

1501

Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption

CT ST 5155073

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 13-24-100-003-0000

Address:

Street: 3153 W IRVING PARK ROAD

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60618

Lender: THE NORTHERN TRUST

Borrower: VICTORIA LAND PARTNERS, L.P.

Loan / Mortgage Amount: \$4,600,000.00

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

Certificate number: 49FCC98E-E9DA-4E6B-986E-99724B90D30A

Execution date: 12/19/2014

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When recorded, mail to:

Attn: Brian Harvey  
 The Northern Trust Company  
 4370 La Jolla Village Drive, Suite 1000  
 San Diego, CA 92122

Dated as of December 17, 2014

The above space for recorder's

**MORTGAGE**

This Mortgage (as modified from time to time, the "Mortgage") has been executed by VICTORIA LAND PARTNERS, L.P., a California limited partnership, and RABA, LP, a California limited partnership (individually and collectively "Mortgagor"), in favor of The Northern Trust Company, as mortgagee (together with any successor, assign or subsequent holder, "Mortgagee"), with an office at 50 South LaSalle, Chicago, IL 60603. If more than one person or entity executes this Mortgage, the term "Mortgagor" refers to each of them individually and some or all of them collectively, and their obligations hereunder shall be joint and several. If any party comprising "Mortgagor" is a trustee(s), "Trust Agreement" means the governing trust agreement and/or instruments governing the trust, as modified from time to time, and all related documents and instruments, and "Mortgagor" also refers to the trustee(s) as such and the trust individually and collectively. Various capitalized terms used in this Mortgage have the meanings set forth in the Section of this Mortgage entitled "DEFINITIONS."

In consideration of Mortgagee's extension of new financial accommodations or continuation of existing financial accommodations to Mortgagor, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Mortgagor agrees as follows:

**1. DEFINITIONS.**

(a) As used in this Mortgage the following terms shall have the indicated meanings unless otherwise specified:

"Constituent Documents"—means the articles or certificate of incorporation, by-laws, partnership agreement, certificate of limited partnership, limited liability company operating agreement, limited liability company articles of organization, trust agreement, certificate of formation, and all other documents and instruments pertaining to the formation and ongoing existence of any person or entity which is not a natural person.

"Dollar" and "\$" means lawful money of the United States of America.

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"Event of Default"—see Section entitled "EVENTS OF DEFAULT."

"Guarantor" means PETER A. ZARCADES; THE TRUST INDENTURE OF PETER A. ZARCADES AND SANDRA RAE ZARCADES, AND ANY AMENDMENTS THERETO, DATED JULY 19, 1972; PETER A ZARCADES SEPARATE PROPERTY TRUST DATED OCTOBER 29, 1980; DAVID J. TRAKMAN; THE TRAKMAN TRUST UNDER DECLARATION OF TRUST DATED OCTOBER 18, 2007; and any person, or any persons severally, who now or hereafter guarantees payment or collection of all or any part of the Liabilities or provides any collateral for the Liabilities.

"Liabilities"—see Section entitled "LIABILITIES."

"Loan Agreement" means that certain Loan Agreement by and between Mortgagor and Mortgagee dated the date of this Mortgage.

"Mortgagee Affiliate" means Northern Trust Corporation or any direct or indirect subsidiary of Northern Trust Corporation (other than Mortgagee itself).

"Note" means the Term Note Secured by Mortgage of even date herewith executed by Mortgagor in favor of Mortgagee in the original principal amount of \$4,600,000.00, as amended, restated, renewed or replaced from time to time.

"Permitted Encumbrances" means: (i) this Mortgage; (ii) any other lien in favor of Mortgagee; (iii) liens for ad valorem taxes and special assessments not delinquent; and (ii) typical utility easements and rights of access.

"Premises"—see Section entitled "GRANT OF LIEN."

The term "person" includes both individuals and organizations.

"Rate Protection Agreement(s)" means, in each case it entered into with Mortgagee or any Mortgagee Affiliate, any agreement or understanding:

(i) pertaining to rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transaction of any combination of any of the foregoing (including any options to enter into any of the foregoing); or

(ii) which is any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, together with any related schedules and confirmations thereunder.

"Related Document(s)" means this Mortgage, the Note, and any agreement, guaranty, Rate Protection Agreement, or other document or instrument previously, now or hereafter delivered to Mortgagee in connection with the Liabilities or this Mortgage; except that the words do not mean any guaranty or environmental or other indemnity agreement, whether now or hereafter existing, executed in connection with the Liabilities.

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"Related Party(ies)" means any Guarantor, any Subsidiary, and, in addition: (i) as to any Mortgagor which is a natural person, trusts for the benefit of Mortgagor; and (ii) as to any Mortgagor which is not a natural person, to the extent applicable, any general or limited partner, controlling shareholder, joint venturer, member or manager, of Mortgagor.

"Subsidiary" means any corporation, partnership, limited liability company, joint venture, trust, or other legal entity of which Mortgagor owns directly or indirectly 50% or more of the outstanding voting stock or interest, or of which Mortgagor has effective control, by contract or otherwise.

"Trust Agreement"—see preamble.

"Unmatured Event of Default" means any event or condition that would become an Event of Default with notice or the passage of time or both.

(b) As used in this Mortgage, unless otherwise specified: the term "including" means "including without limitation;" the term "days" means "calendar days"; and terms such as "herein," "hereof" and words of similar import refer to this Mortgage as a whole. References herein to partners of a partnership, joint venturers of a joint venture, or members of a limited liability company, mean, respectively, persons or entities owning or holding partnership interests, joint venture interests, or membership interests in such partnership, joint venture or limited liability company. Unless otherwise defined herein, all terms (including those not capitalized) that are defined in the Uniform Commercial Code of Illinois shall have the same meanings herein as in such Code, as such Code may be amended from time to time. Unless the context requires otherwise, wherever used herein the singular shall include the plural and vice versa, and the use of one gender shall also denote the others. Captions herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof; references herein to sections or provisions without reference to the document in which they are contained are references to this Mortgage.

