens certificates and similar data and assurances with respect to title as Lender deems reasonably necessary either to prosecute such suit or to consummate such sale or to evidence to bidders at any sale the true condition of the title to or the value of the Premises. It is agreed that in connection with any public or private sale, the following is commercially reasonable: the advertising of the sale of the Premises on the internet including on www.auction.com for no less than seven (7) consecutive days and the sale of the Premises at an auction held over the internet including on www.auction.com.

10. The proceeds of any foreclosure sale, or other sale of the Premises in accordance with the terms hereof or as permitted by law, shall be distributed and applied in the following order of priority: first, to the payment of all costs and expenses incident to the foreclosure and/or sale proceedings, including all items as are mentioned in any preceding or succeeding paragraph hereof; second, to the payment of all other items which under the terms hereof constitute secured Indebtedness in addition to that evidenced by the Note, with interest thereon as herein provided; third, to the payment of all principal, accrued interest remaining unpaid on the Note and Repayment Fee; fourth, any surplus to the Borrower or Borrower's successors or assigns, as their rights may appear.

11. Following the occurrence of an Event of Default, unless the same has been specifically waived in writing, Borrower shall forthwith upon demand of Lender surrender to Lender possession of the Premises, and Lender shall be entitled to take actual possession of the Premises or any part thereof personally or by its agents or attorneys, and Lender in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of the Premises together with all documents, books, records, papers and accounts of the Borrower or the then owner of the Premises relating thereto, and may exclude Borrower, its agents or assigns wholly therefrom, and may as attorney in fact or agent of the Borrower, or in its own name as Lender and under the powers herein granted:

(a) hold, operate, maintain, repair, rebuild, replace, alter, improve, manage or control the Premises as it deems judicious, insure and reinsure the same and any risks related to Lender's possession, operation and management thereof and receive all Rents, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion it deems proper or necessary to enforce the payment or security of the Rents, including actions for the recovery of Rent, actions in forcible detainer and actions in distress for Rents hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Borrower; and

(b) conduct leasing activity pursuant to the provisions of the Schedule II, attached hereto.

Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under any Lease. Except to the extent that the same is caused solely by Lender's gross negligence or willful misconduct, should Lender incur any liability, loss or damage under any Leases, or under or by reason of this Mortgage, or in the defense of any claims or demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements in any Lease, the amount thereof, including costs, expenses and reasonable attorneys' fees and costs, including reasonable attorneys' fees and costs on appeal, shall be added to the Indebtedness and secured hereby.

12. Upon the occurrence of an Event of Default, Lender in the exercise of the rights and powers conferred upon it shall have the full power to use and apply the Rents, less costs and expenses of collection to the payment of or on account of the items listed in (a) - (c) below, at the election of Lender and in such order as Lender may determine as follows:

(a) to the payment of (i) the expenses of operating and maintaining the Premises, including, but not limited to the cost of management, leasing (which shall include reasonable compensation to Lender and its agent or agents if management and/or leasing is delegated to an agent or agents), repairing, rebuilding, replacing, altering and improving the Premises, (ii) premiums on insurance as hereinabove authorized, (iii) taxes and special assessments now due or which may hereafter become due on the Premises, and (iv) expenses of placing the Premises in such condition as will, in the sole judgment of Lender, make it readily rentable;

(b) to the payment of any principal, interest or any other Indebtedness secured hereby or any deficiency which may result from any foreclosure sale;

(c) to the payment of established claims for damages, if any, reasonable attorneys' fees and costs and reasonable attorneys' fees and costs on appeal.



# UNOFFICIAL COPY

The manner of the application of Rents, the reasonableness of the costs and charges to which such Rents are applied and the item or items which shall be credited thereby shall be within the sole and unlimited discretion of Lender. To the extent that the costs and expenses in (a) and (c) above exceed the amounts collected, the excess shall be added to the Indebtedness and secured hereby.

13. Upon the occurrence of any Event of Default, unless the same has been specifically waived in writing, Lender may apply to any court having jurisdiction for the appointment of a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the then value of the Premises or the adequacy of Lender's security. Lender may be appointed as such receiver. The receiver shall have power to collect the Rents during the pendency of any foreclosure proceedings and, in case of a sale, during the full statutory period of redemption, if any, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collect such Rents. In addition, the receiver shall have all other powers which shall be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in its possession at Lender's election and in such order as Lender may determine in payment in full or in part of those items listed in paragraph 12.

14. (a) Borrower agrees that all reasonable costs, charges and expenses, including but not limited to, reasonable attorneys' fees and costs, incurred or expended by Lender arising out of or in connection with any action, proceeding or hearing, legal, equitable or quasi legal, including the preparation thereof and any appeal therefrom, in any way affecting or pertaining to the Loan Documents, or the Premises, shall be promptly paid by Borrower. All such sums not promptly paid by Borrower shall be added to the Indebtedness secured hereby and shall bear interest at the Default Rate from the date of such advance and shall be due and payable on demand.

