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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



1527319128

Doc#: 1527319128 Fee: \$94.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/30/2015 03:27 PM Pg: 1 of 29

Report Mortgage Fraud
800-532-8785

Property of Cook County Clerk's Office

The property identified as: **PIN:** 17-03-223-032-0000

Address:

Street: 845 N. State Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60610

Lender: JPMorgan Chase Bank, N.A.

Borrower: Tower 10 Glades LLC, a Delaware limited liability company

Loan / Mortgage Amount: \$115,000,000.00

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: 2C32F688-783C-4E40-873F-DE13D82F162C

Execution date: 9/29/2015

CCRD REVIEWER

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SV/JL
1 of 2
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**This Document Prepared By
and After Recording Return to:**

Dentons US LLP
233 South Wacker Drive, Suite 5900
Chicago, Illinois 60606
Attention: Steven R. Davidson, Esq.

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

This Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (hereinafter called "Mortgage") is made as of the 30th day of September, 2015, by and between TOWER 10 GLADES LLC, a Delaware limited liability company, whose mailing address is located at c/o Newcastle Limited LLC, 150 N. Michigan Ave., Suite 3610, Chicago, IL 60601, hereinafter called "Mortgagor," and JPMORGAN CHASE BANK, N.A., a national banking association, as Administrative Agent for the benefit of the Lenders (as defined in the Loan Agreement described below), whose mailing address is 10 S. Dearborn, Chase Tower IL1-0958, Chicago, IL 60603, Attention of David C. Weislogel, hereinafter called "Mortgagee."

Section 1. Grant and Secured Obligations.

1.1 Grant. Mortgagor has executed and delivered to Mortgagee that certain promissory note of even date herewith in the aggregate amount of \$115,000,000 (together with any amendments or allonges thereto, or restatements, replacements or renewals thereof, the "Note"), in and by which the Mortgagor promises to pay, pursuant to that certain Loan and Security Agreement dated of even date herewith (the "Loan Agreement") by and between Mortgagor and Mortgagee, the principal of all Loans and interest at the rate and in installments as provided in the Loan Agreement, with a final payment of the outstanding principal balance and accrued and unpaid interest being due on or before September 30, 2025. To the extent there may be any inconsistency between the terms and provisions of this Mortgage and the terms and provisions of the Loan Agreement, the terms and provisions of the Loan Agreement shall govern and control. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Loan Agreement.

In consideration of the debt evidenced by the Note and to secure the timely payment of both principal and interest in accordance with the terms and provisions of the Note and in accordance with the terms, provisions and limitations of this Mortgage, to secure the payment of

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any and all amounts advanced by the Mortgagee with respect to the Premises (as defined herein) for the payment of taxes, assessments, insurance premiums or any other costs incurred in the protection of the Premises, and to secure the performance of the covenants and agreements contained herein and in the Note, the Loan Agreement and any other documents evidencing and securing the loan secured hereby or delivered to Mortgagee pursuant to the Loan Agreement (collectively, the "Loan Documents") to be performed by Mortgagor, and to secure all Swap Agreements entered into with a Lender in connection with the Loan Agreement, and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Mortgagor hereby mortgages and warrants to Mortgagee, all estate, right, title and interest which Mortgagor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

(a) The real property located in the County of Cook, State of Illinois, as described in Exhibit A, together with all existing and future conditions, covenants, restrictions, easements and rights affording access to it (the "Premises"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Premises (the "Improvements"); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("leases") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such leases; together with

(e) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; together with

(f) All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for

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purposes of this Mortgage and any manufacturer's warranties with respect thereto; together with

(g) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements; together with

(h) All of Mortgagor's interest in and to all operating and other bank accounts pertaining to the Property; together with

(i) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds (including real estate tax refunds), cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Mortgagor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Mortgagee), which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally and any builder's or manufacturer's warranties with respect thereto; together with

(j) All insurance policies pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(k) All of Mortgagor's rights in and to all Swap Agreements entered into in connection with the Loan Agreement; together with

(l) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("Books and Records"); together with

(m) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

1.2 Secured Obligations.

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(a) Mortgagor makes the grant and mortgage set forth in Section 1.1 above, and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Mortgagee may choose:

(i) Payment of all obligations at any time owing under the Note, this Mortgage, the Loan Agreement or any other Loan Documents; and

(ii) Payment and performance of all obligations of Mortgagor arising from any Swap Agreements entered into with a Lender in connection with the Loan Agreement provided that at or prior to the time that any transaction relating to such Swap Agreement is executed, the Lender party thereto (if other than Mortgagee) shall have delivered written notice to Mortgagee that such a transaction has been entered into and that it constitutes an Obligation entitled to the benefits of the lien of this Mortgage; and

(iii) Payment and performance of all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay, incur and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance, costs and expenses or obligation be secured by this Mortgage; and

(iv) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Agreement which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

Section 2. Assignment of Rents.

