

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1534842042 Fee: \$100.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/14/2015 11:16 AM Pg: 1 of 32

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 13-24-303-026-0000

Address:

Street: 3542 N WHIPPLE STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60618

Lender: NAWAL OUZREN

Borrower: INDEPENDENCE PROPERTIES, LLC AN ILLINOIS LIMITED LIABILITY CORPORATION

Loan / Mortgage Amount: \$60,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

S
P
S
SC
NT

Certificate number: ED9D7B20-CF80-4742-8A42-1CDF5C248BA1

Execution date: 11/24/2015

UNOFFICIAL COPY

FIRST AMERICAN TITLE

FILE # 2669041

Property of Cook County Clerk's Office

MORTGAGE

**COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____**

UNOFFICIAL COPY

MORTGAGE

This Mortgage, Security Agreement, Assignment of Leases and Rents, and Financing Statement (hereinafter referred to as the "Mortgage") is made as of November 24, 2015, (hereinafter "Effective Date") by the between Independence Properties, LLC, an Illinois Limited Liability Corporation, with its mailing address of 675 Lakeview Parkway, Vernon Hills, Illinois 60041 (hereinafter referred to as "Mortgagor") and Nawal Ouzren, an Individual, with its mailing address of 560 Vine Avenue, #301, Highland Park, Illinois 60035 (hereinafter referred to as "Mortgagee"), and pertains to the real estate commonly known as 3542 N. Whipple, Illinois 60618 (hereinafter referred to as "Real Estate") and further described in Exhibit A, attached hereto and made a part hereof.

I. RECITALS

1.01 Note. Whereas Mortgagor has executed and delivered to Mortgagee a Secured Note (hereinafter referred to as "Note") of even date herewith, in which Mortgagor promises to pay to the order of Mortgagee the principal amount of Sixty-Thousand Dollars and 00/100 (\$60,000.00) in repayment of a loan (hereinafter referred to as "Loan") from Mortgagor to Mortgagee in like amount, or as much thereof as may now or hereafter be disbursed or advanced by Mortgagee under the Note, together with interest thereon, from date, at the rate set forth therein, in installments as set forth in the Note, the entire unpaid principal balance and accrued interest being due and payable one year from the Effective Date (hereinafter referred to as the "Maturity Date"), with the terms and provisions of the Note being incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

1.02 Indebtedness. Whereas, indebtedness of the Loan, evidenced by the Note, including the principal thereto and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums that may be at any time due or owing or required to be paid herein or under the Note are herein called the "Indebtedness Hereby Secured"; and

II. THE GRANT

Now, therefore, in order to secure the payment of the principal and interest and any other sums that may now or hereafter become owing from Mortgagor to covenants, provisions, agreements, and obligations contained herein or under the Loan Documents (whether or not Mortgagor is personally liable for such payment, performance, and observance), in consideration of Ten and 00/100 Dollars (\$10.00), in hand paid by Mortgagee to Mortgagor, the recitals stated hereinabove, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby grants, bargains, sells, assigns, releases, aliens, transfers, remises, conveys, and mortgages to Mortgagee and its successors and assigns forever and hereby represents and warrants to continuing security interest in and to all of the following rights, interests, claims, and property (Real Estate):

- (a) all of the Real Estate described in Exhibit A;
- (b) all buildings, structures, and other improvements of every kind and description now or

UNOFFICIAL COPY

hereafter erected, situated, or placed on the Real Estate (Improvements), together with any and all Personal Property (as defined in Paragraph (l) herein below), attachments now or hereafter owned by Mortgagor and located in or on, forming part of, attached to, used or intended to be used in connection with, or incorporated in any such Improvements, including all extensions, additions, betterments, renewals, substitutions, and replacements to any of the foregoing;

(c) all estate, claim, demand, right, title, and interest of Mortgagor now owned or hereafter acquired, including without limitation any after-acquired title, franchise, license, remainder, or reversion, in and to (i) any land or vaults lying within the right-of-way of any street, avenue, way, passage, highway, or alley, open or proposed, vacated or otherwise, adjoining the Real Estate; (ii) any and all alleys, sidewalks, streets, avenues, strips, and gores of land belonging, adjacent, or pertaining to the Real Estate and Improvements; (iii) storm and sanitary sewer, water, gas, electric, railway, and telephone services relating to the Real Estate and Improvements; (iv) all developmental rights, air rights, water, water rights, water stock, gas, oil, minerals, coal, and other substances of any kind or character underlying or relating to the Real Estate or any part thereof; and (v) each and all of the tenements, hereditaments, easements, appurtenances, other rights, liberties, reservations, allowances, and privileges relating to the Real Estate or the Improvements or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity;

(d) all leasehold estates, right, title, and interest of Mortgagor in any and all leases, subleases, management agreements, arrangements, concessions, or agreements, written or oral relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (hereinafter referred to as "Leases");

(e) all rents, issues, profits, royalties, revenue, advantages, income, avails, claims against guarantors, all cash or security deposits, advance rentals, deposits, or payments given and other benefits now or hereafter derived directly or indirectly from the Real Estate and Improvements under the Leases or otherwise (hereinafter referred to as "Rents"), subject to the right, power, and authority in the Assignments (as hereinafter defined) collect and apply the Rents;

(f) all right, title, and interest of Mortgagor in and to all options to purchase or lease the Real Estate or any other rights, interests, or greater estates in the rights and properties comprising the Real Estate, now owned or hereafter acquired by the Mortgagor;

(g) any interests, estates, or other claims of every name, kind, or nature, both in law and in equity, that Mortgagor now has or may acquire in the Real Estate and Improvements or other rights, interests, or properties comprising the Real Estate now owned or hereafter acquired;

(h) all goodwill, trademarks, trade names, option rights, books and records, and general intangibles or Mortgagor relating to the Real Estate or Improvements, all accounts, contract rights, instruments, chattel paper, and other rights of Mortgagor for payment of money, for property sold or lent, for services rendered, for money lent, or for advances or deposits made relating to the Real Estate or Improvements;

(i) all rights of Mortgagor to any and all plans and specifications, designs, drawings, and other matters prepared for any construction on the Real Estate or to the Improvements;

UNOFFICIAL COPY

(j) all rights of Mortgagor under any contracts executed by Mortgagor with any provider of goods or services for or in connection with any construction undertaken on or services performed or to be performed in connection with the Real Estate or Improvements;

(k) all rights of Mortgagor as seller or borrower under any agreement, contract, understanding, or arrangement pursuant to which Mortgagor has, with the prior written consent of Mortgagee, obtained the agreement of any person or entity to pay or disburse any money for Mortgagor's sale (or borrowing on the security) of the Real Estate or any part thereof;

(l) all right, title, and interest of Mortgagor in and to all tangible personal property (Personal Property) owned by Mortgagor and now or at any time hereafter located in, on, or at the Real Estate or Improvements or used or useful in connection herewith including, but not limited to:

- (i) all furniture, furnishings, and equipment furnished by the Mortgagor to occupants of the Real Estate or Improvements (but expressly excluding from the term Personal Property any furniture, equipment, trade fixtures, furnishings or other property of or owned by the occupants of the Real Estate);
- (ii) all building materials and equipment located on the Real Estate and intended for construction, reconstruction, alteration, repair, or incorporation in or to the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements (all of which shall be deemed to be included in the Real Estate upon delivery thereto);
- (iii) all machines, machinery, fixtures, apparatus, equipment, or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, plumbing, sprinkling, waste removal, refrigeration, and ventilation, and all fire sprinklers, alarm systems, and protection and electronic monitoring equipment and devices;
- (iv) all window, structural, and swimming pool maintenance and cleaning equipment and rigs and all equipment relating to the exclusion of vermin, pests, or insects and the removal of dust;
- (v) all lobby and other indoor furniture, including , without limitation, tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, wall beds, wall sofas, and other furnishings.
- (vi) all rugs, carpets, and other floor coverings, curtains, draperies, drapery rods and brackets, awnings, window shades, venetian blinds, and curtains;
- (vii) all lamps chandeliers, and other lights;
- (viii) all recreational equipment and materials;
- (ix) all office furniture, equipment, and supplies;

