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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1519129052 Fee: \$90.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 07/10/2015 02:35 PM Pg: 1 of 27

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN: 17-09-210-001-0000**

Address:

Street: 165 West Superior Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60654

Lender: PNC Bank National Association

Borrower: SP Realty Holding Company LLC

Loan / Mortgage Amount: \$73,730,000.00

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: 7ABD0B44-A5F2-4C61-AB5B-8303F5CC2B33

Execution date: 7/10/2015
CCRD REVIEWER

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This document prepared by and upon recordation return to:

Riemer and Braunstein LLP
71 South Wacker Drive, Suite 3515
Chicago, Illinois 60606
Attention: Thomas D. Gianturco, Esq.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

(This Mortgage Secures Future Advances)

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**") is made as of the 10th day of July, 2015, by **SP REALTY HOLDING COMPANY LLC**, a Delaware limited liability company (the "**Mortgagor**"), with an address at 225 North Columbus Drive, Suite 100, Chicago, Illinois 60601 in favor of **PNC BANK, NATIONAL ASSOCIATION**, for its benefit and as Agent for the Lenders (the "**Agent**"), with an address at One North Franklin Street, Suite 2150, Chicago, Illinois 60606.

BACKGROUND:

Mortgagor is the owner of a certain tract or parcel of and described in Exhibit A attached hereto and made a part hereof, together with the improvements now or hereafter erected thereon.

Pursuant to the terms and conditions of a Construction Loan Agreement dated as of the date hereof, by and among Mortgagor, Agent and Lenders (as amended, modified, replaced, restated or supplemented from time to time, the "**Loan Agreement**"), Mortgagor has borrowed from Lenders a loan in the amount of up to SEVENTY-THREE MILLION SEVEN HUNDRED THIRTY THOUSAND AND 00/100 DOLLARS (\$73,730,000.00) in the aggregate (the "**Loan**"), which Loan is evidenced by one or more promissory notes in favor of the Lenders (as amended, modified, replaced, restated or supplemented from time to time, collectively, the "**Note**"). The Loan bears interest at the rate set forth in the Loan Agreement and will mature four (4) years from the date hereof, subject to a one (1) year extension option. Under no circumstances, however, shall the total indebtedness secured hereby exceed ONE HUNDRED FORTY-SEVEN MILLION FOUR HUNDRED SIXTY THOUSAND AND 00/100 DOLLARS (\$147,460,000.00), plus interest thereon, and any disbursements made for payment of taxes, special assessments or insurance on the Property (as defined below), and interest on such disbursements.

NOW, THEREFORE, for the purpose of securing the payment and performance of all Obligations (including any PNC Provided Interest Rate Hedge Liabilities), Mortgagor, for good

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and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, gives, grants, bargains, sells, conveys, assigns, transfers, mortgages, hypothecates, pledges, sets over and confirms unto Agent and hereby grants to Agent a security interest in and lien upon the following described property, all accessions and additions thereto, all substitutions therefor and replacements and proceeds thereof, and all reversions and remainders of such property, all of the same whether now owned or held or hereafter acquired (collectively, the **“Property”**):

(a) all of the premises described in Exhibit A, together with (i) all of the easements, rights of way, privileges, liberties, hereditaments, gores, streets, alleys, passages, ways, waters, watercourses, rights and appurtenances now or hereafter belonging or appertaining thereto; (ii) all estate, right, title, interest, claim and demand therein and in the public streets and ways adjacent thereto, either in Law or in equity; and (iii) all rights, if any, retained by, reserved to or created for the benefit of Mortgagor as a declarant or other party who subjects the foregoing to any condominium regime, owners' association, or similar regime intended to establish common interests or ownership rights therein (collectively, the **“Land”**);

(b) all the buildings, structures and improvements of every kind and description now or hereafter erected or placed on the Land (collectively, the **“Improvements”**);

(c) all machinery, apparatus, equipment, fittings, appliances and fixtures of every kind and nature whatsoever owned by Mortgagor and regardless of whether the same may now or hereafter be attached or affixed to the Land or Improvements, including all electrical, antipollution, heating, lighting, incinerating, power, air conditioning, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, computer and communication machinery, apparatus, equipment, fittings, appliances and fixtures, and all engines, pipes, pumps, tanks, motors, conduits, ducts, compressors, elevators, escalators and motor vehicles, and all articles of personal property and goods of every kind and nature whatsoever, including all shades, awnings and carpets now or hereafter affixed to, attached to, placed upon, or used or usable in any way in connection with the use, enjoyment, occupancy or operation of the Land or Improvements (collectively, the **“Equipment”**);

(d) to the extent assignable, all of Mortgagor's right, title and interest in and to any and all agreements, contracts, plans, franchises, management agreements, approvals (whether issued by a governmental authority or otherwise), leases of equipment and other personal property, and other documentation or written or recorded work product required for or in any way related to the development, construction, renovation, use, occupancy, maintenance or ownership of the Improvements, whether now existing or hereafter arising, including all (i) Construction and Development Documents, (ii) all other plans, specifications and other design work for buildings and utilities; (iii) all architect's agreements; and (iv) all construction contracts and warranties, (v) environmental reports, surveys and other engineering work product, (vi) permits and licenses, including all Governmental Approvals to the extent permitted by Law or by the

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terms thereof, and (vii) agreements of sale, purchase options and agreements for easements and rights of way benefiting the Land (collectively, the “**Contracts**”);

(e) all leases, licenses, subleases or any other use or occupancy agreement now or hereafter entered into covering all or any part of the Land or Improvements, including all cash, guaranties, letters of credit or securities deposited or delivered under the Leases to secure performance of lessees of their obligations thereunder, whether such cash, guaranties, letters of credit or securities are to be held until the expiration of the terms of such Leases or applied to one or more installments of rent coming due prior to the expiration of such terms (collectively, the “**Leases**”).

(f) all revenues, rents, income, issues and profits arising or issuing from the Land, the Improvements or the Leases including, without limitation, (i) early termination fees, break fees, or reimbursements of concessions provided to lessees due to Mortgagor, (ii) payments or reimbursements of percentage rent, operating costs, taxes, insurance, or services provided to lessees, and (iii) all advantages and claims against guarantors of any Leases whether any of the foregoing arise before or after the commencement by or against the Mortgagor of any case or proceeding under any Federal or State bankruptcy, insolvency or similar Law (collectively, the “**Rents**”);