2.1 Assignment. Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee all rents, royalties, issues, profits, revenue income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents (some or all collectively, as the context may require, "Rents"). This is an absolute assignment, not an assignment for security only.

2.2 Grant of License. Mortgagee hereby confers upon Mortgagor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.2 below, shall exist and be continuing. If an Event of Default has occurred and is continuing, Mortgagee shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Mortgagor, and without regard to the adequacy of Mortgagee's security under this Mortgage.

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2.3 Collection and Application of Rents. Subject to the License granted to Mortgagor under Section 2.2 above, Mortgagee has the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Mortgagee its attorney-in-fact to perform any and all of the following acts, after the occurrence and during the continuance of an Event of Default or a monetary Unmatured Default:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents.

Mortgagee and Mortgagor agree that the mere recordation of the assignment granted herein entitles Mortgagee immediately to collect and receive rents upon and during the continuance of an Event of Default, as defined in Section 6.2, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Mortgagor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property as permitted under Subsection 6.3(c). In Mortgagee's sole discretion, Mortgagee may choose to collect Rents either with or without taking possession of the Property. Mortgagee shall apply all Rents collected by it in the manner provided under Section 6.6. If an Event of Default occurs while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Mortgagee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity.

2.4 Mortgagee Not Responsible. Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Premises and Improvements, unless Mortgagee agrees in writing to the contrary, Mortgagee is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or
- (b) Except pursuant to a written subordination, non-disturbance and attornment agreement, responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property, unless caused by the gross negligence, willful misconduct or bad faith of Mortgagee; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

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2.5 Leasing. Mortgagor shall not accept any deposit or prepayment of rents under the leases for any rental period exceeding one (1) month without Mortgagee's prior written consent; provided, however, Mortgagor may collect rent not more than one hundred eighty (180) days in advance for not more than twenty (20) apartment units. Mortgagor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement.

Section 3. Grant of Security Interest.

3.1 Security Agreement. The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Mortgagee. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, Mortgagor as debtor hereby grants Mortgagee as secured party a security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations. This Mortgage constitutes a security agreement under the Uniform Commercial Code of the State in which the Property is located (the "UCC"), as amended or recodified from time to time, covering all such Property and Rents.

3.2 Financing Statements. Mortgagor hereby authorizes Mortgagee to file one or more financing statements. In addition, Mortgagor shall execute such other documents as Mortgagee may from time to time require to perfect or continue the perfection of Mortgagee's security interest in any Property or Rents. As provided in Section 5.10 below, Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. In case Mortgagor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

Section 4. Fixture Filing.

This Mortgage constitutes a financing statement filed as a fixture filing under Article 9 of the UCC, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of Mortgagor, as debtor, and Mortgagee, as secured party, are as set forth in the preambles of this Mortgage.

Section 5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Mortgagor represents and warrants that:

(a) Mortgagor lawfully possesses and holds fee simple title to all of the Premises and Improvements;

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(b) Mortgagor has or will have good title to all Property including the Premises and Improvements, subject only to those exceptions to title contained in the title insurance policy delivered to Mortgagee pursuant to the Loan Agreement and such additional exceptions to title as may be approved by Mortgagee or otherwise permitted by the Loan Agreement (collectively, the "Permitted Encumbrances");

(c) Mortgagor has the full power, right and authority to encumber the Property and assign the Rents;

(d) This Mortgage creates a first and prior lien on the Property, subject to Permitted Encumbrances;

(e) Mortgagor owns any Property which is personal property free and clear of all liens, claims and encumbrances, other than Permitted Encumbrances; and

(f) Mortgagor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified herein.

