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Illinois Anti-Predatory Lending Database Program



Certificate of Exemption

Doc#: 1606929052 Fee: \$92.00
RHSP Fee:\$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 03/09/2016 04:14 PM Pg: 1 of 28

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 16-07-124-036-0000

Address:

Street: 1132 and 1135 Westgate Street

Street line 2:

City: Oak Park

State: IL

ZIP Code: 60301

Lender: JP Morgan Chase

Borrower: LMC Oak Park Holdings, LLC

Loan / Mortgage Amount: \$50,765,067.00

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

Certificate number: 31F7DFBD-E241-42DF-AC52-34C3A28538BE

Execution date: 3/7/2016

668363 7 of 9

ccc

28

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Prepared by and Return to:
Holland & Knight LLP
701 Brickell Avenue, 30th Floor
Miami, Florida 33131
Attention: John F. Halula, Esq.

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

by

LMC OAK PARK HOLDINGS, LLC,
a Delaware limited liability company,
as Mortgagor

JPMORGAN CHASE BANK, N.A.,
a national banking association,
as Mortgagee

This document serves as a Fixture Filing under the Illinois Uniform Commercial Code.

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

This Construction Mortgage, Assignment of Rents, Security Agreement and Fixture Filing is made as of March 7, 2016, by **LMC OAK PARK HOLDINGS, LLC**, a Delaware limited liability company (herein referred to as "**Mortgagor**"), whose address is c/o Lennar Corporation, 1300 E. Woodfield Road, Suite 304, Schaumburg, Illinois 60173 Attention: Doug Bober, to **JPMORGAN CHASE BANK, N.A.**, a national banking association, in its capacity as Administrative Agent for the benefit of the Lenders (each as defined in the Loan Agreement described below) ("**Mortgagee**"), whose address is 700 North Pearl Street, 13th Floor, Dallas, TX 75201, Attention: Manager, Real Estate Group.

Recitals

Mortgagor has requested that Lenders make the Loan (as hereinafter defined) to Mortgagor. As a condition precedent to making the Loan, Mortgagee has required that Mortgagor execute and deliver this Construction Mortgage, Assignment of Rents, Security Agreement and Fixture Filing to Mortgagee.

Grants and Agreements

Now, therefore, in order to induce Lenders to make the Loan to Mortgagor, Mortgagor agrees as follows:

Article I

Definitions.

As used in this Mortgage, the terms defined in the Preamble hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

"**Accessories**" means all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land.

"**Accounts**" means all accounts of Mortgagor within the meaning of the Uniform Commercial Code of the State, derived from or arising out of the use, occupancy or enjoyment of the Property or for services rendered therein or thereon.

"**Additions**" means any and all alterations, additions, accessions and improvements to property, substitutions therefor, and renewals and replacements thereof.

"**Affiliates**" has the meaning provided in the Loan Agreement.

"**Claim**" means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including fees, costs and expenses of attorneys, consultants, contractors and experts.

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"Condemnation" means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

"Condemnation Awards" means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

"Contract of Sale" means any contract for the sale of all or any part of the Property or any interest therein, whether now in existence or hereafter executed.

"Default" means an event or circumstance which, with the giving of Notice or lapse of time, or both, would constitute an Event of Default under the provisions of this Mortgage.

"Design and Construction Documents" means, collectively, (a) all contracts for services to be rendered, work to be performed or materials to be supplied in the development of the Land or the construction or repair of Improvements, including all agreements with architects, engineers or contractors for such services, work or materials, (b) all plans, drawings and specifications for the development of the Land or the construction or repair of improvements; (c) all permits, licenses, variances and other rights or approvals issued by or obtained from any Governmental Authority or other Person in connection with the development of the Land or the construction or repair of Improvements; and (d) all amendments of or supplements to any of the foregoing.

"Dispute" means any controversy, claim or dispute between or among the parties to this Mortgage, including any such controversy, claim or dispute arising out of or relating to (a) this Mortgage, (b) any other Loan Document, (c) any related agreements or instruments, or (d) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort).

"Encumbrance" means any Lien, easement, right of way, roadway (public or private), condition, covenant or restriction (including any covenant, condition or restriction imposed in connection with any condominium development or cooperative housing development), Lease or other matter of any nature that affects title to the Property.