(b) Borrower hereby agrees that upon the occurrence of an Event of Default and the acceleration of the principal sum secured hereby pursuant to this Mortgage, to the full extent that such rights can be lawfully waived, Borrower hereby waives and agrees not to insist upon, plead or in any manner take advantage of, any notice of acceleration, any stay, extension, exemption, homestead, marshaling or moratorium law or any law providing for the valuation or appraisal of all or any part of the Premises prior to any sale or sales thereof under any provision of this Mortgage or before or after any decree, judgment or order of any court or confirmation thereof, or claim or exercise any right to redeem all or any part of the Premises so sold and hereby expressly waives to the full extent permitted by applicable law on behalf of itself and each and every person or entity acquiring any right, title or interest in or to all or any part of the Premises, all benefit and advantage of any such laws which would otherwise be available to Borrower or any such person or entity, and agrees that neither Borrower nor any such person or entity will invoke or utilize any such law to otherwise hinder, delay or impede the exercise of any remedy granted or delegated to Lender herein but will permit the exercise of such remedy as though any such laws had not been enacted. Borrower hereby further expressly waives to the full extent permitted by applicable law on behalf of itself and each and every person or entity acquiring any right, title or interest in or to all or any part of the Premises any and all rights of redemption from any sale or any order or decree of foreclosure obtained pursuant to provisions of this Mortgage.

15. In accordance with and subject to the terms and conditions of Schedule I, attached hereto, Borrower hereby assigns to Lender directly and absolutely, and not merely collaterally, the interest of Borrower as lessor under the Leases of the Premises, and the Rents payable under any Lease and/or with respect to the use of the Premises, or portion thereof, including any oil, gas or mineral lease, or any installments of money payable pursuant to any agreement or any sale of the Premises or any part thereof, subject only to a license, if any, granted by Lender to Borrower with respect thereto prior to the occurrence of an Event of Default.

The collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice, except to the extent any such Event of Default is fully cured. Failure or discontinuance of Lender at any time, or from time to time, to collect any such moneys shall not impair in any manner the subsequent enforcement by Lender of the right, power and authority herein conferred on Lender. Nothing contained herein, including the exercise of any right, power or authority herein granted to Lender, shall be, or be construed to be, an affirmation by Lender of any tenancy, Lease or option or right to possession otherwise, or an assumption of liability under, or the subordination of the lien or charge of this Mortgage to any such tenancy, Lease or option or right to possession otherwise. Borrower hereby agrees that, in the event Lender exercises its rights as provided for in this paragraph or in Schedule II, attached hereto, Borrower waives any right to compensation for the use of Borrower's furniture, furnishings or equipment in the Premises for the period such assignment of rents or receivership is in effect, it being understood that the Rents derived from the use of any such items shall be applied to Borrower's obligations hereunder as above provided.

# UNOFFICIAL COPY

16. All rights and remedies granted to Lender in the Loan Documents shall be in addition to and not in limitation of any rights and remedies to which it is entitled in equity, at law or by statute, and the invalidity of any right or remedy herein provided by reason of its conflict with applicable law or statute shall not affect any other valid right or remedy afforded to Lender. No waiver of any default or Event of Default under any of the Loan Documents shall at any time thereafter be held to be a waiver of any rights of the Trustee or Lender hereunder, nor shall any waiver of a prior Event of Default or default operate to waive any subsequent Event of Default or default. All remedies provided for in the Loan Documents are cumulative and may, at the election of Lender, be exercised alternatively, successively or concurrently. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision or to proceed against one portion of the Premises to the exclusion of any other portion. Time is of the essence under this Mortgage and the Loan Documents.

17. By accepting payment of any sum secured hereby after its due date, Lender does not waive its right either to require prompt payment when due of all other sums or installments so secured or to declare a default for failure to pay such other sums or installments.

18. The terms and conditions of the Note, including, without limitation, the usury provisions of paragraph 4 of the Note and the liability provisions of paragraph 9 of the Note, are fully incorporated herein by reference as if the same were specifically stated here.

19. In the event one or more provisions of the Loan Documents shall be held to be invalid, illegal or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the Loan Documents shall be construed as if any such provision had never been contained herein.

20. If the payment of the Indebtedness secured hereby or of any part thereof shall be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefore, or interested in said Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Lender notwithstanding such variation or release.

21. Upon payment in full of the principal sum, interest and other Indebtedness secured by the Loan Documents, these presents shall be null and void, and Lender shall release this Mortgage and the lien hereof by proper instrument executed in recordable form.

22. (a) Borrower hereby grants to Lender and its respective agents, attorneys, employees, consultants, contractors and assigns an irrevocable license and authorization to enter upon and inspect the Premises and all facilities located thereon at reasonable times.

(b) In connection with any sale or conveyance of this Mortgage, Borrower grants to Lender and its respective agents, attorneys, employees, consultants, contractors and assigns an irrevocable license and authorization to conduct, at Lender's expense, a Phase I environmental audit of the Premises.

(c) In the event there has been an Event of Default or in the event Lender has formed a reasonable belief, based on its inspection of the Premises or other factors known to it, that Hazardous Materials (as defined in the Environmental Indemnity) may be present on the Premises, then Borrower grants to Lender and its respective agents, attorneys, employees, consultants, contractors and assigns an irrevocable license and authorization to conduct, at Borrower's expense, environmental tests of the Premises, including without limitation, a Phase I environmental audit, subsurface testing, soil and ground water testing, and other tests which may physically invade the Premises or facilities (the "Tests"). The scope of the Tests shall be such as Lender, in its sole discretion, determines is necessary to (i) investigate the condition of the Premises, (ii) protect the security interests created under this Mortgage, or (iii) determine compliance with Environmental Laws, the provisions of the Environmental Indemnity and the other Loan Documents and other matters relating thereto.