UNOFFICIAL COPY

- (x) all kitchen equipment, including, without limitation, refrigerators, ovens, stoves, dishwashers, range hoods, exhaust systems, and disposal units;
- (xi) all laundry equipment and supplies, including, without limitation, washers and dryers;
- (xii) all tractors, mowers, sweepers, snow removers, motor vehicles, and other equipment used in the maintenance of the Real Estate or Improvements;
- (xiii) all fixtures, personal property, and other tangible property of any kind or character now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with the Real Estate or the aforesaid Improvements thereon, including, without limitation, any and all antennae, appliances, apparatus, basins, bathtubs, bidets, boilers, bookcases, cabinets, compactors, coolers, dehumidifiers, doors, ducts, dynamos, elevators, engines, equipment, escalators, fans fittings, furnaces, growing plants, hardware, heaters, humidifiers, incinerators, machinery, maintenance supplies and inventories, motors, pipes, pumps, radiators, screens, sinks, stokers, toilets, tools, ventilators, wall coverings, water fountains, windows, wiring, nonstructural additions to the Real Estate, and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are attached to such improvements, it being intended, agreed, and declared that all such property owned by Mortgagor and placed by it on the Real Estate or used in connection with the operation or maintenance thereof shall, as far as permitted by law, be deemed for the purposes of this Mortgage to be part of the Real Estate constituting and located on the Real Estate and covered by this Mortgage, and as to any of the aforesaid property that is not part of such Real Estate or does not constitute a "fixture," as that term is defined in the Uniform Commercial Code of the State in which the Real Estate are located (Code), this Mortgage shall be deemed to be, as well, a security agreement under such Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as Secured party, as that term is defined in such Code, provided that the enumeration of any specific articles of Personal Property set forth herein shall in no way exclude or be held to exclude any items of property not specifically enumerated;

(m) all of the estate, interest, right, title, or other claim or demand that Mortgagor now has or may hereafter have or acquire with respect to (i) proceeds of insurance in effect with respect to the Real Estate and (ii) any and all awards, claims for damages, judgments, settlements, and other compensation made for or consequent on the taking by condemnation, eminent domain, or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Real Estate, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (Awards);

(n) all other property or rights of Mortgagor of any kind or character related to the Real Estate;

UNOFFICIAL COPY

To Have and To Hold the Real Estate hereby mortgaged and conveyed or so intended, together with the rents, issues, and profits thereof, unto Mortgagee, its successors and assigns, forever, free from all rights and benefits under and by which the Real Estate are located (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth.

Mortgagor hereby covenants with and warrants to Mortgagee and with the purchaser at any foreclosure sale that, at the execution and delivery hereof, Mortgagor owns the Real Estate and has good, indefeasible estate therein, in fee simple that the Real Estate are free from all encumbrances whatsoever (and any claim of any other person thereto) other than those encumbrances permitted by Mortgagee in writing, including and limited to **Grand Coast Capital Fund I, LLC** (Permitted Exceptions); that it has no good and lawful right to sell, mortgage, and convey the Real Estate; and that Mortgagor and its successors and assigns shall forever warrant and defend the Real Estate against all claims and demands whatsoever.

Provided, however, that if and when Mortgagor has paid all of the Indebtedness Hereby Secured, has paid any and all other amounts required under the Loan Documents, has strictly performed and observed all of the agreements, terms, conditions, provisions, and warranties contained herein and in all of the Loan Documents, this Mortgage and the estate, right, and interest of Mortgagee in and to the Real Estate shall cease and shall be released at the cost of Mortgagor, but otherwise shall remain in full force and effect. Mortgagee shall be entitled to charge a reasonable release fee.

III. GENERAL AGREEMENTS

To protect the security of this Mortgage, Mortgagor further covenants and agrees as follows:

3.01 Recitals. The recitals set forth above are true and correct and are incorporated by reference herein.

3.02 Principal and Interest. Mortgagor shall pay promptly when due each and every installment of the principal interest and any other sums required to be paid (including fees and charges), if any, on the Note at the times and in the manner provided in the Note and this Mortgage and shall pay all other Indebtedness Hereby Secured as it becomes due, and shall duly perform and observe all of the covenants, agreements, and provisions contained herein, in the Note, or in the Loan Documents. All sums payable by Mortgagor shall be paid without demand, counterclaim, offset, deduction, or defense. Mortgagor hereby waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction, or defense.

3.03 Maintenance, Repair, Restoration, Prior Liens, Parking. Mortgagor shall

(a) promptly repair, restore, replace, or rebuild any portion of the Real Estate that may become damaged, destroyed, altered, removed, severed, or demolished, whether or not proceeds of insurance are available or sufficient for the purpose, with replacements at least equal in quality and condition as existed prior thereto, free from any security interest in, encumbrances on, or reservation

UNOFFICIAL COPY

of title thereto;

(b) keep the Real Estate in good condition and repair, without waste, and free from mechanics, material suppliers, or like liens or claims or other liens or claims for lien;

(c) complete, within a reasonable time any Improvements now or hereafter in the process of erection on the Real Estate;

(d) comply and cause the Real Estate to comply with all statutes, rules, regulations, orders, decrees, and other requirements of any governmental body, federal, state, or local, having jurisdiction over the Real Estate and the use thereof (including without limitation the Americans with Disabilities Act, the Environmental Barriers Act, all related federal, state, and local laws, statutes, ordinances, and codes, all regulations and accessibility guidelines promulgated pursuant to such Acts, laws, statutes, ordinances, and codes, and all such substitutions, amendments, and replacements thereof) and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions, and nonconforming uses), privileges, franchises, and concessions that are applicable to the Real Estate or its use and occupancy;

(e) pay when due all operating costs of the Real Estate;

(f) provide, improve, grade, surface, and thereafter maintain, clean, repair, and adequately light parking areas within the Real Estate of sufficient size to accommodate not less than the amount of standard-size American-made automobiles as may be required by Mortgagee or as may be required by law, ordinance, or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways, and sidewalk cuts and sufficient paved areas for ingress, egress, and right-of-way to and from the adjacent thoroughfares necessary or desirable for the use thereof;

(g) reserve and use all such parking areas solely and exclusively for the purpose of providing ingress, egress, and parking facilities for automobiles and other passenger vehicles of Mortgagor and tenants of the Real Estate and their invitees and licensees;

(h) not abandon the Real Estate nor do anything whatsoever to depreciate or impair the value of the Real Estate or the security of this Mortgage;

(i) cause the Real Estate to be managed in a competent and professional manner;

(j) not permit the granting of any easements, licenses, covenants, conditions, or declarations of use against the Real Estate other than use restrictions provided or contained in Leases previously approved by the Mortgagee;

(k) not permit execution of any Leases without the prior written consent of the Mortgagee;
and

(l) not permit any unlawful use or nuisance to exist on the Real Estate.

UNOFFICIAL COPY

3.04 Property Taxes and Contest of Liens. Mortgagor shall be responsible for the payment, when first due and owing and before any penalty attaches of all taxes and assessments (general or special), water charges, sewer charges, and any other charges, fees, taxes, claims, levies, charges, expenses, liens, and assessments, ordinary or extraordinary, governmental or nongovernmental, statutory or otherwise, that may be asserted against the Real Estate or any part thereof or interest (hereinafter referred to as "Taxes"). Notwithstanding anything contained herein to the contrary, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such Taxes as well as any mechanics, material suppliers, or other liens or claims for lien on the Real Estate (hereinafter referred to as "Contested Liens").

