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1515241046

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Doc#: 1515241046 Fee: \$90.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 06/01/2015 11:25 AM Pg: 1 of 27

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 12-10-300-061-0000

Address:

Street: 9501 Winona Avenue

Street line 2:

City: Schiller Park

State: IL

ZIP Code: 60176

Lender: Lake Forest Bank and Trust Company

Borrower: Cherry Hill Four LLC; NICO LLC; Buffalo Grove Commerce Court LLC; Woodfield Commerce LLC; White Oak Circle LLC; Northern 2014 LLC

Loan / Mortgage Amount: \$34,015,531.00

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: F73DBA36-4B55-457F-AFC3-AE014E310247

Execution date: 05/27/2015

Property of Cook County Clerk's Office

8978010 103

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8978010 16F3

Property of Cook County Clerk's Office

(The Above Space for Recorder's Use Only)

**MORTGAGE, ASSIGNMENT OF
LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE
FILING BY NORTHERN EQUITIES LLC IN FAVOR OF
LAKE FOREST BANK & TRUST COMPANY**

Dated as of May 27, 2015

**Permanent Index Tax
Identification No. (See Below)**

Property Address:
9501 Winona Avenue, Schiller Park, IL 60176

**Prepared By and
After Recording Return To:**
Tom Buranosky, Esq.
Fox, Swibel, Levin & Carroll, LLP
200 West Madison Street, Suite 3000
Chicago, Illinois 60606

Identification No: 12-10-300-061-0000

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

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage") is made as of the 27 day of May, 2015, by NORTHERN EQUITIES LLC, an Illinois limited liability company ("Mortgagor"), in favor of LAKE FOREST BANK & TRUST COMPANY ("Mortgagee").

RECITALS:

A. Mortgagor owns the real estate commonly known as 9501 Winona Avenue, Schiller Park, Illinois and legally described on Exhibit A attached hereto (the "Real Estate").

B. Mortgagee has agreed to make a loan to Mortgagor, Cherry Hill Four LLC, an Illinois limited liability company ("Cherry Hill"), NICO LLC, an Illinois limited liability company ("NICO"), Buffalo Grove Commerce Court LLC, an Illinois limited liability company ("BGCC"), Woodfield Commerce LLC, an Illinois limited liability company ("Woodfield Commerce"), White Oak Circle LLC, an Illinois limited liability company ("White Oak Circle"), and Northern 2014 LLC, an Illinois limited liability company ("Northern 2014" and collectively with Mortgagor, Cherry Hill, Nico, BGCC, Woodfield Commerce, and White Oak Circle on a joint and several basis, the "Borrowers"), in the aggregate principal amount of THIRTY FOUR MILLION FIFTEEN THOUSAND FIVE HUNDRED THIRTY ONE AND NO/100THS DOLLARS (\$34,015,531.00) (the "Loan"), which Loan is evidenced by a Loan Agreement of even date herewith by and between Borrowers and Mortgagee (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement") and a Mortgage Note of even date herewith in the face amount of \$34,015,531.00 from Mortgagor to the order of Mortgagee (as amended, restated, supplemented or otherwise modified from time to time, the "Note").

C. The execution and delivery of this Mortgage as security for the Obligations (as defined in **Section 1** below) are conditions to the making of the Loan to Mortgagor.

D. The Loan, if not sooner paid, shall be due and payable on May 27, 2022 (the "Maturity Date").

NOW, THEREFORE, for and in consideration of: (i) the Recitals set forth above (such Recitals being incorporated herein and made a part hereof by this reference), (ii) the mutual covenants and agreements set forth in the Note and this Mortgage, (iii) the making of the Loan, and (iv) other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the Obligations, Mortgagor, intending to be legally bound, does, by these presents, **MORTGAGE, WARRANT and CONVEY** unto Mortgagee, its successors and assigns, all of Mortgagor's estate, right, title and interest in, to and under the Real Estate described in Exhibit A attached hereto and made a part hereof, situate, lying and being in Schiller Park, County of Cook and the State of Illinois which, with the property hereinafter described, is hereinafter collectively referred to as the "**Premises**":

TOGETHER with all right, title and interest which Mortgagor may now have or hereafter acquire in, to, under or as holder of, all property of any kind or nature whatsoever, including without limitation, the items of property which are described in **clauses (a) through (i)** below:

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(a) any and all buildings and other improvements of every kind and description now or hereafter erected or placed on the Real Estate and all materials intended for construction, reconstruction, alteration and repair of any such buildings and improvements, now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon delivery thereof to the Real Estate;

(b) all tenements, easements, fixtures and appurtenances thereto pertaining or belonging whether now held or hereafter acquired, including, without limitation, all easements, licenses, privileges and appurtenances created pursuant to any declaration of covenants, conditions, restrictions or easements now existing or hereafter created;

(c) all leases, lettings, agreements for use and occupancy, concessions and licenses of or with respect to any or all of the improvements on the Real Estate (collectively, the "Leases"), and all gross receipts, rents, issues and profits thereof accruing and to accrue from the Premises and the avails thereof (collectively, the "Rents") for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily);

(d) all land lying in the bed of any street, road, avenue, alley, sidewalk or walkway opened or proposed, vacated or adjoining the Real Estate;

(e) all other property, fixtures, apparatus, machinery, equipment, goods, systems and articles of any kind or nature whatsoever now or hereafter in or on the Premises and used or useful in connection with any portion of the Premises, including, without limitation, those used to produce and/or supply electricity, steam, heat, gas, air cooling, air conditioning, ventilation, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled); and all maintenance and cleaning materials, equipment and supplies; and all conduits, ducts, generators, compressors, pumps, tanks, motors; and all inventory, raw materials, scrap materials, component parts, work-in-process and finished and unfinished goods; and all bathroom fixtures, kitchen and restaurant equipment, shades, awnings, venetian blinds, screens, doors, windows, appliances, curtain fixtures, partitions, floor coverings and all building materials; and all security, life-safety, telephone, computer, communication, and audio-visual systems, equipment and supplies; and all other fixtures, apparatus, equipment, machinery, furniture, furnishings, supplies, goods and articles and all other items of tangible personal property of whatever kind now or hereafter owned by Mortgagor;

(f) all right, title and interest of Mortgagor in and to any and all contracts and contract rights, together with all the reversions and remainders and all insurance proceeds, deposits, refunds, rebates, rents, tolls, issues and profits related thereto and any other expectancy under or from any such contract or contract right, including, without limitation, all the estate, right, title, interest and claims whatsoever, at law or in equity, which Mortgagor may now or hereafter acquire with respect to any portion of the Premises;

(g) All "accounts" (as defined in the Uniform Commercial Code as in effect in Illinois from time to time -- the "UCC") and other receivables and rights to payment, including, without limitation, all right, title and interest of Mortgagor to receivables from and payment for goods or for services rendered, whether or not earned by performance, and whether or not evidenced by an instrument or chattel paper;