2. **GRANT OF LIEN.** Mortgagor hereby grants, bargains, sells, conveys and mortgages to Mortgagee and its successors and assigns forever, under and subject to the terms and conditions hereinafter set forth, all of Mortgagor's right, title and interest in and to the real property located in Cook County, State of Illinois described in **Exhibit A** attached hereto and by this reference incorporated herein, all or part of which is commonly known as: 3153 W. Irving Park Rd., Chicago, IL 60618 including all improvements now and hereafter located thereon, TOGETHER WITH THE FOLLOWING:

(a) all rents, issues, profits, royalties and income with respect to the said real estate and improvements and other benefits derived therefrom, subject to the right, power and authority given to Mortgagor to collect and apply same; and

(b) all right, title and interest of Mortgagor in and to all leases or subleases covering the said real estate and improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Mortgagor thereunder, including all cash or security deposits, advance rentals, and deposits or payments of similar nature; and

(c) all privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said real estate and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity,

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which Mortgagor now has or may hereafter acquire in the said real estate and improvements; and

(d) all easements, rights-of-way and rights used in connection with the said real estate and improvements or as a means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; and

(e) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the said real estate and improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said real estate and improvements; and

(f) any and all buildings and improvements now or hereafter erected on the said real estate, including all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements; and

(g) all materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately upon the delivery thereof to the said real estate; and

(h) all fixtures now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the said real estate and improvements, including all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, 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 Mortgagor and used or useful in the operation of the said real estate and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said real estate and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property owned by Mortgagor and placed by it on and in the said real estate and improvements shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code of Illinois), this Mortgage is deemed to be a security agreement under the Uniform Commercial Code of Illinois for the purpose of creating hereby a security interest in such property, which Mortgagor as debtor hereby grants to Mortgagee as secured party; and

(i) all the estate, interest, right, title, other claim or demand, including claims or demands with respect to any proceeds of insurance related thereto, which Mortgagor now has or may hereafter acquire in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said real estate and improvements or personal property, including any awards resulting from a change of grade of streets and awards for severance damages;

(j) without limiting (a)-(i), all proceeds and products of the foregoing

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(the said real estate and improvements and the property and interests described in (a) through (j) above, being collectively referred to herein as the "Premises"),

TO HAVE AND TO HOLD the same unto Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth. Without limiting any other provision hereof, Mortgagor covenants that it is lawfully seized of the Premises, that the same are unencumbered except for Permitted Encumbrances, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

3. **LIABILITIES.** The Premises shall secure the payment and performance of all obligations and liabilities of Mortgagor:

(a) to Mortgagee evidenced or arising, whether direct or indirect, absolute or contingent, now due or to become due, or now existing or hereafter arising, joint, several or joint and several, under or with respect to the Note, Rate Protection Agreements relating to the Loan Agreement or the Note, future advances (under the Note or any Rate Protection Agreements) and letters of credit issued by Mortgagee for the account of or at the request of Mortgagor and all reimbursement obligations arising therefrom;

(b) to any Mortgagee Affiliate under or in connection with Rate Protection Agreements relating to the Note and letters of credit issued by any Mortgagee Affiliate for the account of or at the request of Mortgagor and all reimbursement obligations arising therefrom; and

(c) to Mortgagee or any Mortgagee Affiliate under or in connection with: (i) Related Documents; (ii) any expenses (including attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee or any Mortgagee Affiliate, in each case whether in or out of court, in original or appellate proceedings or in bankruptcy) incurred or paid by Mortgagee or any Mortgagee Affiliate in connection with the enforcement or preservation of its rights hereunder or under any Related Document; and (iv) interest accruing after filing of a petition in bankruptcy;

(d) to Mortgagee as to all sums advanced by Mortgagee to perform any of the terms, covenants and provisions of this Mortgage or any of the Related Documents, or otherwise advanced by Mortgagee pursuant to the provisions hereof or thereof to protect the property hereby mortgaged and pledged; and

(e) This Mortgage specifically does not secure any guaranties by any Guarantor or any environmental or other indemnity agreement executed in favor of Mortgagee.

(any or all obligations and liabilities described in the foregoing portion of this Section, the "Liabilities"). This Mortgage shall continue and remain in effect notwithstanding that at any particular time there may be no Liabilities outstanding. Notwithstanding the foregoing, if Mortgagor is a natural person the Premises shall not secure any Liabilities subject to Regulation Z of the Federal Reserve Board unless the Truth in Lending disclosure pertaining to such Liabilities discloses the Premises as security for such Liabilities.

**THE TOTAL AMOUNT OF INDEBTEDNESS SECURED HEREBY SHALL NOT EXCEED NINE MILLION TWO HUNDRED THOUSAND DOLLARS (\$9,200,000.00) OUTSTANDING AT ANY ONE TIME, PLUS INTEREST THEREON.**

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4. [Intentionally Deleted]

5. **REPRESENTATIONS.**

(a) Mortgagor represents and warrants to Mortgagee that:

(i) Mortgagor's exact complete legal name is as set forth in the preamble hereto. If Mortgagor is an organization: Mortgagor's type of organization and jurisdiction of organization or formation are as set forth in the preamble hereto; Mortgagor's place of business or, if Mortgagor has more than one place of business, Mortgagor's chief executive office, is at Mortgagor's address set forth in the preamble hereto; and Mortgagor has never been organized or formed in any jurisdiction other than the jurisdiction set forth in the preamble hereto. If Mortgagor is a natural person, Mortgagor's principal residence is at Mortgagor's address set forth in the preamble hereto. Except as and if specifically disclosed by Mortgagor to Mortgagee IN WRITING prior to the execution hereof, during the five (5) years and six months prior to the date hereof:

(A) Mortgagor has not been known by any legal name different from the one set forth in the preamble hereto nor has Mortgagor been the subject of any merger, consolidation, or other corporate or organizational reorganization.

(B) If Mortgagor is a natural person, Mortgagor's principal place of residence has been at Mortgagor's address set forth in the preamble hereto.

(ii) Mortgagor (if Mortgagor is not a natural person) and any Subsidiary are validly existing and in good standing under the laws of their state of organization or formation, and are duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so might have a material adverse impact on the assets, condition or prospects of Mortgagor. The execution, delivery and performance of this Mortgage and all Related Documents are within Mortgagor's powers and have been authorized by all necessary action required by law and (unless Mortgagor is a natural person) Mortgagor's Constituent Documents.

(iii) The execution, delivery and performance of this Mortgage and all Related Documents have received any and all necessary governmental approval, and do not and will not contravene or conflict with any provision of law, any Constituent Document or any agreement affecting Mortgagor or its property.