5.2 Taxes, and Assessments Mortgagor shall, prior to delinquency, pay or cause to be paid each installment of all taxes and special assessments of every kind, now or hereafter levied against the Property or any part thereof, without notice or demand, and shall if requested to do so by Mortgagee in writing, provide Mortgagee with evidence of the payment of same. Mortgagor shall pay all taxes and assessments which may be levied upon Mortgagee's interest herein or upon this Mortgage or the debt secured hereby (excluding any income taxes or similar charges imposed upon Mortgagee), without regard to any law that may be enacted imposing payment of the whole or any part thereof upon the Mortgagee. Notwithstanding anything contained in this Section to the contrary, Mortgagor shall have the right to pay or cause to be paid any such tax or special assessment under protest or to otherwise contest any such tax or special assessment but only if (i) such contest has the effect of preventing the collection of such tax or special assessment so contested and also prevent the sale or forfeiture of the Property or any part thereof or any interest therein, (ii) Mortgagor promptly notifies Mortgagee in writing of its intent to contest such tax or special assessment, and (iii) if required by the terms of the Loan Agreement, Mortgagor has maintained and continues to maintain adequate reserves as security; provided that any such reserves shall be deposited immediately with Mortgagee upon demand if any Event of Default occurs hereunder. Mortgagor shall prosecute or cause the prosecution of all such contest actions in good faith and with due diligence.

5.3 Performance of Secured Obligations. Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 Liens, Charges and Encumbrances. Mortgagor shall promptly discharge, insure over, or bond off any lien on the Property as provided for in the Loan Agreement.

5.5 Damages, Restoration, and Insurance Proceeds. All settlements of insurance claims and the use of insurance proceeds shall be subject to the terms and conditions set forth in the Loan Agreement.

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5.6 Condemnation Proceeds. Mortgagor hereby assigns, transfers and sets over unto Mortgagee its entire interest in the proceeds (the "Condemnation Proceeds") of any award or any claim for damages for any of the Property taken or damaged under the power of eminent domain or by condemnation or any transaction in lieu of condemnation ("Condemnation"). All settlements of any Condemnation proceeding, and the use of Condemnation Proceeds shall be subject to the terms and conditions set forth in the Loan Agreement.

5.7 Maintenance and Preservation of Property.

(a) Mortgagor shall insure the Property as required by Section 7.01 of the Loan Agreement and keep the Property in good condition and repair.

(b) Except as required by the terms of any lease approved by Mortgagee or otherwise permitted under the Loan Agreement, Mortgagor shall not remove or demolish the Property or any material part of it in any way, or materially alter, restore or add to the Property, or initiate or allow any material change or variance in any zoning or other Premises use classification, which adversely affects the Property or any material part of it, except with Mortgagee's express prior written consent in each instance.

(c) Mortgagor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable Laws or order of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Mortgagor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could reasonably be expected to invalidate or would be prohibited by any insurance coverage required to be maintained by Mortgagor on the Property or any part of it under the Loan Agreement.

(d) Mortgagor shall not commit or allow physical waste of the Property.

(e) Mortgagor shall perform all other acts which from the character or use of the Property as a Class A residential apartment building may be reasonably necessary to maintain and preserve its value.

5.8 Releases, Extensions, Modifications and Additional Security. From time to time, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person:

(a) Release any person liable for payment of any Secured Obligation;

(b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

(c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

(d) Alter, substitute or release any property securing the Secured Obligations;

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- (e) Consent to the making of any plat or map of the Property or any part of it;
- (f) Join in granting any easement or creating any restriction affecting the Property;
- (g) Join in any subordination or other agreement affecting this Mortgage or the lien of it; or
- (h) Release the Property or any part of it.

5.9 Release. If Mortgagor shall fully pay all principal and interest on the Note, and all other indebtedness secured hereby, and terminate the obligations of the Mortgagee to make additional advances under the Loan Agreement, Mortgagee, upon written request of Mortgagor and confirmation that the foregoing requirements have been satisfied, shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of the amounts required under the Loan Agreement and payment of any filing fee in connection with such release. Mortgagor shall pay any actual out-of-pocket costs of preparation and recordation of such release.

