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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 1516019019 Fee: \$88.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 06/09/2015 10:17 AM Pg: 1 of 26

Report Mortgage Fraud  
800-532-8785

No 1150339 1 of 2 JL/SV

The property identified as: PIN: 17-15-306-010-0000

**Address:**

**Street:** 1-15 E. 9th Street and 901-1007 S. State Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60605

**Lender:** Comerica Bank

**Borrower:** 1001 South State Street (Chicago) Owner, LLC

**Loan / Mortgage Amount:** \$75,614,000.00

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

**Certificate number:** 1E1D3DF6-9D8D-4C37-893A-CEB963E71143

**Execution date:** 5/27/2015

CCRD REVIEWER

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DOCUMENT PREPARED BY AND )  
 WHEN RECORDED MAIL TO: )  
 )  
 Comerica Bank )  
 611 Anton Blvd., 4th Floor )  
 Mail Code 4410 )  
 Costa Mesa, CA 92626 )  
 Attn: Lisa DeBenon )

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## CONSTRUCTION MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (WITH ASSIGNMENT OF RENTS AND LEASES)

This Construction Mortgage, Security Agreement and Fixture Filing (With Assignment of Rents and Leases) ("Mortgage") is made as of May 27, 2015, by 1001 SOUTH STATE STREET (CHICAGO) OWNER, LLC, a Delaware limited liability company (hereinafter called "Mortgagor"), whose address is 625 N. Michigan Avenue, Suite 2000, Chicago, IL 60611, COMERICA BANK, as "Agent" (in such capacity, hereinafter called "Mortgagee"), for the lenders (each, a "Lender" and collectively, the "Lenders") from time to time party to that certain Construction Loan Agreement of even date herewith (the "Loan Agreement") among Mortgagor, Lenders and Mortgagee. Mortgagee's address is 2000 Avenue of the Stars, Suite 210, Los Angeles, CA 90067, Attn: Commercial Real Estate - MC 4693. Capitalized terms used herein and not otherwise defined shall have the meaning given in the Loan Agreement.

### WITNESSETH:

1. That Mortgagor hereby MORTGAGES, GRANTS, ASSIGNS, REMISES, RELEASES, WARRANTS AND CONVEYS to Mortgagee all of Mortgagor's present and future right, title and interest in the following property (collectively, the "Premises"):

(a) all that certain real property now or hereafter acquired, in the City of Chicago, County of Cook, State of Illinois (the "Land"), more particularly described as follows:

See Exhibit "A" attached hereto

(b) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements");

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Land or the Improvements, including easements, rights-of-way, development rights, mineral rights, water and water rights, pumps and pumping plants and all shares of stock evidencing the same (the "Appurtenances," and together with the Land and the Improvements, the "Real Property");

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(d) subject to the assignment to Mortgagee set forth in Paragraph 10 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Premises or the ownership, use, management, operation, leasing or occupancy of the Premises, including those past due and unpaid (the "Rents");

(e) all present and future right, title and interest of Mortgagor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Article 9 of the Illinois Uniform Commercial Code (the "UCC"), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating, ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property (the "Goods," and together with the Real Property, the "Property"); and

(f) all present and future right, title and interest of Mortgagor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC), all rights to payment, all letter of credit rights relating to any of the Property, all commercial tort claims relating to the Property, all rights of Mortgagor as declarant or manager under any covenants, conditions and restrictions, reciprocal easement agreements or other similar instruments or agreements, including, without limitation, payments and rights to payment and/or reimbursements under such agreements, and all other agreements, obligations, rights and written materials (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Premises or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the Property or any other part of the Premises, including (to the extent applicable to the Property or any other portion of the Premises) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements and other payments arising or resulting from or otherwise relating to any insurance (whether or not Mortgagee is named as a loss payee of such insurance) or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) all of the Mortgagor's funds, if any, now or hereafter held by Mortgagee for the benefit of Lenders for payment of costs associated with the Property and the Personal Property (as defined below), (viii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Mortgagor under any such agreements, (ix) reserves, deposits, bonds, deferred payments, refunds, including, without limitation, property tax or income tax refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks,

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goodwill and all other types of intangible personal property of any kind or nature, (x) all deposit accounts, cash, revenues, rental income and reimbursements, and (xi) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the "Intangibles");

**TO HAVE AND TO HOLD** the Premises, unto Mortgagee, its successors and assigns, forever, for the benefit of the Lenders, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Event of Default.

2. Mortgagor further grants to Mortgagee, pursuant to the UCC, a security interest in all present and future right, title and interest of Mortgagor in and to all Goods and Intangibles and all of the Premises described above in which a security interest may be created under the UCC (collectively, the "Personal Property"). This Mortgage constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Mortgagee. Mortgagee shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a "secured party" under the UCC and other applicable Illinois law. Mortgagor covenants and agrees that this Mortgage is a "construction mortgage" under Section 9-334(h) of the UCC, and constitutes a fixture filing under Section 9-502(l) of the UCC.

For purposes of the fixture filing that is part of this Mortgage, Mortgagor provides the following information as a representation and warranty to Mortgagee, and to provide notice of the same:

Mortgagor is the debtor and is a limited liability company.

Mortgagor is organized under the laws of the State of Delaware.

Mortgagor's organizational identification number is 5585644.

Mortgagor's full correct, legal name is 1001 South State Street (Chicago) Owner, LLC.

Mortgagor's address is 625 N. Michigan Avenue, Suite 2000, Chicago, IL 60611.

Mortgagee is the secured party.

Mortgagee's address is 2000 Avenue of the Stars, Suite 210, Los Angeles, CA 90067, Attn: Commercial Real Estate - MC 4693.

