

# UNOFFICIAL COPY

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



1517642030

Doc#: 1517642030 Fee: \$98.00  
RHSP Fee:\$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 06/25/2015 10:39 AM Pg: 1 of 31

Report Mortgage Fraud  
800-532-8785

The property identified as:

PIN: 14-28-320-030-1083

**Address:**

Street: 2500 N. Lakeview

Street line 2: Units 1803, 3001 & 3002

City: Chicago

State: IL

ZIP Code: 60614

Lender: PHI Real Property LLC

Borrower: Erik C. Gould and Nadia F. Gould

Loan / Mortgage Amount: \$900,000.00

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

*Box 400*

Certificate number: 09E34564-B161-4AA6-B457-950440FACCBF

Execution date: 6/12/2015

S Y  
P 31  
S N  
SC V  
INT AR

1 of 1  
Pub. 150001181 NC

Property of Cook County Clerk's Office

**UNOFFICIAL COPY****PREPARED BY AND  
AFTER RECORDING  
RETURN TO:**

Krasnow Saunders  
Kaplan & Beninati LLP  
Attention: Frederick M. Kaplan  
500 N. Dearborn – 2<sup>nd</sup> Floor  
Chicago, IL 60654

**Address of Mortgaged Property:**

Units 1803, 3001 and 3002  
2500 N. Lakeview  
Chicago, IL 60614

PINs: 14-28-320-030-1083  
14-28-320-030-1028  
14-28-320-030-1061

**MORTGAGE AND SECURITY AGREEMENT**

**THIS MORTGAGE AND SECURITY AGREEMENT** (the or this “**Mortgage**”) is made as of this 12<sup>th</sup> day of June, 2015, by Erik C. Gould (“**Erik**”) and Nadia F. Gould (“**Nadia**”) of 2500 N. Lakeview Ave, Suite 1601, Chicago, IL 60614 (collectively referred to herein as the “**Mortgagor**”), husband and wife, as tenants by the entirety as to Units 3001-A and 3002-B of the Premises (as hereinafter defined) and as joint tenants as to Unit 1803-C of the Premises, in favor of PHI Real Property LLC, an Illinois limited liability company (“**PHI**”), and Pradera Investments LLC, an Iowa limited liability company (“**Pradera**”; PHI and Pradera being, individually and collectively, the “**Mortgagee**”):

**WITNESSETH:**

- A. In order to settle a dispute, Kestrel Holdings (USA), LLC, a Delaware limited liability company (“**Kestrel**”), and Mortgagee, among other parties, have entered into that certain Founding Member Interest Purchase and Settlement Agreement dated as of even date herewith (the “**Agreement**”).
- B. Pursuant to the Agreement, Nine Hundred Thousand and 00/100 Dollars (\$900,000.00) will be paid by Kestrel to Mortgagee on or before August 15, 2016. The foregoing

# UNOFFICIAL COPY

payment obligation is also evidenced by a promissory note, dated as of even date herewith, and executed by Kestrel in favor of the Mortgagee (the "**Kestrel Note**" and the loan by Mortgagee to Kestrel that is evidenced by the Kestrel Note being the "**Loan**").

- C. Also pursuant to the Agreement, Mortgagor executed and delivered to Mortgagee that certain Guaranty, dated as of even date herewith, and pursuant to which Mortgagor has guaranteed all of the obligations of Kestrel under and pursuant to the Kestrel Note (the "**Guaranty**"; the Note and the Guaranty are hereinafter sometimes collectively referred to as the "**Loan Documents**").
- D. Erik is the sole member of Kestrel and Nadia is Erik's wife and, correspondingly, Erik and Nadia will each receive a direct benefit from the Agreement, the Loan and the Kestrel Note and, therefore, are willing, as security for the performance by Kestrel and/or Mortgagor, as applicable, under the Agreement and the Loan Documents, to grant this Mortgage.

**NOW, THEREFORE**, Mortgagor, to secure: (i) the payment of said principal sum of money and all interest and other indebtedness evidenced by the Note and by any extensions, renewals or refinancings thereof; (ii) the performance and observance of the covenants, terms, conditions and agreements contained in the Note, this Mortgage the Loan Documents and the Agreement to be performed by Kestrel and/or Mortgagor, as applicable; and (iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the Loan Documents, with interest thereon as provided herein or therein; and also in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, ASSIGN, REMISE, RELEASE, WARRANT, AND CONVEY unto Mortgagee, its successors and assigns, the real estate and all of its estate, right, title and interest therein situate, legally described in **Exhibit A** attached hereto and made a part hereof, which together with the property hereinafter described, is referred to herein as the "Premises";

**TOGETHER** with all buildings and improvements now or hereafter constructed upon or erected upon or located on the real estate legally described in **Exhibit A** attached hereto, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the real estate legally described in **Exhibit A** attached hereto, and all rents, issues, royalties, income, proceeds, profits and other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, 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), and all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, refrigerators, curtain and drapery fixtures, partitions, attached floor covering, now or hereafter therein or thereon, and all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration

# UNOFFICIAL COPY

(whether single units or centrally controlled), and ventilation, including (without restricting the foregoing): all fixtures, apparatus, equipment and articles, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as defined in the Uniform Commercial Code of Illinois (the "Code")), this Mortgage is hereby deemed to also be a Security Agreement under the Code for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as Secured Party (as defined in the Code), as more particularly provided in this Mortgage.