5.10 Compensation, Exculpation, Indemnification.

(a) Mortgagor agrees to pay any fees required by and pursuant to the Loan Agreement, for any services that Mortgagee may render in connection with this Mortgage, including providing the release pursuant to Section 5.9 above. Mortgagor shall also pay or reimburse all of Mortgagee's actual, out-of-pocket costs and expenses which may be incurred in rendering any such services. Mortgagor further agrees to pay or reimburse Mortgagee for all actual, out-of-pocket costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Mortgagee under Section 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Subsection 6.3(i) below) and any cost of evidence of title. If Mortgagee chooses to dispose of Property through more than one Foreclosure Sale, Mortgagor shall pay all actual out-of-pocket costs, expenses or other advances that may be incurred or made by Mortgagee in each of such Foreclosure Sales. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all actual out-of-pocket expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments incurred in connection with the making of the Loan, together with all additional expenses incurred by Mortgagee required by applicable law with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication reasonable costs, and reasonable 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

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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, the value of or the environmental condition of the Property. All expenditures and expenses of the nature in this Subsection mentioned, and such expenses and fees as may be incurred in the protection of the Property and maintenance of the lien of this Mortgage, including the fees of any attorney (including the reasonable costs and fees of paralegals) employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due upon demand and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

(b) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

(i) Mortgagee's exercise of or failure to exercise any rights, remedies or powers granted to Mortgagee in this Mortgage;

(ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) Any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct, gross negligence, or bad faith of Mortgagee.

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(c) Mortgagor agrees to indemnify Mortgagee against and hold it harmless from all out-of-pocket losses, damages (excluding consequential, special and punitive damages), liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it actually incurs, unless caused by the gross negligence, willful misconduct or bad faith of the Mortgagee:

(i) In performing any act required or permitted by this Mortgage or any of the other Loan Documents or by law;

(ii) Because of any failure of Mortgagor to perform any of its obligations; or

(iii) Because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Documents.

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This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 5.10 immediately demand by Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation is demanded at the Default Rate.

5.11 Defense and Notice of Claims and Actions. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.12 Subrogation. Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

5.13 Site Visits, Observation and Testing. Mortgagee and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, and conducting non-invasive tests (unless Mortgagee has a good faith reason to believe that the taking and removing soil or groundwater samples is required by law, and in such case, conducting such tests) on any part of the Property. Mortgagee has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Mortgagee, its agents or representatives shall impose any liability on any of Mortgagee, its agents or representatives. In no event shall any site visit, observation or testing by Mortgagee, its agents or representatives be a representation that there has been or shall be compliance with any law, regulation or ordinance. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation or testing by any of Mortgagee, its agents or representatives. Neither Mortgagee, its agents or representatives owe any duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any adverse condition affecting the Property. Mortgagee shall give Mortgagor reasonable notice (if no Event of Default has occurred and is continuing, such notice shall be at least 48 hours during the construction of the Project and 24 hours thereafter unless Mortgagor otherwise agrees) before entering the Property, and any such entry shall be subject to the rights of tenants. Mortgagee shall make reasonable efforts to avoid interfering with Mortgagor's use of the Property in exercising any rights provided in this Section 5.13. Mortgagor shall be entitled to have a representative present at each visit by Mortgagee, its agents or representatives.

5.14 Notice of Change. Mortgagor shall give Mortgagee prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Mortgagor's name or business structure. Unless otherwise approved by Mortgagee in writing, all Property that consists of personal property (other than the Books and Records) will

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be located on the Premises and all Books and Records will be located at Mortgagor's place of business or chief executive office if Mortgagor has more than one place of business.

Section 6. Transfers, Default and Remedies.

6.1 Transfers. Mortgagor acknowledges that Mortgagee is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Mortgagor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Mortgagee's reliance, Mortgagor agrees that Mortgagor shall not make any transfer, except as permitted in the Loan Agreement, of the Property or transfer of its interests therein (except for easements in the ordinary course that do not interfere with the operation of the Property or impose material burdens on the owner of the Property) or permit any changes in the ownership of Mortgagor (any of the foregoing being a "Transfer"), unless the Transfer is preceded by Mortgagee's express written consent to the particular transaction and transferee or is otherwise permitted by the terms of the Loan Agreement. Mortgagee may withhold such consent in its sole discretion.