**FOR THE PURPOSE OF SECURING**, in such order of priority as Mortgagee may elect, (1) payment of an indebtedness in the aggregate principal sum of Seventy-Five Million Six Hundred Fourteen Thousand Dollars (\$75,614,000) evidenced by one or more promissory notes, each executed by Mortgagor and payable to the order of Mortgagee and any and all modifications, extensions, replacements, supplements or renewals thereof, whether hereafter evidenced by said notes or otherwise (collectively, "Note"); (2) payment of interest on said indebtedness according to the terms of the Loan Agreement and the Note; (3) payment of all other sums, with interest as herein provided, becoming due or payable under the provisions of this Mortgage to Mortgagee; (4) due, prompt and complete observance, performance and

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discharge of each and every condition, obligation, covenant and agreement contained herein, or in the Note, or in the Loan Agreement or any other loan agreement relative to any indebtedness evidenced by the Note or in any document or instrument evidencing, securing or pertaining to the indebtedness evidenced by the Note, excluding, however, the Guaranty, Completion Agreement and Environmental Indemnity (as defined in the Loan Agreement) and all modifications, renewals or extensions of any of the foregoing; (5) payment of such additional sums, with interest thereon as may be hereafter borrowed from Mortgagee, its successors or assigns by Mortgagor when evidenced by another promissory note or notes, which are by the terms thereof secured by this Mortgage; and (6) payment of all amounts required pursuant to any master agreement (pertaining to interest rate swaps or options, forward rate transactions, cap, collar or floor transactions or any similar interest rate hedge product) that is concurrently or hereafter executed by Mortgagor, in connection with Mortgagor's obligations under the Note and the Loan Agreement, as the same may be amended from time to time.

## **TO PROTECT AND MAINTAIN THE SECURITY OF THIS MORTGAGE, MORTGAGOR AGREES:**

(a) To pay, perform, observe and discharge each and every condition, obligation, covenant and agreement for which this Mortgage has been given as security as provided above.

(b) Subject to the Loan Agreement and Section 3 of this Mortgage, (i) to keep the Property in good condition and repair subject to normal wear and tear; (ii) not to remove or demolish any improvement thereon; (iii) to complete or restore promptly and in good and workmanlike manner any improvement which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; (iv) to comply with all laws affecting the Premises or requiring any alterations or improvements to be made thereon; (v) not to commit or knowingly permit physical waste thereof; (vi) not to commit, suffer or knowingly permit any act upon the Premises in violation of law; and (vii) to do all acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

Mortgagor shall maintain all required insurance in companies, amounts, coverages, deductibles, and forms satisfactory to the Mortgagee, as required in the separate insurance letter agreement of even date herewith between Mortgagor and Agent (the "Insurance Agreement"). Neither Mortgagee nor any Lender, by reason of accepting, rejecting, approving or obtaining insurance, shall incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency or insolvency of any insurer, or (iii) the payment of losses. All property insurance policies shall name Mortgagee, for the benefit of the Lenders, as the primary loss payee, all liability insurance policies shall name Mortgagee, for the benefit of the Lenders, as an additional insured, and all policies shall provide that they cannot be terminated as to Mortgagee except upon thirty (30) days' prior written notice to Mortgagee. Mortgagor shall deliver to Mortgagee the original of all certificates evidencing the required policies, and, if requested by Mortgagee, receipts satisfactory to the Mortgagee, evidencing payment of the premiums therefor. Unless the Mortgagor provides Mortgagee evidence of the insurance coverages required hereunder, Mortgagee may purchase insurance at the Mortgagor's expense to cover Mortgagee's interest in the Premises. The insurance may, but need not, protect Mortgagee's interest. The coverages that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim

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that is made against Mortgagor in connection with the Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the Premises, Mortgagor will be responsible for the costs of such insurance, including, without limitation, interest at the Default Interest Rate and any other charges which Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The cost of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

(c) As of the date this Mortgage is recorded and continuously until this Mortgage is released, the insurance policies shall conform to the following requirements:

(i) All insurance policies must be underwritten by insurers with a Best's rating of B+, VI or better;

(ii) Mortgagor shall maintain a Commercial General Liability insurance policy, including broad form coverages or their equivalents, with One Million Dollars (\$1,000,000) combined single limit coverage for bodily injury and property damage; provided, however, if improvements similar to the Improvements secured hereby are generally insured at higher limits of coverage, such higher limits shall be obtained. Mortgagor may provide coverage, during construction, with the construction contractor's coverage, if it has been approved by Agent and names Agent as an additional insured, and if Mortgagor includes the general liability insurance under its general liability portfolio program, if approved by Agent. In all other cases, Mortgagor shall maintain such liability insurance coverages as Mortgagee may require from time to time, subject to the terms of the Insurance Agreement and the Loan Agreement;

(iii) Mortgagor shall provide, as required by Mortgagee, additional property and rental income insurance coverages as follows:

(A) All risk coverage (excluding earthquake insurance) in the amount of the full replacement cost of the Improvements;

(B) A waiver of co-insurance endorsement or agreed value endorsement (relative to casualty);

(C) A replacement cost coverage endorsement (relative to casualty);

(D) A standard mortgage clause (438BFU or CP12-18) with Mortgagee named as loss payee in the Declarations;

(E) A waiver of subrogation clause;

(F) To the extent that any portion of the Real Property constitutes rental property, loss of rents coverage in an amount equal to at least twelve (12) months of rentals from the Real Property secured hereby and any expenses that are payable or reimbursable by tenants; and

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(G) If required by Mortgagee, flood insurance in an amount sufficient to provide full replacement cost coverage of the Real Property in the event the Real Property is located within any flood hazard area.