**TO HAVE AND TO HOLD** the Premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

# UNOFFICIAL COPY

## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title. The Mortgagor represents that he is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except such liens and encumbrances as shall have been expressly approved in writing by Mortgagee, and (b) the Mortgagor has legal power and authority to mortgage and convey the Premises.

2. Maintenance; Repair and Restoration of Improvements; Payment of Prior Liens, etc. Mortgagee shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right to contest by appropriate proceedings diligently prosecuted the validity or amount of any such lien if and only if Mortgagor shall within fifteen (15) days after the filing thereof (1) place a bond with Mortgagee in an amount, form, content and issued by a surety reasonably acceptable to Mortgagee for the payment of any such lien or (2) cause the title company which has issued the loan policy of title insurance to Mortgagee insuring the lien of this Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien; (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; (d) complete within a reasonable time any buildings or any other improvements now or at any time in process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises and the use and development thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) make no structural or non-structural alterations to the Premises or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Mortgagee; (g) not suffer or permit any change in the general nature of the occupancy of the Premises, without the prior written consent of Mortgagee; (h) not initiate or acquiesce in any zoning reclassification without the prior written consent of Mortgagee; (i) pay or cause to be paid each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note; and (j) duly perform and observe, or cause to be duly performed and observed, all of the covenants, terms, provisions and agreements herein, in the, Agreement, the Note or in the Loan Documents on the part of Kestrel or Mortgagor to be performed and observed. As used in this Paragraph and elsewhere in this Mortgage, the term "**indebtedness**" shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Mortgagee thereunder, and all other sums at any time secured by this Mortgage.

# UNOFFICIAL COPY

3. Payment of Taxes and Assessments. Mortgagor shall pay before any penalty or interest attaches all general taxes, special taxes, condominium general assessments or special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises, or any interest therein, of any nature whatsoever when due, and shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted and Mortgagor shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Mortgagee, insuring over any exception created by such protest.

4. Insurance. Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including without limitation: (a) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation guard endorsements; (b) if there are tenants under leases at the Premises, rent and rental value or business loss insurance for the same perils described in (a) above payable at the rate per month and for the period specified from time to time by Mortgagee; (c) broad form sprinkler damage insurance in an amount reasonably satisfactory to Mortgagee, if and so long as the Premises shall contain a sprinkler system; (d) if the Premises are located in a flood hazard district, flood insurance in the maximum amount obtainable up to the amount of the indebtedness hereby secured; and (e) such other insurance as Mortgagee may from time to time reasonably require. Mortgagor also shall at all times maintain comprehensive public liability, property damage and workmen's compensation (if applicable) insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, companies, amounts and deductibles reasonably satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee. Mortgagor shall deliver all policies (or certificates thereof), including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not-less than thirty (30) days prior to their respective dates of expiration. Notwithstanding the preceding provisions of this paragraph to the contrary, provided an Event of Default has not occurred, or if an Event of Default has occurred, is not continuing, then the insurance policies evidenced by the certificates of insurance attached hereto as **Exhibit B** shall be deemed to satisfy the insurance coverage requirements of this paragraph.



# UNOFFICIAL COPY

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgage clause acceptable to Mortgagee. Mortgagor immediately shall notify Mortgagee whenever any such separate insurance is taken out and promptly shall deliver to Mortgagee the policy or policies of such insurance.

In the event of loss Mortgagor shall give immediate notice by mail to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and if Mortgagor shall make such proof of loss in a timely manner as provided above, then the provisions of Section 19 below shall apply. Any insurance proceeds so received by Mortgagee, or any part thereof, shall be applied by Mortgagee, after the payment of all of Mortgagee's expenses, including costs and attorneys' fees, to the restoration or repair of the property damaged as provided in Paragraph 19 hereof. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. Mortgagor shall furnish Mortgagee, without cost to Mortgagee, at the request of Mortgagee, from time to time, evidence of the replacement value of the Premises.

5. Condemnation. If all or any part of the Premises are substantially damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its expenses, including costs and attorneys' fees, to the restoration or repair of the property damaged as provided in Paragraph 19 hereof, if in the reasonable judgment of Mortgagee the property can be restored or repaired to the condition existing immediately prior to the taking. If in the reasonable judgment of Mortgagee the said property cannot be restored or repaired to the condition existing immediately prior to the taking, then such award or monies received after the payment of expenses of Mortgagee as aforesaid shall be applied on account of the unpaid principal balance of the Note. Irrespective of whether such principal balance is then due and payable and, at any time from and after the taking, upon thirty (30) days prior written notice to Mortgagor, Mortgagee may declare the whole of the indebtedness hereby secured to be due and payable. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the property and expenses of Mortgagee as aforesaid, then such excess monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable.

6. Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage or the issuance of the Note hereby secured,

# UNOFFICIAL COPY

Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note secured hereby. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

7. Lease Assignment. As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, Mortgagor, as lessor, hereby assigns to Mortgagee the entire lessor's right, title and interest in and to all leases and subleases (including all extensions and renewals thereof) which now or hereafter affect all or any portion of the Premises and in and to all rents, issues, income and profits of or from all or any portion of the Premises.

Mortgagor shall not, without Mortgagee's prior written consent, (a) execute an assignment or pledge of any rents and/or any leases affecting all or any portion of the Premises; or (b) accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment, other than security and other deposits.

Mortgagor at its sole cost and expense shall (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases affecting all or any portion of the Premises, on the part of the lessor thereunder to be kept and performed, (ii) use its best efforts to enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the lessees to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the lessor or of the lessees thereunder; (iv) as additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, transfer and assign to Mortgagee any lease or leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) give written notice to Mortgagee within five (5) days of the occurrence of any material default under any lease affecting all or any portion of the Premises; and (vi) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the lessee under any lease affecting all or any portion of the Premises a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as lessor under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the lessor, each and all of which covenants and payments Mortgagor agrees to perform and pay.

In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each Lease affecting all or any portion of the Premises shall, at the option of Mortgagee, attorn to any person succeeding to the interest of Mortgagor as a result of such enforcement and shall recognize such successor in interest as lessor under such Lease without



# UNOFFICIAL COPY

change in the terms or other provisions thereof; provided, however, that such successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or such successor in interest. Each lessee, upon request by such successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

Mortgagee shall have the option to declare this Mortgage in default because of a material default of the lessor in any lease affecting all or any portion of the Premises, whether or not such default is cured by Mortgagee pursuant to the right granted herein.

8. Effect of Extensions of Time. If the payment of said indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the indebtedness be released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor or in the beneficiary of Mortgagor, 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.

9. Effect of Changes in Laws Regarding Taxation. In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or 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 Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holders thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, 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 indebtedness secured hereby to be and become due and payable thirty (30) days from the giving of such notice.

10. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee. Mortgagee may, but need not, make any payment or perform any act herein 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 or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of any buildings or other improvements now or at any time hereafter on the Premises, and rent, operate and manage the Premises and such buildings and improvements and

# UNOFFICIAL COPY

pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and such buildings and improvements shall be operational and usable for their intended purposes. Following an Event of Default and during the continuance thereof, all monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraph 9 above or to protect the Premises or 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 an annual rate (the "Default Rate") equal to the Default Rate (as defined in the Note). In addition to the foregoing, any costs, expenses and fees, including actual reasonable attorneys' fees, incurred by Mortgagee following any such Event of Default hereunder and during the continuance thereof in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting and enforcing any of Mortgagee's rights hereunder, (c) recovering any indebtedness secured hereby, or (d) any litigation or proceedings affecting the Note, this Mortgage, the Premises or any guarantor or co-maker of the Note or this Mortgage, including without limitation, bankruptcy and probate proceedings, 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. The interest accruing under this Paragraph 10 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. 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. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the loan evidenced by the Note, 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, then as additional security hereunder, 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.

11. Mortgagee's Reliance on Tax Bills and Claims for Liens. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, 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 other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, provided that if no Event of Default then exists hereunder Mortgagee shall give to Mortgagor ten (10) days' prior written notice thereof.

12. Acceleration of Indebtedness in Event of Default. Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

- (a) the occurrence of an Event of Default (as defined in the Note);

# UNOFFICIAL COPY

(b) Mortgagor fails to promptly perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under (i) this Mortgage, or (ii) the Guaranty; provided, however, that Mortgagor shall have a period (the "Cure Period") not to exceed the lesser of (A) thirty (30) days after written notice of such failure of performance or observance, or (B) the cure period, if any, applicable to such default under the Note to cure the same and an Event of Default under this subparagraph (b) shall not be deemed to exist during the Cure Period, unless the continued operation or safety of the Premises, or the priority, validity or enforceability of this Mortgage or the lien hereof or the lien of any of the other Loan Documents, or the value of the Premises is impaired, threatened or jeopardized, it being further provided if such failure is not capable of cure within the Cure Period and Mortgagor commences during the Cure Period such cure and thereafter diligently and continuously pursues said cure (for a period not to exceed 90 days), no Event of Default shall be deemed to have occurred under this subparagraph (b); or

(c) Any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of this Mortgage.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate. If while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Premises, as set forth in Paragraph 21 hereof, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness hereby secured, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

13. Foreclosure; Expense of Litigation. When the indebtedness hereby secured, or any part thereof, 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. It is further agreed that if default be made in the payment of any part of the secured indebtedness as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmaturing part of the secured indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmaturing part of the secured

# UNOFFICIAL COPY

indebtedness, but as to such unmatured part this Mortgage, the lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness without exhausting the power to foreclose and to sell the Premises pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure. 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 the said insurance policies.

In any suit to foreclose or partially 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 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 may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such 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 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 at the Default Rate and shall be secured by this Mortgage.

14. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure (or partial foreclosure) sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 13 hereof; second, all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided and all principal and interest remaining unpaid on the Note; and third, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

15. Appointment of Receiver. Upon, or at any time after the filing of a complaint to



# UNOFFICIAL COPY

foreclose (or partially foreclose) this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power 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, 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, and 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 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) the deficiency in case of a sale and deficiency.

16. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall forthwith and upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of the Premises or any part thereof personally, or by its agents or attorneys, as for condition broken. Mortgagee's rights and remedies under this Paragraph 17 shall be effective whether before or after the whole principal sum secured hereby is declared to be immediately due and payable hereunder, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder. In the event Mortgagee is entitled to take possession of the Premises, Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, Mortgagor's beneficiary, or their respective employees, agents or servants, wholly therefrom. In such case Mortgagee, under the powers herein granted, may hold, operate, manage and control the Premises and conduct the business, if any, thereof, 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 the Premises, including actions for the recovery of rent, actions, in forcible detainer and actions in distress for rent. Mortgagee shall have full power:

- (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;



# UNOFFICIAL COPY

(c) to extend or modify any then existing leases and to enter 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 of the indebtedness secured hereby 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 judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) to make any 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; 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.

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 lease. To the extent permitted by law, Mortgagor shall and does hereby agree to protect, indemnify, defend and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases except for such claims and demands as result directly from the negligent or willful actions of Mortgagee. Should Mortgagee incur any such liability, loss or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest at the Default Rate.

17. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, 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 the operating expenses of the Premises, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and

# UNOFFICIAL COPY

shall also include lease commissions (but not with respect to the renewal of existing leases unless provided for therein) 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;

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises, including the cost from time to time of installing or replacing refrigeration and gas or electric stoves therein, and of placing the Premises in such condition as will, in the judgment of Mortgagee, make them readily rentable; and

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

18. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or any other document given to secure the Note or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

19. Mortgagee's Right of Inspection. After the occurrence of an Event of Default, Mortgagee and/or its representative shall have the right to inspect the Premises at all reasonable times and upon prior notice to Mortgagor and access thereto shall be permitted for that purpose.

20. Disbursement of Insurance or Eminent Domain Proceeds.

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty or by a taking under the power of eminent domain, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(b) Prior to the payment or application of insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Premises, Mortgagee shall be entitled to evidence of the following:

# UNOFFICIAL COPY

(i) That there is not then a default in any of the terms, covenants and conditions of the Note, this Mortgage or any of the other Loan Documents;

(ii) That Mortgagee shall first be given reasonably satisfactory proof that either such improvements have been fully restored, or that the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage;

(iii) That in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore or rebuild the said improvements, Mortgagor or its Lessee(s) shall deposit with Mortgagee funds equaling such deficiency, which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Premises; and

(iv) That prior to the disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 20 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of Mortgagor's architect, certifying the extent of the repair and restoration completed to the date thereof, and such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises, and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Premises above there shall have been delivered to Mortgagee the following:

(i) A waiver of subrogation from any insurer who claims that no liability exists as to Mortgagor or the then owner or other insured under the policy of insurance in question;

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Mortgagee.

(d) In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a reasonable time, then Mortgagee, at its option, and upon not less than thirty (30) days' written notice to Mortgagor, may commence to restore, repair or rebuild the said improvements for or on behalf of Mortgagor, and for such

# UNOFFICIAL COPY

purpose, may perform all necessary acts to accomplish such restoration, repair or rebuilding. In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Premises, such excess shall be applied on account of the unpaid principal balance of the Note irrespective of whether such balance is then due and payable.

(e) In the event: Mortgagor commences the repair or rebuilding of the improvements located on the Premises, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 21; or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a reasonable time, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above; then Mortgagee may, at its option, accelerate the indebtedness evidenced by the Note and apply all or any part of the insurance proceeds or condemnation award against the indebtedness secured hereby.

21. Release Upon Payment and Discharge of Mortgagor's Obligations; Partial Release. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of reasonable expenses incurred by Mortgagee in connection with the execution of such release.

22. Notices. Any notice or demand required or permitted to be given under this Mortgage shall be in writing and shall be personally delivered or mailed by United States registered or certified mail, return receipt requested, addressed as follows:

To Mortgagee: PHI Real Property LLC  
c/o Michael P. Polsky  
1 S. Wacker Dr., Suite 1810  
Chicago, IL 60606

And to: Pradera Investments, LLC  
c/o Jonathan Taiber  
1005 W. 16<sup>th</sup> St  
Cedar Falls, IA 50613

With a required copy to: Krasnow Saunders  
Kaplan & Beninati LLP  
500 N. Dearborn St  
2<sup>nd</sup> Floor  
Chicago, IL 60654  
Attention: Frederick M. Kaplan

# UNOFFICIAL COPY

To Mortgagor: c/o Erik Gould  
2500 N. Lakeview #1601  
Chicago, IL 60614

Either party may designate a different address for notice purposes by giving notice thereof in accordance with this Paragraph 22; provided, however, that such notice shall not be deemed given until actually received by the addressee. Any notice or demand given by United States mail shall be deemed given on the second business day after the same is deposited in the United States mail as registered or certified mail, addressed as above provided with postage thereon fully prepaid.