3.05 Insurance. Mortgagor shall insure and keep insured the Real Estate and each and every part and parcel thereof against such perils and hazards as Mortgagee may from time to time require, and in any event including

(a) Insurance against loss to the Improvements caused by fire, lightning, windstorms, vandalism, malicious mischief, and risks as Mortgagee may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the Improvements, plus the cost of debris removal, with full replacement cost and inflation guard endorsement;

(b) Commercial general public liability insurance against bodily injury and property damage in any way arising in connection with the Real Estate with such limits as Mortgagor may reasonably require; and

(c) During the making of any alterations or improvements to the Real Estate (i) insurance covering claims based on the owner's or employer's contingent liability not covered by the insurance provided in subsection (b) above and (ii) Workers' Compensation insurance covering all persons engaged in making such alterations or improvements.

All policies of insurance to be maintained and provided as required herein shall be in forms, companies, and amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall, at all times prior to and during foreclosure and at any time prior to confirmation of the foreclosure sale, have attached thereto waiver of subrogation and mortgage clauses or endorsements in favor of and with loss payable to Mortgagee. Said policies shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Real Estate for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgage. All said insurance shall be written in amounts sufficient to prevent Mortgagor from becoming a coinsurer and shall provide for thirty (30) days' prior written notice of cancellation to Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee marked "paid" and, in case of insurance policies, to Mortgagee marked "paid," and, in case of insurance policies about to expire, Mortgagor shall deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

Mortgagor shall not carry any separate insurance, concurrent in kind or form and contributing in the event of a loss, with any insurance required herein. Mortgagee may, at any time and in its sole discretion, upon written notice to the Mortgagor, procure and substitute for any and all of the policies of insurance required herein, in such amounts and with such companies as Mortgagee may

UNOFFICIAL COPY

select, the cost of which shall be paid by Mortgagor to Mortgagee upon demand. In the event of a change in ownership or of occupancy of the Real Estate (if approved in writing by Mortgagee), immediate notice thereof shall be delivered to all insurers. All money paid by Mortgagee in procuring said insurance that is not reimbursed by Mortgagor shall be additional Indebtedness Hereby Secured and shall be immediately due and payable without notice, with interest thereon at the Default Rate. In the event of foreclosure of this Mortgage or other transfer of title to the Real Estate in extinguishment of the Indebtedness Hereby Secured, all right, title, and interest of Mortgagor in and to any insurance policies then in force and any claims or proceeds thereunder shall pass to Mortgagee or any purchase or grantee at the foreclosure sale or after entry of an order of foreclosure.

Mortgagor shall give Mortgagee prompt notice of any damage to or destruction of the Real Estate.

In the event of any insured damage to or destruction of the Real Estate or any part thereof (Insured Casualty) and if, in the reasonable judgment of Mortgagee, the Real Estate can be restored to an architectural and economic unit of the same character and not less valuable than existed prior to the Insured Casualty and adequately securing the outstanding balance of the Indebtedness Hereby Secured, and if the insurers do not deny liability to the insureds, and if no Event of Default shall have occurred and be then continuing, and if all then existing Leases shall continue in full force and effect without reduction or abatement of rentals (except during the period of untenability), and if Mortgagee indicates the Real Estate may be reconstructed at least 30 days prior to the Maturity Date, then the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing, or rebuilding (Restoring) the Real Estate or any part thereof.

Except as may be otherwise provided herein, Mortgagee shall apply the proceeds of insurance (including amounts not required for Restoring) resulting from any Insured Casualty on the Indebtedness Hereby Secured, in such order or manner as Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of insurance proceeds as aforesaid.

In the event that proceeds of insurance, if any, shall be made available to Mortgagor for the Restoring of the Real Estate, Mortgagor hereby covenants to restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, in accordance with plans and specifications to be first submitted to and approved by Mortgagee. In the event Mortgagor shall fail within a reasonable time, subject to delays beyond its control, to restore or rebuild the Improvements, then Mortgagee, at its option, may, but under no circumstance shall be obligated to, restore and rebuild said Improvements, for or on behalf of Mortgagor.

Any portion of the insurance proceeds remaining after deduction for all expenses incurred in the collection and administration of the insurance proceeds (including attorneys' fees) and after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction.

No interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagee.

UNOFFICIAL COPY

3.06 Disbursement of Insurance Proceeds and Awards. In the event Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee's being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements, and such other evidences of cost and of payment as Mortgagee may reasonably require and approve; and Mortgagee may require that all contractors and subcontractors, in addition to all plans and specification for such Restoring, be approved by Mortgagee prior to commencement of work. No payment made prior to the final completion of the Restoring shall exceed 90% of the value of the work performed from time to time; funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds, except as may otherwise be provided in any loan agreement expressly approved by Mortgagee; and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee on behalf of Mortgagor for the Restoring, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for lien.

3.07 Restrictions on Transfers. It shall be an immediate Event of Default if, without the prior written consent of Mortgagee, any of the following shall occur:

(a) If Mortgagor shall create, effect, contract for, commit to, or consent to, or shall suffer or permit any conveyance, sale, assignment, transfer, hypothecation, lien, pledge, mortgage, security interest, or other encumbrance or alienation (or any agreement to do any of the foregoing) of the Real Estate or any part thereof, or interest therein or title thereto (excepting, however, "Obsolete Collateral," which shall be sales or other dispositions of Collateral (as hereinafter defined) no longer useful in connection with the operation of the Real Estate, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral subject to the first and prior lien hereof, with at least equal value and utility), except the Permitted Exceptions provided herein; or

(b) If Mortgagor is a land trustee (Trustee Mortgagor), then if any beneficiary of Mortgagor shall create, effect, contract for, commit to, or consent to, or shall suffer or permit, any sale, assignment, collateral assignment, transfer, lien, pledge, mortgage, security interest, removal, or other encumbrance or alienation of such beneficiary's beneficial interest in Mortgagor; or

(c) If Mortgagor is a corporation, or if any corporation is a beneficiary of a Trustee Mortgagor, then if any shareholder of such corporation shall create, effect, contract for, commit to, or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest, removal, or other encumbrance or alienation of any such shareholder's shares of such corporation (provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over The Counter" market, then this subparagraph (c) shall be inapplicable); or

(d) If Mortgagor is a partnership or joint venture, or if any beneficiary of a Trustee Mortgagor is a partnership or joint venture, then if any general partner or joint venturer in such partnership or joint venture shall create, effect, consent to, suffer, or permit any sale, assignment,

UNOFFICIAL COPY

transfer, lien, pledge, mortgage, security interest, removal, or other encumbrance or alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer; or

(e) If there shall be any change in control (by way of transfers of stock ownership, partnership interests, or otherwise) in any corporation or partnership constituting or included within Mortgagor that directly or indirectly controls any corporation or partnership constituting or included within Mortgagor that results in a material change in the identity of the person(s) in control of such entity; in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, removal, encumbrance, or alienation is effected directly, indirectly, voluntarily, or involuntarily, by operation of law, or otherwise; securing the Indebtedness Hereby Secured, (ii) to the lien of current Taxes not in default, or (iii) to any transfers of the Real Estate, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests as the case may be, in Mortgagor or any beneficiary of a Trustee Mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, or to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives, and/or committee. The provisions of this Paragraph shall be operative with respect to, and shall be binding on, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrances of the Real Estate, or such beneficial interest in, share of stock of, or partnership or joint venture interest in Mortgagor or any beneficiary of a Trustee Mortgagor. Any waiver by Mortgagee of the provisions of this Paragraph shall not be deemed to be a waiver of the right of Mortgagee in the future to insist on strict compliance with the provisions hereof. Mortgagee may condition any consent on such increase in rate of interest payable on the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof, and/or the payment of a fee, all as Mortgagee may in its sole discretion require.