3. The amount collected under any fire or other insurance policy maintained by Mortgagor with respect to the Property (whether or not required hereunder and whether or not Mortgagee is named as loss payee) may be applied by Mortgagee upon any indebtedness secured hereby and in such order as Mortgagee may determine, or at the option of Mortgagee the entire amount so collected or any part thereof may be released to Mortgagor. Such application or release shall not cure or waive any Event of Default (as defined in Paragraph 14 below) or notice of an Event of Default hereunder or invalidate any act done pursuant to such notice. The foregoing notwithstanding, if Mortgagor gives Mortgagee written notice of Mortgagor's intent to repair and restore the Improvements and all of the following conditions are satisfied, Mortgagee will permit insurance proceeds held by Mortgagee to be used for repair or restoration of the Improvements: (a) Mortgagee determines in its reasonable discretion that its security interest in the Property has not been impaired; (b) the repair or restoration of the Improvements can be completed prior to the maturity date of the Loan; (c) no Event of Default exists under any of the Loan Documents other than that which is a direct result of the casualty or condemnation; (d) Agent has determined that the proceeds of the insurance, together with the undisbursed Loan proceeds, are insufficient to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges and insurance during the repair period), Mortgagor has paid, or caused to be paid, such costs up to the amount of the deficiency that Agent has determined in its reasonable discretion and in good faith; (e) Mortgagee and Mortgagor have established an arrangement for lien releases and disbursement of funds acceptable to Mortgagee (which procedures may be substantially the same as Mortgagee's standard construction lending procedures); (f) Mortgagee shall have received and approved plans and specifications for the work, as approved by the applicable Governmental Authorities and any other Persons or entities that have such approval rights, a guaranteed maximum price contract for the work signed by a contractor acceptable to Mortgagee, a cost breakdown for the work, and, if requested by Mortgagee, a payment and performance bond or sub-guard insurance for the work, all of which shall be acceptable to Mortgagee in its reasonable discretion; and (g) Mortgagor has delivered to Mortgagee evidence reasonably acceptable to Mortgagee that (i) after completion of the work, the income from the Real Property will be sufficient to pay all expenses and debt service for the Real Property; (ii) upon completion of the work, the size, capacity and total value of the Real Property will be at least as great as it was before the damage occurred; and (iii) there has been no material adverse change in the financial condition or credit of Mortgagor since the date of this Mortgage; and (h) satisfaction of any additional conditions that Mortgagee may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable. However, as to insurance proceeds in amounts less than \$2,500,000, if the conditions in Section 3(a), (b) and (c) are satisfied, then Mortgagor may retain the insurance proceeds, and use them to pay the costs to repair or restore the Improvements, without being required to follow the other procedures or satisfy the other conditions in Section 3.

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4. Mortgagor agrees to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee or any Lender; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Mortgagee or any Lender may appear, and in any suit brought by Mortgagee to foreclose this Mortgage.

5. Subject to the contest right described below, Mortgagor agrees to pay and discharge, at least ten (10) days prior to delinquency, all taxes of every kind and nature, including real and personal property taxes, special taxes and income, franchise, withholding, profits and gross receipts taxes, all general and special assessments, including assessments on appurtenant water stock, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against Mortgagor or the Premises or any part thereof or upon the revenues, rents, issues, income and profits thereof or upon this Mortgage or the indebtedness now or hereafter secured hereby; and, when due, all encumbrances, charges and liens, with interest, on the Premises or any part thereof, which appear to be prior or superior hereto or subject or subordinate hereto. If any Event of Default has occurred under any of the Loan Documents or if Mortgagor has failed to pay real property taxes or assessments prior to delinquency or insurance premiums prior to lapse, then, at Mortgagee's written request, Mortgagor shall pay to Mortgagee in equal installments on the day on which monthly payments of interest are due under the Loan Agreement, sufficient funds (as estimated by Mortgagee from time to time) to pay when due the next maturing taxes, assessments and hazard insurance premiums. When so provided with sufficient funds, Mortgagee shall pay such taxes, assessments and hazard insurance premiums before delinquency. Any excess over the amount required for such purposes shall be held for future use, refunded to Mortgagor, or, upon and during the continuance of an Event of Default, applied to any indebtedness hereby secured, at Mortgagee's option.

At its cost and expense, Mortgagor may contest the amount or validity of any taxes, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) such proceedings operate to prevent the collection of, or other realization upon, such taxes so contested, (b) there will be no sale, forfeiture or loss of the Property during the contest, (c) Mortgagee is not subjected to any claim as a result of such contest, and (d) Mortgagor provides assurances satisfactory to Mortgagee of its ability to pay such taxes in the event Mortgagor is unsuccessful in its contest (including, at Mortgagee's request, the establishment of an appropriate reserve account with Mortgagee or providing adequate security acceptable to Mortgagee). Each such contest shall be promptly prosecuted to final conclusion or settlement, and Mortgagor shall indemnify and save Mortgagee harmless against all claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Mortgagor shall pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

Mortgagor agrees to promptly observe, perform, and discharge each and every condition, obligation, covenant and agreement affecting the Premises in all material respects, whether the same is prior and superior or subject and subordinate hereto including, if the security hereunder



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is or will be a condominium, community apartment or part of a planned development, each and every provision to be performed by Mortgagor under any Declaration of Covenants, Conditions and Restrictions pertaining to the Real Property and, upon written request of Mortgagee, to pay all assessments and maintenance charges, if the same have not been paid or legal steps have not been initiated to enforce such payment within ninety (90) days after such written request is made.

If Mortgagor fails to make any payment or to do any act as required in this Section 5 within ten (10) days after receipt of written notice from Mortgagee, then Mortgagee, but without obligation so to do and without further notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Real Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees and costs in connection therewith.