23. Waiver of Defenses. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

24. Waiver of Rights. Mortgagor hereby covenants and agrees that to the extent permitted by 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. To the extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the premises 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.

25. Transfer of Premises; Further Encumbrance. In determining whether or not to make the Loan, Mortgagee examined the creditworthiness of Mortgagor, found it acceptable and relied and continues to rely upon same as the means of repayment of the Note. Mortgagee also evaluated the background and experience of Mortgagor, in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the Note. Mortgagor is well-experienced in borrowing money and owning and operating property such as the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the Loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original beneficiary of Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises, (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) would impair Mortgagee's



# UNOFFICIAL COPY

right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor, and the guarantor of the Note agree that if this paragraph be deemed a restraint on alienation, that it is a reasonable one, and that, any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises, or any interest in the Premises (whether voluntary or by operation of law), including without limitation, the entering into of an installment agreement for the sale of the Premises, the placement or granting of liens on all or any part of the Premises or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create a lien on the personal property utilized in the operation of the Premises, or the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, without Mortgagee's prior written consent shall be an Event of Default under this Mortgage and the other Loan Documents. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of default under this Mortgage and the other Loan Documents: any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises, other than in favor of Mortgagee.

Any consent by Mortgagee, or any waiver by Mortgagee of an Event of Default under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent Event of Default under this Paragraph 25. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 25 shall be void and of no force or effect.

26. Expenses Relating to Note and Mortgage. Mortgagor shall have no obligation to pay for the fees and expenses, including attorney's fees, incurred by Mortgagee for or with respect to the negotiation and preparation of the Note, this Mortgage, or the Guaranty. Mortgagor will, however, pay (i) all charges related to the recording of this Mortgage, (ii) all federal, state, county and municipal taxes, if any, and other taxes, if any (not including, however, any income or franchise taxes of Mortgagee) arising out of or in connection with the Note or this Mortgage, and (iii) all reasonable expenses, charges, costs and fees, including attorney's fees and expenses, incurred by Mortgagee in enforcing its rights under the Loan Documents, including the Note and this Mortgage. Mortgagor recognizes that, during the term of the Mortgage, Mortgagee:

- (a) may be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan

# UNOFFICIAL COPY

Documents or the Premises are involved directly or indirectly;

(b) may make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(c) may make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Premises, which event may or may not actually occur;

(d) may make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(e) may enter into negotiations with Mortgagor or any of Mortgagor's agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the indebtedness represented by the Note or the transfer of the Premises in lieu of foreclosure; or

(f) may enter into negotiations with Mortgagor or any of Mortgagor's agents, employees or attorneys, pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor, which approval is required by the terms of this Mortgage.

All expenses, charges, costs and fees described in this Paragraph 26 shall be so much additional indebtedness secured hereby, shall bear interest at from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

27. Further Instruments. Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

28. Indemnity. Except in respect of Mortgagee's willful and wanton misconduct or gross negligence, Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: the making of the loan evidenced by the Note and secured by this Mortgage; any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a

# UNOFFICIAL COPY

defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; the offer for sale or sale of all or any portion of the Premises; and/or the ownership, leasing, use, operation or maintenance of the Premises. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

29. Waiver of Right of Redemption. To the extent permitted by law, Mortgagor hereby releases and waives any and all rights to retain possession of the Premises after the occurrence of an Event of Default hereunder and any and all rights of redemption from sale under any order or decree of foreclosure, on behalf of Mortgagor, all persons and entities interested beneficially in Mortgage and each and every person (except judgment creditors of Mortgagor), acquiring any interest in, or title to, the premises described herein subsequent to the date of this Mortgage.

30. Miscellaneous

(a) Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its successors and permitted assigns, any subsequent owner or owners of the Premises who acquire the Premises subject to this Mortgage and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Invalidity of Provisions. In the event one or more of the provisions contained in this Mortgage or the Note or in any security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage and the Note it secures are to be construed and governed by the laws of the State of Illinois.

# UNOFFICIAL COPY

(c) Municipal and Zoning Requirements. Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises without the express prior written consent of Mortgagee (which consent may be withheld in Mortgagee's sole discretion if, in the reasonable opinion of Mortgagee, the value of the Premises shall be adversely affected by such zoning change). Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) Option of Mortgagee to Subordinate. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated, of a unilateral declaration to that effect.

(f) Use of Proceeds. Mortgagor warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

(g) Mortgagee in Possession. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

(h) Relationship of Mortgagee and Mortgagor. Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor.

# UNOFFICIAL COPY

or of any beneficiary, lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a Mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

(i) Time of the Essence. Time is of the essence of the payment by Mortgagor and its beneficiary of all amounts due and owing to Mortgagee under the Note and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage.

(j) No Merger. It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(k) Value for Purposes of Insurance. Upon request by Mortgagee, Mortgagor agrees to furnish evidence of replacement value, without cost to Mortgagee, of the type which is regularly and ordinarily made for insurance companies, with respect to the buildings and improvements on the Premises.