(g) all personal property of Mortgagor, including the following: (i) accounts (including health-care-insurance receivables and credit card receivables); (ii) securities entitlements, securities accounts, commodity accounts, commodity contracts and investment property; (iii) deposit accounts; (iv) all Loan proceeds now or hereafter held by Agent or any Lender or any other financial institution, whether or not disbursed; (v) all funds now or hereafter deposited by Mortgagor with Agent under the Loan Agreement, any of the other Loan Documents or for any other reason in connection with the Property, (vi) all reserves, deferred payments, deposits, refunds, escrows, cost savings and payments of any kind relating to the construction of the Improvements, (vii) instruments (including promissory notes); (viii) documents (including warehouse receipts); (ix) chattel paper (including electronic chattel paper and tangible chattel paper); (x) inventory, including raw materials, work in process, or materials used or consumed in Mortgagor’s business, items held for sale or lease or furnished or to be furnished under contracts of service, sale or lease, goods that are returned, reclaimed or repossessed; (xi) goods of every nature, including stock-in-trade, goods on consignment, standing timber that is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, crops grown, growing, or to be grown, manufactured homes, computer programs embedded in such goods and farm products; (xii) equipment, including machinery, vehicles and furniture; (xiii) fixtures; (xiv) agricultural liens; (xv) as-extracted collateral; (xvi) letter of credit rights; (xvii) to the extent assignable, general intangibles, of every kind and description, including payment intangibles, software, computer information, source codes, object codes, records and data, all existing and future customer lists, choses in action, claims (including claims for indemnification or breach of warranty), books, records, patents and patent applications, copyrights, trademarks, tradenames, tradestyles, trademark applications, goodwill, blueprints, drawings, designs and plans, trade secrets, contracts, licenses, license agreements, formulae, tax and any other types of refunds, returned and unearned insurance premiums,

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rights and claims under insurance policies; (xviii) all the items otherwise described in this subsections (a) through (f), above, or (i) through (l) below, which are personal property or fixtures otherwise within the scope of the UCC (defined below); (xix) all supporting obligations of all of the foregoing property; (xx) all property of Mortgagor now or hereafter in Agent's or any Lender's possession or in transit to or from, or under the custody or control of, Agent, any Lender or any affiliate of any of them; (xxi) all cash and cash equivalents thereof; and (xxii) all cash and noncash proceeds (including insurance proceeds) of all of the foregoing property, all products thereof and all additions and accessions thereto, substitutions therefor and replacements thereof (collectively, the "UCC Collateral");

(h) all books, accounts and other records described in Section 4.4 of the Loan Agreement;

(i) all minerals, petroleum, natural resources, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land;

(j) all insurance proceeds under any policy of insurance maintained pursuant to the Loan Documents, all condemnation proceeds, awards or damages relating to the Property, and all rebates, refunds or repayment of any Impositions;

(k) the Escrow Payments (as hereinafter defined); and

(l) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims.

To have and to hold the same unto Agent, its successors and assigns, forever.

Provided, however, that if Mortgagor pays to Agent and Lenders the Obligations, and if Mortgagor keeps and performs each of its other covenants, conditions and agreements set forth herein and in the other Loan Documents, then, upon the release and termination of all obligations, duties and commitments of Mortgagor under the Obligations and the Loan Documents, the estate granted and conveyed will become null and void.

In furtherance of the foregoing provisions, the Mortgagor covenants, agrees, represents and warrants as follows:

1. **Defined Terms.** Capitalized terms used herein and not otherwise defined herein, whether appearing before or after this provision, have the meanings given such terms in the Loan Agreement.

2. **Covenants.** Until all the Obligations have been fully paid, satisfied and discharged and until the Agent has no further obligation to make any additional advances of the Loan proceeds or, if applicable, to issue or honor letters of credit for Agent's benefit, the Mortgagor agrees as follows:

(a) **Payment and Performance of Obligations.** Mortgagor will pay or cause to be paid and perform all Obligations when due as provided in the Loan Documents. All

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the covenants, conditions and agreements contained in the Loan Agreement, the Note and the other Loan Documents are incorporated by reference herein.

(b) Insurance. Mortgagor will obtain and maintain, or cause to be maintained, in full force and effect at all times all policies of insurance required by the terms of the Loan Agreement. Pursuant to the requirements of the Illinois Collateral Protection Act, 815 ILCS 180/1, *et seq.* ("**Collateral Protection Act**"), Mortgagor is hereby notified that unless the Mortgagor provides the Agent with evidence of the insurance coverage required by the Loan Agreement and each other Loan Document, Agent may purchase insurance at Mortgagor's expense to protect Agent's interest in the Property or any other collateral for the Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage the Agent purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property or any other collateral for the Obligations. Mortgagor may later cancel any insurance purchased by Agent but only after providing Agent with evidence that Mortgagor has obtained insurance as required by this Mortgage and each other Loan Document. If Agent purchases insurance for the Property or any other collateral for the Obligations, Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that Agent may lawfully 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 total outstanding Obligations. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

(c) Payment of Impositions. Mortgagor will promptly pay all Impositions in accordance with the terms of the Loan Agreement.

(d) Maintenance and Use of Property. Mortgagor will maintain the Property in a good and safe condition and state of repair, in accordance with the terms of the Loan Agreement. Subject to the terms of the Loan Agreement, the Property will not be removed, demolished or materially altered or expanded (except for ordinary replacement of personal property) without the Agent's prior consent. Subject to the terms of the Loan Agreement, Mortgagor will not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof.

(e) Waste. Mortgagor will not commit or suffer any waste of the Property or make an change in the use of the Property which would any way increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any insurance policy, or do or permit to be done on the Property anything that may impair the value of the Property or the security of this Mortgage. Without Agent's prior written consent, Mortgagor will not permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

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(f) Change of Name, Identity or Structure. Except as may be permitted under the Loan Agreement, Mortgagor will not change Mortgagor's name, identity (including its trade name or names) or corporate, partnership, limited liability company or other legal structure without the Agent's prior written consent.

(g) Legal Requirements. Promptly comply in all material respects with and conform to all present and future laws, statutes, codes, ordinances, orders and regulations and all covenants, restrictions and conditions which may be applicable to the Mortgagor or to any of the Property (the "**Legal Requirements**").

3. Title.

(a) Mortgagor represents and warrants to Agent and each of the Lenders that: (i) Mortgagor has good and marketable title to an estate in fee simple absolute in the Land and Improvements and has all right, title and interest in all other property constituting a part of the Property, in each case free and clear of all liens and encumbrances, except for Permitted Encumbrances; (ii) Mortgagor's correct name, type of organization, jurisdiction of organization and chief executive office are as set forth in the heading of this Mortgage; and (iii) this Mortgage is a valid and enforceable first lien on the Property subject only to Permitted Encumbrances.

(b) Mortgagor covenants and agrees that: (i) Agent will, subject to Mortgagor's right of possession prior to an Event of Default, quietly enjoy and possess the Property; and (ii) Mortgagor will preserve such title as it warrants herein and the validity and priority of the lien hereof and will forever warrant and defend the same to Agent against the claims of all persons.

4. Leases.

(a) Mortgagor will execute and deliver to Agent, on demand, such additional assignments and instruments as Agent may require to implement, confirm, maintain and continue the assignment of Rents and Leases hereunder. The assignment of Rents and Leases contained herein is independent of any separate assignment of Rents and Leases given in favor of Agent and is intended as an absolute assignment and not merely the granting of a security interest. Mortgagor, however, will have a license to collect, retain and use the Rents so long as no Event of Default exists.