(iv) There has been no material adverse change in the business, condition, properties, assets, operations or prospects of Mortgagor or any Related Party since the date of the latest financial statements provided by or on behalf of Mortgagor or any Related Party to Mortgagee.

(v) No financing statement, mortgage, notice of judgment or any similar instrument (unless filed on behalf of Mortgagee) covering any Premises is on file in any public office, except as pertains to Permitted Encumbrances.

(vi) Mortgagor is the lawful owner of and has rights in or power to transfer all Premises, free and clear of all liens, pledges, charges, mortgages, and claims other than any in favor of Mortgagee, except for Permitted Encumbrances.

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(vii) Mortgagor has filed or caused to be filed all federal, state, and local tax returns that are required to be filed, and has paid or has caused to be paid all of its taxes, including any taxes shown on such returns or on any assessment received by it, to the extent that such taxes have become due.

(viii) If Mortgagor is not a natural person: (A) the execution, delivery and performance of this Mortgage and all Related Documents are in Mortgagor's best interest in its current and future business operations and will materially benefit Mortgagor; (B) Mortgagor has received adequate, fair and valuable consideration, and at least reasonably equivalent value, to enter into and perform this Mortgage and all Related Documents; (C) Mortgagor's assets at fair valuation exceed the sum of Mortgagor's debts; (D) Mortgagor is able to pay its debts as they become due; and (E) Mortgagor does not have unreasonably small capital with which to conduct its business.

(b) The request or application for any Liabilities by Mortgagor shall be a representation and warranty by Mortgagor as of the date of such request or application that: (i) no Event of Default or Unmatured Event of Default has occurred and is continuing as of such date; and (ii) Mortgagor's representations and warranties herein and in any Related Document are true and correct as of such date as though made on such date.

6. **COVENANTS.** Mortgagor agrees to comply with the following covenants so long as this Mortgage remains in effect:

(a) Mortgagor shall pay and perform all Liabilities when due.

(b) Mortgagor shall provide to Mortgagee, at such times and in such form as Mortgagee shall from time to time require:

(i) a "rent roll" and other information concerning any and all leases, rentals and tenants of any or all of the Premises;

(ii) copies of all assessments, bills and other information pertaining to any and all ad valorem and other taxes and Impositions on or pertaining to any or all of the Premises; and

(iii) without limiting any provision of any other Related Document executed in connection herewith, annual financial statements of Mortgagor and any Guarantor, and separate annual financial statements (including cash flow statements) for the Premises. Any and all of such shall be fully audited, reviewed, or compiled as Mortgagee shall from time to time require.

(c) Mortgagor shall at all times provide, maintain and keep in force such insurance in such amounts and against such risks on or pertaining to the Premises as Mortgagee shall from time to time reasonably request, and in any event including:

(i) during construction (if any), all-risks package of builder's risk insurance, including owner's, contractor's, and employer's liability insurance, workmen's compensation insurance, and physical damage insurance;



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(ii) insurance against loss by fire, risks covered by the so-called extended coverage endorsement, and other risks as Mortgagee may reasonably require, in amounts equal to not less than one hundred percent (100%) of the full replacement value of the Premises;

(iii) public liability insurance against bodily injury and property damage with such limits as Mortgagee may require;

(iv) steam boiler, machinery, and other insurance of the types and in amounts as Mortgagee may require, but in any event not less than customarily carried by persons owning or operating like properties; and

(v) if the Premises are located in an area that has been identified by the United States Department of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 or other applicable law or regulation, flood insurance in an amount at least equal to the replacement cost of any improvements on the Premises or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968 or such other applicable law or regulation, whichever is less.

All insurance policies required hereby ("Policies") shall:

(A) contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the Policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against Mortgagor;

(B) provide that the amount payable for any loss shall not be reduced by reason of co-insurance;

(C) be issued by companies and in amounts in each company reasonably satisfactory to Mortgagee;

(D) name Mortgagor and Mortgagee as insureds, as their respective interests may appear, and have attached thereto a mortgagee's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee.

Mortgagor shall furnish Mortgagee with certificates of insurance in form and substance satisfactory to Mortgagee. Not less than 5 days prior to the date the premium is due for each Policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of the premium. Not less than 30 days prior to the expiration of any certificate of insurance required to be delivered hereunder, Mortgagor shall furnish Mortgagee with a replacement certificate and/or other evidence satisfactory to Mortgagee of the extension and continuance in force of the insurance coverage. Each Policy shall contain a provision that such policy will not be cancelled, amended or reduced in amount or scope without at least 30 days' prior written notice to Mortgagee.

(d) Mortgagor agrees to pay or cause to be paid prior to delinquency all real property taxes and assessments, general and special, and all other taxes and assessments of any kind

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or nature whatsoever, including any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Premises, which are assessed or imposed upon the Premises, or become due and payable, and which create, may create or appear to create a lien upon the Premises, or any part thereof (all of such taxes, assessments and other governmental and non-governmental charges of the above-described or like nature are hereinafter referred to as "Impositions"). Mortgagor shall furnish Mortgagee upon request official receipts evidencing payment thereof. Mortgagor may before any delinquency occurs contest or object to the amount or validity of any Imposition in good faith by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay the collection of the contested Impositions and prevent the sale or forfeiture of the Premises to collect the same; no such contest or objection shall relieve, modify or extend Mortgagor's covenants to pay any such Imposition prior to delinquency unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to so contest or object, and unless, at Mortgagee's sole option, Mortgagor shall furnish a bond or surety in an amount and form as requested by and satisfactory in all respects to Mortgagee.

(e) If requested by Mortgagee, in order to provide moneys for the payment of the Impositions and the premiums on the Policies, Mortgagor shall pay to Mortgagee on a monthly basis on such date(s) as Mortgagee shall require such amount as Mortgagee shall estimate will be required to accumulate, by the date 30 days prior to the due date of the next annual installment of such Impositions and premiums, through substantially equal monthly payments by Mortgagor to Mortgagee, amounts sufficient to pay such next annual Impositions and insurance premiums. Mortgagee shall hold all such payments in escrow, without interest unless required by law. Such amounts held in escrow shall be made available to Mortgagor for the payment of the Impositions and insurance premiums when due, or may be applied thereto directly by Mortgagee if it in its sole discretion so elects.