6.2 Events of Default. Mortgagor will be in default under this Mortgage upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default"; any one singly, an "Event of Default"):

(a) If a default shall occur with respect to covenants, agreements and obligations of Mortgagor under this Mortgage involving the payment of money (other than a default in the payment of principal or interest when due as provided in Section 8.01 (a) of the Loan Agreement) and shall continue for a period of five (5) business days after written demand therefor; or

(b) If there is a failure of Borrower to perform any of the other covenants and agreements contained in this Mortgage and, with respect to covenants and agreements other than those specifically referenced in this Section 6.2, or for which another cure period is provided, such failure is not cured by Borrower within thirty (30) days after Mortgagee gives notice to Mortgagor of the occurrence thereof; provided, however, that if the default is not susceptible of being cured within thirty (30) days and Mortgagor has commenced to cure such default within such thirty (30) day period and is diligently proceeding with such cure, then no Event of Default shall occur until ninety (90) days after the date Mortgagee first gave notice to Borrower of such breach; or

(c) A "Default" occurs and is continuing under the Loan Agreement or any other Loan Document.

6.3 Remedies. At any time after an Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

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(a) Acceleration. Upon the occurrence and continuation of any Event of Default, then the whole of said principal sum hereby secured shall, at once either automatically or at the option of Mortgagee as described in Section 9.01 of the Loan Agreement, become immediately due and payable, together with accrued interest thereon, without any presentment, demand, protest or notice of any kind to Mortgagor.

(b) Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Mortgagee would have, upon entering and taking possession of the Property under subsection (c) below.

(c) Entry. Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Mortgagee may in its sole discretion consider appropriate to protect the security of this Mortgage. Such other things may include to the extent permitted by law: taking and possessing all of Mortgagor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants (excepting such tenants occupying the Property pursuant to any SNDA and which are not then in default under their leases); fixing or modifying Rents; collecting and receiving any payment of money owing to Mortgagee; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Mortgagee so requests, Mortgagor shall assemble all of the Property that has been removed from the Premises and make all of it available to Mortgagee at the site of the Premises. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole discretion may consider to be necessary and appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.

(d) Cure; Protection of Security. Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage, including, without limitation, completing construction of the improvements at the Property contemplated by the Loan Agreement. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the

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security of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Mortgagee's sole judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee or to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted under this Subsection 6.3(d) either with or without giving notice to any person. Any amounts expended by Mortgagee under this Subsection 6.3(d) shall be secured by this Mortgage.

(e) Uniform Commercial Code Remedies. Mortgagee may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code in the State in which the Property is located.

(f) Foreclosure; Lawsuits. Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Mortgagee or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Mortgagee's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right provided in Subsection 6.3(b), upon, or at any time after, the filing of a complaint to foreclose this Mortgage, Mortgagee shall be entitled to the appointment of a receiver of the property by the court in which such complaint is filed, and Mortgagor hereby consents to such appointment.

(g) Deficiency Judgments. Mortgagee or other person holding the Mortgage may obtain a deficiency judgment against Mortgagor if the amount Mortgagee or such other person holding the Mortgage receives from a foreclosure sale is less than (i) the amount remaining unpaid on the Mortgage; or (ii) the amount of the judgment entered, and Mortgagor does hereby irrevocably consent to the appointment of a receiver for the Mortgaged Premises and the property of Mortgagor and until such deficiency judgment is satisfied in full.

(h) Other Remedies. Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a mortgagee under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

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(i) Sale of Personal Property. Mortgagee shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) For purposes of this power of sale, Mortgagee may elect to treat as personal property any Property which is intangible or which can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Mortgagee may dispose of any personal property, in any manner permitted by Article 9 of the Uniform Commercial Code of the State in which the Property is located, including any public or private sale, or in any manner permitted by any other applicable law.

(ii) In connection with any sale or other disposition of such Property, Mortgagor agrees that the following procedures constitute a commercially reasonable sale: Mortgagee shall mail written notice of the sale to Mortgagor not later than thirty (30) days prior to such sale. Mortgagee will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Mortgagee will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Mortgagee shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(j) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Mortgagee may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Mortgagee may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" and any two or more, "Foreclosure Sales").

If Mortgagee chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Mortgagee may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Mortgage on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

6.4 Credit Bids. At any Foreclosure Sale, any person, including Mortgagor or Mortgagee, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Mortgagee may settle for the purchase price by crediting the sales price of the property against the following obligations:

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(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to pay or reimburse Mortgagee under Section 5.10 of this Mortgage; and

(b) Second, all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose.

6.5 Application of Foreclosure Sale Proceeds. Mortgagee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee under Section 5.10 of this Mortgage;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

6.6 Application of Rents and Other Sums. Mortgagee shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Mortgagee may receive or collect under Section 6.3 above, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Mortgagee or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Mortgagee shall have no liability for any funds which it does not actually receive.