(b) Mortgagor will not (i) execute an assignment or pledge of Rents or Leases other than in favor of Agent; (ii) accept any prepayment of an installment of any Rents more than thirty (30) days prior to the due date of such installment; or (iii) except as otherwise specifically permitted in the Loan Agreement, enter into or amend any of the terms of any of the Leases without the Agent's prior written consent. Any or all Leases of all or any part of the Property are subordinated to this Mortgage and to Agent's rights and, together with any and all rents, issues or profits relating thereto, and will be assigned at the time of execution to Agent as additional collateral security for the Obligations, all in such form, substance and detail as is satisfactory to Agent in its sole discretion.

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5. **Due on Sale; Transfers.** Unless permitted by the Loan Agreement and subject to any approval or consent rights of Agent therein, Mortgagor will not sell, convey or otherwise transfer any interest in the Property (whether voluntarily or by operation of law), or agree to do so, including (a) any sale, conveyance, encumbrance, assignment or other transfer of (including installment land sales contracts), or the grant of a security interest or negative pledge in or against, all or any part of the legal or equitable title to the Property; (b) any lease, license, or possessory right of all or any portion of the Property; or (c) any sale, conveyance, encumbrance, assignment, or other transfer of, or the grant of a security interest or negative pledge in or against, any membership interest in the Mortgagor. Any transaction which is prohibited under this Section 5 will be null and void to the extent permitted by applicable Law. Any default under this Section 5 will cause an immediate acceleration of the Obligations, without any demand by Agent.

6. **Construction Contracts; Mechanics' Liens.** Prior to Mortgagor performing any construction or other work on or about the Property for which a lien could be filed against the Property (other than the work to be performed as described in the Loan Agreement, which shall be governed by the terms of the Loan Agreement), Mortgagor will enter into a written contract (each an "**Additional Construction Contract**") with the contractor who is to perform such work, or materialman providing materials (each an "**Additional Contractor**"), containing a provision whereby Additional Contractor will, at the request of Mortgagor or Agent, verify in an affidavit in a form approved by Agent that all labor and materials furnished by Additional Contractor, including all applicable taxes, have been paid by Additional Contractor up to the date of such requested affidavit. Notwithstanding the foregoing, if any mechanic's or other Lien is filed against the Property purporting to be for labor or material furnished or to be furnished on behalf of Mortgagor, or for any other reason relating to the acts or omissions of Mortgagor, then Mortgagor will at its expense, cause such Lien to be discharged of record by payment, bond or otherwise or insured against on Agent's title insurance policy within thirty (30) days after written notice. If Mortgagor fails to cause such Lien to be discharged of record within the thirty (30) day period, Agent may, in Agent's sole discretion and without waiving Agent's other rights and remedies under the Loan Documents, cause such Lien to be discharged by payment, bond or otherwise without investigation as to the validity thereof or as to any offsets or defenses thereto, and Mortgagor will, upon demand, reimburse Agent for all amounts paid and costs incurred in connection therewith including attorneys' fees and disbursements.

7. **Rights of Agent to Insurance Proceeds.**

(a) In the event of a casualty loss with respect to the Property, if an Event of Default exists, Agent shall have the exclusive right to adjust, collect and compromise all insurance claims in excess of \$1,000,000.00, and if no Event of Default exists, Mortgagor may adjust, collect or compromise any claims in excess of \$1,000,000.00 under said policies with the prior written consent of Agent. Mortgagor shall have the exclusive right to adjust and compromise all insurance claims of \$1,000,000.00 or less. Each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Agent instead of to Mortgagor and Agent, jointly, and Mortgagor appoints Agent as Mortgagor's attorney-in-fact to endorse any draft therefor, except that any claim for \$1,000,000.00 or less shall be paid directly to Mortgagor. In the event of a casualty loss with respect to the Property involving a Minor Loss (as

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hereinafter defined), provided that the conditions of Section 10 hereof are satisfied at the time of such casualty, Agent shall apply the insurance proceeds received for a Minor Loss to the repair and restoration of the Property under such terms and conditions as are set forth in Section 10 hereof. If any loss results in a Major Loss or if any of the other conditions set forth in Section 10 are not satisfied, any such proceeds may, at the sole option of Agent, be applied to all or any part of Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Property under such terms and conditions as are set forth in Section 10 or otherwise as Agent may impose. Agent shall not be deemed to have elected such option until such option is elected specifically in writing. Until so elected, Agent shall not in any circumstances be deemed to have waived its right to make such election.

(b) A “**Minor Loss**” shall mean a casualty loss or condemnation proceedings involving the Property wherein all of the following conditions are met:

- (i) no Event of Default shall have occurred and be continuing;
- (ii) the casualty proceeds are less than \$10,000,000.00;
- (iii) the Mortgagor provides evidence satisfactory to the Agent that reconstruction of the Property can be completed no later than six (6) months prior to the Expiration Date (exclusive of any Extension Option that has not been exercised); and
- (iv) the Agent determines after consulting with the Inspecting Architect, that casualty or condemnation proceeds are sufficient to pay in full the cost of reconstruction. In the event that the Agent determines that such proceeds are not sufficient, Agent shall not be required to make any proceeds available for reconstruction unless the Mortgagor complies with the provisions of Section 10(a)(i) hereof.

(c) Any casualty loss or condemnation proceedings involving the Property which does not qualify as a Minor Loss shall be called a “**Major Loss**”.

8. **Condemnation.** Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Property, shall notify Agent of the pendency of such proceedings. Agent may participate in any such proceedings and Mortgagor shall deliver to Agent all instruments requested by it to permit such participation. Any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof, is hereby assigned to and shall be received and collected directly by Agent. In the event that Agent shall receive any such award or compensation for a Minor Loss, and provided that the conditions of Section 10 hereof are satisfied at the time of such condemnation, Agent shall apply the award or compensation proceeds received for such Minor Loss to the repair and restoration of the Property under such terms and conditions as are set forth in Section 10 hereof. If the condemnation proceedings result in a Major Loss or if any of the other conditions set forth in Section 10 are not satisfied,

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then any such award or compensation proceeds may, at the sole option of Agent, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Property under such terms and conditions as are set forth in Section 10 or otherwise as Agent may impose. Agent shall not be deemed to have such option until such option is elected specifically in writing. Until so elected, Agent shall not in any circumstances be deemed to have waived its right to make such election.

9. **Environmental Indemnity Agreement.** Mortgagor has executed and delivered to Agent an Environmental Indemnity Agreement of even date herewith. All of Mortgagor's representations, warranties, covenants and obligations under the Environmental Indemnity Agreement are incorporated by reference in this Mortgage, and any costs, expenses or other amounts due and payable from time to time by Mortgagor pursuant to the Environmental Indemnity Agreement are secured by the lien of this Mortgage.