(h) all right, title and interest of Mortgagor in and to all advertising materials, guaranties, warranties, plans and specifications, building permits, other permits, licenses, soil tests, environmental reports, market and feasibility studies, appraisals and any other documents, materials or personal property of any kind now or hereafter existing in connection with the use of the Premises and in and to all contracts relating to the construction, design, operation and maintenance of the Premises or other contracts, documents or drawings concerning or affecting the Premises; and

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(i) all right, title and interest of Mortgagor in and to any general intangibles not otherwise specified herein, including, without limitation, all names, trade names, goodwill, authorizations, variances, land use entitlements, appurtenances, permits, licenses, approvals, clearances and consents; it being understood that the enumeration of any specific articles of property in **clauses (a) through (i)** above shall in no way result in or be held to exclude any items of property not specifically mentioned or any such items hereafter acquired (the items in **clauses (e), (f), (g), (h) and (i)** above being sometimes collectively called the "**Personal Property**"); and

TOGETHER with all estates, interests, rights, titles, claims or demands which Mortgagor now has or may hereinafter acquire in the Premises, including, but not limited to, any and all awards or payments, including interest thereon, and the right to receive the same, which may be made to or for the account of Mortgagor with respect to the Premises as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, (c) any loss of or damage to any building or other improvement on the Real Estate, (d) any other injury to or decrease in the value of the Premises, or (e) any refund due on account of the payment of real estate taxes, assessment or other charges levied against or imposed upon the Premises -- Mortgagor hereby agreeing to execute and deliver, from time to time, such further instruments as may be reasonably requested by Mortgagee to confirm such assignment to Mortgagee of any such award or payment.

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate mortgaged hereby and to be appropriated to the use of the real estate, and shall, for the purposes of this Mortgage, be deemed to be real estate and conveyed and mortgaged hereby. As to any of the property aforesaid which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of said real estate, this Mortgage is hereby deemed to be, as well, a security agreement under the UCC for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as "secured party" (as said term is defined in the UCC), securing said indebtedness and obligations described in this Mortgage, and Mortgagee shall have, in addition to its rights and remedies hereunder, all rights and remedies of a "secured party" under the UCC. As to any of the above personal property which the UCC classifies as fixtures, this instrument shall constitute a fixture filing and financing statement under the UCC.

The Premises shall include any and all property now or hereafter owned or created, replacements and substitutions therefor, accessions thereto, proceeds (whether cash, noncash, moveable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof and all proceeds and products from any and all of the foregoing (a) through (i).

Mortgagor hereby covenants, represents and warrants (i) that Mortgagor is lawfully seized of the indefeasible fee title to the Premises, (ii) that Mortgagor is the record title owner of the Premises and that the same are unencumbered, except for the Permitted Exceptions shown on the Title Policy (as defined in the Loan Agreement), (iii) that Mortgagor has good right, full power and lawful authority to convey and mortgage the Premises, and (iv) Mortgagor shall forever defend the Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

TO HAVE AND TO HOLD the Premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

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IT IS FURTHER UNDERSTOOD AND AGREED THAT:

Obligations Secured

1. This Mortgage secures:

(a) the due and punctual payment of the principal amount of, and interest on, the Note from time to time outstanding;

(b) the due and punctual payment of all indebtedness evidenced by the Note, including, without limitation, any future advances, plus all interest accruing thereon (including, without limitation, all interest accruing after commencement of any proceeding against or with respect to Mortgagor under the Bankruptcy Code (as defined in the Loan Agreement), or any other Federal or State bankruptcy, insolvency, receivership or similar law at the rate specified in the Note), and all fees due and payable in connection therewith, and all other amounts due hereunder and otherwise secured hereby under law when and as due, whether at maturity, acceleration, upon one or more dates set for payment or otherwise;

(c) the due and punctual payment of all other monetary obligations of Mortgagor to Mortgagee under this Mortgage, the Loan Agreement the Note and any and all other "Loan Documents" (as defined in the Loan Agreement), whether now existing or hereafter arising;

(d) the due and punctual performance by Mortgagor of all other covenants, agreements and obligations on the part of Mortgagor under this Mortgage, the Loan Agreement the Note and any and all other Loan Documents, whether now existing or hereafter arising;

(e) any renewals, extensions, restatements, supplements, amendments or modifications of this Mortgage, the Loan Agreement, the Note and any other Loan Document.

The foregoing items set forth in subsections (a) through (e) of this Section 1 of this Mortgage are hereinafter collectively called the "Obligations."

Representations, Warranties and Covenants

2. Mortgagor represents, warrants and covenants as follows:

(a) Mortgagor shall: (i) promptly repair, restore and rebuild any buildings or improvements now or hereafter located on the Real Estate which may become damaged or destroyed; (ii) keep the Premises free from mechanics' liens or other liens or claims for lien of any kind or nature whatsoever (collectively, "Liens"); (iii) pay when due any indebtedness which may be secured by a mortgage on the Premises, whether senior or junior to this Mortgage and whether permitted by the terms hereof or otherwise, and comply with all requirements of all documents and instruments evidencing or securing such indebtedness, and upon request, exhibit satisfactory evidence of the discharge of any such mortgage to Mortgagee; (iv) comply with all material requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof; (v) make no material alterations in the Premises, except as specifically permitted in writing by Mortgagee and as permitted or required by law or municipal ordinance; (vi) suffer or permit no change in the general nature of the occupancy or use of the Premises, except as may be specifically permitted in writing by Mortgagee and permitted or required by law or municipal ordinance; (vii) initiate or acquiesce in no zoning variation or reclassification, except for zoning changes which are initiated upon reasonable advance written notice to Mortgagee and are necessary to the operation of any building and which do not involve any property other than the Premises and will not result in any diminution or loss in the use or value of the Premises or in Mortgagee's security interest in the Premises; (viii) procure, maintain and renew any and all

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governmental licenses, approvals and permits as may be required, at any time and from time to time, in order to own, operate, repair and maintain the Premises; and (ix) pay each item of indebtedness secured by this Mortgage when due according to the terms of the Loan Documents, and pay, perform, satisfy and discharge each of the Obligations when required to do so under the terms of this Mortgage, the Note and the other Loan Documents.