(f) Mortgagor shall:

(i) keep the Premises, including any sidewalk, road, parking or landscape located thereon, in good condition, repair and order, and free of nuisance;

(ii) not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or governmental regulations) any improvements which are part of the Premises;

(iii) Subject to (f) of this Section, promptly repair and restore any portion of the Premises which may become damaged or be destroyed so as to be of at least equal value and of substantially the same character as prior to such damage or destruction;

(iv) subject to any right to contest set forth herein, pay when due all claims for labor performed and materials furnished to and for the Premises;

(v) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Premises or any part thereof or requiring any alterations or improvements;

(vi) not commit or permit any waste or deterioration of the Premises;

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(vii) not commit, suffer or permit any act to be done in or upon the Premises in violation of any law, ordinance or regulation;

(viii) not initiate or acquiesce in any zoning change or reclassification of the Premises;

(ix) pay all utilities incurred for the Premises; and

(x) keep the Premises free and clear of all liens and encumbrances of every sort except Permitted Encumbrances.

(g) As to any damage to or destruction of the Premises:

(i) Mortgagor shall give Mortgagee prompt written notice of any damage to or destruction of any portion or all of the Premises. If and to the extent Mortgagee so consents in writing, losses covered by insurance may be settled and adjusted by Mortgagor. In all other cases, Mortgagee at its option may settle and adjust any insurance claim without the consent of Mortgagor. In any case Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses so incurred by Mortgagee shall be so much additional indebtedness secured by this Mortgagee, and shall be reimbursed to Mortgagee upon demand.

(ii) In the event of any insured damage to or destruction of the Premises or any part thereof the proceeds of insurance payable as a result of such loss shall be applied upon the Liabilities or applied to the repair and restoration of the Premises, as Mortgagee in its sole discretion shall elect.

(iii) If Mortgagee shall elect that proceeds of insurance are to be applied to the repair and restoration of the Premises, Mortgagor hereby covenants promptly to repair and restore the same in such manner as Mortgagee may require; if insurance proceeds are not sufficient to pay for the full repair and restoration costs, Mortgagor shall pay such amounts out of its own funds. Mortgagee shall reimburse Mortgagor for costs incurred in repair and restoration in such manner as it shall deem fit, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens except Permitted Encumbrances.

(h) As to any "condemnation" of the Premises:

(i) If the Premises or any part thereof or interest therein are taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Mortgagor receive any notice or other information regarding any such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee.

(ii) Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All proceeds of compensation, awards, damages, rights of action and proceeds awarded to Mortgagor (all such, "Condemnation Awards") are hereby assigned to

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Mortgagee and Mortgagor agrees to execute such further assignments of the Condemnation Awards as Mortgagee may require.

(iii) All Condemnation Awards shall be applied upon the Liabilities or applied to the repair and restoration of the Premises, as Mortgagee in its sole discretion shall elect.

(iv) If Mortgagee shall elect that Condemnation Awards are to be applied to the repair and restoration of the Premises, Mortgagor hereby covenants promptly to repair and restore the same in such manner as Mortgagee may require; if the Condemnation Awards are not sufficient to pay for the full repair and restoration costs, Mortgagor shall pay such amounts out of its own funds. Mortgagee shall reimburse Mortgagor for costs incurred in repair and restoration in such manner as it shall deem fit, and at all times the undisbursed balance of Condemnation Awards remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens except Permitted Encumbrances.

(i) Mortgagee and its agents are authorized to enter at any time upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts Mortgagee is authorized to perform under the terms of this Mortgage or any of the Related Documents. Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the Premises and shall make such books and records and all supporting vouchers and data available for examination by Mortgagee and its agents at any time during normal business hours, and from time to time on request at the offices of Mortgagee, or at such other location as may be mutually agreed upon.

(j) Without limiting any other provision hereof or of any Related Document, Mortgagor agrees to provide, cooperate with, and pay for the full cost of any appraisal, environmental audit, report or study, or the like of or pertaining to the Premises or any portion thereof which Mortgagee in its sole discretion may require from time to time.

(k) Except for Permitted Encumbrances, Mortgagor shall not create, suffer or permit to be created or filed against the Premises, or any part thereof or interest therein, any mortgage lien, security interest, or other lien, charge or encumbrance, either superior or inferior to the lien of this Mortgage without the express written consent of Mortgagee. Mortgagor may contest in good faith and by appropriate proceedings the validity of any such lien, charge or encumbrance, if, as preconditions: (i) Mortgagor shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amounts or form as Mortgagee shall require, and (ii) Mortgagor shall diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien, by depositing in court a bond for the amount claimed, or otherwise giving security for such claim, or in such manner as is or may be prescribed by law, and any amounts expended by Mortgagee in so doing shall be payable by Mortgagor upon demand by Mortgagee, together with interest at two percent (2%) in addition to the interest rate on the Note from the date of demand to the date of payment, and shall be so much additional indebtedness secured by this Mortgage. If title to the Premises is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein upon the creation of any lien against the Premises shall also be construed as a similar prohibition or limitation against the creation of any lien or security interest upon the beneficial interest under such trust.

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(l) If any documentary stamp, intangible, recording or other tax or fee becomes due in respect of the Liabilities or this Mortgage or the recording thereof, Mortgagor shall pay such amount in the manner required by law.

(m) Mortgagor shall keep at its address for notices hereunder its records concerning the Premises, which records shall be of such character as will enable Mortgagee to determine at any time the status of the Premises. Mortgagor shall permit Mortgagee from time to time to inspect, audit, and make copies of, and extracts from, all records and all other papers in the possession or control of Mortgagor pertaining to the Premises.

### 7. DEPOSIT OF GROSS REVENUES.

(a) Until such time as all of the principal of and interest on the Note and all other amounts coming due under this Mortgage and the other Related Documents have been paid in full, if Mortgagee so requests Mortgagor shall deposit all income and receipts with respect to the Premises, including all base rent, additional rent, security deposits and other amounts paid by tenants of the Premises (collectively, "Gross Revenues"), promptly upon receipt thereof, into a bank account maintained by Mortgagor with Mortgagee.