"Environmental Agreement" means the Environmental Indemnity Agreement of even date herewith by and between Mortgagor, Guarantor and Mortgagee pertaining to the Property, as the same may from time to time be extended, amended, restated or otherwise modified. The Environmental Agreement is one of the Loan Documents, but this Mortgage does not secure the obligations of Mortgagor under the Environmental Agreement.

"Event of Default" means an event or circumstance specified in Article VI and the continuance of such event or circumstance beyond the applicable grace and/or cure periods therefor, if any, set forth in the Loan Agreement.

"Expenses" means all out-of-pocket reasonable fees, charges, costs and expenses of any nature whatsoever actually incurred at any time and from time to time (whether before or after an Event of Default) by Mortgagee or Mortgagor in making, funding, administering or modifying the Loan, in negotiating or entering into any "workout" of the Loan, or in exercising or enforcing any rights, powers

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and remedies provided in this Mortgage or any of the other Loan Documents, including reasonable out-of-pocket attorneys' fees, court costs, receiver's fees, management fees and costs actually incurred in the repair, maintenance and operation of, or taking possession of, or selling, the Property.

"Foreclosure Act" means the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-101, et seq., as amended from time to time,

"Future Advances" means any loan of money whether such advances are obligatory or are to be made at the option of Lenders, or otherwise, from Lenders to Mortgagor pursuant to the Loan Agreement made within twenty (20) years from the date hereof, which advances shall be secured by this Mortgage even though there not be any indebtedness outstanding at the time any such advance is made and such amounts will be a lien from the date of recordation of this Mortgage as provided in 5/15-1302(b)(1) of the Foreclosure Act. The total amount of such advances may increase or decrease from time to time, but the total unpaid aggregate balance secured by this Mortgage at any one time shall not exceed a maximum principal amount of \$100,000,000.00, plus interest thereon, and any disbursements made for the payment of the Property Assessments (whether taxes, levies or otherwise), insurance, or other liens on the Property, with interest on such disbursements. Except as provided in the Loan Agreement, Lenders have no obligation whatsoever to make a Future Advance.

"Governmental Authority" means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity.

"Guarantor" means Lennar Corporation, a Delaware corporation, and its successors and assigns.

"Guaranty" means each of (a) the Limited Interest Repayment and Careveout Guaranty of even date herewith executed by Guarantor in favor of Mortgagee, and (b) the Completion Guaranty Agreement of even date herewith executed by Guarantor in favor of Mortgagee, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Improvements" means all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, together with any on-site improvements and off-site improvements in any way used or to be used in connection with the use, enjoyment, occupancy or operation of the Land.

"Insurance Proceeds" means the insurance Claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising.

"Land" means the real property described in Exhibit A attached hereto and made a part hereof.

"Laws" means all federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

"Leases" means all leases, license agreements and other occupancy or similar use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property or any part thereof, together with all options therefor, amendments thereto and renewals, modifications and guaranties thereof, including any cash or security deposited under the Leases to secure performance by the tenants of their obligations under the Leases, whether such cash or security is to be held until the

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expiration of the terms of the Leases or applied to one or more of the installments of rent coming due thereunder.

"**Lenders**" means and the Mortgagee (as a lender) and certain other lenders from time to time a party to the Loan Agreement.

"**Letter of Credit**" means any letter of credit issued by Mortgagee for the account of Mortgagor or its nominee in connection with the development of the Land or the construction of the Improvements, together with any and all extensions, renewals or modifications thereof, substitutions therefor or replacements thereof.

"**Lien**" means any mortgage, this Mortgage, pledge, security interest, assignment, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

"**Loan**" means the loan from Mortgagee to Mortgagor, the repayment obligations in connection with which are evidenced by the Note.

"**Loan Agreement**" means the Construction Loan and Security Agreement of even date herewith among Mortgagor, Mortgagee and the Lenders, which sets forth, among other things, the terms and conditions upon which the proceeds of the Loan will be disbursed, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"**Loan Documents**" means this Mortgage, the Note, the Guaranty, the Environmental Agreement, the Loan Agreement, any Swap Agreement, any application or reimbursement agreement executed in connection with any Letter of Credit, and any and all other documents which Mortgagor, Guarantor or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"**Mortgage**" means this Construction Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, as the same may from time to time be extended, renewed, amended, restated, supplemented or otherwise modified.