10. **Restoration.**

(a) All amounts of casualty insurance or condemnation proceeds received by Agent pursuant to Section 7 or Section 8, respectively, which are to be applied to the restoration of the Property in accordance with this Section 10 Restoration and, in the event that the conditions set forth in this Section 10 Restoration hereof have been satisfied, may either be held in a restoration fund ("**Restoration Fund**") by Agent or, if it refuses to serve, a bank or trust company appointed by Agent which has a combined capital and surplus of not less than \$1,000,000,000.00 as restoration fund trustee (the "**Restoration Fund Trustee**") with any additions thereto that may be required by Agent as hereinafter provided. The interest or income, if any, received on all deposits or investments of any monies in the Restoration Fund shall be added to the Restoration Fund. If Agent consents to the deposit of such funds in an interest-bearing account or otherwise consents to the investment of such funds, neither Agent nor the Restoration Fund Trustee shall be liable or accountable for any loss resulting from any such deposit or investment or for any withdrawal, redemption or sale of deposits or investments. Agent and the Restoration Fund Trustee may impose reasonable charges for services performed in managing the Restoration Fund and may deduct such charges therefrom. Restoration shall be performed only in accordance with the following conditions:

(i) prior to commencement of restoration and from time to time during restoration, Agent may require Mortgagor to deposit additional monies into the Restoration Fund in amounts which, in Agent's judgment, are sufficient to defray all costs to be incurred to complete the restoration and all costs associated therewith, including labor, materials, architectural and design fees and expenses and contractor's fees and expenses, to the extent the same exceed the amounts contained in the Restoration Fund, and Agent shall have approved a budget and cost breakdown for the restoration, together with a disbursement schedule, all in detail satisfactory to Agent;

(ii) prior to commencement of restoration, the contracts, contractors, plans and specifications for the restoration shall have been approved by Agent and

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all governmental authorities having jurisdiction, and Agent shall be provided with acceptable surety bonds insuring satisfactory completion of the restoration and the payment of all subcontractors and materialmen;

(iii) all restoration work shall be done under guaranteed maximum fixed price contracts, fully bonded;

(iv) at the time of any disbursement from the Restoration Fund, an Event of Default or Potential Default shall not have occurred, no mechanics' or materialmen's liens shall have been filed and remain undischarged and an endorsement satisfactory to Agent to its title insurance policy shall have been delivered to Agent;

(v) disbursements from the Restoration Fund shall be made from time to time, but not more frequently than once each calendar month, for completed work under the aforesaid contracts (subject to retainage as provided in (vii) below) and for other costs associated therewith and approved by Agent upon receipt of evidence satisfactory to Agent of the stage of completion and of performance of the work in a good and workmanlike manner in accordance with the contracts, plans and specifications as reasonably approved by Agent;

(vi) Mortgagor will pay the cost of Agent's inspecting architect or engineer and the cost of any reasonable out-of-pocket attorney's fees and disbursements incurred by Agent in connection with such restoration;

(vii) Agent shall have the option to retain up to ten percent (10%) of the cost of all work until the restoration is fully completed, as determined by Agent, and all occupancy permits therefor have been issued;

(viii) Agent may impose such other conditions, including a restoration schedule, as are customarily imposed by construction lenders to assure complete and lien-free restoration; and

(ix) any sum remaining in the Restoration Fund upon completion of restoration shall, at Agent's sole option, be applied to any part of the Obligations and in any order (notwithstanding that any of such Obligations may not then be due and payable) or be paid to Mortgagor.

(b) If within a reasonable period of time after the occurrence of any loss or damage to or condemnation of the Property to in no event exceed sixty (60) days, Mortgagor shall not have submitted to Agent and received Agent's approval of plans and specifications for the repair, restoration or rebuilding of such loss, damage or condemnation or shall not have obtained approval of such plans and specifications from all governmental authorities whose approval is required or if, after such plans and specifications are approved by Agent and by all such governmental authorities, Mortgagor shall fail to commence promptly such repair, restoration or rebuilding or if thereafter Mortgagor fails to carry out diligently such repair, restoration or rebuilding or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in

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connection with such work or if any other condition of this Section is not satisfied within a reasonable period of time after the occurrence of any such loss or damage, then Agent, in addition to all other rights herein set forth, and after giving Mortgagor thirty (30) days written notice of the nonfulfillment of one or more of the foregoing conditions, may, failing Mortgagor's fulfillment of said conditions within said thirty (30)-day period, at Agent's option, (i) declare all Obligations immediately due and payable, or (ii) perform or cause to be performed such repair, restoration or rebuilding and may take such other steps as Agent may elect to carry out such repair, restoration or rebuilding and may enter upon the Property for any of the foregoing purposes, and Mortgagor hereby waives, for itself and all others holding under it, any claim against Agent and any receiver and their respective agents (other than a claim based upon the alleged gross negligence or intentional misconduct of Agent or any such receiver or agent) arising out of anything done by them or any of them pursuant to this Section and Agent may, in its discretion, apply any insurance of condemnation proceeds held by it to reimburse itself or such receiver for all amounts expended or incurred by it in connection with the performance of such work, including attorneys' fees, and any excess costs shall be paid by Mortgagor to Agent, and Mortgagor's obligation to pay such excess costs shall be secured by the lien of this Mortgage and shall bear interest at the Default Rate until paid.

(c) Mortgagor waives any and all right to claim or recover against Agent, its officers, employees, agents and representatives for loss of or damage to Mortgagor, the Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

11. **Installments for Insurance and Taxes.** Upon Agent's request, while an Event of Default exists, Mortgagor will pay monthly to Agent, an amount determined by Agent to equal one-twelfth (1/12th) of the annual premiums for the insurance policies referred to hereinabove and the annual Impositions and any other item which at any time may be or become a lien upon the Property (collectively, the "**Escrow Charges**"). The amounts so paid (collectively, the "**Escrowed Amounts**") will be used in payment of Escrow Charges as long as no Event of Default exists. No Escrowed Amount will bear interest or be deemed to be trust funds. Agent has no obligation to pay any Escrow Charges if at any time Escrowed Amount being held by the Agent for such Escrow Charges are insufficient to make such payments. If, at any time, Escrowed Amount are exhausted, or if Agent determines, in its sole discretion, that such funds will be insufficient to pay in full any Escrow Charges when due, Mortgagor will promptly pay to Agent, upon demand, an amount which Agent estimates as sufficient to make up such deficiency. Upon the occurrence of an Event of Default, Agent has the right, at its election, to apply any Escrowed Amount against the Obligations in such order as Agent determines in its sole discretion, and Mortgagor hereby grants to Agent a lien upon and security interest in all Escrowed Amounts for such purpose. Nothing in this Section, however, shall relieve Mortgagor of its obligation to pay all costs and expenses related to all Impositions and insurance.

12. **Inspection of Property.** In addition to any rights that the Agent and the Lenders may have under the Loan Agreement, Agent, Lender, Inspecting Architect, and each of their respective employees and agents have the right to enter the Property at any reasonable hour upon reasonable notice for the purpose of inspecting the Property. Mortgagor will provide Agent,

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Inspecting Architect, the Lenders and each of their respective employees and agents reasonable rights of access to the Property as well as such information about the Property and the past or present conduct of operations and activities thereon as Agent, Inspecting Architect, any Lender, and each of their respective employees and agents, reasonably request.