Section 7. Miscellaneous Provisions.

7.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Loan Documents also grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

7.2 No Waiver or Cure.

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(a) Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Mortgage; or prejudice Mortgagee or any receiver in the exercise of any right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Mortgage.

(i) Mortgagee, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.3(c).

(ii) Mortgagee collects and applies Rents as permitted under Sections 2.3 and 6.6 above, either with or without taking possession of all or any part of the Property.

(iii) Mortgagee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Mortgagee under Section 5.5 and Section 5.6 above.

(iv) Mortgagee makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.13 above.

(v) Mortgagee receives any sums under this Mortgage or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Mortgagee or any receiver invokes any right or remedy provided under this Mortgage.

7.3 Powers of Mortgagee.

(a) If Mortgagee performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.8 or Subsection 6.3(d) of this Mortgage, that act alone shall not release or change the personal liability, if any, of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. Mortgagee shall not

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be required to comply with any demand by the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Mortgagee may take any of the actions permitted under Subsections 6.3(b) and/or 6.3(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

(c) From time to time if an Event of Default exists, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Mortgage. Mortgagee may from time to time if an Event of Default exists obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

7.4 Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

7.5 Governing Law. In all respects, including the creation, perfection, construction, performance and enforcement of the lien of this Mortgage shall be governed by the law of the State of Illinois.

7.6 Successors in Interest. The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 7.6 does not waive the provisions of Section 6.1 above.

7.7 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage.

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7.8 Waiver of Statutory Rights. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

7.9 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Mortgagor may, at its option, declare all Secured Obligations immediately due and payable.

7.10 Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given if given in accordance with Section 11.01 of the Loan Agreement.

Any notice or demand delivered to the person or entity named above to accept notices and demands for Mortgagor shall constitute notice or demand duly delivered to Mortgagor, even if delivery is refused.

7.11 Future Advances. This Mortgage is given to, and the parties intend that it shall secure indebtedness, exclusive of interest thereon, in a maximum amount equal to \$230,000,000, which indebtedness may include advances made at the request of Mortgagor or its respective successor(s) in title after this Mortgage is filed of record to the fullest extent and with the highest priority contemplated by law (including disbursements that the Lenders may, but shall not be obligated to, make under this Mortgage, the Loan Documents or any other document with respect thereto), and any disbursements made for the enforcement of this Mortgage and any remedies hereunder, including but not limited to, payment of taxes, special assessments, utilities or insurance on the Property, and advances to complete construction of the Improvements, and interest on such disbursements and all disbursements by Mortgagee pursuant to applicable law (all such indebtedness being hereinafter referred to as the maximum amount secured hereby). This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law. All future advances under the Loan Agreement, the Note, this Mortgage and the other Loan Documents shall have the same priority as if the future advance was made on the date that this Mortgage was recorded.

7.12 Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage secures the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or

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incurred by Mortgagee not to exceed the maximum amount secured hereby or the maximum amount permitted by law. For purposes hereof, all obligations of Mortgagor to Mortgagee under all Swap Agreements and any indebtedness or obligation contained therein or evidenced thereby shall be considered an obligation of Mortgagor secured hereby pursuant to the Loan Agreement.

7.13 WAIVER OF TRIAL BY JURY. MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF MORTGAGOR OR MORTGAGEE. MORTGAGOR AND MORTGAGEE EACH ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. MORTGAGOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, ENTER INTO THIS MORTGAGE AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

7.14 Incorporation of Loan Agreement and Environmental Indemnity Agreement. The terms and provisions of the Loan Agreement and that certain Environmental Indemnity Agreement (the "Indemnity") dated as of even date herewith, are incorporated herein by express reference. All advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the resulting indebtedness secured hereby may exceed the face amount of the Note, shall be secured hereby to the same extent as though said Loan Agreement were fully incorporated in this Mortgage, and the occurrence of any Default under said Loan Agreement shall constitute a Event of Default under this Mortgage entitling Mortgagee to all of the rights and remedies conferred upon Mortgagee by the terms of both this Mortgage and the Loan Agreement. Mortgagor hereby agrees to comply with all covenants and fulfill all obligations set forth in the Loan Agreement and Indemnity which pertain to the Premises as if Mortgagor were a party to such documents. In the event of any conflict or inconsistency between the terms of this Mortgage and the Loan Agreement or Indemnity, the terms and provisions of the Loan Agreement or Indemnity as the case may be, shall in each instance govern and control.