(l) Enforcement of this Mortgage. This Mortgage may be enforced by any single party comprising Mortgagee, acting alone, or by all parties comprising Mortgagee acting together. If a party comprising Mortgagee, acting alone, elects to enforce this Mortgage, such party may enforce the rights of all parties comprising Mortgagee under this Mortgage.

31. Compliance with Environmental Laws. In addition to all other provisions of this Mortgage, Mortgagor, at its cost and expense, shall comply with all laws, statutes, ordinances, rules and regulations of any governmental authority ("Agency") having jurisdiction thereof concerning environmental matters, including, but not limited to, any discharge (whether before or after the date of this Mortgage) into the air, waterways, sewers, soil or ground water or any substance or "pollutant". After an Event of Default, Mortgagee and its agents and representatives shall have access to the Premises upon reasonable advanced notice to Mortgagor (such access not to unreasonably interfere with the activities of Mortgagor upon the Mortgaged Premises) and to the books and records of Mortgagor and any occupant of the Premises claiming under Mortgagor for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Premises or made or produced thereon. Mortgagor and all occupants of the Premises claiming under Mortgagor shall provide to the Mortgagee copies of all manifests, schedules, correspondence and other documents



# UNOFFICIAL COPY

of all types and kinds when filed or provided to an Agency or as such are received from any Agency. Mortgagee and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Premises including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Premises by the Mortgagor or an occupant claiming under Mortgagor or otherwise present on the Premises.

## 32. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (herein called the "Act") the 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 any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Section 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Paragraphs 12 or 15 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

33. Mutual Waiver of Right to Trial by Jury. MORTGAGOR AND MORTGAGEE HEREBY MUTUALLY (A) WAIVE THE RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION, CLAIM, COUNTERCLAIM, CROSS-CLAIM, THIRD-PARTY CLAIM, DISPUTE, DEMAND, SUIT OR PROCEEDING ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE NOTE, THIS MORTGAGE, ANY OF THE OTHER LOAN DOCUMENTS, OR THE LOAN EVIDENCED OR SECURED THEREBY, OR ANY RENEWAL, EXTENSION, OR MODIFICATION THEREOF, OR ANY CONDUCT OF EITHER PARTY RELATING THERETO, AND (B) AGREE THAT ANY SUCH ACTION, CLAIM, SUIT OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.

34. Collateral Protection Act. Pursuant to the terms of the Collateral Protection Act (815 ILCS 180/1 et seq.), Mortgagor is hereby notified that:

"UNLESS MORTGAGOR PROVIDES MORTGAGEE WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS MORTGAGE, MORTGAGEE MAY PURCHASE INSURANCE AT MORTGAGEE'S EXPENSE TO PROTECT MORTGAGEE'S

# UNOFFICIAL COPY

INTERESTS IN THE MORTGAGED PROPERTY, WHICH INSURANCE MAY, BUT NEED NOT, PROTECT THE INTERESTS OF MORTGAGOR. THE COVERAGE PURCHASED BY MORTGAGEE MAY NOT PAY ANY CLAIM MADE BY MORTGAGOR OR ANY CLAIM MADE AGAINST MORTGAGOR IN CONNECTION WITH THE MORTGAGED PROPERTY. MORTGAGOR MAY LATER CANCEL ANY INSURANCE PURCHASED BY MORTGAGEE, BUT ONLY AFTER PROVIDING MORTGAGEE WITH EVIDENCE THAT MORTGAGOR HAS OBTAINED THE INSURANCE AS REQUIRED HEREUNDER. IF MORTGAGEE PURCHASES INSURANCE, THE MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF SUCH INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES IMPOSED IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE TOTAL OBLIGATION SECURED HEREBY. THE COSTS OF SUCH INSURANCE MAY BE GREATER THAN THE COST OF INSURANCE MORTGAGOR MAY BE ABLE TO OBTAIN FOR ITSELF.

[SIGNATURES CONTINUED ON NEXT PAGE]



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

Unit numbers 3001-A, 3002-B, and 1803-C in 2500 North Lakeview Condominium, as delineated on survey of the following described parcels 1, 2, 3 and 4 of real estate (herein referred to as "Parcel") according to Plat of Survey recorded in Book 14 of Plats, Page 79 as Document 237247 in Cook County, Illinois:

**Parcel 1:**

The East 40 feet of lot 13 in the subdivision of part of outlot 'B' in Wrightwood, said Wrightwood being a subdivision of the Southwest 1/4 of Section 28, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

**Parcel 2:**

Lots 3, 4 and 5 in the resubdivision of Lots 1 to 9 inclusive (except the Easterly 3 feet thereof of said Lot 9) and Lots 14, 15 and 16 (except the Westerly 10 feet of said Lot 14) all in Goudy and Goodwillie's Subdivision of lots 2, 3 and 4 in Assessor's Division of outlot 'B' of Wrightwood, a subdivision of the Southwest 1/4 of Section 28, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

**Parcel 3:**

The East 1/2 of Lot 12 and all of Lot 13 and the West 10 feet of Lot 14 in Goudy and Goodwillie's Subdivision of Lots 2, 3 and 4 in Assessor's Division in outlot 'B' in Wrightwood, a subdivision of the Southwest 1/4 of Section 28, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

also

**Parcel 4:**

Lot 14 (except that part taken for Lakeview Avenue) in the subdivision of part of outlot 'B' in Wrightwood of the Southwest 1/4 of Section 28, Township 40 North, Range 14 East of the Third Principal Meridian.