"**Note**" means those certain Promissory Note(s) from Mortgagor to a Lender in an aggregate maximum principal amount of Fifty Million Seven Hundred Sixty-Five Thousand, Sixty-Seven and No/100 Dollars (\$50,765,067.00), as the same may from time to time be extended, renewed, amended, restated, supplemented or otherwise modified and any and all notes given in substitution or replacement thereof in accordance with the Loan Agreement, which Notes provide for a variable rate of interest more particularly set forth in the Loan Agreement, and mature on March 17, 2019 (subject to 2 options to extend the maturity date each for one additional year), unless earlier due and payable in accordance with the Loan Documents.

"**Notice**" means a notice, request, consent, demand or other communication given in accordance with the provisions of Section 9.8 of this Mortgage.

"**Obligations**" means (i) all unpaid principal of and accrued and unpaid interest on the Loan, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other indebtedness, liabilities, or obligations of Mortgagor to Mortgagee arising under this Mortgage, the Note or any of the other Loan Documents, and (ii) all Swap Obligations under Swap Agreements with one or more Lenders or their

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respective Affiliates, provided that at or prior to the time that any transaction relating to such Swap Obligation is executed, the Lender counterparty thereto (other than JPMorgan or its Affiliates) shall have delivered written notice to Administrative Agent that such a transaction has been or will be entered into and, subject to Mortgagee's prior approval in its reasonable discretion, such Swap Obligation shall constitute an Obligation entitled to the benefits of the liens and guaranties provided by the Loan Documents, provided, however, that the definition of 'Obligations' shall exclude any Excluded Swap Obligations of any Guarantor for purposes of determining any obligations of any Guarantor; excluding, however, the debts, obligations and liabilities of Mortgagor under the Environmental Agreement. This Mortgage does not secure the Environmental Agreement, the Guaranty or any other Loan Document that is expressly stated to be unsecured.

"Permitted Encumbrances" means (a) Liens and security interests granted pursuant to the Loan Documents, (b) the items set forth on Schedule B of the Title Policy, (c) customary easements entered into by Mortgagor in connection with the development and operation of the Property which Mortgagee has determined would have no material adverse effect on the use or value of the Property, (d) documents required to be recorded by applicable law which have no material adverse effect on the use or value of the Property, (e) Leases executed in accordance with the terms of the Loan Agreement, (f) any taxes, claims, governmental charges or claims or Liens being contested in accordance with Section 4.06(c) of the Loan Agreement, and (g) any and all equipment leases entered into in the ordinary course of the construction or operation of the Property which provide for payments in an aggregate amount of not more than \$50,000.00, (h) any and all subordination, non-disturbance and attornment agreements executed by Mortgagee with respect to any Lease, and (i) any memoranda of any Lease.

"Person" means an individual, a corporation, a partnership, a joint venture, a limited liability company, a trust, an unincorporated association, any Governmental Authority or any other entity.

"Personalty" means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Mortgagor now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the Accessories; (b) the Accounts; (c) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Mortgage, and Mortgagee shall have no responsibility for the performance of Mortgagor's obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real Property or the operation thereof; (e) all of Mortgagor's rights and interests under all Swap Agreements, including all rights to the payment of money from Mortgagee under any Swap Agreement and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Agreement; (f) all insurance policies held by Mortgagor with respect to the Property or Mortgagor's operation thereof; and (g) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Mortgagor with Mortgagee related to the Property, including any such deposit account from which Mortgagor may from time to time authorize Mortgagee to debit and/or credit payments due with respect to the Loan; together with all Additions to and Proceeds of all of the foregoing.

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"Proceeds" when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code of the State.

"Property" means the Real Property and the Personalty and all other rights, interests and benefits of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the Real Property and/or the Personalty and all other property and rights used or useful in connection therewith, including all Leases, all Rents, all Condemnation Awards, all Proceeds, and all of Mortgagor's right, title and interest in and to all Design and Construction Contracts, all Contracts of Sale and all Refinancing or Purchase Commitments.

"Property Assessments" means all Taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium and owner's association assessments and charges, maintenance charges and other governmental or municipal or public or private dues, charges and levies and any Liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Property or any part thereof, or upon any Leases or any Rents, whether levied directly or indirectly or as excise taxes, as income taxes, or otherwise.