(d) Provided no Event of Default has occurred, Lender will provide Borrower with reasonable notice of Lender's intent to enter, inspect and conduct the Tests provided for in this paragraph. In addition, Lender shall conduct such inspections and Tests during normal business hours and use reasonable efforts to minimize disruption to lessees.

The foregoing licenses and authorizations are intended to be a means of protection of Lender's security interest in the Premises and not as participation in the management of the Premises.

23. Within 15 days after any written request by any party to this Mortgage, the requested party shall certify, by a written statement duly acknowledged, the amount of principal, interest and other Indebtedness then owing on the Note, the

# UNOFFICIAL COPY

terms of payment, Maturity Date and the date to which interest has been paid. Borrower shall further certify whether any defaults, offsets or defenses exist against the Indebtedness secured hereby.

24. Borrower has had the opportunity to fully negotiate the terms hereof and modify the draftsmanship of the Loan Documents. Therefore, the terms of the Loan Documents shall be construed and interpreted without any presumption, inference, or rule requiring construction or interpretation of any provision of the Loan Documents against the interest of the party causing the Loan Documents or any portion of it to be drafted. Borrower is entering into the Loan Documents freely and voluntarily without any duress, economic or otherwise.

25. This Mortgage and all provisions hereof shall inure to the benefit of the heirs, successors and assigns of Lender and shall bind the heirs and permitted successors and assigns of Borrower.

26. THIS MORTGAGE WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS MORTGAGE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PREMISES SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAW OF THE STATE IN WHICH THE PREMISES IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS MORTGAGE AND/OR THE OTHER LOAN DOCUMENTS, AND THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS MORTGAGE MAY, AT LENDER'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 OR IN ANY FEDERAL OR STATE COURT HAVING JURISDICTION IN OR OVER THE COUNTY IN WHICH THE PREMISES IS LOCATED, AND BORROWER 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 BORROWER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING AND CONSENTS TO SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY NEW YORK, ANY STATE HAVING JURISDICTION IN OR OVER ANY ONE OR MORE OF THE PREMISES, OR FEDERAL LAW, AS APPLICABLE.

27. BORROWER AND LENDER, BY ITS ACCEPTANCE HEREOF, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY ACTIONS BROUGHT BY BORROWER OR LENDER IN CONNECTION WITH THIS MORTGAGE, ANY OF THE LOAN DOCUMENTS, THE INDEBTEDNESS SECURED HEREBY, OR ANY OTHER STATEMENTS OR ACTIONS OF LENDER.

28. This Mortgage and the Indebtedness secured hereby is for the sole purpose of acquiring or financing Eligible Premises as a business or commercial investment in accordance with the terms and conditions of the Loan Agreement, and all proceeds of such Indebtedness shall be used for said business or commercial investment purpose only, and not for personal, family or household purposes. No such proceeds will not be used for the purchase of any security within the meaning of the Securities Exchange Act of 1934, as amended, or any regulation issued pursuant thereto, including without limitation, Regulations U, T and X of the Board of Governors of the Federal Reserve System. This is not a mortgage where a seller is providing financing to a buyer for the payment of all or any portion of the purchase price, and the Premises secured hereby is

# UNOFFICIAL COPY

not a single-family residence or homestead (except as is owned for investment purposes only and not for occupancy by Trustor, any Obligor or Interest Owner) or used for mining, grazing, agriculture, timber or farming purposes.

29. Unless Lender shall otherwise direct in writing, Borrower shall appear in and defend all actions or proceedings purporting to affect the security hereunder, or any right or power of the Lender. The Lender shall have the right to appear in such actions or proceedings. Borrower shall save Lender harmless from all reasonable costs, and expenses, including but not limited to, reasonable attorneys' fees and costs and costs of a title search, continuation of abstract and preparation of survey incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body in and to which Lender may be or become a party by reason hereof. Such proceedings shall include but not be limited to condemnation, bankruptcy, probate and administration proceedings, as well as any other action, suit, proceeding, right, motion or application wherein proof of claim is by law required to be filed or in which it becomes necessary to defend or uphold the terms of this Mortgage or the Loan Documents or otherwise purporting to affect the security hereof or the rights or powers of Lender. All money paid or expended by Lender in that regard, together with interest thereon from date of such payment at the applicable interest rate shall be additional Indebtedness secured hereby and shall be immediately due and payable by Borrower without notice.

30. Upon the occurrence of an Event of Default, unless the same has been specifically waived in writing, all Rents collected or received by Borrower shall be accepted and held for Lender in trust and shall not be commingled with the funds and property of Borrower, but shall be promptly paid over to Lender.

31. If more than one, all obligations and agreements of Borrower are joint and several.

32. This Mortgage may be executed in counterparts, each of which shall be deemed an original; and such counterparts when taken together shall constitute but one agreement.

33. Borrower acknowledges that Lender has made the Loan to Borrower upon the security of the collective interest in the Premises (as defined herein and each other Mortgage given by Borrower to Lender) and in reliance upon the aggregate of the Premises taken together being of greater value as collateral security than the sum of each Premises taken separately. Borrower agrees that this Mortgage and each other Mortgage are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default under this Mortgage and the Loan Documents shall constitute an Event of Default under such other Mortgages, (ii) an Event of Default under any of such other Mortgages shall constitute an Event of Default under this Mortgage; and (iii) this Mortgage and each of the other Mortgages constitute security for the Note as if a single blanket lien were placed on each of the Premises as security for the Note.