All according to the Plat thereof recorded in Book 14 of Plats, Page 79 as Document 237247 in Cook County, Illinois which survey is attached as exhibit "B" to Declaration of Condominium made by National Boulevard Bank, a national banking association, as trustee under trust agreement dated February 1, 1972 and known as rust number 4207, and not individually, recorded in the Office of the Recorder of Cook County, as Document 22817643, together with an undivided percentage interest in said parcels (excepting from said parcels all the property and space comprising all the units thereof as defined and set forth in said Declaration and Survey).

# UNOFFICIAL COPY

## EXHIBIT B

### INSURANCE CERTIFICATES

**COOK COUNTY**  
**RECORDER OF DEEDS**  
**SCANNED BY \_\_\_\_\_**

**COOK COUNTY**  
**RECORDER OF DEEDS**  
**SCANNED BY \_\_\_\_\_**

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## Exhibit B

DECLARATIONS									
<p>We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.</p>	<p>Coverage afforded by this policy is provided by:</p> <p>State Farm Fire and Casualty Company 2702 Ireland Grove Road Bloomington, IL 61709-0001 A Stock Company with Home Offices in Bloomington, Illinois.</p>								
<p>93-CP-D658-7 F                      <b>Policy Number</b></p>									
<p><b>Name of Insured and Mailing Address</b> GOULD, ERIC C &amp; FALIK, NADIA 2500 N LAKEVIEW AVE APT 1601 CHICAGO IL 60614-1818</p>									
<p>The Policy Period begins and ends at 12:01 a.m. Standard Time at the residence premises. 1/15/15                      <b>Effective Date</b> 1/15/16                      <b>Expiration of Policy Period</b></p>	<p><b>Automatic Renewal</b> - If the Policy Period is shown as <b>12 months</b>, this policy will be renewed automatically subject to the premiums, rules and forms in effect each succeeding policy period. If this policy is terminated, we will give you and the Mortgagee/Lienholder written notice in compliance with the policy provisions or as required by law.</p>								
<p><b>Limit of Liability - Section 1</b> \$142200                      Building Property (Coverage A)</p>									
<p><b>Policy Type</b>                      Rental Condominium Policy</p>	<p><b>Deductibles - Section 1</b>                      \$ 2000 ALL LOSSES In case of loss under this policy, the deductible will be applied per occurrence and will be deducted from the amount of the loss. Other deductibles may apply - refer to your policy.</p>								
<p><b>Location of Premises</b> 2500 N LAKEVIEW AVE APT 3001 CHICAGO IL 60614</p>	<p><b>Policy Premium</b>                      \$348</p>								
<p><b>Forms &amp; Endorsements</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">FP-6131      SPECIAL FORM 3</td> <td style="width: 50%;">OPT RC</td> </tr> <tr> <td>FE-1213      AMEND END</td> <td>FE-7783      LEAD POISON EX</td> </tr> <tr> <td>FE-5310      U/O PROP AMEND</td> <td>FE-5903      FUNGUS EXCL</td> </tr> <tr> <td>FE-5486      LOSS ASSESSMNT</td> <td>FE-5801      REPORTING END</td> </tr> </table>		FP-6131      SPECIAL FORM 3	OPT RC	FE-1213      AMEND END	FE-7783      LEAD POISON EX	FE-5310      U/O PROP AMEND	FE-5903      FUNGUS EXCL	FE-5486      LOSS ASSESSMNT	FE-5801      REPORTING END
FP-6131      SPECIAL FORM 3	OPT RC								
FE-1213      AMEND END	FE-7783      LEAD POISON EX								
FE-5310      U/O PROP AMEND	FE-5903      FUNGUS EXCL								
FE-5486      LOSS ASSESSMNT	FE-5801      REPORTING END								
<p><b>Mortgagee &amp; Additional Insured</b> PHI Real Property LLC One South Wacker Drive, Suite 1810 Chicago, IL 60606</p>	<p><b>Agent Name &amp; Address</b> MARK J. CURI 120 S LASALLE ST SUITE 1840 CHICAGO, IL 60603 312-726-3466 <a href="mailto:MARK@MARKCURI.COM">MARK@MARKCURI.COM</a></p>								

**MORTGAGEE COPY**

# UNOFFICIAL COPY

## DECLARATIONS

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

Coverage afforded by this policy is provided by:

State Farm Fire and Casualty Company  
2702 Ireland Grove Road  
Bloomington, IL 61709-0001  
A Stock Company with Home Offices in  
Bloomington, Illinois.