"Real Property" means the Land and Improvements, together with (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, appurtenances, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by Mortgagor and belonging or appertaining to the Land or Improvements; (b) all Claims whatsoever of Mortgagor with respect to the Land or Improvements, either in law or in equity, in possession or in expectancy; (c) all estate, right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements; and (d) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing.

"Refinancing or Purchase Commitment" means any commitment from or other agreement with any Person providing for the financing of the Property or acquisition of all or part of the Property, some or all of the proceeds of which are intended to be used for the repayment of all or a portion of the Loan.

"Rents" means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Real Property.

"State" means the State of Illinois.

"Swap Agreement" has the meaning provided in the Loan Agreement.

"Swap Obligations" has the meaning provided in the Loan Agreement.

"Taxes" means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on Mortgagor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

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"Transfer" means any direct or indirect sale, assignment, conveyance or transfer, including any Contract of Sale and any other contract or agreement to sell, assign, convey or transfer, whether made voluntarily or by operation of Law or otherwise, and whether made with or without consideration.

Article II

Granting Clauses; Condition of Grant.

Section 2.1 Conveyances and Security Interests.

In order to secure the prompt payment and performance of the Obligations, Mortgagor (a) grants, bargains, sells, aliens, remises, releases, assigns, mortgages, hypothecates, deposits, pledges, sets over, confirms, warrants and conveys the Real Property unto Mortgagee, all estate, right, title and interest of Mortgagor in and to the Real Property, whether now owned or held or hereafter acquired by Mortgagor, to have and hold the Real Property unto Mortgagee, its successors and assigns forever; and to hold the Real Property unto Mortgagee in fee simple forever; provided that Mortgagor may retain possession of the Real Property until the occurrence of an Event of Default; (b) grants to Mortgagee a security interest in the Personality; (c) subject to the terms of the Loan Agreement, assigns to Mortgagee, and grants to Mortgagee a security interest in, all Condemnation Awards and all Insurance Proceeds; and (d) subject to the terms of the Loan Agreement, assigns to Mortgagee, and grants to Mortgagee a security interest in, all of Mortgagor's right, title and interest in, but not any of Mortgagor's obligations or liabilities under, all Design and Construction Documents, all Contracts of Sale and all Refinancing or Purchase Commitments. All Persons who may have or acquire an interest in all or any part of the Property will be deemed to have notice of, and will be bound by, the terms of the Obligations and each other agreement or instrument made or entered into in connection with each of the Obligations. Such terms include any provisions in the Note, the Loan Agreement or any Swap Agreement which provide that the interest rate on one or more of the Obligations may vary from time to time. The definition of "Obligations" includes Future Advances.

Mortgagor represents and warrants that Mortgagor is lawfully seized of the Property and has the right, power and authority to mortgage, grant, convey and assign the Property, and that the Property is unencumbered except for the Permitted Encumbrances. Mortgagor covenants that Mortgagor will warrant and defend generally the title to the Property against all claims and demands, subject to the Permitted Exceptions.

Section 2.2 Absolute Assignment of Leases and Rents.

In consideration of the making of the Loan by Mortgagee to Mortgagor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns the Leases and Rents to Mortgagee. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Mortgagor to Mortgagee of all of Mortgagor's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Event of Default shall exist and continue, however, Mortgagor shall have a license (which license shall terminate automatically and without notice upon the occurrence of an Event of Default) to collect, but not prior to accrual, all Rents. Mortgagor agrees to collect and hold all Rents in trust for Mortgagee and to use the Rents for the payment of the cost of operating and maintaining the Property and for the payment of the other Obligations before using the Rents for any other purpose.

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Section 2.3 Security Agreement, Fixture Filing and Financing Statement.

This Mortgage creates a security interest in the Personalty, and, to the extent the Personalty is not real property, this Mortgage constitutes a security agreement from Mortgagor to Mortgagee under the Illinois Uniform Commercial Code. In addition to all of its other rights under this Mortgage and otherwise, Mortgagee shall have all of the rights of a secured party under the Illinois Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable Law.