3.08 Nondiscrimination. Mortgagor covenants and agrees at all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed, or national origin including, but not limited to, the requirements of Title VIII of the 1968 Civil Rights Act or any substitution, amendment, or replacement thereof.

3.09 Mortgagee's Dealings with Transferee. In the event Mortgagee gives its written consent to the sale or transfer, whether by operation of law, voluntarily, or otherwise, of all of any part of the Real Estate, Mortgagee shall be authorized and empowered to deal with the vendee or transferee with regard to the Real Estate, the Indebtedness Hereby Secured, and any of the terms or conditions hereof as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from any of its covenants hereunder, and without waiving Mortgagee's right of acceleration as provided herein.

3.10 Change in Tax Laws. If, by the laws of the United States of America, or of any state, county, or municipal governmental subdivision having jurisdiction over Mortgagee, Mortgagor, or the Real Estate, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, or court order has the effect of deducting from the value of the Real Estate for the purpose of taxation any lien thereon, or imposing on Mortgagee the payment of the whole or any part of the taxes required to be paid by Mortgagor, or changing in any

UNOFFICIAL COPY

way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Real Estate, or the manner of collection of taxes, so as to affect this Mortgage, the Indebtedness Hereby Secured, Mortgagee, or any subsequent holder of the Note, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, or reimburse Mortgagee therefore on demand, unless Mortgagee determines, in Mortgagee's sole and exclusive judgment, that such payment or reimbursement by Mortgagor is unlawful; in which event the Indebtedness Hereby Secured shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this Paragraph shall require Mortgagor to pay any income, franchise, or excise tax imposed on Mortgagee, excepting only that which may be levied against the income of Mortgagee as a complete or partial substitute for taxes required to be paid by Mortgagor pursuant hereto.

3.11 Inspection of Real Estate. Mortgagor shall at all times permit Mortgagee and its agents and designees, at all reasonable times, to enter on and inspect the Real Estate; deliver to Mortgagee either all of its executed originals (in the case of chattel paper or instruments) or certified copies (in all other cases) of all Leases, agreements creating or evidencing Personal Property, all amendments and supplements thereto, and any other document that evidences, governs, or creates supplements thereto, and any other document that evidences, governs, or creates the Real Estate; permit access by Mortgagee to its books and records, construction progress reports, tenant registers, sales records, offices, insurance policies, supporting data, vouchers, and other papers for examination and the making of copies and extracts; and prepare such schedules, summaries, reports and progress schedules as Mortgagee may request.

3.12 Acknowledgement of Debt. Mortgagor, within three (3) days upon request in person or within five (5) days upon request by mail, shall furnish (a) a written statement duly acknowledged of all amounts due on any Indebtedness Hereby Secured, whether for principal or interest on the Note or otherwise, and stating whether any offsets or defenses exist against the Indebtedness Hereby Secured and covering such other matters as Mortgagee may reasonably require; and (b) a Certificate of Mortgagor setting forth the names of all lessees under any Leases, the terms of their respective Leases, the space occupied, the rents payable thereunder, and the dates through which any and all rents have been paid.

3.13 Other Amounts Secured. At all times, regardless of whether any proceeds of the Loan have been disbursed, this Mortgage shall secure any advances made pursuant to the provisions of the Loan Documents and any other amounts as provided herein, and the payment of any and all commissions, service charges, liquidated damages, expenses, and advances due to or paid or incurred by Mortgagee in connection with the Loan secured hereby, all in accordance with the application and loan commitment issued in connection with this transaction, if any, and the other Loan Documents.

3.14 Mortgagee in Possession. Nothing herein contained shall be construed as constituting Mortgagee as a mortgagee in possession in the absence of the actual taking of possession of the Real Estate by Mortgagee.

3.15 Uniform Commercial Code. This Mortgage constitutes a Security Agreement as that term is used in the Code of the State in which the Real Estate are located with respect to: (a) any and all sums at any time on deposit for the benefit of the Mortgagee pursuant to any of the provisions of

UNOFFICIAL COPY

this Mortgage or any of the Loan Documents; and (b) any part of the premises that may or might now or hereafter be or be deemed to be personal property, fixtures, or property (including all replacements, additions, and substitutions) other than real estate (Collateral). All of Mortgagor's right, title, and interest in the Collateral is hereby assigned to Mortgagee to secure the payment of the Indebtedness Hereby Secured and the performance of all of Mortgagor's obligations, and all of the terms, provisions, conditions, and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Real Estate. The following provisions of this Paragraph shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor (being the Debtor-as that term is used in the Code) is and shall be the true and lawful owner of the Collateral, subject to no liens, charges of encumbrances other than the lien hereof.

(b) The Collateral is to be used by Mortgagor solely for business purposes, being installed on the premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Real Estate.

(c) The Collateral shall be kept at the Real Estate except for Obsolete Collateral and shall not be removed therefrom without the consent of Mortgagee, as Secured Party, by Mortgagor or any other person; and the Collateral may be affixed to such Real Estate but shall not be affixed to any other real estate.

(d) No Financing Statement as that term is used in the Code covering any of the Collateral or any proceeds thereof is on file in any public office (except Financing Statements showing Mortgagee as the sole Secured Party, or with respect to the liens or encumbrances, if any, expressly permitted by any approved loan agreement or this Mortgage); and Mortgagor shall at its own cost and expense, upon demand, furnish to Mortgagee such further information and shall execute and deliver to Mortgagee such Financing Statement and other documents in form satisfactory to Mortgagee and shall do all such acts and things as Mortgagee may appropriate to establish and maintain a perfected security interest in the liens or encumbrances (except Financing Statements showing Mortgagee as the sole Secured Party, or with respect to the liens or encumbrances, if any, expressly permitted by an approved loan agreement or this Mortgage); and Mortgagor shall pay the cost of filing the same or filing or recording such Financing Statements or other documents, as well as this instrument, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.

(e) Upon any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction in which rights or remedies are asserted) and at any time thereafter (such Event not having previously been cured), Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth hereinafter, and thereupon Mortgagee shall have the remedies of a Secured Party under the Code, including without limitation the right to take immediate and exclusive possession of the Collateral or any part thereof, and for that purpose, may, as far as Mortgagor can give authority therefore, with or without judicial process, enter (if this can be done without breach of the peace) on any place in which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the collateral is affixed to the Real Estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve, and prepare the Collateral for sale, until

UNOFFICIAL COPY

disposed of, or may propose to retain the collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations as provided in the Code. Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on the Real Estate. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee that is reasonably convenient to both parties. Mortgagee will give Mortgagor at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of Mortgagor as provided hereinafter, at least five (5) days before the time of the sale or disposition. Mortgagee may buy at any public sale, and if the Collateral is a type customarily sold in a recognized market or is of a type that is the subject of widely distributed standard price quotations, Mortgagee may buy at any private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Real Estate comprised within the Real Estate, the Collateral and Real Estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling, or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness Hereby Secured. Mortgagee will account to the Mortgagor for any surplus realized on such disposition.

(f) The remedies of Mortgagee hereunder are cumulative, and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof as long as any part of the Indebtedness Hereby Secured remains unsatisfied.

(g) The terms and provisions contained in this Paragraph shall, unless the context otherwise required, have the meanings and be construed as provided in the Code.

(h) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover and include all Leases between Mortgagor, as lessor, and various tenants named therein, as lessee, including all extensions and renewals of the terms thereof, as well as any amendments to or replacements of said Leases, together with all of the right, title, and interest of Mortgagor as lessor thereunder, including, without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive, and receipt for any and all of the Rents, and money payable as damages or in lieu of the Rents, and money payable as the purchase price of the Real Estate of any part thereof, or claims for money and other sums of money payable or receivable thereunder howsoever payable, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things that Mortgagor or any lessor is or may become entitled to do under the Leases.