<p>93-ES-A974-4 F <b>Policy Number</b></p>									
<p><b>Named Insured and Mailing Address</b> GOULD, ERIK C &amp; FALIK, NADIA 2500 N LAKEVIEW AVE APT 1601 CHICAGO IL 60614-1818</p>									
<p>The Policy Period begins and ends at 12:01 a.m. Standard Time at the residence premises. 1/15/15 <b>Effective Date</b> 1/15/16 <b>Expiration of Policy Period</b></p>	<p><b>Automatic Renewal</b> - If the Policy Period is shown as <b>12 months</b>, this policy will be renewed automatically subject to the premiums, rules and forms in effect each succeeding policy period. If this policy is terminated, we will give you and the Mortgagee/Lienholder written notice in compliance with the policy provisions or as required by law.</p>								
<p><b>Limit of Liability - Section 1</b> \$150000 Building Property (Coverage A)</p>	<p><b>Deductibles - Section 1</b> \$ 2000 ALL LOSSES In case of loss under this policy, the deductible will be applied per occurrence and will be deducted from the amount of the loss. Other deductibles may apply - refer to your policy.</p>								
<p><b>Policy Type</b> Rental Condominium Policy</p>	<p><b>Policy Premium</b> \$358</p>								
<p><b>Location of Premises</b> 2500 N LAKEVIEW AVE APT 3002 CHICAGO IL 60614</p>									
<p><b>Forms &amp; Endorsements</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">FP-6131 SPECIAL FORM 3</td> <td style="width: 50%;">OPT RC</td> </tr> <tr> <td>FE-1213 AMEND END</td> <td>FE-7783 LEAD POISON EX</td> </tr> <tr> <td>FE-5310 U/O PROP AMEND</td> <td>FE-5903 FUNGUS EXCL</td> </tr> <tr> <td>FE-5486 LOSS ASSESSMNT</td> <td>FE-5801 REPORTING END</td> </tr> </table>		FP-6131 SPECIAL FORM 3	OPT RC	FE-1213 AMEND END	FE-7783 LEAD POISON EX	FE-5310 U/O PROP AMEND	FE-5903 FUNGUS EXCL	FE-5486 LOSS ASSESSMNT	FE-5801 REPORTING END
FP-6131 SPECIAL FORM 3	OPT RC								
FE-1213 AMEND END	FE-7783 LEAD POISON EX								
FE-5310 U/O PROP AMEND	FE-5903 FUNGUS EXCL								
FE-5486 LOSS ASSESSMNT	FE-5801 REPORTING END								
<p><b>Mortgagee &amp; Additional Insured</b> PHI Real Property LLC One South Wacker Drive, Suite 1810 Chicago, IL 60606</p>	<p><b>Agent Name &amp; Address</b> MARK J. CURI 120 S LASALLE ST SUITE 1840 CHICAGO, IL 60603 312-726-3466 <a href="mailto:MARK@MARKCURI.COM">MARK@MARKCURI.COM</a></p>								

**MORTGAGEE COPY**

**UNOFFICIAL COPY****DECLARATIONS**

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

Coverage afforded by this policy is provided by:

State Farm Fire and Casualty Company  
2702 Ireland Grove Road  
Bloomington, IL 61709-0001  
A Stock Company with Home Offices in  
Bloomington, Illinois.

93-EG-A775-4 F <b>Policy Number</b>	
<b>Named Insured and Mailing Address</b> GOULD, ERIK C & FALIK, NADIA 2500 N LAKEVIEW AVE APT 1601 CHICAGO IL 60614-1818	
The Policy Period begins and ends at 12:01 a.m. Standard Time at the residence premises. 1/15/15 <b>Effective Date</b> 1/15/16 <b>Expiration of Policy Period</b> 12 months-Policy Period	<b>Automatic Renewal</b> - If the Policy Period is shown as <b>12 months</b> , this policy will be renewed automatically subject to the premiums, rules and forms in effect each succeeding policy period. If this policy is terminated, we will give you and the Mortgagee/Lienholder written notice in compliance with the policy provisions or as required by law.
<b>Limit of Liability - Section 1</b> \$100000      Building Property (Coverage A)	<b>Deductibles - Section 1</b> \$ 1000 ALL LOSSES in case of loss under this policy, the deductible will be applied per occurrence and will be deducted from the amount of the loss. Other deductibles may apply - refer to your policy.
<b>Policy Type</b> Business Office	<b>Policy Premium</b> \$475
<b>Location of Premises</b> 2500 N LAKEVIEW AVE APT 1803 CHICAGO IL 60614	
<b>Forms &amp; Endorsements</b> CMP-4100 BUSN COVG FORM CMP-4710 EMPL DISHON CMP-4819 UNAUTH BUS CAR CMP-4213 AMENDATORY END CMP-4705 LOSS OF INCOME CMP-4709 MONEY & SECUR	
<b>Mortgagee &amp; Additional Insured</b> PHI Real Property LLC One South Wacker Drive, Suite 1810 Chicago, IL 60606	<b>Agent Name &amp; Address</b> MARK J. CURI 120 S LASALLE ST SUITE 1840 CHICAGO, IL 60603 312-726-3466 <a href="mailto:MARK@MARKCURI.COM">MARK@MARKCURI.COM</a>

**MORTGAGEE COPY**