Mortgagor agrees to pay within ten (10) Business Days after demand therefor by Mortgagee, all sums so expended by Mortgagee or any Lender, with interest from date of expenditure until paid in full by Mortgagor at a rate equal to the Default Interest rate, which sums shall be secured by this Mortgage to the same extent and with the same priority as the principal and interest payable under the Note and the Loan Agreement, and such sums shall be deemed mandatory advances required for the preservation and protection of the lien of this Mortgage and Mortgagee's rights hereunder.

6. Mortgagor agrees that any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Mortgagee who may apply or release such moneys in the same manner, upon the same conditions, and with the same effect as above provided for disposition of proceeds of fire or other insurance. If such conditions are not satisfied, then regardless of whether the security given hereby is impaired by a partial condemnation, Mortgagee, in its sole and absolute discretion, shall have the right to apply all compensation, award or other payments or relief therefor made on account thereof to either the payment of accrued but unpaid interest and second to the prepayment of principal under the Note and the Loan Agreement or reimbursement of Mortgagor for expenses incurred by it in the restoration of the Property, and in respect thereto, Mortgagor hereby waives the benefit of any statute or rule of law which may be contrary thereto.

7. By accepting the payment, performance or observance of any condition, obligation, covenant or agreement contained herein after the date to be paid, performed or observed as provided hereunder, Mortgagee does not waive its right either to require prompt payment, performance or observance when due of all other conditions, obligations, covenants or agreements contained herein or to declare an Event of Default for failure so to do.

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8. At any time or from time to time, without liability therefor and without notice, upon written request of Mortgagee and presentation of this Mortgage and the Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Mortgagee may: consent to the making of any map or plat thereof; join in granting any easement thereon; join in the execution of or subordination of the lien or charge hereof to any covenants, conditions or restrictions affecting said property; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

9. Mortgagee shall release this Mortgage and the lien hereof by proper instrument in recordable form upon payment in full of all sums secured by this Mortgage.

10. Mortgagor absolutely and unconditionally hereby assigns, transfers, conveys and sets over to Mortgagee all the Rents; provided, however, prior to any Event of Default, Mortgagor shall have the right as the agent and fiduciary representative of Mortgagee for collection and distribution purposes only, to collect and receive the Rents as they become due and payable to be applied by Mortgagor to the payment of the principal and interest and all other sums due or payable on the Note and to the payment of all other sums payable under this Mortgage and to the payment of Project Expenses. After the occurrence of any Event of Default, Mortgagee may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name, in the name of Lenders or in the name of Mortgagor, sue for or otherwise collect the Rents, including those past due and unpaid and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees and expenses, to the payment of the principal and interest and all other sums due or payable on the Note and the Loan Agreement and to the payment of all other sums payable under this Mortgage and in such order as Mortgagee may determine. The entering upon and taking possession of the Property, the collection of the Rents and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of an Event of Default under any of the Loan Documents or invalidate any act done pursuant to such notice. However, if the Event of Default is completely cured and no other Event of Default then exists under any of the Loan Documents, at a time prior to Mortgagee's filing of a petition for the appointment of a receiver, then Mortgagee shall not subsequently exercise such remedies, on account of the cured Event of Default; provided that Mortgagee shall in no way be restricted from exercising any and all of such remedies after the occurrence of any subsequent Event of Default.

All leases and rental agreements now or hereafter affecting the Real Property, including all oil and gas leases and other subsurface leases and the royalties derived therefrom, are hereby assigned and transferred to Mortgagee by the Mortgagor. Mortgagor hereby agrees and covenants that no lease for which Mortgagee's consent is required under the Loan Agreement will be modified or terminated without Mortgagee's prior written consent, such consent to be requested and given or withheld in accordance with the Loan Agreement.

Mortgagor agrees that it will not (a) execute any further assignment of any of its right, title and interest in the Rents without the prior written consent of Mortgagee; (b) accept

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prepayments of any installments of Rents to become due under any leases or rental agreements in excess of one (1) month, except prepayments in the nature of security; and (c) with respect to any lease or rental agreement for which Mortgagee's consent is required under the Loan Agreement, Mortgagor will not terminate, amend, modify or accept a surrender of any such lease or rental agreement without the prior written consent of the Mortgagee except as provided in the Loan Agreement. Mortgagee shall approve or disapprove any matter so submitted by Mortgagor within ten (10) Business Days after Mortgagee's receipt thereof. If Mortgagee has not delivered written approval or disapproval of such proposed transaction within five (5) Business Days after Mortgagee's receipt of a written notice (which notice is delivered after the expiration of such ten (10) Business Day period) that states that Mortgagee's failure to respond will be deemed approval of the transaction, then such proposed transaction will be deemed to be approved.

11. Mortgagor may enter into leases of the Improvements in accordance with the requirements of the Loan Agreement. Mortgagor shall use its best and diligent efforts to lease all of the apartment units on the Property in accordance with the requirements of the Loan Agreement. Upon the request of Mortgagee, Mortgagor shall deliver copies of all executed Leases to Agent.