3.16 Future Advances. This Mortgage also secures the payment of and includes all future or further advances as shall be made at all times, regardless of whether Loan proceeds have been disbursed, by Mortgagee herein or its successors or assigns, to and for the benefit of Mortgagor, its heirs, personal representatives, or assigns, to the same extent as of such future advances were made on the date of the execution of this Mortgage. The total amount of Indebtedness Hereby Secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed the maximum principal sum permitted by the laws of the state in which the Real Estate are located or \$1,000,000. Whichever is the lesser if a specific amount is specified)

UNOFFICIAL COPY

together with interest thereon and any and all disbursements made by Mortgagee for the payment of Taxes or insurance on the Real Estate covered by the lien of this Mortgage and for reasonable attorneys' fees, Loan commissions, service charges, liquidated damages, expenses, and court costs incurred in the collection of any or all of such sums of money. Such further or future advances shall be wholly optional with Mortgagee, and the same shall bear interest at the same rate as specified in the Note referred to herein unless said interest rate shall be modified by subsequent agreement. Mortgagee has bound itself and by acceptance hereof does bind itself to make advances pursuant to and subject to the terms of the commitment. The parties hereby acknowledge and intend that all advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the Act.

3.17 Prepayment privilege. At such time as there is no Event of Default under the terms of the Note, the Loan Documents, or this Mortgage, Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise, without penalty.

3.18 Effect of Extensions of Time, Amendments on Junior Liens, and Others. If the payment of the Indebtedness Hereby Secured or any part thereof shall be extended or varied, or if any of the security shall be released, all persons now or at any time hereafter liable therefore or interested in the Real Estate shall be held to assent to such extension, variation, or release, and their liability, if any, and the lien and all provisions hereof shall continue in full force and effect, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation, or release. Except for the **Permitted Exceptions**, any other person, firm, or corporation taking a junior mortgage or other lien on the Real Estate or any interest therein shall take the said lien subject to the rights of Mortgagee, herein to amend, modify, and supplement this Mortgage, the Note, the Loan Documents, or any other document or instrument evidencing, securing, or guaranteeing the Indebtedness Hereby Secured and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Paragraph contained shall be construed as waiving any provision contained herein that provides, among other things, that it shall constitute an Event of Default if the Real Estate are sold, conveyed, or encumbered.

3.19 Releases. Mortgagee, without notice and without regard to the consideration, if any, paid therefore, and notwithstanding the existence at that time of any inferior liens thereon, may release from the lien of the Mortgage all of any part of the Real Estate, or release from liability any person obligated to repay any Indebtedness Hereby Secured, without in any way affecting the liability of any non-released party to any of the Note, this Mortgage, or any of the other Loan Documents, including without limitation any guaranty given as additional security for the Indebtedness Hereby Secured, and without in any way affecting the priority or validity of the lien of this Mortgage with respect to the remaining Real Estate. Any such agreement shall not in any way release or impair the lien created by this Mortgage with respect to the remaining Real Estate or reduce or modify the liability of any non-released person or entity obligated personally to repay the Indebtedness Hereby Secured but shall extend the lien hereof as against the title of all parties having any interest, subject to the Indebtedness Hereby Secured, in the Real Estate.

UNOFFICIAL COPY

3.20 Interest Laws. It being the intention of Mortgagee and Mortgagor to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note, this Mortgage, or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount (Excess Interest) in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the Indebtedness Hereby Secured. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Mortgage, or any of the other Loan Documents, then in such event:

(a) the provisions of this Paragraph shall govern and control; (b) neither Mortgagor nor any of the other obligors under the note shall be obligated to pay any Excess Interest; (c) any Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon (not to exceed the maximum amount permitted by law), or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the rate of interest under the Note shall be automatically subject to reduction to the maximum lawful rate allowed under the applicable laws of the aforesaid State, and the Note, this Mortgage, and the other Loan Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in the rate of interest under the Note; and (e) neither Mortgagor nor any of the other obligors under the Note shall have any action against Mortgagee for any damages whatsoever arising out of the payment or collection of any Excess Interest.

IV. REPRESENTATIONS AND WARRANTIES

To induce Mortgagee to make the Loan secured hereby, in addition to any representations and warranties in the Note, in this Mortgage, or in any Loan Documents, Mortgagor hereby further represents and warrants that as of the date hereof and until the Indebtedness Hereby Secured is paid in full and all obligations under this Mortgage are performed:

4.01 Power and Authority. Mortgagor, and if Mortgagor is more than one party, each party constituting Mortgagor (and, if Mortgagor or any constituent party of Mortgagor is a partnership, each of Mortgagor's and any constituent party's general partners) is duly organized and validly existing and, if Mortgagor is a corporation, is qualified to do business and is in good standing in the state in which the Real Estate are located, and has full power and due authority to execute, deliver, and perform this Mortgage, the Note, and all Loan Documents in accordance with their terms. Such execution, delivery, and performance have been fully authorized by all necessary corporate or partnership action and approved by each required governmental authority or other party, and the obligations of Mortgagor and every other party thereto under each are the legal, valid, and binding obligations of each enforceable by Mortgagee in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws applicable to the enforcement of creditors' rights generally.

4.02 No Event of Default or Violations. No Event of Default or event that, with notice or passage of time or both, would constitute an Event of Default has occurred nor is continuing under this Mortgage, the Note, or any of the Loan Documents. Neither the Real Estate, nor Mortgagor, nor

UNOFFICIAL COPY

any party constituting Mortgagor, nor any general partner in any such party, is in violation of any governmental regulation (including, without limitation, any applicable securities law and the ADA) or in default under any agreement to which it is bound, or that affects it or any of its property, and the use and occupancy of the Real Estate and the execution, delivery, and performance of this Mortgage, the Note, or any of the Loan Documents, in accordance with their terms, shall not violate any governmental requirement (including without limitation any applicable usury law and the ADA), or in default under any agreement to which it is bound, or that affects it or any of its property, and the use and occupancy of the Real Estate and the execution, delivery, and performance of this Mortgage, the Note, or any of the Loan Documents, in accordance with their terms, shall not violate any governmental requirement (including without limitation any applicable usury law and the ADA), or conflict with, be inconsistent with, or result in any default under any of the representations or warranties, covenants, conditions, or any of the representations or warranties, covenants, conditions, or other provisions of any indenture, mortgage, deed of trust, easement, restriction of record, contract, document, agreement, or instrument of any kind to which any of the foregoing is bound or that affects it or any of its property, except as identified in writing to and previously approved by Mortgagee.

4.03 No Litigation or Governmental Controls. There are no proceedings of any kind pending, or threatened against, or affecting Mortgagor, the Real Estate (including any attempt or threat by any governmental authority to condemn or rezone all of any portion of the Real Estate), any party constituting Mortgagor, or any general partner in any such party, or involving the validity, enforceability, or priority of this Mortgage, the Note, or any of the Loan Documents or enjoining or preventing or threatening to enjoin or prevent the use and occupancy of the Real Estate or the performance by Mortgagor of its obligations hereunder and there are no rent controls, governmental moratoria, or federal, state, and local environment controls presently in existence threatening or affecting the Real Estate, except as identified in writing to and previously approved by Mortgagee.

4.04 Liens. Title to the Real Estate, or any part thereof, is not subject to any liens, encumbrances, or defects of any nature whatsoever, whether or not of record and whether or not customarily shown on title insurance policies, except as identified as a Permitted Exception.

4.05 Purpose of Loan. The Loan evidenced by the Note and secured hereby is a business loan within the purview of 815 ILCS 205/4 (or any substitute, amended, or replacement statutes) transacted solely for the purpose of carrying on or acquiring the business of Mortgagor or, if Mortgagor is a trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of the land trust of which Mortgagor is trustee.

4.06 Compliance with Laws.

(a) Mortgagor shall comply with all statutes, ordinances, regulations, rules, orders, decrees, and other requirements relating to the Real Estate or any part thereof by any federal, state, or local authority (including without limitation the ADA). Mortgagor shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions, and nonconforming uses), privileges, franchises, and concessions that are applicable to the Real Estate or that have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Real Estate.