34. The terms and provisions of Schedule I and Schedule II, each attached hereto, are hereby incorporated herein as a part of this Mortgage with the same effect as if set forth in the body hereof.

(Signatures on next page)

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be duly executed and delivered as of the date first above written.

BORROWER:

ABBASI REAL ESTATE, LLC,  
an Illinois limited liability company

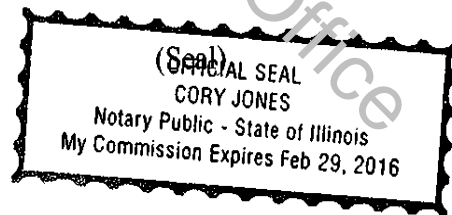
By: *Mohammed K. Abbasi*  
Mohammed K. Abbasi  
Member

STATE OF ILLINOIS	)	
	)	
COUNTY OF <u>COOK</u>	)	

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Mohammed Abbasi, Managing member of Abbasi Real Estate an ILLINOIS LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that X he signed and delivered said instrument as X free and voluntary act, and as a free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 5<sup>th</sup> day of November, 2014.

*Cory Jones*  
Print Name: Cory Jones  
Notary Public  
Commission Expiration: 02/29/2016



# UNOFFICIAL COPY

## Exhibit "A"

**Block 3, except the West 123.75 feet thereof (as measured perpendicular to the west line of said Block 3), in Buckingham Pointe, a Planned Unit Development, being a resubdivision of the west half of Lot 6, and all of Lots 7 through 18, inclusive, in Block 1 of Oliver Salinger and Company's Glen Acres, being a subdivision in the west half of the Northwest Quarter of Section 33, Township 41 North, Range 12 East of the Third Principal Meridian, according to the plat thereof recorded January 13, 2006 as Document 0601345102, in Cook County, Illinois.**

**APN: 09-33-104-092**

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## SCHEDULE I

### STATE MODIFICATIONS

Illinois:

1. In the event of any inconsistencies between the terms and conditions of this Schedule I and the terms and conditions of this Mortgage, the terms and conditions of this Schedule I shall control and be binding.

2. Illinois State Law Provisions.

(a) The provisions of this Paragraph 2 are an integral part of this Mortgage and in the event of any inconsistencies between the terms and conditions of any other paragraph or provision of this Mortgage and this Paragraph 2, the terms and conditions of this Paragraph 2 shall control.

(b) The proceeds of the indebtedness secured hereby referred to herein shall be used solely for business purposes and in furtherance of the regular business affairs of Borrower, and the entire principal obligation secured by this Mortgage constitutes (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).

(c) Illinois Mortgage Foreclosure Law. It is the intention of Borrower and Lender that the enforcement of the terms and provisions of this Mortgage 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, Borrower agrees and covenants that:

(i) Borrower and 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;

(ii) Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon 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 the Lender shall continue in the Lender as judgment creditor or mortgagee until confirmation of sale;

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

(iv) Borrower acknowledges that the Premises 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 15-1215 of the Act;

(v) Borrower hereby voluntarily and knowingly waives its statutory rights to reinstatement and redemption pursuant to 735 ILCS Section 5/15-1601(b);

(vi) All advances, disbursements and expenditures made or incurred by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage, the Loan Agreement or the Note or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(A) all advances by Lender in accordance with the terms of this Mortgage, the Note or Loan Agreement to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Premises; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

# UNOFFICIAL COPY

(B) payments by Lender of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrances, including without limitation, any Senior Monetary Liens; (ii) 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 Premises or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) 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 Act;

(C) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens, including without limitation any Senior Monetary Liens;

(D) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of this Mortgage or arising from the interest of Lender hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Premises;

(E) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearings as referred to in Section 5/15-1508(b)(1) of the Act;

(F) expenses deductible from proceeds of sale as referred to in Section 5/15-1512(a) and (b) of the Act; and

(G) expenses incurred and expenditures made by Lender for any one or more of the following: (i) if the Premises or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Borrower's interest in the Premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Lender takes possession of the Premises imposed by Section 5/15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Lender to be required for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit or of affecting the Premises; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (vii) if the Loan secured hereby is a construction loan, costs incurred by Lender for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Borrower or Lender pursuant to any lease or other agreement for occupancy of the Premises; and (ix) if this Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.

(vii) All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note.

(viii) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act.

(d) Additional Advances. This Mortgage secures payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender or advanced under the any of the Loan Documents securing or evidencing the Loan, even though the aggregate amount outstanding at any time may exceed the original principal balance stated herein and in the Note.