13. **Security Agreement; Fixture Filing, Etc.** The Mortgagor will execute and deliver to Agent on demand such financing statements and other instruments, as Agent may require in order to perfect, protect and maintain such security interest under the Uniform Commercial Code as adopted in the State of Illinois (“UCC”) on the aforesaid collateral. This Mortgage, to the extent that it conveys or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement under the UCC, with Mortgagor, as debtor and Agent, as secured party, as in effect in the state in which the Land is located, and this Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the County in which the Land is located with respect to any and all fixtures included within the term “**Property**” as used herein and with respect to any equipment or other personal property that may now be or hereafter become such fixtures. The Note evidences a debt created by one or more disbursements made by Agent, on behalf of the Lenders, to Mortgagor to finance the cost of the construction of certain improvements upon the Property in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the UCC. The information required for a sufficient fixture filing financing statement pursuant to Section 9-502 of the UCC is as follows:

Debtor’s legal name:	SP Realty Holding Company LLC
Type of legal entity:	Limited Liability Company
Mailing address:	225 North Columbus Drive, Suite 100 Chicago, Illinois 60601 Attention: David J. Carlins
State of Organization of Debtor(s):	Delaware
Name of Secured Party:	PNC Bank, National Association
Mailing address:	One North Franklin Street, Suite 2150 Chicago, Illinois 60606 Attention: Tracy S. Larrison
Description of the collateral:	All “Property” defined in this Mortgage
Description of real estate to which the collateral is attached or upon which it is or will be located:	The Land described on <u>Exhibit A</u> attached hereto

14. **Events of Default; Rights and Remedies of Agent.** Upon the occurrence of any event of default under this Mortgage (and the expiration of applicable grace of cure periods set forth in the Loan Agreement) or any event designated as an “Event of Default” under the Loan Agreement, the Note or any other Loan Document (each, an “**Event of Default**”), Agent may, in its sole discretion, without demand, notice or delay, do one or more of the following:

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(a) declare all of the Obligations to be due and payable immediately; provided that any such declaration will not negate any automatic acceleration of the Obligations that may have occurred as a result of certain events which result in automatic acceleration upon their occurrence pursuant to the express terms of the Loan Documents;

(b) Institute and maintain an action on any instruments evidencing the Obligations or any portion thereof, and take such other action at law or in equity for the enforcement of any of the Loan Documents as the law may allow, and in each such action the Agent shall be entitled to all costs of suit and attorneys' fees.

(c) Foreclose the lien of this Mortgage immediately or at any time thereafter:

(1) Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of Agent, in Agent's sole and absolute discretion, appoint Agent as a mortgagee-in-possession or appoint a receiver of the Property (a "**Receiver**") pursuant to the Illinois Mortgage Foreclosure Law, as amended (735 ILCS 5/15-1101, *et seq.*) (the "**Mortgage Foreclosure Act**"). Such appointment may be made either before or after sale, without choice, without regard to the solvency or insolvency, at the time of application for each Receiver, of the person or persons, if any, liable for the payment of the Obligations; without regard to the value of the Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant, and Agent hereunder or any employee or agent thereof may be appointed as such Receiver. Such Receiver shall have all powers and duties prescribed by the Mortgage Foreclosure Act, including the power to take possession, control and care of the Property and to collect all Rents (including, but not limited to, any delinquent Rents) thereof during the pendency of such foreclosure suit and apply all funds received toward the Obligations, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor, its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such Receiver, would be entitled to collect such Rents, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. To the extent permitted under any applicable Legal Requirements, such Receiver may take any action permitted to be taken by Agent pursuant to any other Loan Document, extend or modify any then existing Leases and make new leases of the Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan, 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 and other parties whose interests in the Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction

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of foreclosure decree or issuance of certificate of sale or deed to any purchaser or at any time thereafter.

(2) The court may, from time to time, authorize said Receiver to apply the net amounts remaining in his hands, after deducting reasonable compensation for the Receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of the Obligations, including without limitation the following, in such order of application as Agent may, in its sole and absolute discretion, elect: (i) amounts due upon the Note and any other Loan Documents; (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage; (iii) costs and expenses incurred by Agent, including costs and expenses of foreclosure and litigation upon the Property; (iv) insurance premiums, repairs, impositions, and interest, penalties and costs, in connection with the Property; (v) any other encumbrance or lien upon the Property that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same; and (vi) all costs, expenses, and monies advanced by Agent to cure or attempt to cure any default by Mortgagor in the performance of any obligation or condition contained in any of the other Loan Documents or this Mortgage or otherwise, to protect the security hereof provided herein, or in any of the other Loan Documents, with interest on such sums advanced at the Default Rate. The excess of the proceeds of sale, if any, shall then be paid to Mortgagor (or such other person or party as is applicable in accordance with applicable Legal Requirements).

(3) This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Property, as Agent may elect, until all of the Property has been foreclosed against and sold. As part of the foreclosure, Agent in its sole discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Property, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, parcels, or units, as Agent may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable Legal Requirements. Upon the completion of any such sale or sales, Agent shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers of the property so sold, in accordance with any applicable Legal Requirements, and Agent is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor, in its name and stead, which appointment is coupled with an interest, to make all necessary transfers of property thus sold, and for that purpose Agent may execute and deliver, for and in the name of Mortgagor, all necessary instruments of assignment and transfer, Mortgagor hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof.

(4) In the case of any sale of the Property pursuant to any judgment or decree of any court at public auction or otherwise, Agent may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Note and any claims

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for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by Agent for the enforcement, protection or collection of this security interest, including court costs, attorneys' fees, stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by Mortgagor, with interest on such sums advanced at the Default Rate.

(d) The Agent may, in its sole and absolute discretion, whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale of the Property or during any period of redemption, without regard to waste, adequacy of the security or solvency of Mortgagor revoke the privilege granted Mortgagor hereunder to collect the Rents, and may, at its option, without notice: (i) enter and take actual possession of the Property, the Rents and the Leases or any part thereof personally, or by its agents or attorneys, and exclude Mortgagor therefrom; (ii) enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating thereto; (iii) as attorney-in-fact or agent of Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Property, the Rents, and the Leases and conduct the business, if any, thereof (including entering into new leases of the Property, or any part thereof, under such terms and conditions as Agent, in its sole and absolute discretion, may elect) either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents and the Leases (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease for any cause or on any ground which would entitle Mortgagor to cancel the same; (v) elect to disaffirm any Lease made subsequent hereto or subordinated to the lien hereof, (vi) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to the Property that, in its reasonable discretion, may seem appropriate; (vii) insure and reinsure the Property for all risks incidental to Agent's possession, operation and management thereof; (viii) perform such other acts in connection with the management and operation of the Property, as Agent in its sole discretion may deem necessary or desirable, (ix) collect any or all of the Rents, including any Rents past due and unpaid, (x) perform any obligation or exercise any right or remedy of the Mortgagor under any Lease, or (xi) enforce any obligation of any tenant of any of the Property. The Agent may exercise any right under this Section 14(d), whether or not the Agent shall have entered into possession of any of the Property, and nothing herein contained shall be construed as constituting the Agent a "mortgagee in possession", unless the Agent shall have entered into and shall continue to be in actual possession of the Property. The Mortgagor hereby authorizes and directs each and every present and future tenant of any of the Property to pay all Rents directly to the Agent and to perform all other obligations of that tenant for the direct benefit of the Agent, as if the Agent were the landlord under the Lease with that tenant, immediately upon receipt of a demand by the Agent to make such payment or perform such obligations. The Mortgagor hereby waives any right, claim or demand it may now or hereafter have against any such tenant by reason of such

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payment of Rents or performance of obligations to the Agent, and any such payment or performance to the Agent shall discharge the obligations of the tenant to make such payment or performance to the Mortgagor.