UNOFFICIAL COPY

(b) Mortgagee (by its officers, employees, and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default (as hereinafter defined), may contract for the Services of persons (Site Reviewers) to perform ADA site assessments (Site Assessments) on the Real Estate for the purpose of determining whether there exists on the Real Estate any condition that could reasonably be expected to result in any liability, cost, or expense to the owner, occupier, or operator of such premises arising under the ADA. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Mortgagor that do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter on the Real Estate for such purposes. The Site Reviewers are further authorized to perform such tests on the Real Estate as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Mortgagor will supply to the Site Reviewers such historical and operational information regarding the Real Estate as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Mortgagee shall make the results of such Site Assessments fully available to Mortgagor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Mortgagor upon demand of Mortgagee, and any such obligations shall be Indebtedness Hereby Secured.

(c) Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all actions, causes of action, claims, liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees) that may at any time be imposed on, incurred by, or asserted or awarded against Mortgagee, arising from or out of or in connection with the failure of the Real Estate or any portion thereof to comply with the ADA. Should Mortgagee incur or be subject to any such actions, causes of action, claims, liabilities, losses, damages, costs, or expenses, the amount thereof shall be secured hereby at the Default Rate, and Mortgagor shall reimburse Mortgagee therefore immediately upon demand. The indemnification set forth in this Section 4.09(c) shall survive the satisfaction and release of this Mortgage and the payment and satisfaction of the Indebtedness Hereby Secured and shall continue to be the personal liability, obligation, and indemnification of Mortgagor binding on Mortgagor forever.

V. EVENT OF DEFAULT AND REMEDIES

5.01 *Event of Default.* The occurrence of any of the following shall constitute an event of default (Event of Default) under this Mortgage:

(a) Failure of Mortgagor to pay any amount due herein or secured hereby, interest thereon, or any installment of principal thereof or interest thereon as and when same becomes due and payable whether at maturity or by acceleration or otherwise under the Note, this Mortgage, or any of the other Loan Documents; or

(b) Failure of Mortgagor to perform or observe any other covenants, agreement,

UNOFFICIAL COPY

representation, warranty, or other provision contained in the Note, this Mortgage, or the other Loan Documents after the expiration of any grace period expressly allowed in said instrument relative to the cure of such default; or

(c) If (and for the purpose of this Subparagraph (d) only) the term "Mortgagor" shall mean and include not only Mortgagor, but also any beneficiary of a Trustee Mortgagor, any general partner in a partnership Mortgagor or in a partnership that is a beneficiary of a Trustee Mortgagor or in an partnership that is a beneficiary of a Trustee Mortgagor, any owner of more than ten percent of the stock in a corporate Mortgagor or a corporation that is the beneficiary of a Trustee Mortgagor, and each person who, as guarantor, co-maker, or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein or in the Note or in any of the Loan Documents:

- (i) Mortgagor shall file a voluntary petition in bankruptcy, insolvency, or debtor relief, or for arrangement, reorganization, or other relief under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, nor or hereafter in effect, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Mortgagor or for any part of the Real Estate or any substantial part of Mortgagor's property, or shall make any general assignment for the benefit of Mortgagor's creditors, or shall fail generally to pay Mortgagor's debts as they become due, or shall take any action in furtherance of any of the foregoing;
- (ii) Mortgagor shall admit in writing or shall file an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay its debts as they mature;
- (iii) A court having jurisdiction shall enter an order for relief in respect of Mortgagor in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Mortgagor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter an order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Mortgagor or for any part of the Real Estate of any substantial part of Mortgagor's property, or ordering the winding up or liquidation of the affairs of Mortgagor, and such order shall not be dismissed within thirty (30) days after the entry thereof;
- (iv) Mortgagor shall fail to pay any money judgment against it within thirty (30) days following the day it becomes a lien against the Real Estate;
- (v) Any termination or voluntary suspension of the transaction of the business of Mortgagor occurs, or all or a substantial part of Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or levied upon, unless such attachment, seizure, writ, warrant, or levy is vacated within thirty (30) days; or

UNOFFICIAL COPY

(vi) Mortgagor shall abandon the Real Estate;

(d) In the event Mortgagor is a limited or general partnership or a joint venture, a change of any constituent general partner or any joint venturer, whether voluntarily, involuntarily, or otherwise, or the sale, conveyance, transfer, disposition, charging, or encumbrance of any such general partner or joint venture interests, without the prior written consent of Mortgagee; provided, however, that in the event Mortgagor is a limited partnership, the death of a general partner shall not constitute a default if (i) such limited partnership is not dissolved or terminated and (ii) within 60 days after the death of such general partner a replacement general partner is chosen who fulfills the following conditions: (a) the replacement general partner has a net worth acceptable to Mortgagee; (b) Mortgagee is satisfied that the replacement general partner has adequate experience with similar projects; and (c) the replacement general partner is otherwise acceptable to Mortgagee in Mortgagee's sole discretion; or

(e) If Mortgagor is other than a natural person or persons, without the prior written consent of Mortgagee in each case, (i) the dissolution or termination of existence of Mortgagor, voluntarily or involuntarily, whether by reason of death of a general partner of Mortgagor or otherwise; (ii) the amendment or modification in any respect of Mortgagor's articles or agreement of partnership or its corporate resolutions relating to this transaction or its articles of incorporation or bylaws; or (iii) the distribution of any of Mortgagor's capital, except for distributions of the proceeds of the Loan and cash from operations (meaning any cash of Mortgagor earned from operation of the Real Estate, but not from a sale or refinancing of the Real Estate or from borrowing, available after paying all ordinary and necessary current expenses of Mortgagor, including expenses incurred in the maintenance of the Real Estate or from borrowing, available after paying all ordinary and necessary current expenses of Mortgagor, including expenses incurred in the maintenance of the Real Estate and after establishing reserves to meet current or reasonably expected obligations of Mortgagor); or

(f) Any other event occurring (including, without limitation, default in order to avoid prepayment penalty or premium) or failing to occur that, under this Mortgage, under the Note, under any of the Loan Documents, or under any document or instrument referenced herein or related hereto, constitutes a default by Mortgagor or gives Mortgagee the right to accelerate the maturity or any part thereof of the Indebtedness Hereby Secured.

5.02 Acceleration of Maturity. At any time during the existence of any Event of Default Mortgagee is hereby authorized and empowered, at its option and without affecting the lien hereby created or the priority of said lien or any right of Mortgagee hereunder, to declare, without further notice, all Indebtedness Hereby Secured (which shall include any prepayment premium or penalty provided for in the Note) to be immediately due and payable, whether or not such Event of Default is thereafter remedied by Mortgagor with interest thereon at the annual rate as provided in the Note, and Mortgagee may immediately proceed to foreclose this Mortgage and/or exercise any right, power, or remedy provided by this Mortgage, the Note, the Assignment of Rents, the Assignment of Leases, any approved loan agreement hereto, or any of the Loan Documents, or by law or in equity conferred.

5.03 Foreclosure of Mortgage. Upon occurrence of any Event of Default, or at any time thereafter, Mortgagee may, at its option, proceed to foreclose the lien of this Mortgage and pursue all

UNOFFICIAL COPY

remedies afforded to a mortgagee under the pursuant to the Act (as hereinafter defined).

5.04 Remedies Cumulative and Non-Waiver. No remedy or right of Mortgagee hereunder or under the Note or any Loan Documents or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or a different nature, nor shall it extend or affect any grace period. Every such remedy or right may be exercised concurrently or independently, when and as often as may be deemed expedient by Mortgagee. All obligations of Mortgagor and all rights, powers, and remedies of Mortgagee expressed herein shall be in addition to, and not in limitation of, those provided by law or in the Note or any Loan Documents or any other written agreement or instrument relating to any of the Indebtedness Hereby Secured or any security therefore.