(b) If any Event of Default shall occur and be continuing under this Mortgage or any of the other Related Documents, Mortgagor shall cause all Gross Revenues to be applied immediately upon receipt thereof to the payment of the principal of and interest on the Note and other amounts due under the Related Documents. Mortgagor shall indemnify Mortgagee with respect to any Gross Revenues which after the occurrence and during the continuance of any Event of Default under this Mortgage or any of the other Related Documents are not applied to the payment of the principal of and interest on the Note and other amounts due under the Related Documents as required by the foregoing provisions of this Section. Nothing contained in this Section shall be construed to relieve Mortgagor of the obligation to pay the principal of and interest on the Note and other amounts due under the Related Documents when and as same come due in accordance with the terms of the Note and the other Related Documents in the event that the Gross Revenues are not sufficient for the payment thereof when due.

### 8. EVENTS OF DEFAULT. Each of the following shall constitute an "Event of Default":

(a) (i) failure to pay, when and as due, any principal payable on any of the Liabilities; (ii) failure to pay, when and as due, any interest or other amounts payable on any of the Liabilities; or (iii) failure to comply with or perform any agreement or covenant of Mortgagor contained herein or in any Related Document, which failure does not otherwise constitute an Event of Default, subject to any applicable notice, grace or cure period; or

(b) any default, event of default, or similar event shall occur or continue under any Related Document, and shall continue beyond any applicable notice, grace or cure period set forth in such Related Document; or

(c) there shall occur any default or event of default, any similar event, any event that requires the prepayment of borrowed money or permits the acceleration of the maturity thereof, or any event or condition that might become any of the foregoing with notice or the passage of time or both, under the terms of any evidence of indebtedness or other agreement issued or assumed or entered into by Mortgagor or any Related Party, or under the terms of any document or instrument under which any such evidence of indebtedness or other agreement is

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issued, assumed, secured, or guaranteed, and such event shall continue beyond any applicable notice, grace or cure period; or

(d) any representation, warranty, certificate, financial statement, report, notice, or other writing furnished by or on behalf of Mortgagor or any Related Party to Mortgagee is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified; or

(e) this Mortgage or any Related Document, including any guaranty of or pledge of collateral security for the Liabilities, shall be repudiated or shall become unenforceable or incapable of performance in accord with its terms; or

(f) Mortgagor or any Related Party (in each case if not a natural person) shall fail to maintain their existence in good standing in their state of organization or formation or shall fail to be duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so would reasonably be expected to have a material adverse impact on the assets, condition or prospects of Mortgagor or any Related Party; or

(g) Mortgagor or any Related Party shall die, be declared legally incompetent, dissolve, liquidate, merge, consolidate, or cease to be in existence for any reason; or, if Mortgagor is a partnership or joint venture, any general or limited partner or joint venturer of Mortgagor shall withdraw from Mortgagor, or any general partner shall become a limited partner; or the trust under the Trust Agreement shall terminate in whole or in part or be the subject of a distribution of other than income but, in the case of a distribution, only if such distribution would otherwise cause an Event of Default or Unmatured Event of Default to occur; or

(h) any person or entity presently not in control of a Mortgagor or Related Party which is not a natural person shall obtain control directly or indirectly of such a Mortgagor or Related Party, whether by purchase or gift of stock or assets, by contract, or otherwise; or

(i) any proceeding (judicial or administrative) shall be commenced against Mortgagor or any Related Party, or with respect to any of their assets, which would reasonably be expected to have a material and adverse effect on the ability of Mortgagor to repay the Liabilities; or a judgment or settlement shall be entered or agreed to in any such proceeding which would reasonably be expected to have a material and adverse effect on the ability of Mortgagor to repay the Loan evidenced by the Related Documents; or any garnishment, summons, writ of attachment, citation, levy or the like is issued against or served upon Mortgagee for the attachment of any property of Mortgagor or any Related Party in Mortgagee's possession or control; or

(j) Except for Permitted Encumbrances, Mortgagor shall grant or any person (other than Mortgagee) shall obtain or perfect a mortgage or other lien on the Premises; Mortgagee shall not have a lien or security interest in the Premises or other assets constituting security for the Liabilities, of first-priority except as allowed hereby or by the related collateral documents, and enforceable in accord with this Mortgage (as to the Premises) or the related collateral documents (as to such other assets); or any notice of a federal tax lien against Mortgagor or any Related Party shall be filed with any public recorder; or

(k) there shall be any material loss or depreciation in the value of any Premises or any other collateral for the Liabilities for any reason; or Mortgagee shall otherwise reasonably deem itself insecure; or

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(l) **DUE ON SALE CLAUSE:** Except as specifically permitted by the Loan Agreement in connection with a one-time transfer of the Premises to a limited liability company controlled by, and to remain in control of, Peter A. Zarcades as described therein, in form and substance acceptable to Mortgagee, Mortgagor shall sell, transfer, convey or assign the title to all or any portion of the Premises, or in the event any beneficiary of Mortgagor (if Mortgagor is a land trust) shall sell, transfer, convey or assign any beneficial interest under the Trust by which Mortgagor was created (including a collateral assignment thereof), in either case whether by operation of law, voluntarily, or otherwise, or Mortgagor or such a beneficiary shall contract to do any of the foregoing; or Mortgagor or any other person or entity shall grant, or any person other than Mortgagee shall obtain, a security interest in or mortgage or other lien or encumbrance upon the Premises; Mortgagor or any other person shall perfect (or attempt to perfect) such a security interest or encumbrance; a court shall determine that Mortgagee does not have a first-priority mortgage and security interest in the Premises enforceable in accordance with the terms hereof;

(m) any bankruptcy, insolvency, reorganization, arrangement, readjustment, liquidation, dissolution, or similar proceeding, domestic or foreign, is instituted by or against Mortgagor or any Related Party, and, if instituted against Mortgagor or any Related Party, shall not be dismissed or vacated within sixty (60) days after the filing or other institution thereof; or

(n) Mortgagor or any Related Party shall become insolvent, generally shall fail or be unable to pay its debts as they mature, shall admit in writing its inability to pay its debts as they mature, shall make a general assignment for the benefit of its creditors, shall enter into any composition or similar agreement, or shall suspend the transaction of all or a substantial portion of its usual business.

Anything in the Events of Default stated above notwithstanding, a one-time transfer of the Premises to a limited liability company controlled by, and to remain in control of, Peter A. Zarcades as described in the Loan Agreement in form and substance acceptable to Mortgagee, shall not constitute an Event of Default.