(e) Mortgagor hereby grants Agent full power and authority to exercise each and every one of the rights, privileges and powers contained herein and in every other Loan Document, at any and all times after any Event of Default without notice to Mortgagor or any other person or other party. Agent, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order as it may, in its sole and absolute discretion, determine: (i) to the payment of the operating expenses of the Property, including the cost of management and leasing thereof (which shall include reasonable compensation to Agent and its agents or contractors, if management be delegated to agents or contractors, and it 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; (ii) to the payment of Impositions, costs, expenses, and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Property, and of placing the Property in such condition as will, in the judgment of Agent, make it readily rentable or saleable; (iii) to the payment of any Obligations; and (iv) to the payment of any other cost or expense required or permitted hereunder.

(f) The exercise of any of Agent's rights pursuant to this Section 14, the taking possession by Agent as a mortgagee-in-possession, the appointment of a Receiver, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default or waive, modify or affect notice of default hereunder or invalidate any act done pursuant to said notice, nor in any way operate to prevent Agent from pursuing any remedy which now or hereafter it may have under the terms and conditions of this Mortgage, the other Loan Documents, or any other instruments securing the same. The rights and powers of Agent hereunder shall remain in full force and effect both prior to and after any foreclosure of this Mortgage and any sale pursuant thereto and until expiration of the period of redemption for said sale. The purchaser at any foreclosure sale, including Agent, shall have the right at any time and without limitation, to advance money to any Receiver to pay any part or all of the items which the Receiver would otherwise be authorized to pay if cash were available from the Property and the sum so advanced, with interest at the Default Rate, shall be a part of the sum required to be paid to redeem from any foreclosure sale.

(g) Agent may exercise from time to time any rights, powers and remedies available to it under the applicable UCC and as may be provided in this Mortgage and any other Loan Document. Mortgagor shall, promptly upon request by Agent, assemble the Property other than the Land and Improvements ("**Other Collateral**") and make it available to Agent at such place or places, as Agent shall designate. Any notification of intended disposition required by any Legal Requirement or with respect to any Other Collateral shall be deemed reasonably and properly given if given at least thirty (30) days before such disposition. Without limiting the generality of the preceding sentences of

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this Section 14(g), Agent may, with respect to so much of the Other Collateral as is personal property under applicable Legal Requirements, to the fullest extent permitted by applicable Legal Requirements, without further notice, advertisement, hearing or process of law of any kind: (i) notify any person or other party obligated on the Other Collateral to perform directly for Agent its obligations thereunder; (ii) enforce collection of any of the Other Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto; (iii) endorse any checks, drafts or other writings in the name of Mortgagor to allow collection of the Other Collateral; (iv) take control of any proceeds of the Other Collateral; (v) enter upon any Property where any of the Other Collateral may be located and take possession of and remove such Other Collateral; (vi) sell any or all of the Other Collateral, free of all rights and claims of Mortgagor therein and thereto, at any public or private sale; and (vii) bid for and purchase any or all of the Other Collateral at any such sale. Any proceeds of any disposition by Agent of any of the Other Collateral may be applied by Agent to the payment of expenses in connection with the Other Collateral, including attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by Agent toward the payment of such of the Obligations and in such order of application determined by Agent, and any excess shall be paid to Mortgagor or other secured parties, as their interests may appear. Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Note and other Loan Documents and, to the fullest extent permitted by applicable Legal Requirements, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by Agent of any of its rights and remedies hereunder. Mortgagor hereby appoints Agent its attorney-in-fact with full power of substitution to take possession of the Other Collateral upon any Event of Default and, as Agent in its sole discretion deems necessary or proper, to execute and deliver all instruments required by Agent to accomplish the disposition of the Other Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Obligations are outstanding.

(h) It is the intention of the parties that this Mortgage shall confer upon Agent the fullest rights, remedies and benefits available under applicable Legal Requirements. Agent may take any of the actions referred to in this Section 14 irrespective of and without regard to the adequacy of the security for the Obligations.

(i) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Mortgage Foreclosure Act, the provision of the Mortgage Foreclosure Act shall take precedence over the provision 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 Mortgage Foreclosure Act. Mortgagor and Agent shall have the benefit of all of the provisions of the Mortgage Foreclosure Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Mortgage Foreclosure Act which is specifically referred to herein may be repealed, Agent shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision of this Mortgage shall grant to

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Agent any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Agent under the Mortgage Foreclosure Act in the absence of said provision, Agent shall be vested with the rights granted in the Mortgage Foreclosure Act to the full extent permitted by the applicable Legal Requirements.

15. **Application of Proceeds**. Agent will apply the proceeds of any foreclosure sale of, or other disposition or realization upon, or Rents or profits from, the Property in accordance with Section 10.2(b) of the Loan Agreement or as otherwise required by Law.

16. **Agent's Right to Protect Security**. Agent is hereby authorized to do any one or more of the following, irrespective of whether an Event of Default has occurred: (a) appear in and defend any action or proceeding purporting to affect the security hereof or Agent's rights or powers hereunder; (b) purchase such insurance policies covering the Property as it may elect if Mortgagor fails to maintain the insurance coverage required under the Loan Documents; and (c) take such action as Agent may determine to pay, perform or comply with any Impositions or Law, to cure any Events of Default and to protect Agent's security in the Property.

17. **Further Assurances**. Mortgagor covenants and agrees to execute and deliver to Agent, on demand, such additional assignments, agreements and instruments as Agent may require to create, perfect, implement, confirm, maintain or continue the grant and assignment of the liens and security interests created in favor of the Agent, for the benefit of itself and the other Lenders under this Mortgage and the rights and remedies of the Agent and Lenders under this Mortgage or the other Loan Documents. Mortgagor will execute (if required by Law) and deliver to Agent on demand such financing statements and other instruments as Agent may require in order to perfect, protect and maintain its security interest in the UCC Collateral, and will cause the security interest granted to Agent in any motor vehicles to be noted upon the title to such motor vehicles. For any financing statements or other instruments that the Law does not require Mortgagor's signature, Mortgagor irrevocably authorizes the Agent to file against Mortgagor and/or the Property one or more financing, continuation or amendment statements pursuant to the UCC, in form satisfactory to Agent, and at Mortgagor's cost and expense, as Agent may require in order to perfect, protect and maintain its security interest in any of the Property under the UCC.