7.15 Inconsistencies. In the event of any inconsistency between this Mortgage and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling.

7.16 Partial Invalidity; Maximum Allowable Rate of Interest. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found

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by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage and the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. All agreements herein and in the Note are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to the holders of such Note for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the holders of such Note shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

7.17 Declaration of Subordination. 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 Condemnation Proceeds), 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 appropriate official records of the County wherein the Premises are situated, of a unilateral declaration to that effect.

7.18 Certain Matters Relating to Property Located in the State of Illinois. With respect to the Property which is located in the State of Illinois, notwithstanding anything contained herein to the contrary the provisions contained in the Rider attached hereto as Exhibit B (the "Rider") are incorporated by reference as if fully set forth herein. If there is any inconsistency between the terms contained in this Mortgage and the terms contained in the Rider, the terms in the Rider shall prevail.

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first above written.

Mortgagor:

TOWER 10 GLADES LLC, a Delaware limited liability company

By: 

Name: Kent A. Swanson
Its Authorized Signatory

[Remainder of page intentionally blank; signatures to follow]

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STATE OF ILLINOIS)
)
) SS:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 30th day of September, 2015, by Kent A. Swanson, the Authorized Signatory of Tower 10 Glades LLC, organized under the laws of the State of Delaware, who acknowledged that he did sign the foregoing instrument on behalf of said limited liability company.

Sign Name: Melody Worsham
Notary Public

Print Name: Melody Worsham

[NOTARIAL SEAL]

My Commission Expires: 3/26/18



UNOFFICIAL COPY**EXHIBIT "A"****Parcel A:**

Lot 4 in Loyola Subdivision,
BEING A RE-SUBDIVISION OF LOTS 2, 3, 4, 5, "A" AND PART OF LOT 6 IN THE SUBDIVISION OF BLOCK 18
IN CANAL TRUSTEES' SUBDIVISION;
TOGETHER WITH LOTS 1, 2, 3, 4, 9 AND PARTS OF THE PRIVATE ALLEYS IN ANDREW LARSON'S
SUBDIVISION OF LOT 1 IN THE SUBDIVISION OF BLOCK 18 AFORESAID; AND LOTS 1, 2, 3 AND 4 IN THE
SUBDIVISION OF LOT 7 OF BLOCK 18 IN THE CANAL TRUSTEES' SUBDIVISION AFORESAID OF THE
SOUTH FRACTIONAL 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD
PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED AUGUST 6, 2013 AS DOCUMENT NUMBER
1321816010 AND RE-RECORDED AUGUST 26, 2013 AS DOCUMENT NUMBER 1323839038, IN COOK
COUNTY, ILLINOIS.

Parcel B: South Air Rights Parcel

Lot 5 in Loyola Subdivision,
BEING A RE-SUBDIVISION OF LOTS 2, 3, 4, 5, "A" AND PART OF LOT 6 IN THE SUBDIVISION OF BLOCK 18
IN CANAL TRUSTEES' SUBDIVISION;
TOGETHER WITH LOTS 1, 2, 3, 4, 9 AND PARTS OF THE PRIVATE ALLEYS IN ANDREW LARSON'S
SUBDIVISION OF LOT 1 IN THE SUBDIVISION OF BLOCK 18 AFORESAID; AND LOTS 1, 2, 3 AND 4 IN THE
SUBDIVISION OF LOT 7 OF BLOCK 18 IN THE CANAL TRUSTEES' SUBDIVISION AFORESAID OF THE
SOUTH FRACTIONAL 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD
PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED AUGUST 6, 2013 AS DOCUMENT NUMBER
1321816010 AND RE-RECORDED AUGUST 26, 2013 AS DOCUMENT NUMBER 1323839038, IN COOK
COUNTY, ILLINOIS.