(f) In addition to the provisions and disclosures concerning insurance set forth in the Loan Agreement and the other Loan Documents, including without limitation, the provisions and disclosures concerning Lender Placed Insurance and the Monthly Lender Placed Insurance Payment required to be paid by Borrower with regard to Lender Placed Insurance, pursuant to the terms of the Collateral Protection Act (815 ILCS 180/1 et seq.), Borrower is hereby notified that:



# UNOFFICIAL COPY

"UNLESS BORROWER PROVIDES LENDER WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THE LOAN AGREEMENT AND THIS MORTGAGE, LENDER MAY PURCHASE INSURANCE AT BORROWER'S EXPENSE TO PROTECT LENDER'S INTERESTS IN THE PREMISES, WHICH INSURANCE MAY, BUT NEED NOT, PROTECT THE INTERESTS OF BORROWER. THE COVERAGE PURCHASED BY LENDER MAY NOT PAY ANY CLAIM MADE BY BORROWER OR ANY CLAIM MADE AGAINST BORROWER IN CONNECTION WITH THE PREMISES. BORROWER MAY LATER CANCEL ANY INSURANCE PURCHASED BY LENDER, BUT ONLY AFTER PROVIDING LENDER WITH EVIDENCE THAT BORROWER HAS OBTAINED THE INSURANCE AS REQUIRED UNDER THE LOAN AGREEMENT AND HEREUNDER. IF LENDER PURCHASES INSURANCE, THE BORROWER WILL BE RESPONSIBLE FOR THE COSTS OF SUCH INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES IMPOSED IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE TOTAL OBLIGATION SECURED HEREBY. THE COSTS OF SUCH INSURANCE MAY BE GREATER THAN THE COST OF INSURANCE BORROWER MAY BE ABLE TO OBTAIN FOR ITSELF."

3. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the UCC and is being recorded as a fixture filing. With respect to said fixture filing, (i) the debtor is Borrower, and Borrower's name and address appear in the first paragraph of this Mortgage, and (ii) the secured party is Lender, and Lender's name and address appear in the first paragraph of the Mortgage. The Premises includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Premises, including, but not limited to, the Leases and Rents and all proceeds thereof, all fixtures and all goods that are or are to become fixtures. The real property upon which the fixtures are or are to be located is described on Exhibit A hereto, and the record owner of such real property is the Borrower.

4. Borrower expressly agrees that upon a violation of Section 2(g) of this Mortgage by Borrower and acceleration of the principal balance of the Note because of such violation, Borrower will pay all sums required to be paid in connection with a prepayment, if any, as described in the Loan Agreement, herein imposed on prepayment after an Event of Default and acceleration of the principal balance. Borrower expressly acknowledges that Borrower has received adequate consideration for the foregoing agreement.

5. Following the occurrence of an Event of Default, unless the same has been specifically waived in writing, upon, or at any time prior or after, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application, which application may be made on an ex parte basis, to a court of competent jurisdiction for appointment of a receiver for all or any part of the Premises, as a matter of strict right and without notice to Borrower and without regard to the adequacy of the Premises for the repayment of the indebtedness secured hereby or the solvency of Borrower or any person or persons liable for the payment of the indebtedness secured hereby, and Borrower does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Lender, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the Rents pursuant to other terms and provisions of this Mortgage. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Premises upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances. Such receivership shall, at the option of Lender, continue until full payment of all of the indebtedness secured hereby or until title to the Premises shall have passed by foreclosure or trustee's sale under this Mortgage or deed in lieu of foreclosure.

6. Lender shall have all powers, rights and remedies under applicable law whether or not specifically or generally granted or described in this Mortgage. Nothing contained herein shall be construed to impair or to restrict such powers, rights and remedies or to preclude any procedures or process otherwise available to mortgagees under mortgages in the State of Illinois. Lender shall be entitled to enforce the payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any other Loan Document or other agreement or any laws now or hereafter in force, notwithstanding the fact that some or all of the indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers contained herein, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other rights or security now or hereafter held by Lender. Lender shall be entitled to enforce this Mortgage and any other rights or security now or hereafter held by Lender in such order and manner as Lender may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy contained herein or by law provided or permitted, but each shall be cumulative

## SCHEDULE I

# UNOFFICIAL COPY

and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Every power or remedy given by any of this Mortgage or the other Loan Documents to Lender, or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender, and either of them may pursue inconsistent remedies. By exercising or by failing to exercise any right, option or election hereunder, Lender shall not be deemed to have waived any provision hereof or to have released Borrower from any of the obligations secured hereby unless such waiver or release is in writing and signed by Lender. The waiver by Lender of Borrower's failure to perform or observe any term, covenant or condition referred to or contained herein to be performed or observed by Borrower shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent failure of Borrower to perform or observe the same or any other such term, covenant or condition referred to or contained herein, and no custom or practice which may develop between Borrower and Lender during the term hereof shall be deemed a waiver of or in any way affect the right of Lender to insist upon the performance by Borrower of the obligations secured hereby in strict accordance with the terms hereof or of any other Loan Document.

7. Lender, its successors and assigns, may elect to cause the Premises or any part thereof to be sold as follows:

(a) Lender may proceed as if all of the Premises were real property, in accordance with subparagraph (d) below, or Lender may elect to treat any of the Premises which consists of a right in action or which is property that can be severed from the Land without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with subparagraph (c) below, separate and apart from the sale of real property, the remainder of the Premises being treated as real property.

(b) Lender may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, hereinafter provided (or immediately upon the expiration of any redemption period required by law) or Lender may delay any such sale or other disposition for such period of time as Lender deems to be in its best interest. Should Lender desire that more than one such sale or other disposition be conducted, Lender may at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Lender may deem to be in its best interest.