12. Mortgagor agrees to indemnify, defend and hold harmless Mortgagee and Lenders from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including reasonable attorneys' fees and disbursements) which may be imposed on, incurred or paid by or asserted against Mortgagee and/or any Lender by reason or on account of, or in connection with (a) any Event of Default by Mortgagor hereunder or under any other Loan Document; (b) Mortgagee's good faith and commercially reasonable exercise of any of its rights and remedies, or the performance of any of their duties hereunder or under the other Loan Documents to which Mortgagor is a party; (c) the construction, reconstruction or alteration of the Real Property by Mortgagor or its agents; (d) any negligence or willful misconduct of Mortgagor, or any negligence or willful misconduct of any lessee of the Real Property or any portion thereof, or any of their respective agents, contractors, employees, licensees or invitees; or (e) any accidents, injury, death or damage to any person or property occurring in, on or about the Real Property or any street, drive, sidewalk, curb or passageway adjacent thereto, except to the extent resulting from the willful misconduct or gross negligence of Mortgagee. Upon demand by Mortgagee, Mortgagor shall defend any action or proceeding brought against Mortgagee arising out of or alleging any claim or cause of action covered by this indemnity, all at Mortgagor's own cost and by counsel to be approved by Mortgagee in the exercise of its reasonable judgment. In the alternative, Mortgagee and/or any Lender may elect to conduct its own defense at the expense of Mortgagor. The provisions of this Paragraph 12 shall survive the foreclosure or the delivery of a deed in lieu of foreclosure of this Mortgage or the payment in full of the indebtedness secured hereby and the release of this Mortgage, as the case may be (each a "Transfer"), but shall not apply to events or conditions that first occur in the period after a Transfer.

Any amount payable to Mortgagee or any Lender under this Paragraph 12 shall be due and payable immediately after demand therefor and receipt by Mortgagor of a statement setting forth in reasonable detail the amount claimed and the basis therefor, and such amounts shall bear

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interest at the rate specified in Paragraph 5 hereof from and after the date such amounts are paid by Mortgagee or any Lender, as the case may be, until paid in full by Mortgagor.

13. Mortgagor shall not install materials, personal property, equipment, or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any person, firm or corporation to remove or repossess any such material, equipment or fixtures, or whereby title to any of the same is not completely vested in Mortgagor at time of installation, in violation of the terms of the Loan Agreement, without Mortgagee's written consent.

14. Each of the following is an "Event of Default" hereunder: (a) the failure by Mortgagor to timely perform any of its obligations under this Mortgage, including, without limitation, failure to timely pay amounts due and payable or perform under any condition, covenant or agreement set forth herein, which failure is not cured within ten (10) days after receipt of Mortgagee's notice of such failure, or (b) the occurrence of any Event of Default described in the Loan Agreement. Any cure periods herein shall run concurrently with applicable cure periods under the Loan Agreement or any other Loan Document. Upon the occurrence of any Event of Default, Mortgagee may declare all sums secured hereby immediately due and payable by delivery without further notice to Mortgagor and take any action or pursue any right or remedy permitted under applicable law.

If any Note or the Loan Agreement provides for any charge for prepayment of any indebtedness secured hereby, Mortgagor agrees to pay said charge, if any, prior to the date thereof stated in the Note or the Loan Agreement, even if and notwithstanding Mortgagor shall have defaulted in payment thereof, or in performance of any agreement hereunder, and Mortgagee, by reason thereof, shall have declared all sums secured hereby immediately due and payable.

15. When all or any part of the indebtedness secured hereby shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such 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 such insurance policies.

16. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee

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may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this section and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

17. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as the Lender may determine in its sole and absolute discretion.

18. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the Premises in accordance with the Act. Such appointment may be made either before or after sale, with or without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the Rents of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such Rents. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

19. At any time after an Event of Default has occurred and while it is continuing, Mortgagor shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Premises. Mortgagee, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Premises, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of

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the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Mortgagee shall have full power to:

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same;
- (b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date 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 Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee deems are necessary;
- (e) insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof; and
- (f) receive all Rents.

20. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the Rents 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 the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;
- (b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and
- (c) to the payment of any indebtedness secured hereby, including any deficiency which may result from any foreclosure sale.

21. Mortgagor agrees that:

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(a) if any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act;

(b) if any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 18 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law; and

(c) without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not specifically enumerated in this Mortgage, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.

22. If Mortgagor, or any subsequent owner of the Real Property covered hereby, shall occupy such Real Property, or any part thereof, after an Event of Default, Mortgagor, or such owner, shall pay to Mortgagee, for the account of Lenders, in advance on the first day of each month a reasonable rental for the premises so occupied, and upon failure to pay such reasonable rental, Mortgagor, or such owner, may be removed from said premises by summary dispossession proceedings or by any other appropriate action or proceeding.

23. Mortgagor hereby represents and warrants: (a) that it is or will be the lawful owner of all of the Premises free of all claims, liens or encumbrances whatsoever, other than the security interests granted pursuant hereto, Permitted Encumbrances, and such other matters as may be approved in writing by Mortgagee in Mortgagee's sole and absolute discretion; (b) all written information, including but not limited to financial statements furnished by Mortgagor to Mortgagee heretofore or hereafter, is and will be correct and true as of the date given; and (c) if Mortgagor is a business entity, the execution, delivery and performance hereof are within its powers and have been duly authorized.

24. With respect to the Personal Property and the security interest granted to Mortgagee, for the benefit of the Lenders, under the Mortgage, the following shall apply:

(a) Mortgagor shall: (i) deliver such financing statements and execute such other documents and do such other acts and things, all as Mortgagee may from time to time require, to establish and maintain a valid security interest in the Personal Property, including payment of all costs and fees in connection with any of the foregoing when reasonably deemed necessary by Mortgagee and Mortgagor hereby authorizes Mortgagee to file financing statements and continuation statements in any applicable jurisdiction, covering "all assets" of Mortgagor, including without limitation, all Property described in this Mortgage; (ii) keep the Personal

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Property separate and identifiable and at the location described herein and permit Mortgagee and its representatives to inspect the Personal Property and/or records pertaining thereto from time to time during normal business hours; (iii) at Mortgagor's expense upon Mortgagee's request remove any unauthorized lien or security interest and defend any claim affecting the Personal Property; (iv) reimburse Mortgagee for any expenses including but not limited to reasonable attorneys' fees and legal expenses, incurred by Mortgagee in seeking to protect, collect or enforce any rights in the Personal Property; (v) maintain the Personal Property in good condition subject to normal wear and tear and replacement in the ordinary course and not use the Personal Property for any unlawful purpose; and (vi) at its own expense, upon request of Mortgagee, during the existence of any Event of Default, notify any parties obligated to Mortgagor on any of the Personal Property to make payment to Mortgagee, and Mortgagor hereby irrevocably grants Mortgagee power of attorney to make said notifications and collections. Mortgagor does hereby authorize Mortgagee to perform any and all acts which Mortgagee in good faith deems necessary for the protection and preservation of the Personal Property or its value or Mortgagee's security interest therein, including, after an Event of Default, transferring any of the Personal Property into its own name and receiving the income thereon as additional security hereunder.