18. **Appointment of Agent as Attorney-in-Fact**. Agent, or any of its officers, is hereby irrevocably appointed attorney-in-fact for Mortgagor (without requiring any of them to act as such), such appointment being coupled with an interest, to do any or all of the following: (a) while an Event of Default exists, collect Rents and exercise each other right and remedy set forth in this Mortgage or the other Loan Documents; and (b) settle for, collect and receive any awards payable under Section 8 from the authorities making the same to the extent Agent has the right to settle, collect and receive such awards pursuant to Section 8.

19. **Certain Waivers**.

(a) Mortgagor hereby waives and releases all benefit that might accrue to Mortgagor by virtue of any present or future Law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time for

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payment or any rights of marshaling in the event of any sale hereunder of the Property, and, unless specifically required herein, all notices of Mortgagor's default or of Agent's election to exercise, or Agent's actual exercise of any option under this Mortgage or any other Loan Document.

(b) Mortgagor voluntarily and knowingly hereby acknowledges that the transaction of which this Mortgage is a part is a transaction that does not include either agricultural real estate or residential real estate (each as defined in the Mortgage Foreclosure Act). Mortgagor, on behalf of itself and all persons or other parties now or hereafter interested in the Property or the Other Collateral, to the fullest extent permitted by applicable Legal Requirements hereby waives all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all Obligations secured by this Mortgage, and Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of the Property. Without limiting the generality of the preceding sentence, Mortgagor, on its own behalf and on behalf of each and every person or other party acquiring any interest in or title to the Property subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Without limiting the foregoing, Mortgagor, on its own behalf and on behalf of each and every person or other party acquiring any interest in or title to the Property subsequent to the date of this Mortgage, hereby irrevocably waives pursuant to 735 ILCS 5/15 1601 et seq. of the Mortgage Foreclosure Act any and all rights of reinstatement (including, without limitation, all rights of reinstatement provided for in 735 ILCS 5/15 1602) or redemption from sale or from or under any order, judgment or decree of foreclosure of this Mortgage (including, without limitation, all rights of redemption provided for in 735 ILCS 5/12 122 et seq. and 735 ILCS 5/15 1603) or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Mortgagor hereby expressly waives and releases all rights to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Property and/or any other property now or hereafter constituting security for any of the Obligations marshaled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

20. **Notices.** Except as otherwise required by Law, all notices, demands, requests, consents, approvals and other communications required or permitted hereunder ("**Notices**") must be given in accordance with Section 11.5 of the Loan Agreement.

21. **Documentary Stamps.** If at any time the United States of America, any State thereof or any subdivision of any such State requires revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax, penalty, interest or other charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

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22. **Preservation of Rights.** No course of dealing and no delay or failure of Agent or any Lender in exercising any right, power, remedy or privilege under this Mortgage or any other Loan Document will affect any other or future exercise thereof or operate as a waiver thereof, nor will any single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such a right, power, remedy or privilege preclude any further exercise thereof or of any other right, power, remedy or privilege. The rights and remedies of Agent and Lenders under this Mortgage and any other Loan Document are cumulative and not exclusive of any rights or remedies which they would otherwise have.

23. **Severability.** The provisions of this Mortgage are intended to be severable. If any provision of this Mortgage is held invalid or unenforceable in whole or in part in any jurisdiction, such provision will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

24. **Credit Agreements Act; Changes in Writing.** Mortgagor expressly agrees that for purposes of this Mortgage and the other Loan Documents: (i) this Mortgage and the other Loan Documents shall be a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1, et seq. (the "**Credit Agreement Act**"); (ii) the Credit Agreement Act applies to this transaction including, but not limited to, the execution of this Mortgage and the Note; and (iii) any action on or in any way related to this Mortgage and each other Loan Document shall be governed by the Credit Agreement Act. No modification, amendment or waiver of, or consent to any departure by Mortgagor from, any provision of this Mortgage will be effective unless made pursuant to Section 11.1 of the Loan Agreement. No notice to or demand on Mortgagor will entitle Mortgagor to any other or further notice or demand in the same, similar or other circumstance.

25. **Entire Agreement.** This Mortgage (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between Mortgagor and Agent or Lenders with respect to the subject matter hereof.

26. **Successors and Assigns; Survival.** This Mortgage will be binding upon and inure to the benefit of Mortgagor, Agent, Lenders, and their respective heirs, executors, administrators, personal representatives, successors and assigns; provided, however, that Mortgagor may not assign this Mortgage in whole or in part without Agent's prior written consent. The death or disability of any natural person who is a Mortgagor shall in no way impair or affect this Mortgage, either with respect to the estate of the person so dying, which shall continue to be bound, or otherwise. No Lender may assign or otherwise transfer any of its rights or obligations hereunder except (a) to an assignee in accordance with the provisions of Section 11.9(b) of the Loan Agreement; or (b) by way of participation in accordance with the provisions of Section 11.9(d) of the Loan Agreement and any other attempted assignment or transfer by any party hereto is null and void.

27. **Interpretation.** In this Mortgage, unless Mortgagor and Agent otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all

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statutory provisions consolidating, amending or replacing the statute referred to; the word “or” will be deemed to include “and/or”; the words “including”, “includes” and “include” will be deemed to be followed by the words “without limitation”; references to articles, sections (or subdivisions of sections) or exhibits are to those of this Mortgage; and references to agreements and other contractual instruments will be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Mortgage or the other Loan Documents. Section headings in this Mortgage are included for convenience of reference only and will not constitute a part of this Mortgage for any other purpose. If this Mortgage is executed by more than one party as Mortgagor, the obligations of such persons or entities will be joint and several.

28. **Indemnity.** Mortgagor agrees to indemnify Agent, each Lender, each legal entity, if any, who controls, is controlled by or is under common control with Agent or any Lender and each of their respective directors, officers, employees and agents (each an “**Indemnified Party**” and collectively, the “**Indemnified Parties**”), and to defend and hold each Indemnified Party harmless from and against, any and all claims, damages, losses, liabilities and expenses (including all fees and charges of internal or external counsel with whom any Indemnified Party may consult and all expenses of litigation and preparation therefor) which any Indemnified Party may incur or which may be asserted against any Indemnified Party by any person, entity or governmental authority (including any person or entity claiming derivatively on behalf of Mortgagor), in connection with or arising out of the matters referred to in this Mortgage or in the other Loan Documents, provided, however, that the foregoing indemnity will not apply to any claims, damages, losses, liabilities and expenses solely attributable to an Indemnified Party’s gross negligence or willful misconduct. Agent may participate in the defense of any such action or claim.