(b) Mortgagor may, in good faith and with due diligence, contest the validity or amount of any Lien, and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest or Lien does not adversely affect Mortgagor's financial condition, its ability to pay its Obligations or the priority or value of the lien and security interest of Mortgagee upon the Premises or any part thereof or interest therein; (ii) such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Lien; (iii) within ten (10) days after Mortgagor has first learned of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien; and (iv) Mortgagor shall deposit with Mortgagee a sum of money reasonably deemed adequate by Mortgagee to pay all liens and any penalties and interest thereon, increasing such deposit as Mortgagee may from time to time require in its reasonable judgment. If Mortgagor shall: (x) fail to prosecute such contest with reasonable diligence, or (y) fail to maintain sufficient funds on deposit (as hereinabove provided) or other security (as provided below), then Mortgagee may apply money on behalf of Mortgagor in payment of or on account of any such Lien, or that part thereof then unpaid, together with all interest and penalties thereon and Mortgagor shall reimburse Mortgagee in full for all such monies, within five (5) days after demand therefor by Mortgagee. Mortgagor shall, upon the final disposition of any such contest, pay in full any such Lien or that part thereof then unpaid, together with all interest and penalties thereon. In lieu of the cash deposits described in **subsection (iv)** above, Mortgagor may deliver to Mortgagee and maintain during the pendency of any such proceeding either a payment bond in form and from a bonding company satisfactory to Mortgagee or a letter of credit in form and from a bank satisfactory to Mortgagee or an endorsement to Mortgagor's title insurance policy insuring over any such Lien, provided that such letter of credit or bond or endorsement shall indemnify Mortgagee against the Lien which Mortgagor is contesting as aforesaid, and shall otherwise be in form and substance satisfactory to Mortgagee in its commercially reasonable discretion.

(c) Mortgagor is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under the Bankruptcy Code or any other debtor relief law is pending (or, to Mortgagor's knowledge, threatened) by or against Mortgagor, or any affiliate of Mortgagor, as a debtor. All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Mortgagor to Mortgagee in connection with the loan or loans evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Mortgagor or, to Mortgagor's knowledge, of any tenant under any lease described therein. For the purposes of this paragraph, "**Mortgagor**" shall also include any person liable directly or indirectly for the Obligations or any part thereof and any joint venturer or general partner of Mortgagor.

(d) If Mortgagor is a corporation, partnership, limited liability company, or other legal entity, Mortgagor is and will continue to be (i) duly organized, validly existing and in good standing under the laws of its state of organization, (ii) authorized to do business in, and in good standing in the State of Illinois, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Premises. Each Loan Document executed by Mortgagor has been duly authorized, executed and delivered by Mortgagor, and the obligations thereunder and the performance thereof by Mortgagor in accordance with their terms are and will continue to be within Mortgagor's power and authority (without the necessity of joinder or consent of any other person), are not and will not be in

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contravention of any legal requirement or any other document or agreement to which Mortgagor or the Premises is subject, and do not and will not result in the creation of any encumbrance against any assets or properties of Mortgagor, or any other person liable, directly or indirectly, for any of the Obligations except as expressly contemplated by the Loan Documents. There is no suit, action, claim, investigation, inquiry, proceeding or demand pending (or, to Mortgagor's knowledge, threatened) against Mortgagor or against any other person liable directly or indirectly for the Obligations or which affects the Premises (including, without limitation, any which challenges or otherwise pertains to Mortgagor's title to the Premises) or the validity, enforceability or priority of any of the Loan Documents. There is no judicial or administrative action, suit or proceeding pending (or, to Mortgagor's actual knowledge, threatened) against Mortgagor, or against any other person liable directly or indirectly for the Obligations, except as has been disclosed in writing to Mortgagee in connection with the Loan. The Loan Documents constitute legal, valid and binding obligations of Mortgagor enforceable in accordance with their terms, except as the enforceability thereof may be limited by any debtor relief laws and except as the availability of certain remedies may be limited by general principles of equity. Mortgagor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e. Mortgagor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder). The Loan is solely for business and/or investment purposes, and is not intended for personal, family, household or agricultural purposes. Mortgagor will not cause or permit any change to be made in its name, identity (including its trade name or names), or membership or partnership structure, unless Mortgagor shall have notified Mortgagee in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Mortgagee for the purpose of further perfecting or protecting the lien and security interest of Mortgagee in the Premises.

(e) To the extent any Leases exist, Mortgagor has provided Mortgagee with true, correct and complete copies of each of the Leases (the "Collective Lease Documents"); each of the Leases is in full force and effect in accordance with the Collective Lease Documents; no Lease has been, to Mortgagor's knowledge, modified, altered or amended except as expressly set forth in the Collective Lease Documents; there is no default, event of default or circumstance currently existing which with the giving of notice or passage of time would lead to a default or event of default under any of Leases; and all Rents and other amounts due under the Leases have been paid.

(f) (i) Without limitation of any other provision of this Mortgage or of any other Loan Document and to the extent not prohibited by applicable law, Mortgagor will pay, and will reimburse to Mortgagee on demand to the extent paid by Mortgagee: (x) all appraisal fees, filing, registration and recording fees, recordation, transfer taxes, intangibles taxes, note taxes, mortgage taxes, stamp taxes and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, attorneys' fees (including fees of Mortgagee's counsel), architect fees, engineer fees, construction consultant fees, environmental inspection and audit fees, environmental remediation costs, survey fees, accounting report fees, inspection fees, credit report fees, insurance policy review fees and all other costs and expenses of every character incurred by Mortgagor or Mortgagee in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the loan evidenced by the Loan Documents, and any and all amendments and supplements to this Mortgage, the Loan Agreement, the Note or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Mortgagor as owner of the Premises; and (y) all costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Mortgagor, hereunder or under any other Loan Document. Notwithstanding anything to the contrary set forth in this subsection, Mortgagor shall pay all costs and expenses incurred by Mortgagee, including reasonable attorneys' fees, if the obligations or any part thereof are sought to be collected by or through an attorney at law, whether or not involving probate, appellate, administrative or bankruptcy proceedings. Mortgagor shall pay all costs and expenses

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of complying with the Loan Documents. Mortgagor's obligations under this subsection shall survive the delivery of the Loan Documents, the making of advances, the payment in full of the obligations, the release or reconveyance of any of the Loan Documents, the foreclosure of the Mortgage or conveyance in lieu of foreclosure, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

(ii) In the event that Mortgagee shall ever refer any or all of the Loan Documents to counsel because of any default thereunder, Mortgagor shall reimburse Mortgagee for reasonable attorneys' fees and costs incurred; and if judgment be entered under the Note and/or under any of the Loan Documents, or foreclosure proceedings be commenced upon this Mortgage because of any such default, then reasonable attorneys' fees shall be payable and shall be recovered in addition to all principal, interest and other recoverable sums then due, besides costs of suit. If Mortgagee shall become a party, either as plaintiff or defendant, to any suit or legal proceeding affecting the lien hereby created, Mortgagor shall pay to Mortgagee on demand its costs, expenses and attorneys' fees in such suit or proceeding.

(g) (i) Mortgagor will indemnify and hold harmless Mortgagee from and against, and reimburse them on demand for, any and all Indemnified Matters (hereinafter defined). For purposes of this paragraph (p), the term "Mortgagee" shall include the directors, officers, partners, employees and agents of Mortgagee and any persons owned or controlled by, owning or controlling, or under common control or affiliated with Mortgagee. Without limitation, the foregoing indemnities shall apply to each indemnified person with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) indemnified person. However, such indemnities shall not apply to a particular indemnified person to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of that indemnified person. Any amount to be paid under this subsection (g) by Mortgagor to Mortgagee shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage. Nothing in this paragraph, elsewhere in this Mortgage or in any other Loan Document shall limit or impair any rights or remedies of Mortgagee (including without limitation any rights of contribution or indemnification) against Mortgagor or any other person under any other provision of this Mortgage, any other Loan Document, any other agreement or any applicable legal requirement.