(b) Whenever an Event of Default exists under this Mortgage, Mortgagee, at its option may: (i) transfer any of the Personal Property into its own name, the names of Lenders or the name of its nominee; (ii) notify any parties obligated on any of the Personal Property consisting of accounts, instruments, chattel paper, notes or the like to make payment to Mortgagee and enforce collection of any of the Personal Property herein; (iii) require Mortgagor to assemble and deliver any of the Personal Property to Mortgagee at a reasonably convenient place designated by Mortgagee. No delay on the part of Mortgagee in the exercise of any right or remedy shall constitute a waiver thereof and any exercise, or partial exercise, by Mortgagee of any right or remedy under this Paragraph 24 shall not preclude the exercise of any other right or remedy of Mortgagee under this Paragraph 24, this Mortgage or at law or in equity or the further exercise of the same remedy. This Paragraph 24 shall not be construed to derogate or impair the lien or provisions of any other provision of this Mortgage with respect to any property described in this Mortgage that is real property or which the parties have agreed to treat as real property. Mortgagee's rights, power and remedies as to the Personal Property shall be exercisable as to any part or all of the Personal Property as Mortgagee may elect.

(c) Mortgagor hereby assumes, and releases Mortgagee and Lenders from, all risk of loss, destruction or damage to all or any part of the Personal Property by reason of any casualty or cause whatsoever (except to the extent found by a court of competent jurisdiction to be caused by the intentional misconduct or gross negligence of Mortgagee or any Lender), and Mortgagor shall indemnify and hold Mortgagee and Lenders harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, reasonable attorneys' fees and costs) imposed upon or incurred by or asserted against Mortgagee or any Lender by reason of (i) any failure by Mortgagor to perform or comply with the terms of this Mortgage or (ii) the exercise by Mortgagee of any rights or remedies provided hereunder or at law or in equity, except to the extent caused by Mortgagee's or any Lender's intentional misconduct or gross negligence.

(d) Upon transfer by Mortgagee of its obligations, as Agent for Lenders, Mortgagee shall be fully discharged from all liability with respect to the Personal Property transferred therewith.



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(e) The grant of a security interest in proceeds, replacements, substitutions or the like does not imply any right of Mortgagor to sell or dispose of any Personal Property described herein without the express written consent by Mortgagee.

25. The rights set forth in this section are in addition to Mortgagee's rights of enforcement with respect to all or any portion of the Premises in accordance with the procedures for foreclosure of real estate. Mortgagee may exercise rights of enforcement with respect to all or any portion of the Personal Property under the UCC and in conjunction with, in addition to or in substitution for those rights and remedies, all of the following provisions shall be effective:

(a) After the occurrence of an Event of Default, Mortgagee may enter upon the Premises to take possession of, assemble and collect the Personal Property or, to the extent and for those items of the Personal Property permitted under applicable law, to render it unusable.

(b) Written notice mailed to Mortgagor as provided herein at least ten (10) days prior to the date of public sale of the Personal Property or prior to the date on which private sale of the Personal Property will be made shall constitute reasonable notice; provided that, if Mortgagee fails to comply with this clause (b) in any respect, its liability for such failure shall be limited to the liability (if any) imposed on Mortgagee as a matter of law under the UCC.

(c) Any sale made pursuant to the provisions of this Section shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the foreclosure sale of the Premises as provided in this Mortgage.

(d) In the event of a foreclosure sale, the Premises including the Personal Property may, at the option of Mortgagee, for the benefit of Lenders, be sold as a whole.

(e) It shall not be necessary for Mortgagee to take possession of the Personal Property or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary for the Personal Property or any part thereof to be present at the location of such sale.

(f) With respect to application of proceeds from disposition of the Personal Property, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee.

(g) Any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to non-payment of the obligations secured hereby or as to the occurrence of any Event of Default, or as to Mortgagee or the Lenders having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the Personal Property to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee, shall be taken as prima facie evidence of the truth of the facts so stated and recited.

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(h) Mortgagee may appoint or delegate one or more persons to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the applicable state or local law or regulatory requirements in connection with a disposition of the Personal Property, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Personal Property.

(i) Mortgagee, for the benefit of Lenders, may sell the Personal Property without giving any warranties as to the Personal Property, and may specifically disclaim any warranties of title, merchantability, fitness for a specific purpose or the like, and this procedure will not be considered to affect adversely the commercial reasonableness of any sale of the Personal Property.

(j) Mortgagor acknowledges that a private sale of the Personal Property may result in less proceeds than a public sale.

(k) Mortgagor acknowledges that the Personal Property may be sold at a loss to Mortgagor, and that in such event Mortgagee and Lenders shall not have any liability or responsibility to Mortgagor for such loss.