(c) Should Lender elect to cause any of the Premises to be disposed of as personal property as permitted by subparagraph (a) above, it may dispose of any part hereof in any manner now or hereafter permitted by Division 9 of the UCC or in accordance with any other remedy provided by law. Both Borrower and Lender shall be eligible to purchase any part or all of such property at any such disposition. Any such disposition may be either public or private as Lender may so elect, subject to the provisions of the UCC. Lender shall give Borrower at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Borrower as provided in subparagraph (k) hereof, it shall constitute reasonable notice to Borrower.

(d) Should Lender elect to sell the Premises which is real property or which Lender has elected to treat as real property, upon such election Lender or Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified in the notice of sale, shall sell such Premises, or any portion thereof specified by Lender, at public auction to the highest bidder for cash in lawful money of the United States, subject, however, to the provisions of subparagraph (i) hereof. Trustee for good cause may, and upon request of Lender shall, from time to time, postpone the sale by public announcement thereof at the time and place noticed therefor. If the Premises consists of several lots or parcels, Lender may designate the order in which such lots or parcels shall be offered for sale or sold. Any person, including Borrower, Trustee or Lender, may purchase at the sale. Upon any sale Lender shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession.

(e) In the event of a sale or other disposition of any such property, or any part thereof, and the execution of a deed or other conveyance, pursuant thereto, the recitals therein of facts, such as a default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchaser, payment of purchase money, and any other fact affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed of conveyance shall be conclusive against all persons as to such facts recited therein.

(f) Lender shall apply the proceeds of any sale or disposition hereunder to payment of the following: (1) the expenses of such sale or disposition together with Lender's reasonable attorneys' fees, and the actual cost of publishing, recording, mailing and posting notice; (2) the cost of any search and/or other evidence of title procured in connection therewith and transfer tax on any deed or conveyance; (3) all sums expended under the terms hereof, not then repaid, with accrued

## SCHEDULE I

# UNOFFICIAL COPY

interest in the amount provided herein; (4) all other sums secured hereby; and (5) the remainder if any to the person or persons legally entitled thereto.

(g) The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient discharge from all obligations to see to the proper application of the consideration therefor.

(h) Borrower hereby expressly waives any right which it may have to direct the order in which any of the Premises shall be sold in the event of any sale or sales pursuant hereto.

(i) Upon any sale of the Premises, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the indebtedness then secured hereby for or in settlement or payment of all or any portion of the purchase price of the property purchased, and, in such case, this Mortgage, the Note and documents evidencing expenditures secured hereby shall be presented to the person conducting the sale in order that the amount of said indebtedness so used or applied may be credited thereon as having been paid.

(j) If there exists additional security for the performance of the obligations secured hereby, the holder of the Note, at its sole option and without limiting or affecting any rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever other rights it may have in connection with such other security or in such order as it may determine.

8. Borrower waives the right to assert any statute of limitations as a defense to the obligations secured by this Mortgage, to the fullest extent permitted by law.

9. No portion of the Indebtedness secured by this Mortgage shall be deemed to be offset or compensated by all or any part of any claim, cause of action, counterclaim, or cross-claim, whether liquidated or unliquidated, that Borrower may have or claim to have against Lender.

10. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Premises, such proceeds have been advanced by Lender at Borrower's request, and Lender shall be subrogated to any and all rights, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Indebtedness, but the terms and provisions of this Mortgage shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Lender is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Lender, Borrower hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of the proceeds of the Loan or of any other secured indebtedness have been advanced for the purposes of paying the purchase price for all or a part of the Premises, no vendor's lien is waived; and Lender shall have, and is hereby granted, a vendor's lien on the Premises as cumulative additional security for the Indebtedness. Lender may foreclose under this Mortgage or under the vendor's lien without waiving the other or may foreclose under both.

11. This Mortgage also secures future advances to Borrower and obligations of Borrower to Lender, direct or indirect, absolute or contingent to the same extent as if the future obligation and/or advance were made on the date of this Mortgage.

12. Despite the existence of interests in the Premises other than those created by this Mortgage, if Borrower defaults in paying the Indebtedness, Lender shall have the right, in Lender's sole and absolute discretion, to establish the order in which the Premises will be subjected to the remedies provided in this Mortgage and to establish the order in which all or any part of the Indebtedness secured by this Mortgage is satisfied from the proceeds realized on the exercise of the remedies provided in this Mortgage. Borrower and any Person who now has or later acquires any interest in the Premises with actual or constructive notice of this Mortgage waives any and all rights to require a marshalling of assets in connection with the exercised of any of the remedies provided in this Mortgage or otherwise provided by law.

13. Borrower hereby irrevocably authorizes Lender to apply any and all amounts received by Lender in repayment of the Indebtedness first to amounts which are not guaranteed pursuant to the terms of any guaranty of the Loan and then to amounts which are guaranteed pursuant to the terms of any guaranty of the Loan.

## SCHEDULE I

# UNOFFICIAL COPY

14. Notwithstanding anything herein to the contrary, it is agreed that the maximum principal amount of the Indebtedness secured by this Mortgage, including all advancements, at any one time shall not exceed two hundred percent (200%) of the Loan Amount, and the maximum Indebtedness secured by this Mortgage shall not exceed Two Million Dollars (\$2,000,000.00).