(ii) As used herein, the term "**Indemnified Matters**" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Mortgagee at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Premises or with this Mortgage or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring in or upon or in the vicinity of the Premises through any cause whatsoever at any time on or before the release date of this Mortgage, any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Mortgagor of any representation, warranty, covenant, agreement or condition contained in this Mortgage or in any other Loan Document, any default as defined herein, any claim under or with respect to any Leases or arising under that certain Hazardous Materials Indemnity Agreement of even date herewith. The indemnities in this subsection (g) shall not terminate upon the release, satisfaction, foreclosure or other termination of this Mortgage but will survive the foreclosure of this Mortgage or conveyance in lieu of foreclosure, the repayment of the Obligations, the discharge and satisfaction or release of this Mortgage and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

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Payment of Taxes

3. (a) Mortgagor shall pay or cause to be paid, on or before the due date thereof, all general real estate taxes, special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises (collectively, "Taxes"), and promptly upon request furnish to Mortgagee duplicate receipts evidencing such payment. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such Taxes; provided, however, that: (i) if required by law, Mortgagor shall pay such Taxes under protest on or before their due date; and (ii) if such payment under protest is not so required, that (x) such contest shall have the effect of preventing the collection of the Taxes so contested in the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy the same; (y) Mortgagor has, before such Taxes shall have been increased by any interest, penalties or costs, notified Mortgagee in writing of the intention of Mortgagor to contest the same; and (z) Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, a sum of money or such other indemnity, guaranty or security acceptable to Mortgagee, in its reasonable discretion, which shall be sufficient to pay in full such contested Taxes and all penalties and interest that might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount or such other indemnity, guaranty or security acceptable to Mortgagee, in its reasonable discretion, to cover additional penalties and interest whenever, in the reasonable judgment of Mortgagee, such increase is advisable. In case Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient security on deposit as hereinabove provided, Mortgagee may at its option, after notice to Mortgagor, apply the security so deposited in payment of or on account of such Taxes, or that part thereof then unpaid, together with all penalties and interest thereon. If the amount of the security so deposited shall be insufficient for the payment in full of such Taxes, together with all penalties and interest thereon, Mortgagor shall forthwith upon demand deposit with Mortgagee sums which when added to the security then on deposit shall be sufficient to make such payment in full. Mortgagor shall, upon the final disposition of such contest, apply the security so deposited in full payment of such Taxes, or that part thereof then unpaid, together with all penalties and interest thereon (provided Mortgagor is not then in default) when so requested in writing by Mortgagee and furnished with sufficient funds to make such payment in full together with an official bill for such Taxes. Any excess on deposit shall be paid to Mortgagor.

(b) After an Event of Default or any failure of Mortgagor to pay any Taxes when due, to secure Mortgagor's obligations for the payment of Taxes, Mortgagor shall pay to Mortgagee on the first day of each month commencing with the first day of the month immediately following the month in which this Mortgage is executed, until the Note is paid in full or otherwise canceled and satisfied, an amount equal to one-twelfth (1/12) of the annual Taxes reasonably estimated by Mortgagee to pay the installment of Taxes next due on the Premises. Mortgagor further agrees to cause all bills, statements or other documents relating to Taxes to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and provided Mortgagor has deposited sufficient funds with Mortgagee pursuant to this **Section 3(b)**, and provided further that such amounts have not been previously paid, Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with Mortgagee. If at any time and for any reason the funds deposited with Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Mortgagor, and Mortgagor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of said funds or be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this **Section 3(b)**. Mortgagee shall not be obligated to pay or allow any interest on any sums held by Mortgagee pending disbursement or application hereunder. If the total deposits made pursuant to this **Section 3(b)** on hand at the time payment of Taxes is due and payable shall exceed the amount necessary to pay such Taxes, then such excess shall be credited against subsequent payments required to be made pursuant to this **Section 3(b)**. Should Mortgagor fail to deposit with Mortgagee sums sufficient to fully pay such Taxes at least thirty (30) days before delinquency thereof, Mortgagee may, at Mortgagee's election, but without any obligation to do so, advance any amounts required to make up the

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deficiency, which advances, if any, shall constitute additional Obligations secured hereby immediately due and payable bearing interest at the Default Rate until paid, or at Mortgagee's option, Mortgagee may, without making any advance whatever, apply any sums held by it upon any Obligation secured hereby. Should any Event of Default occur or exist on the part of Mortgagor in the payment or performance of any of Mortgagor's obligations under the terms of this Mortgage, the Loan Agreement or any of the other Loan Documents, Mortgagee may at any time apply any sums or amounts in its possession received pursuant to this **Section 3(b)** toward any Obligations in such manner and order as Mortgagee may elect. The receipt, use or application of any such sums paid by Mortgagor to Mortgagee hereunder shall not be construed to affect the maturity of any of the Obligations or any of the rights or powers of Mortgagee or any of the obligations of Mortgagor under the terms of the other Loan Documents. Until expended or applied as above provided, any funds so deposited and held by Mortgagee may be commingled with the general funds of Mortgagee and shall constitute additional security for the Obligations.

Insurance

4. The Premises shall be insured against all risks as may be now or hereafter embraced in accordance with the Loan by the standard commercial "all risk" form of insurance policy satisfactory to Mortgagee for 100% of replacement cost, with a replacement cost endorsement, without deduction for depreciation. Further, Mortgagor shall purchase and maintain in effect commercial general public liability insurance satisfactory to Mortgagee with a combined single limit for bodily injury and property damage of not less than \$2,000,000 per occurrence, \$4,000,000 aggregate, or such lesser amount as Mortgagor may accept in its discretion. Mortgagor shall also purchase and maintain in effect rental insurance in an amount sufficient to cover loss of rental income for the Premises for a period of at least twelve (12) months. All policies contemplated by this paragraph are to be issued by a company or companies acceptable to Mortgagee and having a rating of at least the third (3rd) highest rating category from Moody's, Duff & Phelps, Fitch Investors or Standard & Poor (or, at Mortgagee's election, a rating of A-, V or better from Best), and shall contain a special mortgagee clause in favor of Mortgagee providing, among other things, thirty (30) days' written notice of cancellation to Mortgagee. In addition, no policies or renewals are to contain co-insurance provisions. All policies and renewals thereof are to be written for not less than one year, with premium paid and satisfactory evidence thereof must be delivered to Mortgagee.

If any part of the Premises is in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards, the Premises must be insured for the maximum amount of flood insurance that is provided under the National Flood Insurance Program. If the community in which the property is located has not been approved for flood insurance under the National Flood Insurance Program, and flood insurance is not available for such properties under such program, Mortgagee shall have no obligation to close the Loan contemplated by this Commitment.