5.06 Mortgagee's Performance of Mortgagor's Obligations. In case of any Event of Default herein, Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein, in the Note, any of the Loan Documents, or any document or instrument related hereto that is required of Mortgagor (whether or not Mortgagor is personally liable therefore) in any form and manner deemed expedient to Mortgagee; and Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on any permitted prior mortgage or encumbrances and purchase, discharge, compromise, or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Real Estate, or contest any Taxes and may, but shall not be required to, complete construction, furnishing, and equipping of the Improvements, and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Real Estate and Improvements shall be operational and usable for their intended purposes. Mortgagee may, but shall not be required to, notify any person obligated to Mortgagor under or with respect to any third-party agreements of the existence of the Event of Default and require that performance be made directly to Mortgagee at Mortgagor's expense and advance such sums as are necessary or appropriate to satisfy Mortgagor's obligations thereunder; and Mortgagor agrees to cooperate with Mortgagee to accomplish the foregoing. All money paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including attorneys' fees and any other money advanced by Mortgagee to protect the Real Estate and the lien hereof, or to complete construction, furnishing, and equipping or to rent, operate, and manage the Real Estate and such Improvement or to pay any such operating costs and expenses thereof or to keep the Real Estate and Improvements operational and usable for their intended purposes, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate. Mortgagee, in making any payment hereby authorized for (a) taxes may do so according to any bill, statement, or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof; or (b) the purchase, discharge, compromise, or settlement of any other prior lien may do so without inquiry as to the validity or amount of any claim for lien that may be asserted; or (c) the completion of construction, furnishing, or equipping of the improvements or the Real Estate or the rental, operation, or management of the Real Estate or the

UNOFFICIAL COPY

payment of operating costs and expenses thereof may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefore as Mortgagee may deem appropriate or may perform the same itself.

All advances, disbursements, and expenditures (Advances) made by Mortgagee before and during foreclosure, prior to sale, and, when applicable, after sale, for the following purposes, including interest thereon at the post-maturity rate, are hereinafter referred to as "Protective Advances":

(a) Advances pursuant to this Section 6.06;

(b) "Excess Restoration Costs" which shall be any amount expended by Mortgagee in restoring the Real Estate in excess of the actual or estimated proceeds of insurance or condemnation, which excess shall constitute additional Indebtedness Hereby Secured;

(c) Advances in accordance with the terms of this Mortgage to (i) protect, preserve, or restore the mortgaged real estate; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Section 15-1302(b)(5) of the Illinois Mortgage Foreclosure Law, 735 ILCS, 5/15-1101, *et seq.*, as amended from time to time (Act);

(d) Payments when due of installments of principal, interest, or other obligations in accordance with the terms of any senior mortgage (as described in Section 15-1505 of the Act) or other lien or encumbrance on the Real Estate or any part thereof on a parity with or prior or superior to the lien hereof (Prior Encumbrance); when due installments of real estate taxes and other impositions; other obligations authorized by this Mortgage; or, with court approval, any other amounts in connection with other liens, encumbrances, or interest reasonably necessary to preserve the status of title, all as referred to in this section of this Mortgage and in Section 15-1505 of the Act;

All Protective Advances shall be so much additional Indebtedness Secured by this Mortgage and shall become immediately due and payable without notice and with interest thereon at the Default Rate.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded pursuant to Section 15-1302(b)(1) of the Act.

The Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act apply to:

(a) Determination of amount of Indebtedness Hereby Secured by this Mortgage at any time;

(b) Inclusion of the same in the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent amendment of such judgment, supplemental judgments, orders, adjudications, or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being hereby agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

UNOFFICIAL COPY

(c) If right of redemption has not been waived by this Mortgage, computation of amount required to redeem, pursuant to Sections 15,1603(d)(2) and 15-1603 (e) of the Act;

(d) Determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(e) Application of income in the hands of any receiver or mortgagee in possession; and

(f) Computation of any deficiency judgment pursuant to Sections 15-1508(e), 15-1508(b)(2), and 15-1511 of the Act.

5.07 Right of Possession. In any case in which, under the provisions of this mortgage, Mortgagee has a right to institute foreclosure proceedings, whether or not the entire Indebtedness Hereby Secured becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after judgment thereunder and at all times until the confirmation of sale, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to mortgagee, and Mortgagee shall be entitled to take and upon Mortgagee's request to be placed by the court in actual possession of the Real Estate or any part thereof, personally or by its agent or attorneys, and as provided in Sections 15-1701(b)(2) and 15-1701(c) of the Act. Mortgagee, in its discretion may enter upon and take and maintain possession or may apply to the court in which a Foreclosure is pending to be placed in possession or may apply to the court in which a Foreclosure is pending to be placed in possession of all or any part of the Real Estate, together with all documents, bonds, records, papers, and accounts of Mortgagor or the then owner of the Real Estate relating thereto, and may exclude Mortgagor or the then owner of the Real Estate relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, as attorney in fact or agent of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

(a) Hold, operate, manage, and control all or any part of the Real Estate and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the Rents of the Real Estate, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(b) Cancel or terminate any Lease or sublease of all or any part of the Real Estate for any cause or on any ground that would entitle Mortgagee to cancel the same;

(c) Elect to disaffirm any Lease or sublease of all or any part of the Real Estate made subsequent to this Mortgage or subordinated to the lien hereof;

(d) Extend or modify any then existing Leases and make new Leases of all or any part of the Real Estate, 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 evidenced by the Note and the issuance of a deed or deeds to a purchase or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding on Mortgagor, all persons whose interests in the Real Estate are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, or

UNOFFICIAL COPY

issuance of any certificate of sale or deed to any such purchaser; and

(e) Make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Real Estate as may seem judicious to Mortgagee, to insure and reinsure the Real Estate and all risks incidental to Mortgagee's possession, operation, and management thereof, and to receive all Rents therefrom.

Without limiting the generality of the foregoing provisions of this section, Mortgagee shall also have all power, authority, and duties as provided in Section 15-1703 of the Act.

5.08 Priority of Rent Payments. Any Rents of the Real Estate received by Mortgagee after taking possession of all or any part of the Real Estate, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage, any document or instrument referenced herein, or any of the other Loan Documents shall be applied in payment of or on account of the following, in such order as Mortgagee or in case of a receivership, as the court, may determine:

(a) All costs and expenses (including attorneys' fees) incident to the foreclosure proceedings;

(b) Operating expenses of the Real Estate (including reasonable compensation to Mortgagee, any receiver of the Real Estate, any agent or agents to whom management of the Real Estate has been delegated and also including lease commissions and other compensation for an expenses of seeking any procuring tenants and entering into Leases establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

(c) Taxes now due or that may hereafter become due on the Real Estate, or that may become a lien thereon prior to the lien of this Mortgage;

(d) Any and all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Real Estate (including without limitation the cost, from time to time, of installing or replacing ranges, refrigerators, and other appliances and other personal property therein, and of placing the Real Estate in such condition as will, in the judgment of Mortgagee or any receiver thereof, make it readily rentable or salable);

(e) Any Indebtedness Hereby Secured or any deficiency that may result from any foreclosure sale pursuant hereto; and

(f) Any remaining funds to Mortgagor or its successors or assigns, as their interests and rights may appear.

5.09 Appointment of Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall appoint a receiver of the Real Estate whenever Mortgagee when entitled to possession so requests pursuant to Section 15-1702(a) of the Act. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act, including the power to make leases to be binding on all parties, including Mortgagor after redemption, the purchaser at a sale pursuant to a judgment of foreclosure, and any person acquiring an interest in the mortgaged real estate after entry of a judgment of foreclosure, all as provided in Section 15-1701(g) of the Act. In addition, such receiver shall also have the following powers: (a) to

UNOFFICIAL COPY

extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Indebtedness Hereby Secured and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers, at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding on Mortgagor and all persons whose interests in the premises are subject to the lien hereof and on the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) all other powers that may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the premises during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of (a) the Indebtedness Hereby Secured, or secured by or included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a Protective Advance; and (b) the deficiency in case of a sale and deficiency.