This Mortgage constitutes a financing statement filed as a fixture filing under Article 9 of the Illinois Uniform Commercial Code, covering all Property affixed to or located on the Property, and all articles of personal property and all materials delivered to the Property for incorporation or use in any construction being conducted thereon and owned by Mortgagor (which to the fullest extent permitted by law shall be deemed fixtures and a part of the real property). For purposes of treating this Mortgage as a security agreement, fixture filing and financing statement, Mortgagee shall be deemed to be the secured party and the Mortgagor shall be deemed to be the debtor. For this purpose, the respective addresses of Mortgagor, as debtor, and Mortgagee, as secured party from which information concerning the security interest may be obtained, are as set forth in the first paragraph of this Mortgage. Mortgagor's organization number is 5738129. Mortgagor's place of business, or its chief executive office if it has more than one place of business, is located at the address of Mortgagor specified in the first paragraph of this Mortgage. If any Property covered by this Mortgage consists of rights in action or personal property covered by the Illinois Uniform Commercial Code, this Mortgage constitutes a security agreement and financing statement and is intended when recorded to create a perfected security interest in such Property in favor of the Mortgagee. If the lien of this Mortgage on any Property is subject to a prior security agreement covering such Property, then if any Event of Default occurs, the Mortgagor hereby assigns to the Mortgagee all its right, title, and interest in and to all deposits thereon, together with the benefit of any payments now or hereafter made thereon.

Section 2.4 Release of Mortgage and Termination of Assignments and Financing Statements.

If and when Mortgagor has paid and performed all of the Obligations, and no further advances are to be made under the Loan Agreement, Mortgagee will execute a written request for satisfaction of this Mortgage, in recordable form, and termination statements for filed financing statements, if any, and deliver such satisfaction to Mortgagor. Mortgagor shall be responsible for the recordation of such satisfaction and the payment of any recording and filing costs. Upon the recording of such release and the filing of such termination statements, the absolute assignments set forth in Section 2.2 shall automatically terminate and become null and void.

Article III Representations and Warranties.

Mortgagor makes to Mortgagee the representations and warranties as contained in Section 6 of the Loan Agreement.

Article IV Affirmative Covenants.

Section 4.1 Obligations.

Mortgagor agrees to promptly pay and perform all of the Obligations, time being of the essence in each case.

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Section 4.2 [Intentionally Deleted]

Section 4.3 [Intentionally Deleted]

Section 4.4 [Intentionally Deleted]

Section 4.5 Maintenance and Repair of the Property.

Mortgagor, at Mortgagor's sole expense, will (a) keep and maintain Improvements and Accessories in good condition, working order and repair, and (b) make all necessary or appropriate repairs and Additions to Improvements and Accessories, so that each part of the Improvements and all of the Accessories shall at all times be in good condition and fit and proper for the respective purposes for which they were originally intended, erected, or installed.

Section 4.6 Additions to Security.

All right, title and interest of Mortgagor in and to all Improvements and Additions hereafter constructed or placed on the Property and in and to any Accessories hereafter acquired shall, without any further mortgage, conveyance, assignment or other act by Mortgagor, become subject to the Lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clauses hereof. Mortgagor agrees, however, to execute and deliver to Mortgagee such further documents as may be required by the terms of the Loan Agreement and the other Loan Documents.

Section 4.7 Subrogation.

To the extent permitted by Law, Mortgagee shall be subrogated, notwithstanding its release of record, to any Lien now or hereafter existing on the Property to the extent that such Lien is paid or discharged by Mortgagee whether or not from the proceeds of the Loan. This Section shall not be deemed or construed, however, to obligate Mortgagee to pay or discharge any Lien.

Article V Negative Covenants.

Section 5.1 Encumbrances.

Except as may otherwise be expressly permitted by the Loan Agreement, Mortgagor shall not create, suffer, or permit to be created or filed against the Property any mortgage Lien or other Lien superior or inferior to the Lien created by this Mortgage. To the extent that any Lien, privilege or other security device is created by operation of law, Mortgagor shall cause such security device to be released as soon as practicable after its creation. Mortgagor may contest any Lien claim arising from any work performed, material furnished, or obligation incurred by Mortgagor as and to the extent permitted in the Loan Agreement.

Section 5.2 Transfer of the Property.

Except as may otherwise be expressly permitted by the Loan Agreement, Mortgagor shall not sell, lease or convey all or any part of the Property.