### 9. DEFAULT REMEDIES.

(a) Notwithstanding any provision of any document or instrument evidencing or relating to any Liability: (i) upon the occurrence of any Event of Default specified in (a)-(l) of the Section entitled "EVENTS OF DEFAULT," Mortgagee at its option may declare the Liabilities immediately due and payable without notice or demand of any kind (except as and if otherwise specifically set forth herein); and (ii) upon the occurrence of an Event of Default specified in (m)-(n) of the Section entitled "EVENTS OF DEFAULT," the Liabilities shall be immediately and automatically due and payable without action of any kind on the part of Mortgagee.

(b) Upon the occurrence of any Event of Default, Mortgagee may exercise any rights and remedies under this Mortgage (including as set forth below in this Section), any Related Document, at law or in equity, and, without limiting the foregoing or any other provision hereof, may: (i) either in person or by agent, with or without bringing any action or proceeding, if applicable law permits, enter upon and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof. Mortgagee shall be entitled to exercise every right provided for in this Mortgage or any of the Related Documents or by law upon occurrence

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of any Event of Default; or (ii) commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; or (iii) exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of Illinois, and any notice of sale, disposition or other intended action by Mortgagee, sent to Mortgagor at its address specified herein, at least five (5) days prior to such action, shall constitute reasonable notice to Mortgagor.

(c) When the Liabilities, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Liabilities or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Liabilities, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, any of the Related Documents or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage and immediately due and payable with interest thereon at a rate equal to two percent (2%) in addition to the rate on the Note. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

(d) The proceeds of any foreclosure sale of the Premises or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in (c) of this Section; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as therein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any excess to Mortgagor, its successors or assigns, as their rights may appear.

(e) Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises or any portion thereof. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises, and Mortgagee or any holder of the Note may be appointed as such receiver. Such receiver shall have power (i) to collect the Gross Revenues during the pendency of such foreclosure suit, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (ii) power to extend or modify any then existing leases and to make new leases, which extension, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured by this Mortgage and beyond the date of the issuance of a deed or deeds



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to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Mortgage, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may 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 hands in payment in whole or in part of the indebtedness secured by this Mortgage, or found due or secured by any judgment foreclosing this Mortgage or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale.

(f) In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in repairing and restoring the Premises, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

(g) Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the Related Documents or other Mortgage or any laws now or hereafter in force, notwithstanding that some or all of the said 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 herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this Mortgage or any of the Related Documents to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by Mortgagee; Mortgagee may pursue inconsistent remedies. Failure by Mortgagee to exercise any right which it may exercise hereunder, or the acceptance by Mortgagee of partial payments, shall not be deemed a waiver by Mortgagee of any default or of its right to exercise any such rights thereafter.

(h) Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession.

(i) To the extent permitted by applicable law, Mortgagor agrees that it shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but rather waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor hereby expressly waives any and all rights of

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redemption from sale or from or under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of Mortgagor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the Premises are located.

10. **RIGHTS OF MORTGAGEE.** If Mortgagor fails to make any payment or to do any act as and in the manner provided herein or in any of the Related Documents, Mortgagee in its own discretion, without obligation so to do and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation:

- (a) to enter upon and take possession of the Premises;
- (b) to make additions, alterations, repairs and improvements to the Premises which it may consider necessary and proper to keep the Premises in good condition and repair;
- (c) to appear and participate in any action or proceeding affecting or which may affect the Premises, the security hereof or the rights or powers of Mortgagee;
- (d) to pay any Impositions asserted against the Premises and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition;
- (e) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Mortgagee may affect or appears to affect the Premises or the security of this Mortgage or which may be prior or superior hereto; and
- (f) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to inside and outside counsel or other necessary or desirable consultants, contractors, agents and other employees.

Mortgagor irrevocably appoints Mortgagee its true and lawful attorney in fact, at Mortgagee's election, to do and cause to be done all or any of the foregoing in the event Mortgagee shall be entitled to take any or all of the action provided for in this Section. Mortgagor shall immediately, upon demand therefor by Mortgagee, pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including, costs of evidence of title, court costs, appraisals, surveys, attorney's fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, in each and every case whether in or out of court, in original or appellate proceedings or in bankruptcy, all of which shall constitute so much additional indebtedness secured by this Mortgage immediately due and payable, with interest thereon at a rate equal to two percent (2%) in addition to the interest rate on the Note.

11. **ESTOPPEL LETTERS.** Mortgagor shall furnish from time to time within 15 days after Mortgagee's request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

12. **DECLARATION OF SUBORDINATION TO LEASES.** At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to

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priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases and subleases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of the county wherein the Premises are situated, of a unilateral declaration to that effect.

13. **OBLIGATIONS UNCONDITIONAL.** Except as and if otherwise specifically set forth herein, Mortgagor irrevocably waives presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration, demand, diligence, grace, notice of dishonor or default, notice of nonpayment, notice of acceptance, notice of any loans made, extensions granted or other action taken in reliance hereon, and all other demands and notices of any kind in connection with this Mortgage or the Liabilities.

14. **ENVIRONMENTAL MATTERS.** Without limiting Mortgagor's obligations under any provision of any environmental indemnity agreement or other Related Document:

(a) Mortgagor covenants, represents and warrants that:

(i) no substances, including asbestos or any substance containing more than 0.1 percent asbestos, the group of compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances ("Hazardous Materials") (any mixture of a Hazardous Material, regardless of concentration, with other materials shall be considered a Hazardous Material) under any Hazardous Material Law (as defined below) have been or shall be installed, used, generated, manufactured, treated, handled, refined, produced, processed, stored or disposed of, or otherwise present in, on or under the Premises. This provision does not prohibit (1) the use of unrecycled fuel oil as a boiler fuel; (2) the normal use of consumer products; or (3) the normal use of materials such as cleaning products, copier toner, and similar materials routinely used in offices. "Hazardous Material Law(s)" means any law, regulation, order or decree relating to environmental conditions and industrial hygiene, including, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601-2629, the Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and all similar federal, state and local environmental statutes and ordinances and the regulations, orders, and decrees now or hereafter promulgated thereunder.