5.10 Foreclosure Sale. In the event of any foreclosure sale of the Real Estate, the same may be sole in one or more parcels. Mortgagee may be the purchase at any foreclosure sale of the Real Estate or any part thereof.

5.11 Application of Proceeds. The proceeds of any foreclosure sale of the Real Estate shall be distributed and applied in accordance with the provisions of Section 15-1512(c) of the Act. The judgment of foreclosure or order confirming the sale shall provide (after application pursuant to Sections 15-1512(a) and 15-1512(b)) for application of sale proceeds in the following order of priority: First, all items not covered by the provisions of said Sections 15-1512(a) and 15-1512(b) that under the terms hereof constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest thereon as herein provided; and Second, all principal and interest remaining unpaid on the Note.

5.12 Application of Deposits. In the event of any Event of Default, Mortgagee may, at its option, without being required to do so, apply any money or securities that constitute deposits made to or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Mortgagor's obligations under the Note, this Mortgage, or any of the other Loan Documents, in such order and manner as Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Real Estate.

5.13 Insurance upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In case of the foreclosure of this Mortgage, the court in its judgment may provide that the judgment creditor may cause a new or additional loss clause to be attached to each of said policies making the loss thereunder payable to said judgment creditor; and any such foreclosure judgment may further provide, unless the right of redemption has been waived pursuant to Section 15-1601(b) of the Act, that in case of redemption under said judgment, pursuant to the Act, then, and in every such case, the redeemer may cause the preceding loss clause attached to each insurance policy to be

UNOFFICIAL COPY

canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeptor. In the event of foreclosure sale, Mortgagee is hereby authorized, but not required, without the consent of Mortgagor, to assign or cause a receiver to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

VI. MISCELLANEOUS

6.01 Notices, Consents, and Approvals. Any notice, consent, or approval that Mortgagee or Mortgagor may desire or be required to give to the other shall be in writing and shall be mailed or delivered to the intended recipient thereof at its address set forth below or at such other address as such intended recipient may, from time to time, by notice in writing, designate to the sender pursuant hereto. Any such notice, consent, or approval shall be deemed to have been delivered two (2) business days after mailing by United States registered or certified mail, return receipt requested, or when delivered in person with written acknowledgment of the receipt thereof. Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Mortgagee by this Mortgage is not required to be given.

6.02 Time of Essence. It is specifically agreed that time is of the essence of this Mortgage.

6.03 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Real Estate.

6.04 Governing Law. The place of negotiation, execution, and delivery of this Mortgage, the location of the Real Estate, and the place of payment and performance under the Loan Documents being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State. To the extent that this Mortgage may operate as a security agreement under the Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a Secured Party.

6.05 Severability. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstance, is held invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.

6.06 Headings. The headings of articles, sections, paragraphs, and subparagraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof.

6.07 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, when the context so requires.

6.08 Deed in Trust. If title to the Real Estate or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Real Estate shall be construed as a similar prohibition or restriction against the

UNOFFICIAL COPY

creation of any lien on or security interest in the beneficial interest of such trust.

6.09 Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor, its successors, assigns, legal representatives, and all other persons or entities claiming under or through Mortgagor, and the word "Mortgagor," when used herein, shall include all such persons and entities and any others liable for the payment of the Indebtedness Hereby Secured or any part thereof, whether or not they have executed the Note or this Mortgage. The word "Mortgagee," when used herein, shall include Mortgagee's successors, assigns, and legal representatives, including all other holders, from time to time, of the Note.

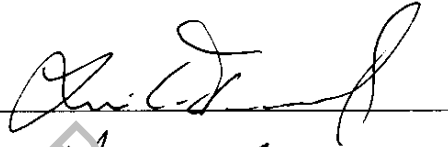
6.10 Grace Periods. Mortgagee shall be entitled to enforce the remedies herein provided in the event of any default by Mortgagor only after such default shall have continued uncorrected for fourteen (14) days with respect to a default in the payment of principal and interest or other economic requirements and for fifteen (15) days with respect to other defaults.

6.11 Individual Exemptory Provisions. Any other provision of this Mortgage to the contrary notwithstanding, Mortgagee, its successors and assigns, or any future holder of the Note, by acceptance hereof, expressly agrees that (a) Mortgagor shall be liable on the indebtedness secured by this Deed to the full extent (but only and limited to the extent) of the properties, property rights, and estates described in this Mortgage; (b) in default occurs in the timely and proper payment of all or any part of such indebtedness, any proceedings, judicial or otherwise, brought by Mortgagee against Mortgagor shall be limited to the preservation, enforcement, and foreclosure of all, or any portion thereof, of the liens, security titles, estates, assignments, property rights, and security interests now or at any time hereafter securing the payment of the Note, and no attachment, execution, judgment, or other order of process shall be sought, issued, or levied on any assets, properties, or funds of Mortgagor or any of its partners other than the properties, property rights, estates, and property interests described in this Mortgage; and (c) in the event of a foreclosure of this Mortgage, no judgment for any deficiency on such indebtedness shall be sought or obtained by Mortgagee against Mortgagor or any of its partners; PROVIDED, HOWEVER, that, notwithstanding the foregoing provisions of this paragraph, Mortgagor shall be fully liable (a) for fraud or material misrepresentations, and (b) for the misapplication of (i) proceeds paid prior to any such foreclosure under any insurance policies by reason of damage, loss, or destruction to any portion of the premises to the full extent of such proceeds so misapplied; or (ii) proceeds or awards resulting from the condemnation, or other taking in lieu of condemnation, prior to any such foreclosure, of any portion of the Real Estate to the full extent of such proceeds or awards so misapplied; (iii) rents, issues, profits, and revenues received or applicable to a period subsequent to the occurrence of a default under the Note or this Mortgage, or under any of the documents securing the indebtedness evidenced by the Note, but prior to such foreclosure. Nothing contained in this paragraph shall (a) be deemed to be a release or impairment of the indebtedness evidenced by the Note or the lien or validity of this Mortgage on the properties described herein, or (b) preclude Mortgagee from foreclosing this Mortgage in case of any default or enforcing any of the other rights of Mortgagee hereunder or under any applicable Guaranties, except as expressly stated in this paragraph.

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the date hereinabove first written.

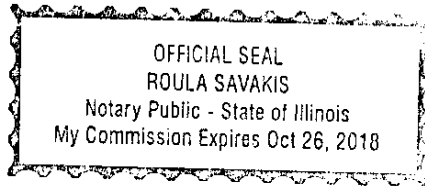
Mortgagor:
INDEPENDENCE PROPERTIES, LLC.

By: 

Its: MANAGER

Subscribed and sworn to before me
this 24 day of November, 2015.


Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A
REAL ESTATE LEGAL DESCRIPTION

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B LOAN DOCUMENTS

The term "Loan Documents," as used in this Mortgage, means the following documents and any other documents previously, now, or hereafter given to evidence, secure, or govern the disbursement of the Indebtedness Hereby Secured, including any and all extensions, renewals, amendments, modifications, and supplements thereof or thereto:

1. The Note;
2. The following security documents:
 - (a) This Mortgage; and
 - (b) Personal Guaranty.
4. The Commitment dated November 17, 2015 by and between Mortgagee and Mortgagor.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

Legal Description: THE NORTH 33-1/3 FEET OF LOT 24 IN BLOCK 2 IN JOSEPH BICKERDIKE'S THIRD SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index #'s: 13-24-303-026-0000 Vol. 0353

Property Address: 3542 N. Whipple Street, Chicago, Illinois 60618

Property of Cook County Clerk's Office