Adjustment of Losses with Insurer and Application of Proceeds of Insurance

5. (a) In the event of any loss or damage to any portion of the Premises by fire or other casualty, Mortgagor shall have the right, so long as no Event of Default, or any event or circumstance which with the giving of notice, the passage of time, or both, would constitute an Event of Default, exists hereunder, to settle insurance claims or agree with the insurance companies on the amount to be paid; provided that Mortgagee shall be permitted to participate in any such settlement and to hire its own adjusters to advise it in connection with any proposed settlement, and any such settlement shall be subject to Mortgagee's written approval; further provided, however, that if a settlement is not reached within a reasonable period of time (as determined by Mortgagee), then Mortgagee shall have the right, upon prior notice to Mortgagor, in its sole discretion, to settle such claim. In any case, Mortgagee shall, subject to **Section 5(b)** below, have the right (but not the obligation) to collect, retain and apply to the Obligations all insurance proceeds (after deduction of all expenses of collection and settlement, including attorneys' and adjustors' fees and expenses), and if such proceeds are insufficient to pay such amount in full, to

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declare the balance remaining unpaid on the Obligations to be immediately due and payable and to avail themselves of any of the remedies afforded under this Mortgage, the Note or any of the other Loan Documents as in the case of any Event of Default or default hereunder or thereunder. Any proceeds remaining after application to the Obligations shall be paid by Mortgagee to Mortgagor or any other party which may be entitled thereto.

(b) Notwithstanding anything to the contrary set forth in **Section 5(a)** above, Mortgagee agrees that the insurance proceeds (after deduction of all expenses of collection and settlement, including attorneys' and adjusters' fees and expenses) may, at the election of Mortgagor (provided that such election cannot be made if in Mortgagee's commercially reasonable judgment, the Premises cannot be fully repaired and restored prior to the Maturity Date), be applied in installments from time to time (which installments shall be made from a construction escrow with a title company selected by Mortgagee) for the restoration or repair of the damaged property, if and so long as the following conditions are satisfied:

(i) Mortgagor shall expeditiously repair and restore all damage to the Premises resulting from such fire or other casualty;

(ii) no Event of Default, or any event or circumstance which with the giving of notice, the passage of time, or both, would constitute an Event of Default shall have occurred hereunder and be continuing;

(iii) the proceeds of insurance, in Mortgagee's commercially reasonable judgment, are sufficient to complete the repair and restoration of any buildings, structures and other improvements on the Premises or if such proceeds of insurance are not so sufficient, then Mortgagor from its own funds shall deposit into the construction escrow at the title company the costs of restoration in the amount of such deficiency;

(iii) the Premises can be legally restored or repaired to the condition and use existing immediately prior to such casualty; and

(v) none of the tenants of the Premises, if any, shall have terminated their respective Leases.

Any surplus in the escrow which may remain after payment of such cost of repair and restoration shall, at the option of Mortgagee, be applied on account of the Obligations or be paid to any other party entitled thereto.

(c) In case of loss after a foreclosure by judicial proceedings has been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in demolishing, rebuilding or restoring the buildings or improvements, shall be applied in payment or reduction of the Obligations or in payment or reduction of the amount due in accordance with any order of foreclosure that may be entered in any such proceeding, and the balance, if any, shall be paid to the owner of the equity of redemption if it shall then be entitled to the same or as the court may direct. In case of the foreclosure of this Mortgage by judicial proceeding, the court in its order and upon notice to the insurer may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the purchaser at the foreclosure sale held in accordance with such judicial proceeding may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said purchaser; and any such foreclosure order may further provide that in case of one or more redemptions under said order, pursuant to the statute in such case made and provided, then, and in every such case, each successive redeemer may cause the preceding loss clause attached to each insurance policy to be canceled and new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of such foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all

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insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

Stamp Tax

6. If, by the laws of the United States of America, or of any State having jurisdiction over Mortgagor, any stamp tax or similar tax is due or becomes due in respect of any of the Obligations or the recording of this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any stamp tax or similar tax on the issuance of the Obligations or the recording of this Mortgage.

Prepayment

7. The Loan may be prepaid only in accordance with Section 4 of the Note.

Effect of Extensions of Time

8. If the payment of any of the Obligations or any part thereof is extended or varied or if any part of the security is released, all persons or entities now or at any time hereafter liable therefor, or interested in the 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 Mortgagee, notwithstanding such extension, variation or release.

Effect of Changes in Laws Regarding Taxation

9. In the event of the enactment after this date of any law of the State of Illinois deducting from the value of land for the purpose of taxation any lien thereon, and imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagee's interest in the property, or the manner of collection of taxes so as to affect this Mortgage or the Obligations secured hereby, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Obligations to be and become due and payable ninety (90) days from the giving of such notice.

Mortgagee's Performance of Defaulted Acts; Subrogation

10. In case of default on the part of Mortgagor under this Mortgage and the failure of Mortgagor to cure such default within the applicable cure period, if any, Mortgagee shall have the right, but not the obligation, to make any payment or perform any act herein or in or with respect to any of the Obligations required of Mortgagor, 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 on title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. Anything to the contrary notwithstanding, Mortgagee may immediately take action to cure any default in the payment of taxes or insurance premiums or any other defaults that create an emergency regarding the priority or validity of the lien of this Mortgage or the physical condition of the Premises without regard to the Mortgagor's cure rights, if any. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including, but not limited to, reasonable attorneys' fees

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and expenses, and any other moneys advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate as defined in **Section 25** below. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor under this Mortgage. Should the proceeds of the Obligations or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, the Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

Mortgagee's Reliance on Tax Bills, Etc.

11. Mortgagee in making any payment hereby authorized: (a) relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any Lien, may do so without inquiry as to the validity or amount of such Lien or any claim for Lien which may be asserted.

Default

12. Each and all of the following shall be a default (an "Event of Default") under this Mortgage: (a) if any payment of principal or interest under the Note is not paid when due and payable, or if any other payment due under or with respect to any of the Obligations, or any other payment due in accordance with the terms of this Mortgage or any other Loan Document is not paid when due or (b) if any other of the covenants, agreements or conditions, hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor in this Mortgage, are not observed or performed, and such nonperformance or nonobservance is not remedied by Mortgagor within thirty (30) days after written notice from Mortgagee to Mortgagor (provided that if such default cannot reasonably be cured within said 30 day period, then said 30 day cure period shall be extended so long as Mortgagor diligently and continuously pursues such cure); or (c) if any representation, warranty, statement, report or certification now or hereafter made by Mortgagor is not true, correct or complete in any material respect, or is misleading in any material respect and (if susceptible of being cured) is not cured within thirty (30) days after written notice thereof from Mortgagee; or (d) if any Event of Default shall have occurred and be continuing under any other Loan Document, including, without limitation, under any of the other Mortgages (as defined in the Loan Agreement), which is not cured within any applicable grace, cure or notice period; or (e) if any Default or Event of Default shall have occurred and be continuing under any Lease, which Default or Event of Default is not cured any applicable grace, cure or notice period. Any and all cure, grace or notice periods under this Mortgage shall run concurrently with any such periods allowed with respect to any default under any of the other Loan Documents or otherwise available to Mortgagor.