26. Mortgagor authorizes Mortgagee to authenticate any record regarding all or any portion of the Personal Property, including, without limitation, a financing statement that covers "all assets" of Mortgagor; and to file any financing statement covering all or any portion of the Personal Property. If required by Mortgagee at any time during the term of this Mortgage, Mortgagor will execute and deliver to Mortgagee, in form satisfactory to Mortgagee, an additional security agreement and/or financing statement covering all Personal Property of Mortgagor which may at any time be furnished, placed on, or annexed or made appurtenant to the Premises and used, useful or held for use in the operation of the Improvements.

27. If Mortgagor is at any time a beneficiary under a letter of credit relating to all or any portion of the Premises, Mortgagor shall promptly notify Mortgagee thereof. At Mortgagee's request, and pursuant to an agreement in form and substance satisfactory to Mortgagee, Mortgagor shall either (a) arrange for the Issuer and any confirmer of such letter of credit to consent to an assignment to Mortgagee of the proceeds of any drawings under the letter of credit, or (b) arrange for Mortgagee to become the transferee beneficiary of the letter of credit, or (c) execute and deliver any other documentation requested by Mortgagee to perfect Mortgagee's security interest in the letter of credit and all rights to payment thereunder.

28. Mortgagor shall deliver financial statements and reports to Mortgagee as and when required in the Loan Agreement. Mortgagor shall keep true and correct records upon which annual statements are based for not less than three (3) years after delivery of the required annual statement. Mortgagee and Lenders shall have the right, at their own cost and at any time and from time to time after giving prior written notice to Mortgagor, to do or cause to be done any of the following: to audit the records; to cause an audit of the records to be made; to make abstracts from the records; to make copies of any or all of the records; to examine any or all purchase agreements, closing statements, leases and

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rental agreements (if such leases and rental agreements exist); and to make copies of any or all leases and rental agreements (to the extent such purchase agreements, closing statements, leases and rental agreements exist). Mortgagor shall make all records specified in the notice available at the time specified in the notice and at the place where the records are customarily kept. Upon any Event of Default under the Note, this Mortgage or other Loan Documents, Mortgagee may perform any of the acts authorized by this paragraph at the sole cost of Mortgagor. Mortgagor shall promptly reimburse Mortgagee for its costs and such costs shall be secured by this Mortgage.

29. The pleading of any statute of limitations as a defense to any and all obligations secured by this Mortgage is hereby waived to the full extent permissible by law.

30. Prior to the payment in full of the amounts owing under the Loan Documents and performance of all obligations secured hereby or the release of the lien created hereby, this Mortgage applies to, inures to the benefit of, and binds all parties hereto and Lenders, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Mortgagee shall mean Mortgagee as Agent for the owners and holders, including pledgees, of the Note, whether or not named as Mortgagee herein. In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural. If more than one (1) person executes this Mortgage as Mortgagor, the obligations of such persons are joint and several.

31. Mortgagor agrees that Mortgagee or any Lender may provide any financial or other information, data or material in Mortgagee's or such Lender's possession relating to Mortgagor, the Loan, this Mortgage, the Premises or the Improvements, to Mortgagee's or such Lender's parent, affiliates, subsidiaries, assignees, participants or service providers, without further notice to Mortgagor, subject to the provisions of the Loan Agreement.

32. That, except as expressly permitted in the Loan Agreement, should Mortgagor sell, convey, transfer, dispose of or further encumber the Premises or any part thereof or any interest therein or enter into a lease covering all or any portion thereof in violation of the terms of the Loan Agreement or this Mortgage, or an undivided interest therein, either voluntarily, involuntarily or otherwise, without the prior written consent of Mortgagee being first had and obtained, then Mortgagee may, at its option, declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions. A Permitted Transfer, as defined in the Loan Agreement is not prohibited by this paragraph.

33. In the event of the passage after the date hereof of any law deducting from the value of real property, for taxation purposes, any lien thereon or changing in any way the laws now in force for the taxation of mortgages or debts whether or not secured thereby for federal, state or local purposes or the manner of the collection of any such taxes so as to affect this Mortgage or the obligations hereby secured, Mortgagor agrees to pay the same and if Mortgagor fails to so do or if it would be illegal for Mortgagor so to do then, the whole of the principal sum secured by this Mortgage, together with accrued interest

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thereon shall, at the option of Mortgagee, without demand or notice, immediately become due and payable.

34. No remedy herein conferred upon, reserved to Mortgagee or any Lender is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee or any Lender in the exercising of any right or power accruing upon any Event of Default shall impair such right or power or any other right or power nor shall the same be construed to be a waiver of any Event of Default or any acquiescence therein. Every power and remedy given by this Mortgage to Mortgagee or Lenders may be exercised from time to time as often as may be deemed expedient by Mortgagee or Lenders. If there exists additional security for the obligations secured hereby, Mortgagee, at its sole option, and without limiting or affecting any of the rights or remedies hereunder, may exercise any of the rights or remedies to which it may be entitled hereunder either concurrently with whatever rights it may have in connection with such other security or in such order and in such manner as Mortgagee may deem fit without waiving any rights with respect to any other security. The granting of consent by Mortgagee to any transaction as required by the terms hereunder shall not be deemed a waiver of the right to secure the consent of Mortgagee to future or successive transactions.

35. In the event any one or more of the provisions contained in this Mortgage or in the Note or Loan Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage or the Note and Loan Agreement, but this Mortgage and the Note and Loan Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

36. MORTGAGOR ACKNOWLEDGE(S) AND AGREE(S) THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE LENDING RELATIONSHIP ESTABLISHED HEREBY WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES, AND THEREFORE, MORTGAGOR HEREBY WAIVE(S) ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ACTIONS SOUNDING IN TORT) TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT OR ARISING FROM THE TRANSACTION CONTEMPLATED HEREUNDER OR THE LENDING RELATIONSHIP ESTABLISHED HEREBY AND AGREE(S) THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE AND NOT BY A JURY.