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Section 5.3 Removal, Demolition or Alteration of Accessories and Improvements.

From and after completion of the Improvements, except to the extent permitted by the following sentence, no Improvements or Accessories shall be removed, demolished or materially altered without the prior written consent of Mortgagee. Mortgagor may remove and dispose of, free from the Lien of this Mortgage, such Accessories as from time to time become worn out or obsolete, provided that, either (a) at the time of, or prior to, such removal, any such Accessories are replaced with other Accessories which are free from Liens other than Permitted Encumbrances and have a value at least equal to that of the replaced Accessories (and by such removal and replacement Mortgagor shall be deemed to have subjected such Accessories to the Lien of this Mortgage), (b) any disposal in the ordinary course of business, or (c) so long as a prepayment may be made without the imposition of any premium pursuant to the Note, such Accessories are sold at fair market value for cash and the net cash proceeds received from such disposition are paid over promptly to Mortgagee to be applied to the prepayment of the principal of the Loan.

Section 5.4 Additional Improvements.

Mortgagor will not construct any Improvements other than those presently on the Land and those described in the Loan Agreement without the prior written consent of Mortgagee. Mortgagor will complete and pay for, within a reasonable time, any Improvements which Mortgagor is permitted to construct on the Land. Mortgagor will construct and erect any permitted Improvements (a) strictly in accordance with all applicable Laws and any private restrictive covenants, (b) entirely on lots or parcels of the Land, (c) so as not to encroach upon any easement or right of way or upon the land of others, and (d) wholly within any building restriction and setback lines applicable to the Land.

Section 5.5 Restrictive Covenants, Zoning, etc.

Without the prior written consent of Mortgagee, Mortgagor will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Property. Mortgagor (a) will promptly perform and observe, and cause to be performed and observed, all of the terms and conditions of all agreements affecting the Property, and (b) will do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

Article VI Events of Default.

The occurrence or happening, from time to time, of any Default under the Loan Agreement shall constitute an Event of Default under this Mortgage.

Article VII Rights and Remedies.

Upon the happening of any Event of Default, Mortgagee shall have the right, in addition to any other rights or remedies available to Mortgagee under any of the Loan Documents, applicable Law, or equity to exercise any one or more of the following rights, powers or remedies:

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Section 7.1 Acceleration.

Mortgagee may accelerate all Obligations under the Loan Documents whereupon such Obligations shall become immediately due and payable, and Mortgagee may also terminate any Swap Agreement and such Swap Agreements shall immediately terminate, all of the foregoing without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of protest, notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby expressly waived by Mortgagor).

Section 7.2 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(a) Mortgagee may demand that Mortgagor surrender the actual possession of the Property and upon such demand, Mortgagor shall forthwith surrender same to Mortgagee and, to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Property and may exclude Mortgagor and its agents and employees wholly therefrom.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or order conferring on Mortgagee the right to immediate possession or requiring the Mortgagor to deliver immediate possession to Mortgagee, to the entry of which judgment or decree the Mortgagor hereby specifically consents.

(c) Mortgagee may from time to time, subject to the terms of the Loan Agreement: (A) continue and complete construction of, build, store, use, operate, manage and control the Property and conduct the business thereof; (B) make all reasonably necessary maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional Personalty; (C) insure or keep the Property insured; (D) exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same; and (E) enter into agreements with others (including, without limitation, new Leases or amendments, extensions, or cancellations to existing Leases) all as Mortgagee from time to time may determine in its sole discretion. Mortgagor hereby constitutes and irrevocably appoints Mortgagee its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution, and empowers said attorney or attorneys in the name of Mortgagor (in the event that Mortgagee reasonably determines that taking such action in Mortgagee's name is not legally permitted or a third party has a reasonable expectation that the action will be taken by or on behalf of the Mortgagor), but at the option of said attorney-in-fact, to do any and all acts and execute any and all agreements that Mortgagee may deem necessary or proper to implement and perform any and all of the foregoing.

(d) Mortgagee may, with or without taking possession of the Property as hereinabove provided, collect and receive all the Rents therefrom, including those past due as well as those accruing thereafter, and shall apply the monies so received first, to the payment of all costs and expenses (including, without limitation, costs of arbitration, reasonable attorneys' fees and expenses) incurred by Mortgagee, Lenders and their respective agents in connection with the collection of same, whether or not in possession of the Property, and second, in such order as Mortgagee may elect, to the payment of the Obligations.