Foreclosure; Expense of Litigation; Protective Advances

13. When an Event of Default shall have occurred (whether listed in **Section 12** or described elsewhere in this Mortgage) and remains uncured, Mortgagee shall have the right to accelerate the maturity of all of the Obligations and when the indebtedness secured hereby or any part thereof shall become due, whether by lapse of time, acceleration or otherwise, then Mortgagee shall have the right to foreclose the lien hereof by judicial action (and shall have the right to foreclose on one or more of the other Mortgages securing the Loan). In any suit to foreclose the lien hereof or in any other action to

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enforce any other remedy of Mortgagee under this Mortgage or with respect to any of the other Obligations, there shall be allowed and included as additional indebtedness in the decree for sale, judgment of foreclosure or other judgment or decree all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys, appraisers, consultants and contractors, outlays related to compliance with Hazardous Materials Laws (as defined in the Loan Agreement), 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 and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale 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 but not limited to the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Obligations or the Premises, including, without limitation, bankruptcy proceedings or in the preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon from the date incurred at the Default Rate (as defined in Section 25 hereof), and shall be secured by this Mortgage.

Without limitation on the foregoing, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 *et seq.* ("Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to (collectively, "**Protective Advances**"):

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to:

- (i) preserve or maintain, repair, restore or rebuild any building or other improvements upon the Premises;
- (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(b) payments by Mortgagee of: (i) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the 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 15-1505 of the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) reasonable attorneys' fees and other expenses incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

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

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any 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 Mortgagee whether or not Mortgagee 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 mortgagee takes possession of the Premises imposed by subsection (c)(1) of Section 15-1704 of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be 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 of or 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 if any way affecting the Premises; and (vii) pursuant to any lease or other agreement for occupancy of the Premises.

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 Default Rate set forth in Section 25 below. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (i) determination of the amount of indebtedness secured by this Mortgage at any time; (ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry or judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose; (iii) if right of redemption is deemed not to be waived by this Mortgage, computation of amount required to redeem, pursuant to subsections (d)(2) and (e) of Section 15-1603 of the Act; (iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (v) application of income in the hands of any receiver or Mortgagee in possession; and (vi) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of Sections 15-1508 and Section 15-1511 of the Act.

Upon any sale made under or by virtue of this Section or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Premises or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of Mortgagor secured by this Mortgage the sale price, after deducting therefrom the expenses of the sale and the cost of the action and any other sums which Mortgagor is required to pay or that Mortgagee is authorized to deduct under this Mortgage.

Mortgagor understands and agrees that in the event of an Event of Default, Mortgagee, to the extent this Mortgage constitutes a security agreement under the UCC, may exercise any and all rights and remedies of a secured party under the UCC including but not limited to the taking possession of any personal property covered by this Mortgage and disposing of the same by sale or otherwise; provided that at least ten (10) days' prior notice of such disposition must be given to the Mortgagor, all as provided for by the UCC, it being agreed that such ten (10) days' notice shall constitute fair and reasonable notice to Mortgagor of such disposition.

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Application of Proceeds of Foreclosure Sale

14. The proceeds of any foreclosure sale of the Premises (or the sale of property under the last unnumbered paragraph of **Section 13** hereof) 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 sale, as the case may be), including all such items as are mentioned in the preceding Section hereof; second, to the repayment of the Obligations and all other items which under the terms hereof constitute secured indebtedness additional to that constituting the Obligations, with interest thereon as herein provided; and third, any overplus to Mortgagor, its successors or assigns, as their rights may appear or as a court may direct.

Appointment of Receiver

15. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, if requested to do so by the Mortgagee, appoint a receiver of the Premises. To the extent permitted by law, Mortgagee shall also be entitled to the appointment of a receiver of the Premises prior to the filing of any such foreclosure complaint, upon or at any time after the occurrence of an Event of Default. Any appointment of a receiver may be made either before or after sale, without notice if permitted by law, 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 hereunder may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, 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; (b) to extend or modify any then-existing leases and to make new leases, which extensions, 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 hereunder and beyond the date of 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 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 any redemption from any judgment or decree of foreclosure, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (c) 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 his hands in payment in whole or in part to: (x) the Obligations 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 any foreclosure sale; and (y) the deficiency in case of a sale and deficiency.

Assignment of Rents and Leases

16. To further secure the Obligations, Mortgagor hereby sells, assigns and transfers unto Mortgagee all Leases (if any) for or with respect to the Premises and all the Rents now due and which may hereafter become due (whether before or after foreclosure or during the period of redemption and whether before or after the filing of any petition by or against Mortgagor under the Bankruptcy Code or any other Federal or State bankruptcy, insolvency, receivership or similar law) under or by virtue of, and to the extent payable pursuant to, any Lease, whether written or verbal, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases and all the Rents and other avails thereunder to Mortgagee. Mortgagor, from and during the occurrence of an Event of Default, hereby irrevocably appoints Mortgagee (which appointment is irrevocable until termination of this Mortgage and coupled with an interest) its true and lawful attorney in

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its name and stead (with or without taking possession of the Premises as provided in **Section 17** hereof) to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as Mortgagee shall, in its reasonable discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the Leases, written or verbal, or other tenancy existing, or which may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of **Section 17** hereof.

Mortgagor agrees that, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed: (a) no rent will hereafter be paid by any person in possession of any portion of the Premises for more than one (1) month in advance; (b) the payment of the rents to accrue for any portion of the Premises will not be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor; and (c) Mortgagor shall not terminate, release, amend, alter, modify, breach or exercise enforcement rights under any Lease. Mortgagor agrees that hereafter it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises permitted under the provisions of this Mortgage.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession of the Premises in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to **Section 17** hereof. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor, except for such liability, if any, as may be expressly imposed on Mortgagee under the Act or liability caused by the negligence or willful misconduct of Mortgagee.

Mortgagor further agrees to assign and transfer to Mortgagee all future Leases upon all or any part of the Premises and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Premises as Mortgagee shall from time to time reasonably require.

Although it is the intention of the parties that the assignment contained in this **Section 16** shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section until an Event of Default occurs. The rights of Mortgagee under this **Section 16** shall continue and remain in full force and effect both before and after commencement of any action or proceeding to foreclose this Mortgage, after the foreclosure sale in connection with the foreclosure of this Mortgage, and until expiration of the period of redemption from any such foreclosure sale.