37. This Mortgage has been executed and delivered in the State of Illinois and is to be construed and enforced according to and governed by the laws thereof.

38. Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured hereby exceed an amount equal to One Hundred Fifty-One Million and 00/100 Dollars (\$151,000,000.00); provided, however, in no event shall the Lender be obligated to advance funds in excess of the aggregate face amount of the Note.

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39. Any notice to be given under this Mortgage shall be given in accordance with Section 12.6 of the Loan Agreement.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the Mortgagor has executed and delivered this Construction Mortgage, Security Agreement and Fixture Filing (with Assignment of Rents and Leases) on the day and year first above written.

MORTGAGOR:

1001 SOUTH STATE STREET (CHICAGO) OWNER, LLC,  
a Delaware limited liability company

By: Ninth St. Investors, LLC,  
an Illinois limited liability company

Its: Managing Member

By: Gomo 1001 Investors LLC,  
an Illinois limited liability company

Its: Manager

By: Golub Real Estate Corp.,  
an Illinois corporation

Its: Manager

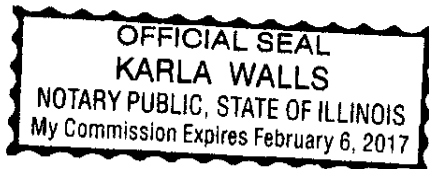
By: *M. Goldman*  
Name: *M. Goldman*  
Title: *VP*

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STATE OF ILLINOIS )  
 )  
COUNTY OF Cook ) SS  
 )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Michael Goldman, the VP of Golub Real Estate Corp., an Illinois corporation, the Manager of Golub 1001 Investors LLC, an Illinois limited liability company, the Manager of Ninth Street Investors, LLC, an Illinois limited liability company, the Managing Member of 1001 SOUTH STATE STREET (CHICAGO) OWNER, LLC, a Delaware limited liability company, who is personally known to me, to be the same person whose name is subscribed to the foregoing instrument as such Michael Goldman, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation as such Manager, for the uses and purposes therein set forth.

Witness my hand and official seal. 5/27/15  
Karla Walls [Seal]  
(Signature)



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## Exhibit "A"

### Real Property Description

#### PARCEL 1A:

THE EAST 1/2 (EXCEPT THE EAST 26 FEET AND EXCEPT THE WEST 30 FEET THEREOF) OF SUB LOT 1 OF LOT 2 IN BLOCK 19 OF CANAL TRUSTEES' SUBDIVISION OF LOTS IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 1B:

THE EAST 92 FEET (EXCEPT THE EAST 26 FEET THEREOF AND EXCEPT THE WEST 40 FEET THEREOF) OF THE NORTH 1/2 OF SUB LOT 2 OF LOT 2 IN BLOCK 19 OF CANAL TRUSTEES' SUBDIVISION LOTS IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

THE EAST 26 FEET OF SUB-LOT 1 IN LOT 2 AND THE NORTH 1/2 OF THE EAST 26 FEET OF SUB-LOT 2 IN LOT 2 IN BLOCK 19 IN CANAL TRUSTEES' SUBDIVISION OF LOTS IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3A:

THE WEST 112-1/2 FEET OF SUB-LOT 1 IN LOT 2 IN BLOCK 19 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO (EXCEPT THE WEST 27 FEET THEREOF TAKEN FOR WIDENING OF STATE STREET) IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3B:

SUB-LOT 2 OF THE CANAL TRUSTEES' SUBDIVISION OF LOT 2 IN BLOCK 19 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE NORTH 20 FEET OF THE EAST 52 FEET AND EXCEPT THAT PART TAKEN FOR WIDENING OF STATE STREET) IN COOK COUNTY, ILLINOIS.

#### PARCEL 3C:



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SUB-LOT 1 OF THE CANAL TRUSTEES' SUBDIVISION LOT 3 IN BLOCK 19 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO (EXCEPTING THEREFROM THE WEST 27 FEET THEREOF) IN SECTION 15, TOWNSHIP 39 NORTH RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

THE NORTH 1/2 OF SUB-LOT 2 OF LOT 3, THE SOUTH 1/2 OF SUB-LOT 2 OF LOT 3 AND THE NORTH 1/2 OF SUB-LOT 1 OF LOT 6, (ALL EXCEPTING THE WEST 27 FEET MORE OR LESS, TAKEN FOR WIDENING OF STATE STREET, AND EXCEPTING THAT PORTION OF SAID PREMISES TAKEN OFF THE REAR FOR ALLEY) ALL IN BLOCK 19 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN SECTIONS 15, 16 AND 17, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

THE SOUTH 1/2 OF SUB-LOT 1 (EXCEPT THAT PART THEREOF TAKEN FOR STREET) OF THE CANAL TRUSTEES' SUBDIVISION OF LOT 6 IN BLOCK 19 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6:

SUB-LOT 2 (EXCEPT THE WEST 27 FEET THEREOF TAKEN FOR WIDENING STATE STREET) OF LOT 6 IN BLOCK 19 IN FRACTIONAL SECTION 15, ADDITION TO CHICAGO OF FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 7:

SUB-LOT 1 OF LOT 7 IN BLOCK 19 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO (EXCEPT THE WEST 27 FEET THEREOF TAKEN FOR THE WIDENING OF STATE STREET) IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.s:                   17-15-306-010-0000  
                               17-15-306-011-0000  
                               17-15-306-012-0000  
                               17-15-306-013-0000  
                               17-15-306-014-0000  
                               17-15-306-030-0000  
                               17-15-306-031-0000  
                               17-15-306-037-8001  
                               17-15-306-037-8002

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901-1007 S. State Street  
Chicago, Illinois 60605

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