(ii) No activity has been or shall be undertaken on the Premises which would cause: (A) the Premises to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Premises within the ambit of, RCRA or any other Hazardous Material Law; (B) a release or threatened release of Hazardous Material from the Premises within the meaning of, or otherwise bring the Premises within the ambit of, CERCLA or SARA or any other Hazardous Material Law; or (C) the discharge of Hazardous Material into any watercourse, body of surface or subsurface water or wetland, or the discharge into the atmosphere of any Hazardous Material which would require a permit under any Hazardous Material Law.

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(iii) No activity has been or shall be undertaken with respect to the Premises which would cause a violation of or support a claim under any Hazardous Material Law.

(iv) No underground storage tanks or underground Hazardous Material deposits are or were located on the Premises and subsequently removed or filled.

(v) No investigation, administrative order, litigation or settlement with respect to any Hazardous Materials is threatened or in existence with respect to the Premises.

(vi) No notice has been served on Mortgagor from any entity, governmental body, or individual claiming any violation of any Hazardous Material Law, or requiring compliance with any Hazardous Material Law, or demanding payment or contribution for environmental damage or injury to natural resources.

(b) Mortgagor agrees unconditionally to indemnify, defend, and hold Mortgagee harmless against any

(i) loss, liability, damage, expense (including attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, in each and every case whether in or out of court, in original or appellate proceedings or in bankruptcy), claim or defect in title arising from the imposition or recording of a lien, the incurring of costs of required repairs, clean up or detoxification and removal under any Hazardous Material Law with respect to the Premises, or liability to any third party arising out of any violation of any Hazardous Material Law; and

(ii) other loss, liability, damage, expense (including attorneys' fees, legal costs and expenses, and time charge of attorneys who may be employees of Mortgagee, in each and every case whether in or out of court, in original or appellate proceedings or in bankruptcy), or claim which may be incurred by or asserted against Mortgagee, including loss of value of the Premises directly or indirectly resulting from the presence on or under, or the discharge, emission or release from, the Premises into or upon the land, atmosphere, or any watercourse, body of surface or subsurface water or wetland, arising from the installation, use, generation, manufacture, treatment, handling, refining, production, processing, storage, removal, clean up or disposal of any Hazardous Material, whether or not caused by Mortgagor.

(c) Mortgagor shall pay when due any judgments or claims for damages, penalties or otherwise against Mortgagee, and shall assume the burden and expense of defending all suits and proceedings of any description with all persons, political subdivisions or government agencies arising out of the occurrences set forth in (b) of this Section. In the event that such payment is not made Mortgagee, at its sole discretion, may proceed to file suit against Mortgagor to compel such payment.

(d) THIS SECTION SHALL APPLY TO ANY CLAIM, DEMAND OR CHARGE CONTEMPLATED BY THIS MORTGAGE MADE OR ASSERTED AT ANY TIME, AND, WITHOUT LIMITATION, SHALL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THAT ALL OBLIGATIONS OF THE MORTGAGOR AND ANY OTHER PERSON OR ENTITY UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY RELATED DOCUMENT OR MATTER HAVE BEEN PAID, RELEASED OR FULFILLED IN FULL. Any claim, demand or charge asserted at any time relating to the period of time set forth in this paragraph shall be subject to the terms and conditions of this Mortgage. Notwithstanding

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the above, this Mortgage shall not be construed to impose any liability on Mortgagor for divisible loss or damage resulting solely from Hazardous Material placed, released or disposed on the Premises after foreclosure or sale of the Premises pursuant to the agreement or acceptance by Mortgagee of a deed in lieu of foreclosure.

- (e) Mortgagor shall immediately advise Mortgagee in writing of
- (i) any governmental or regulatory actions instituted or threatened under any Hazardous Material Law affecting the Premises or the matters indemnified hereunder including any notice of inspection, abatement or noncompliance;
  - (ii) all claims made or threatened by any third party against Mortgagor or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material;
  - (iii) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises to be classified in a manner which may support a claim under any Hazardous Material Law; and
  - (iv) Mortgagor's discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject Mortgagor or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Material Law. Mortgagor shall immediately deliver to Mortgagee any documentation or records as Mortgagee may request in connection with all such notices, inquiries, and communications, and shall advise Mortgagee promptly in writing of any subsequent developments.

(f) Mortgagee shall give written notice to Mortgagor of any action against Mortgagee which might give rise to a claim by Mortgagee against Mortgagor under this Section. If any action is brought against Mortgagee, Mortgagor, at Mortgagee's sole option and Mortgagor's expense, may be required to defend against such action with counsel satisfactory to Mortgagee and, with Mortgagee's sole consent and approval, to settle and compromise any such action. However, Mortgagee may elect to be represented by separate counsel, at Mortgagor's expense, and if Mortgagee so elects any settlement or compromise shall be effected only with the consent of Mortgagee. Mortgagee may elect to join and participate in any settlements, remedial actions, legal proceedings or other actions included in connection with any claims under this Mortgage.

**15. FIXTURE FILING.** Mortgagor and Mortgagee agree, to the extent permitted by law, that:

- (a) All of the goods described in Section 2(h) herein as fixtures are or are to become fixtures on the real property described in Exhibit A.
- (b) This instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Uniform Commercial Code of Illinois; and
- (c) Mortgagor is the record owner of the real property described in Exhibit A.

**16. FURTHER PROVISIONS.**

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(a) The recitals hereto are hereby made a part of this Mortgage. All the covenants hereof shall run with the land. Time is of the essence of this Mortgage and of each and every provision hereof.

(b) To the extent that proceeds of the indebtedness secured by this Mortgage are used to pay an outstanding lien, charge or prior encumbrance against the Premises, Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, and shall have the benefit of the priority thereof, irrespective of whether said liens, charges or encumbrances are released.

(c) Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the judgment of Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired.

(d) No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Liabilities.

(e) If the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured by this Mortgage, or if such lien is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the indebtedness secured by this Mortgage shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the indebtedness secured by this Mortgage, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Mortgage.

(f) Nothing herein or in any Related Document contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively: (i) to require Mortgagor to pay interest at a rate greater than is lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate; or (ii) to require Mortgagor to make any payment or do any act contrary to law; and if any provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and Mortgagee shall be given a reasonable time to correct any such error.

(g) In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from the covenants and/or undertakings hereunder, and without Mortgagee waiving its rights to accelerate the Liabilities as set forth herein.