Mortgagee's Right of Possession in Case of Event of Default

17. In any case in which under the provisions of this Mortgage, Mortgagee has a right to foreclose the lien hereof, Mortgagor shall, forthwith, upon demand by Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled, to the fullest extent permitted by law, to take actual possession of, the Premises or any part thereof personally or by its agents or attorneys. In such event, Mortgagee in its reasonable discretion may, in accordance with law, enter upon and take and maintain possession of all or any part of the Premises together with all documents, books, records, papers and accruals of Mortgagor or the then owner of the Premises relating thereto and may exclude Mortgagor its agents or servants wholly therefrom and may, as attorney-in-fact, as agent for Mortgagor or in its own name as Mortgagee, and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of Rents, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any Lease for any cause or on any ground

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which would entitle Mortgagor to cancel the same; (b) subject to the terms of any subordination, non-disturbance and attornment agreement agreed to by Mortgagee, to elect to disaffirm any Lease which is then subordinate to the lien hereof; (c) to extend or modify any then-existing Leases and to make new Leases, which extensions, 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 hereunder and beyond the date of 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 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 any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (f) to receive all of such avails, rents, issues and profits; Mortgagor 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 Mortgagor. Without limitation on the foregoing, in addition to any rights granted Mortgagee hereunder or under applicable law, Mortgagee shall have all powers, rights and duties as provided for in Sections 15-1701, 15-1702 and 15-1703 of the Act.

From and after an Event of Default, Mortgagor shall be deemed to have constituted and appointed Mortgagee its true and lawful attorney-in-fact (which appointment is irrevocable until termination of this Mortgage and coupled with an interest) with full power of substitution either in the name of Mortgagee or Mortgagor, to exercise any of the powers granted to Mortgagee pursuant to this **Section 17**. Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage (except for any such liability, loss or damage which may be caused by the willful misconduct or gross negligence of Mortgagee) which Mortgagee may or might incur by reason of its performance of any action authorized under this **Section 17** and of and from any and all claims and demands whatsoever (except for any such liability, loss or damage which may be caused by the willful misconduct or gross negligence of Mortgagee) which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagee.

Application of Income Received by Mortgagee

18. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by **Section 16** and **Section 17** hereof, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

- (a) to the payment of any Obligations secured hereby or any deficiency which may result from any foreclosure sale;
- (b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises;
- (c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the Premises and of placing the Premises in such condition as which, in the commercially reasonable judgment of Mortgagee, make it readily rentable; and

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(d) to the payment of the operating expenses of the Premises, including but not limited to the cost of the management and leasing thereof, judgments, claims for damages, if any, and premiums on insurance hereinabove authorized.

Mortgagee's Right of Inspection

19. Mortgagee, personally or through its agents, contractors or consultants, shall have the right to inspect the Premises upon reasonable notice (except in cases of emergency or abandonment) and at all reasonable times and access thereto shall be permitted for that purpose, including, without limitation, to ascertain whether the Premises comply with applicable Hazardous Materials Laws.

Condemnation

20. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises (or any interest therein) taken or damaged by the power of eminent domain or by condemnation. Mortgagee shall be entitled (but shall not be obligated) to participate in the collection of such proceeds and any such proceeds shall be first applied to reimburse Mortgagee for all costs and expenses, including, but not limited to, reasonable attorneys' fees and expenses, incurred in connection with the collection of such proceeds. The remainder of any such award shall be applied in accordance with Section 5 above.

Release upon Payment and Discharge of Mortgagor's Obligations

21. If Mortgagor shall fully pay and satisfy all of the indebtedness secured hereby and fully comply with, satisfy and discharge all of the other terms and provisions hereof and all other Obligations to be paid, satisfied, performed and complied with by Mortgagor, then, upon Mortgagor's request, Mortgagee shall promptly execute and deliver to Mortgagor a release of this Mortgage in recordable form, which release shall not be construed so as to release, waive or modify any provision under the Loan Documents which by its terms would survive such event.

Giving of Notice

22. All notices, reports, requests, demands or other instruments required or contemplated to be given or furnished under this Mortgage to Mortgagor or Mortgagee shall be directed to Mortgagor or Mortgagee, as the case may be, at the following addresses:

Mortgagee: Lake Forest Bank & Trust Company
727 North Bank Lane
Lake Forest, Illinois 60045
Attn: Chris Baker

With a copy to:

Fox, Swibel, Levin & Carroll, LLP
200 West Madison Street
Suite 3000
Chicago, IL 60606
Attention: Tom Buranosky

Mortgagor: c/o Northern Builders, Inc.
5060 River Road
Schiller Park, Illinois 60176
Attention: Thomas R. Kenrich

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With a copy to:

Robert D. Tuerk
5060 River Road
Schiller Park, Illinois 60176

Notices shall be either (i) personally delivered to the offices set forth above, in which case they shall be deemed delivered on the date of delivery to said offices, (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered three (3) business days after deposit in the U.S. mail, postage prepaid, or (iii) sent by air courier (Federal Express or like service), in which case they shall be deemed delivered on the date of delivery. Any party may change the address to which any such notice, report, demand or other instrument is to be delivered by furnishing written notice of such change to the other parties in compliance with the foregoing provisions.

Waiver of Defense; Remedies Not Exclusive; Time is of the Essence

23. No action for the enforcement of the lien 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 or in equity upon the Obligations. Mortgagee shall be entitled to enforce payment and performance of any indebtedness secured hereby and to exercise all rights and powers under this Mortgage or under or with respect to any other Obligations or any laws now or hereafter in force, notwithstanding that some or all of the 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, Loan Documents or Obligations now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other remedy herein or by the other Loan Documents or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy under the other Loan Documents or other remedy given hereunder or now or hereafter existing under the other Loan Documents or at law or in equity or by statute. Every power or remedy given hereby 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, and Mortgagee may pursue inconsistent remedies. No waiver of any Event of Default shall be implied from any omission by the Mortgagee to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any such default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee at any time thereafter to demand and collect payment of interest at such Default Rate or of late charges, if any. Time is of the essence of this Mortgage and each of the covenants and provisions hereof.

Filing and Recording Fees

24. Mortgagor shall pay all title insurance premiums, escrow charges, filing, registration or recording fees and all expenses incident to the execution and acknowledgment of this Mortgage and all Federal, State, County and municipal taxes, and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and the Obligations.

Default Rate

25. "Default Rate" as used herein shall mean the rate of interest set forth in Section 7 of the Note.

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Binding on Successors and Assigns

26. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor and shall inure to the benefit of Mortgagee and its successors and assigns.

Definitions of "Mortgagor" and "Mortgagee"

27. The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the preambles hereof; (b) said original Mortgagor's successors and assigns; and (c) all owners from time to time of the Premises. The word "Mortgagee" when used herein shall include all successors and assigns of the Mortgagee identified in the preambles hereof. As used in this Mortgage, the terms "Mortgagor" and "Mortgagee" and any pronouns used to refer to Mortgagor or Mortgagee shall, as the context requires, include the singular and plural, and the masculine, feminine and neuter.

Captions

28. The captions and headings of various paragraphs and sections of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Business Loan Recital/Statutory Exemptions

29. (a) Mortgagor acknowledges and agrees that (i) the Obligations secured hereby constitute a business loan which comes within the purview of Section 4 of the Interest Act (815 ILCS 205/0.01 *et seq.*) and (ii) that the Obligations are exempted transactions under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 *et seq.* In no event shall any proceeds of the Loan be used for personal, family or household purposes.