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## SCHEDULE II

### ASSIGNMENT OF LEASES AND RENTS

1. Borrower, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby absolutely and directly (and not merely collaterally) assign, bargain, sell, transfer, convey, set over and deliver unto Lender, all rights of the lessor under all leases, tenancies, rental arrangements, license agreements, concession agreements, subleases, and guarantees of the performance or obligations of any tenants thereunder affecting the Premises, or any part thereof, now existing or which may be executed at any time in the future during the life of this Mortgage, and all amendments, extensions and renewals of said leases, subleases, license agreements, concession agreements, and guarantees and any of them, all of which are hereinafter called the "Leases," and all rents or other income or payments, regardless of type or source of payment (including but not limited to security deposits, lease termination payments refunds of any type, prepayment of rents, settlements of litigation or settlements of past due rents) which may now or hereafter be or become due or owing under the Leases and any of them, or on account of the use of the Premises, all of which are hereinafter called the "Rents". It is intended hereby to establish a present and complete transfer, and direct and absolute assignment of all the Leases and all rights of the lessor thereunder and all the Rents unto Lender, with the right, but without the obligation, to collect all of said Rents, which may become due during the life of this Mortgage. Upon written request by Lender, Borrower agrees to deposit with Lender copies of all leases of all or any portion of the Premises.

2. Borrower hereby appoints Lender the true and lawful attorney of Borrower with full power of substitution and with power for it and in its name, place and stead, to demand, collect, give receipts and releases for any and all Rents herein assigned which may be or become due and payable by the lessees and other occupants of the Premises, and at its discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Borrower or otherwise, which Lender may deem necessary or desirable in order to collect and enforce the payment of any and all Rents. Lessees of the Premises, or any part thereof, are hereby expressly authorized and directed to pay all Rents herein assigned to Lender or such nominee as Lender may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made.

3. Lender is hereby vested with full power to use all measures, legal and equitable, whether in person, by agent or by a receiver deemed by it necessary or proper to enforce this Mortgage, including the right to enter upon the Premises, or any part thereof and take possession thereof forthwith to effect the cure of any default on the part of Borrower as lessor in any of the Leases or with or without taking possession of the Premises, to collect the Rents assigned hereunder all without regard to the adequacy of any security for the Indebtedness secured by the Loan Documents.

Borrower hereby grants full power and authority to Lender to exercise all rights, privileges and powers herein granted at any and all times hereafter, without notice to Borrower, with full power to use and apply all of the Rents assigned hereunder as specified in the Loan Documents.

Notwithstanding any provision herein to the contrary, prior to an Event of Default, Lender hereby grants to Borrower the license to enforce all provisions contained in the Leases and collect and use (subject to the terms and conditions of the Loan Documents), all Rents, as the same become due and payable, but in any event for not more than one calendar month in advance, provided, however, Borrower's use of such Rents may be subject to the liability provisions of the Note. Borrower shall render such accounts of collections as Lender may reasonably require. The license herein granted to Borrower shall terminate immediately and automatically, without further action or documentation, upon an Event of Default; and upon written notice of Borrower's Event of Default at any time hereafter given by Lender to any lessee, all Rents thereafter payable and all agreements and covenants thereafter to be performed by any such lessee shall be paid and performed by such lessee directly to Lender in the same manner as if the above license had not been granted, without prosecution of any legal or equitable remedies under this Mortgage. Any lessee of the Premises or any part thereof is authorized and directed to pay to Borrower any Rent herein assigned currently for not more than one calendar month in advance, and any payment so made prior to receipt by such lessee of the aforementioned notice shall constitute a full acquittance to lessee therefore.

4. Lender shall be under no obligation to enforce any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising out of the covenants and agreements of Borrower in the Leases; and Borrower covenants and agrees that it will faithfully perform all of the obligations imposed under any and all of the Leases. All Security Deposits collected by Borrower shall be maintained in accordance with all applicable Legal Requirements and, if cash, shall be deposited by Borrower at a federally insured institution reasonably satisfactory to Lender. Except to the extent that the same is caused solely as a result of Lender's gross negligence or willful misconduct, should Lender incur any liability, loss or damage under the Leases or under or by reason of this Mortgage, or in the defense of any claims and demands whatsoever which may be

## SCHEDULE II

# UNOFFICIAL COPY

asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases, the amount thereof, including costs, expenses and reasonable attorneys' fees and costs, including reasonable attorneys' fees and costs on appeal, shall be added to the Indebtedness secured by this Mortgage.

This Mortgage shall not operate to place responsibility for the control, care, management or repair of the Premises, or parts thereof, upon Lender nor shall it operate to make Lender liable for the carrying out of any of the terms and conditions of any of the Leases, or for any waste of the Premises by the lessee under any of the Leases or any other party, or for any dangerous or defective condition of the Premises or for any negligence in the management, upkeep, repair or control thereof resulting in loss or injury or death to any lessee, licensee, employee or stranger.

5. Provided there has been no Event of Default under the Loan Documents, any amounts collected hereunder by Lender which are in excess of those applied to pay in full the aforesaid liabilities and Indebtedness at the time due shall be promptly paid to Borrower.