(h) Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Premises, or any person liable for any indebtedness secured hereby, without in any

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way affecting the liability of any party to this Mortgage or any Related Documents and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability of any person or entity personally obligated for any Liabilities, but shall extend the lien hereof as against the title of all parties having interest in said security which interest is subject to the indebtedness secured by this Mortgage.

**17. NOTICES.** Except for any notice, request or demand required by governmental regulation to be given in another manner, (a) all notices, requests or demands required or permitted hereunder shall be in writing; (b) each notice, request or demand shall be sent (i) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (ii) by certified United States mail, postage prepaid, return receipt requested; or (iii) by nationally recognized overnight delivery service, marked for next-business-day delivery; and (c) all notices, requests or demands shall be addressed to the appropriate party at its address as follows or such other addresses as may be designated by notice given in compliance with this provision:

**Mortgagee:** THE NORTHERN TRUST COMPANY  
Attention: Credit Administration Team  
IL-CD-BB-11  
50 South La Salle  
Chicago, Illinois 60603

**Mortgagor:** VICTORIA LAND PARTNERS, L.P. and RABA, LP  
Attn: David Trakman  
9171 Towne Center Drive, Suite 335  
San Diego, California 92122

A notice, request or demand will be deemed effective on the earliest of (a) actual receipt; (b) rejection of delivery; or (c) if sent by certified mail, the third day on which regular United States mail delivery service is provided after the day of mailing or, if sent by overnight delivery service, on the next day on which such service makes next-business-day deliveries after the day of sending.

To the extent permitted by governmental regulation, if there is more than one Mortgagor, a notice, request or demand to any Mortgagor shall constitute a notice, request or demand to all Mortgagors. For these purposes, Mortgagor agrees to keep Mortgagee informed at all times of Mortgagor's current address(es).

**18. MISCELLANEOUS.** Except as and if otherwise specifically agreed in any Related Document pertaining to collateral for the Liabilities, and only as to such Related Document, and to the extent, if any, that the UCC or other law provides for the application of the law of a different State, this Mortgage and the Related Documents shall be: (i) governed by and construed in accordance with the internal law of the State of Illinois; and (ii) deemed to have been executed in the State of Illinois. This Mortgage shall bind Mortgagor, its(their)(his)(her) heirs, trustees (including successor and replacement trustees), executors, personal representatives, successors and assigns, and shall inure to the benefit of Mortgagee, its successors and assigns, except that Mortgagor may not transfer or assign any rights or obligations hereunder without the prior written consent of Mortgagee. If an Event of Default has

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## MORTGAGE

occurred and is continuing, Mortgagor agrees to pay upon demand all expenses (including attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, in each case whether in or out of court, in original or appellate proceedings or in bankruptcy) incurred or paid by Mortgagee or any holder hereof in connection with the enforcement or preservation of its rights hereunder or under any Related Document or under any document or instrument executed in connection herewith or therewith. If there shall be more than one person or entity constituting Mortgagor, each of them shall be primarily, jointly and severally liable for all obligations hereunder. To the maximum extent permitted by applicable law, Mortgagee is hereby authorized by Mortgagor without notice to Mortgagor to fill in any blank spaces and dates herein or in any Related Document to conform to the terms of the transaction and/or understanding evidenced hereby. **THIS MORTGAGE AND THE RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

**19. NO PARTY HERETO MAY SEEK OR RECOVER PUNITIVE DAMAGES IN ANY PROCEEDING BROUGHT UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY RELATED DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE TO EXTEND CREDIT SECURED BY THE PREMISES.**

**20. JURISDICTION AND VENUE.** Notwithstanding the terms of any Related Document to the contrary, Mortgagor and (by its acceptance hereof) Mortgagee:

(a) agree irrevocably that all suits, actions or other proceedings with respect to this Mortgage shall be subject to litigation in courts having situs within or jurisdiction over the state and county where the Premises are located;

(b) consent and submit to the jurisdiction of any such court; and

(c) waive any right to transfer or change the venue of any suit, action or other proceeding brought in accordance with this Section, or to claim that any such proceeding has been brought in an inconvenient forum.

**21. WAIVER OF JURY TRIAL.** TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR AND (BY ITS ACCEPTANCE HEREOF) MORTGAGEE VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT THEY OR ANY OF THEM MAY HAVE TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG MORTGAGOR AND MORTGAGEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, ANY RELATED DOCUMENT, OR ANY RELATIONSHIP BETWEEN MORTGAGEE AND MORTGAGOR.

[SIGNATURE PAGE(S) TO FOLLOW]



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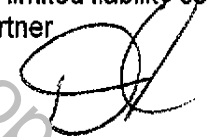
## MORTGAGE

IN WITNESS WHEREOF MORTGAGOR HAS SIGNED, SEALED AND DELIVERED THIS MORTGAGE AS OF THE DATE INDICATED ABOVE.

### MORTGAGOR:

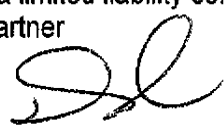
**VICTORIA LAND PARTNERS, L.P.,**  
a California limited partnership

By: MNG Real Estate Investments, LLC,  
a California limited liability company  
Its: General Partner

By:   
\_\_\_\_\_  
David Trakman  
Its: Manager

**RABA, LP,**  
a California limited partnership

By: MNG Real Estate Investments, LLC,  
a California limited liability company  
Its: General Partner

By:   
\_\_\_\_\_  
David Trakman  
Its: Manager

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## CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF SAN DIEGO )

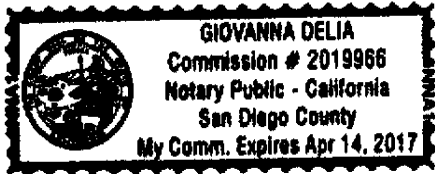
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On December 17, 2014, before me, Giovanna Delia, a notary public, personally appeared David Trakman, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Giovanna Delia  
Notary Public

(seal)



When recorded mail to:

Attn: Brian Harvey  
The Northern Trust Company  
4370 La Jolla Village Drive, Suite 1000  
San Diego, CA 92122  
(858) 824-1244

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MORTGAGE

EXHIBIT A

(LEGAL DESCRIPTION)

LOTS 1 TO 13, BOTH INCLUSIVE, IN BLOCK 1 IN WILLIAM E. HATTERMAN'S IRVING PARK BOULEVARD SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office