(b) Mortgagor acknowledges and agrees that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act).

Waiver of Statutory Rights

30. To the fullest extent permitted under applicable law, Mortgagor shall not and will not apply for or avail itself of any appraisal, 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 hereby waives the benefit of such laws. Mortgagor for itself and all who may claim by, through or under it waives any and all right to have the property and estates comprising the Premises marshaled 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 waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage. The foregoing waiver of the right of redemption is made pursuant to Section 15-1601 of the Act.

Execution of Separate Security Agreement, Financing Statements, Etc.

31. Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee, a security agreement, financing statement or other similar security instruments, in form reasonably satisfactory to Mortgagee, covering all property of any kind whatsoever which

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Mortgagor may hereafter reasonably acquire, and Mortgagor will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may reasonably request in order to create, perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all costs and expenses reasonably incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document.

Partial Invalidity; Usury

32. (a) Whenever possible, each provision in this Mortgage shall be interpreted in such manner as to comport with all applicable local, State and Federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage are found by a court of law to be in violation of any applicable local, State or Federal ordinance, statute, law, administrative or judicial decisions, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the respective rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage shall continue in full force and effect.

(b) All agreements between Mortgagor and Mortgagee under this Mortgage and the other Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to Mortgagee exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then *ipso facto*, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois, and if for any reason whatsoever, Mortgagee shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the next maturing installment or installments of the principal balance of the indebtedness secured hereby (whether or not due and payable) and not to the payment of interest.

Other Loan Documents

33. The other Loan Documents and all provisions thereof are incorporated herein by express reference. Any and all indebtedness arising and accruing under the other Loan Documents from time to time shall be secured hereby to the full extent of the amount stated to be secured hereby and according to law. Whenever possible, each provision in the Mortgage shall be interpreted in such manner as to be consistent with the provisions of the other Loan Documents and no conflict or inconsistency shall be deemed to exist simply because one document contains more extensive grants, restrictions or requirements than the other.

Mortgagee's Lien for Service Charge and Expenses

34. At all times and from time to time, this Mortgage secures (in addition to any proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Mortgagee in connection with this Mortgage, the Obligations to be secured hereby and which are to be reimbursed by Mortgagor under the terms of this Mortgage and any other Loan Document.

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Restrictions on Transfer

35. The occurrence of any of the following events shall also constitute an Event of Default under this Mortgage:

(a) any sale, assignment, transfer, conveyance, pledge, hypothecation, mortgage, lease or other encumbrance of the Premises or any portion thereof, or any beneficial interest therein, or any buildings, structures or other improvements thereon, except as permitted in accordance with Section 1.7 or Section 7.4 of the Loan Agreement;

(b) any sale, assignment, transfer, conveyance, pledge (including, without limitation, any pledge of profits or other economic rights), hypothecation, mortgage or encumbrance of, or change in control, management, capital structure or ownership interest in, Mortgage. Notwithstanding anything to the contrary contained herein, any party owning a membership interest in Mortgage shall be permitted to sell, transfer or assign his, her or its membership interest in Mortgage to personal or family trusts, so long as such agree to abide by the terms of this Mortgage. Such agreement to be bound shall be evidenced by the execution of a counterpart signature page to this Mortgage or an appropriate amendatory document prepared by Mortgagee;

(c) any secondary financing or encumbrances or secured or unsecured indebtedness of any kind other than the Loan without the prior written consent of Mortgagee; and

(d) any contract to effectuate any of the foregoing transactions in (a) or (b) above.

Consent by Mortgagee to any transaction described in Section 35(c) above shall not operate to relieve Mortgagor from any covenant or obligation under this Mortgage except to the extent, if any, expressly provided for in writing in such consent, or be deemed to be a consent to or relieve Mortgagor from obtaining Mortgagee's consent to any subsequent transaction described in this Section.

Applicable Law

36. This Mortgage and the other Loan Documents shall be construed, interpreted and governed by the internal laws of the State of Illinois (without giving effect to Illinois choice of law principles.

No Offsets

37. No right of offset or claim that Mortgagor now has or may have in the future against Mortgagee shall relieve Mortgagor from paying any amounts due under or with respect to the Obligations or from performing any other duties contained herein or secured hereby.

Future Advances

38. This Mortgage also secures any and all future obligations and indebtedness arising under or in connection with this Mortgage and any of the other Loan Documents, which future obligations and indebtedness shall have the same priority as if all such future obligations and indebtedness were made on the date of execution hereof. Nothing in this Section, Section 39 or in any other provision of this Mortgage shall be deemed either (a) an obligation on the part of Mortgagee to make any future advances of any sort other than as expressly set forth in the Note or (b) an agreement on the part of Mortgagee to increase the amount of the Loan.

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Maximum Amount of Indebtedness Secured

39. The maximum aggregate amount of principal, interest and other indebtedness (now or hereafter owed) secured by this Mortgage is SIXTY EIGHT MILLION THIRTY ONE THOUSAND SIXTY TWO AND 00/100 DOLLARS (\$68,031,062.00).

Mortgagee Not a Joint Venturer

40. Mortgagee by entering into this Mortgage or any of the other Loan Documents, or by any action taken pursuant thereto, will not be deemed a partner or joint venturer with Mortgagor. Mortgagor acknowledges and agrees that the sole relationship created between Mortgagor and Mortgagee under this Mortgage and the other Loan Documents is that of borrower and lender.

Mortgagee's Duties

41. The powers conferred on Mortgagee hereunder are solely to protect its interest in the Premises and shall not impose any duty upon it to exercise any such powers. Mortgagee shall have no duty as to any Premises or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Premises.

Further Assurances

42. Mortgagor agrees, at its expense, forthwith on demand to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as Mortgagee may from time to time reasonably request for the better assuring and preserving of the security interests and the rights and remedies created hereby, including, without limitation, the payment of any fees and taxes required in connection with the execution and delivery of this Mortgage, the granting of the security interests created hereby and the filing of any financing statements or other documents in connection herewith.

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EXHIBIT A

Legal Description

LOT 2 IN RIVER ROAD INDUSTRIAL DEVELOPMENT SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF THE NORTH 1/2 OF ROBINSON'S RESERVATION IN TOWN OF LEYDEN (EXCEPT THE WEST 400.00 FEET OF SAID LOT 2 AND EXCEPT THAT PART OF SAID LOT 2 LYING EAST OF A LINE DRAWN FROM A POINT ON THE NORTH LINE OF LOT 2 AFORESAID, 621.28 FEET EAST OF THE NORTHWEST CORNER THEREOF TO A POINT ON SOUTH LINE OF SAID LOT 2 AND 620.01 FEET EAST OF THE SOUTHWEST CORNER THEREOF) IN COOK COUNTY, ILLINOIS.

P.I.N.: 12-10-300-061-0000

Address: 9501 Winona Avenue, Schiller Park, IL 60176

Office of Cook County Clerk's Office