29. **GOVERNING LAW; JURISDICTION; ETC.**

(a) **GOVERNING LAW. THIS AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY ARE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO ITS CONFLICT OF LAWS PRINCIPLES.**

(b) **JURISDICTION. MORTGAGOR IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, CONTRACT, TORT OR OTHERWISE, AGAINST AGENT, ANY LENDER OR ANY RELATED PARTY OF THE FOREGOING, IN ANY WAY RELATING TO ANY LOAN DOCUMENT OR TRANSACTIONS RELATED TO ANY LOAN DOCUMENT, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF ILLINOIS SITTING IN COOK COUNTY, AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF ILLINOIS, AND ANY APPELLATE COURT FROM ANY THEREOF, AND MORTGAGOR IRREVOCABLY AND**

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UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH ILLINOIS STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. MORTGAGOR AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING IS CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN ANY LOAN DOCUMENT AFFECTS ANY RIGHT THAT AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST MORTGAGOR OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. MORTGAGOR IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN THIS SECTION 29. MORTGAGOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. MORTGAGOR IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.5 OF THE LOAN AGREEMENT. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

30. No Merger. If Agent or any other person or entity owning or holding this Mortgage acquires or becomes vested with the fee title to the Property or any other estate or interest in the Property, such estates will not merge as a result of such acquisition and will remain separate and distinct from all other estates and interests in the Property for all purposes after such acquisition. The lien and security interest created hereby will not be destroyed or terminated by the application of the doctrine of merger. Upon the foreclosure of the lien created hereby on the Property, as herein provided, any Leases then existing will not be destroyed or terminated by application of the doctrine of merger or by operation of Law or as a result of such foreclosure unless Agent or any purchaser at a foreclosure sale so elects by written notice to the lessee in question.

31. Counterparts. This Agreement may be executed by different parties hereto on any number of separate counterparts, each of which, when so executed and delivered, will be an original, and all such counterparts will together constitute one and the same instrument.

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32. **WAIVER OF JURY TRIAL.** MORTGAGOR, AND, BY ITS ACCEPTANCE HEREOF, AGENT, EACH HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). MORTGAGOR, AND, BY ITS ACCEPTANCE HEREOF, AGENT EACH (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON COULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 32.

33. **Obligations Survive Judgment.** The Obligations of the Mortgagor and the rights and remedies of the Agent hereunder and under the Loan Agreement and other Loan Documents shall continue after and survive the entry of judgment for foreclosure of this Mortgage or judgment on the Notes; it being the intention of the parties hereto that such rights, remedies and obligations, including but not limited to the obligations of Mortgagor to perform the covenants contained in this Mortgage (including the Mortgagor's covenants in Section 9, Section 12 and Section 28 of this Mortgage) and to reimburse Agent for any payments made or costs or expenses incurred by Agent pursuant to Section 9, Section 12 and Section 28 of this Mortgage, together with interest at the Default Rate shall not merge into or be extinguished by any such judgment but shall continue until all Obligations have been paid in full.

34. **Exculpation.** Section 11.23 of the Loan Agreement is incorporated herein by express reference as if fully set forth herein.

The Mortgagor acknowledges that it has read and understood all the provisions of this Mortgage, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

[Remainder of Page Intentionally Blank; Signatures Follow]

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WITNESS the due execution hereof as a document under seal, as of the date first written above, with the intent to be legally bound hereby.

MORTGAGOR:

SP REALTY HOLDING COMPANY LLC,
a Delaware limited liability company

By: _____
Name: David Cortina
Title: Authorized Signatory

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

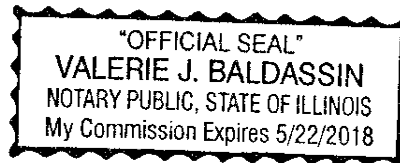
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that David Cortina, the Authorized Signatory of SP Realty Holding Company LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 16 day of June, 2015.

Valerie J. Baldassin
Notary Public

My Commission Expires:

5/22/2018



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EXHIBIT A

Legal Description

Parcel 1:

Lots 1, 2, 3 and 4 in the Assessor's Division of Lots 1 to 6, inclusive, of Block 29 in Wolcott's Addition to Chicago, in the East 1/2 of the Northeast 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, (except that part of Lot 6, aforesaid, lying East of a line 14 feet West of and parallel to the West line of LaSalle Street), in Cook County, Illinois.

Parcel 2:

Lots 9, 10 and 11 in Block 2 in Walter Newberry's Addition to Chicago in the Northeast 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3:

A tract of land described as follows:

That part of the North-South 14 foot public alley lying East of the East line of Lots 7 and 8, lying West of the West line of Lot 9 and lying North of a line 40 feet South of and parallel to a line drawn from the Northeast corner of said Lot 8 to the Northwest corner of said Lot 9, all in Block 2 of Newberry's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian; said part of public alley herein vacated being further described as the North 40 feet of the North-South 14 foot public alley in the block bounded by West Superior Street, West Huron Street, North Wells Street and North LaSalle Street, all in Cook County, Illinois.

Parcel 4:

The North 15 feet of Lot 7 and all of Lot 8 in Block 2 in Walter Newberry's Addition to Chicago in the Northeast 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 5:

The North 27 feet of Lot 6 and the South 13 feet of Lot 7 in Block 2 in Newberry's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 6:

The North 24 feet of Lot 5 and the South 1 foot of Lot 6 in Block 2 in Newberry's Addition to Chicago, said addition being a subdivision of the East 1/2 of the West 1/2 of the Northeast 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 7:

That part of the vacated North-South 14 foot public alley lying East of the East line of Lots 5, 6 and 7, lying West of the West line of Lot 9, lying South of a line

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40.00 feet South of and parallel to a line drawn from the Northeast corner of Lot 8 to the Northwest corner of Lot 9 and lying North of the South line of Lot 9 extended Westward to the West line of said alley all in Block 2 in Newberry's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 8:

An Easement for the benefit of Parcels 1 through 7 as created by Light And Air And Encroachment Easement Agreement recorded August 19, 2014 as document number 1423119123, over and across the land described as follows; That part of Lot 4 and Lot 5 except the North 24.0 feet of Lot 5 in Block 2 in Newberry's Addition To Chicago, being a subdivision of the East half of the West half of the Northeast Quarter of Section 9, Township 39 North, Range 14 East of The Third Principal Meridian, recorded November 22, 1849 (ante-fire), bounded and described as follows: beginning at the intersection of the West line of said Lot 5 with the South line of the North 24.0 feet of said Lot 5; thence South 89 degrees 49 minutes 20 seconds East, being an assumed bearing on the South line of the North 24.0 feet of said Lot 5, a distance of 110.0 feet to the East line of said Lot 5; thence South 0 degrees 00 minutes 00 seconds East 12.0 feet on the East line of said Lots 4 and 5 to the intersection with a line 8.0 feet South of and parallel with the North line of said Lot 4; thence North 89 degrees 49 minutes 20 seconds West on said parallel line 110.0 feet to the West line of said Lot 4; thence North 0 degrees 00 minutes 00 seconds West on the West line of said Lots 4 and 5, a distance of 12.0 feet to the point of beginning, above an elevation of 129.56 feet (based on the City of Chicago datum) for the West 94.50 feet of said Lots 4 and 5 and above an elevation of 63.06 feet (based on the City of Chicago datum) for the East 15.50 feet of said Lots 4 and 5 as extended vertically to all navigable airspace or all airspace above the minimum altitudes of flight, including airspace needed to ensure the safety in the takeoff and landing of aircraft, all in Cook County, Illinois.

Address: 165 West Superior Street, Chicago, Illinois 60654

Permanent Index Numbers: 17-09-210-001-0000, 17-09-210-002-0000, 17-09-210-003-0000, 17-09-210-007 and 17-09-210-016-0000