6. Borrower shall not permit any Person to occupy all or any part of the Premises, except pursuant to a Lease that is, and shall at all time remain, subordinate to the lien of this Mortgage. If any Person is occupying the Premises as of the date hereof, Borrower shall, at its sole cost and expense, either (i) promptly take all steps necessary to commence and thereafter diligently complete an unlawful detainer action or other similar action or proceeding necessary to evict such Person from the Premises in accordance with applicable law or (ii) promptly enter into a Lease with such Person that by its express terms is, and will at all times remain, subordinate to the lien of this Mortgage. Except for the assignment to Lender contained herein, Borrower will not make any transfer or assignment of any of the Leases, or attempt to pledge, assign or encumber any of the Leases or Rents or other amounts payable hereunder, or convey or transfer or suffer a conveyance or transfer of the Premises or of any interest therein so as to effect, directly or indirectly, a merger of the estates and rights of, or a termination or diminution of the obligations of, any lessee thereunder. Borrower further covenants to deliver to Lender, promptly upon receipt thereof, copies of any and all demands, claims and notices of default received by Borrower from any lessee under any of the Leases assigned herein. Borrower shall keep and perform all terms, conditions and covenants required to be performed by lessor under the Leases. If requested by Lender, Borrower shall enforce the Leases and all remedies available to Borrower against the lessees thereunder in case of default under the Leases by lessees.

So long as no Event of Default exists under the Loan Documents, Borrower may enter into Leases of the Premises in the normal course of business provided any such Lease of the Premises shall be and at all times remain subordinate to the lien of this Mortgage. Upon written request by Lender, Borrower shall furnish to Lender a true and complete copy of each Lease, extension, renewal, amendment, termination or modification of Lease, hereafter made by Borrower with respect to space in the Premises along with evidence satisfactory to Lender that Borrower is in compliance with the provisions of this Section 6.

7. Following the occurrence of an Event of Default, Lender may as a trustee-in-fact or agent of Borrower or in its own name as Lender and under the powers granted herein extend, modify, or terminate (to the extent permitted by law or the terms of the specific lease) any then existing leases or subleases and make new leases, which extensions, modifications or new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Premises are subject to the lien of this Mortgage and shall be binding also upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness secured by this Mortgage, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

8. It is the intention of Lender and Borrower that the assignment effectuated by this Mortgage with respect to the rents and other amounts due under the Leases shall be a direct, absolute and currently effective assignment and shall not constitute merely the granting of a lien, collateral assignment or a security interest or pledge for the purpose of securing the Indebtedness secured by this Mortgage and is effective whether or not a default occurs hereunder or under the Loan Documents. In the event that a court of competent jurisdiction determines that, notwithstanding such expressed intent of the parties, Lender's interest in the Rents or other amounts payable under the Leases constitutes a lien on or security interest in or pledge thereof, it is agreed and understood that the forwarding of a notice to Borrower after the occurrence of an Event of Default, advising Borrower of the revocation of Borrower's license to collect such Rents shall be sufficient action by Lender to (i) perfect such lien on or security interest in or pledge of the Rents, (ii) take possession thereof, and (iii) entitle Lender to immediate and direct payment of the Rents for application as provided in the Loan Documents, all without the necessity of any further action by Lender, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Premises. Notwithstanding the direct and absolute assignment of the Rents, there shall be no partial reduction of

## SCHEDULE II

# UNOFFICIAL COPY

any portion of the Indebtedness secured by this Mortgage except with respect to Rents actually received by Lender and applied by Lender toward payment of such Indebtedness.

9. Without limitation of the absolute nature of the assignment of the Rents, Borrower and Lender agree that (i) this Mortgage shall constitute a "security agreement" for purposes of 11 U.S.C. Section 552(b), (ii) the security interest created by this Mortgage extends to property of Borrower acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents, and (iii) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy. Without limitation of the absolute nature of the assignment of the Rents, to the extent Borrower (or Borrower's bankruptcy estate) shall be deemed to hold any interest in the Rents after the commencement of a voluntary or involuntary bankruptcy case, Borrower hereby acknowledges and agrees that such Rents are and shall be deemed to be "cash collateral" under Section 363 of the Bankruptcy Code. Borrower may not use the cash collateral without the consent of Lender and/or an order of any bankruptcy court pursuant to 11 U.S.C. 363(c)(2), and Borrower hereby waives any right it may have to assert that such Rents do not constitute cash collateral. No consent by Lender to the use of cash collateral by Borrower shall be deemed to constitute Lender's approval, as the case may be, of the purpose for which such cash collateral was expended.

10. Borrower acknowledges and agrees that, upon recordation of this Mortgage, Lender's interest in the Rents shall be deemed to be fully perfected, and enforced as to Borrower and all third parties, including, without limitation, any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity of (i) commencing a foreclosure action with respect to this Mortgage, (ii) furnishing notice to Borrower or tenants under the Leases, (iii) making formal demand for the Rents, (iv) taking possession of the Premises as a lender-in-possession, (v) obtaining the appointment of a receiver of the Rents and profits of the Premises, (vi) sequestering or impounding the Rents, or (vii) taking any other affirmative action.

11. Notwithstanding anything in this Mortgage to the contrary, Lender may, upon written notice to Borrower, elect to (i) exclude from the assignment provided in this Mortgage any of the Leases as specified in such notice so that the interest under such indicated Lease is not assigned to Lender, and/or (ii) subordinate the lien and other terms and provisions of this Mortgage to any of the Leases as indicated in said notice to Borrower.