Parcel C: East Air Rights Parcel

Lot 7 in Loyola Subdivision,
BEING A RE-SUBDIVISION OF LOTS 2, 3, 4, 5, "A" AND PART OF LOT 6 IN THE SUBDIVISION OF BLOCK 18
IN CANAL TRUSTEES' SUBDIVISION;
TOGETHER WITH LOTS 1, 2, 3, 4, 9 AND PARTS OF THE PRIVATE ALLEYS IN ANDREW LARSON'S
SUBDIVISION OF LOT 1 IN THE SUBDIVISION OF BLOCK 18 AFORESAID; AND LOTS 1, 2, 3 AND 4 IN THE
SUBDIVISION OF LOT 7 OF BLOCK 18 IN THE CANAL TRUSTEES' SUBDIVISION AFORESAID OF THE
SOUTH FRACTIONAL 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD
PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED AUGUST 6, 2013 AS DOCUMENT NUMBER
1321816010 AND RE-RECORDED AUGUST 26, 2013 AS DOCUMENT NUMBER 1323839038, IN COOK
COUNTY, ILLINOIS.

Parcel D: Access Easement Parcel (to East Chestnut)

Easement appurtenant for the benefit of Parcels A, B and C above for ingress and egress as granted by Loyola
University of Chicago to Tower 10 Glades LLC in the Access Easement Agreement dated September 5, 2013 and
recorded September 6, 2013 as Document Number 1324919123, over the land described therein.

Parcel E: Easement Agreement for Encroachment of Subsurface Improvements:

Easement appurtenant for the benefit of Parcels A, B and C above for the encroachment of underground
improvements as granted by Loyola University of Chicago to Tower 10 Glades LLC in the Easement Agreement
for Encroachment of Subsurface Improvements dated September 5, 2013 and recorded September 6, 2013 as
Document Number 1324919122, over the land described therein.

Exhibit A

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EXHIBIT B

STATE SPECIFIC RIDER

The following provisions are incorporated by reference into Section 7.18 of the attached Mortgage. If any conflict or inconsistency exists between this Exhibit B and the remainder of the attached Mortgage, this Exhibit B shall govern.

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

(i) all reasonable actual out-of-pocket advances by Mortgagee in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5-1302 of the Act;

(ii) payments by Mortgagee of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Property; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act,

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

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

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

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

(vii) reasonable expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member if in any way affecting the Property; (G) costs incurred by Mortgagee for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Property.

All Protective Advances shall be additional Indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the applicable rate set forth in the Loan Agreement. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Secured Obligations secured by this Mortgage at any time; (B) the amount of the Secured Obligations found due and owing to Mortgagee in a judgment of foreclosure or any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional Indebtedness becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose); (C) if right of redemption is deemed not to be waived by this Mortgage, computation of any amounts required to redeem, pursuant to Section 15-1522 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1522 of the Act; (E) application of income in the hands of any receiver or of Mortgagee in possession; and (F) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of sections 15-1508 and Section 15-1511 of the Act.

(b) Waiver of Right of Redemption and Reinstatement. Without limiting the generality of Section 7.8 of this Mortgage, the waiver by Mortgagor of its rights of redemption

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and reinstatement in such Section, include the waiver of such rights as provided under 735 ILCS 5/15-1601 and 735 ILCS 5/15-1602.

(c) Business Loan Recital/Statutory Exemption. (i) Mortgagor acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 105/4(1)(1)); (B) the Secured Obligations secured hereby has been incurred by Mortgagor solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said Section 4; (C) the Secured Obligations secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the Secured Obligations is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et. seq.* has been entered into solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said section.

(ii) Without limiting the generality of anything contained herein, Mortgagor acknowledges and agrees that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201 (1992)) or residential real estate (as defined in 735 5/15-1219 (1992)), and Mortgagor warrants and represents to Mortgagee that none of the Property is presently, or will during the term of this Mortgage, be used principally or at all for agricultural or farming purposes.

(d) Illinois Mortgage Foreclosure Act. It is the express intention of Mortgagee and Mortgagor that the rights, remedies, powers and authorities conferred upon Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Mortgage is deemed inconsistent with any provision in 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.

(e) Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows:

Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or any of the other Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property or any other collateral for the indebtedness or Secured Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage Mortgagee 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 indebtedness or Secured Obligations. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage, the Loan Agreement or any of the other Loan Documents. If Mortgagee purchases insurance for the Property or any other collateral for the indebtedness or Secured Obligations, Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date

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of the cancellation or expiration of the insurance. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

(f) Interest Rate. The interest rate applicable to the indebtedness secured hereby is set forth in the Loan Agreement, the terms of which are incorporated herein by reference.

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