Section 7.3 Proceedings To Recover Sums Due.

(a) If any installment or part of any Obligation shall fail to be paid when due, Mortgagee shall be entitled to sue for and to recover judgment against the Mortgagor for the amount so due and unpaid together with all out-of-pocket costs and expenses (including, without limitation, costs of

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arbitration, reasonable attorneys' fees and expenses) actually incurred by Mortgagee in connection with such proceeding, together with interest thereon at the default rate under the Note from the date incurred by Mortgagee. Any such judgment against the Mortgagor shall bear interest at the maximum rate permitted by Law. All such costs and expenses shall be secured by this Mortgage and shall be due and payable by Mortgagor immediately.

(b) If Mortgagor shall fail to pay upon the Mortgagee's demand, after acceleration as provided herein, all of the unpaid Obligations, together with all accrued interest thereon, Mortgagee shall be entitled to sue for and to recover judgment against the Mortgagor for the entire amount so due and unpaid together with all out-of-pocket costs and expenses (including, without limitation, costs of arbitration, reasonable attorneys' fees and expenses) actually incurred by Mortgagee in connection with such proceeding, together with interest thereon at the default rate under the Note from the date incurred by Mortgagee. Any such judgment against the Mortgagor shall bear interest at the maximum rate permitted by Law. All such costs and expenses shall be secured by this Mortgage and shall be payable by Mortgagor immediately. Mortgagee's right under this subsection may be exercised by Mortgagee either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, including appellate proceedings.

(c) No recovery of any judgment as provided in subsections (i) and (ii) above and no attachment or levy of any execution upon any of the Property or any other property shall in any way affect the lien of this Mortgage upon the Property or any part thereof, or any lien, rights, powers, or remedies of Mortgagee hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

Section 7.4 Foreclosure.

(a) Upon the occurrence of any Event of Default, the Mortgagee may bring an action in any court of competent jurisdiction to foreclose this Mortgage or to specifically enforce any of the covenants and agreements hereof or of the Note or any other Loan Document, or in aid of the execution of any power granted in this Mortgage, or for damages;

(b) Mortgagee may institute proceedings for the partial or complete foreclosure of this Mortgage and Mortgagee may, pursuant to any final judgment of foreclosure, sell the Property as an entirety or in separate lots, units, or parcels, as applicable.

(c) In case of a foreclosure sale of all or any part of the Property, the proceeds of sale shall be applied in accordance with Section 7.14 hereof, and the Mortgagee shall be entitled to seek a deficiency judgment against the Mortgagor to enforce payment of any and all Obligations then remaining due and unpaid, together with interest thereon, and to recover a judgment against the Mortgagor therefor, which judgment shall bear interest at the maximum rate permitted by Law.

(d) The Mortgagee is authorized to foreclose this Mortgage subject to the rights of any tenants of the Property, or Mortgagee may elect which tenants Mortgagee desires to name as parties defendant in such foreclosure and failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by the Mortgagor to be, a defense to any proceedings instituted by the Mortgagee to collect the unpaid Obligations or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

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Section 7.5 Receiver.

Mortgagee may apply to any court of competent jurisdiction to have a receiver appointed to enter upon and take possession of the Property, collect the Rents therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the laws of the State. The right of the appointment of such receiver shall be a matter of strict right without regard to the value or the occupancy of the Property or the solvency or insolvency of Mortgagor. The expenses, including receiver's fees, attorneys' fees, costs and agent's commission incurred pursuant to the powers herein contained, together with interest thereon at the default rate under the Note, shall be secured hereby and shall be due and payable by Mortgagor immediately without notice or demand. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash or deposits at the time held by, payable, or deliverable under the terms of this Mortgage to the Mortgagee, and the Mortgagee shall have the right to offset the unpaid Obligations against any such cash or deposits in such order as Mortgagee may elect.

Section 7.6 Remedies as to Personalty.

Mortgagee may exercise any or all of its rights and remedies under the Illinois Uniform Commercial Code-Secured Transactions as in effect from time to time (or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable law) or other applicable law as well as all other rights and remedies possessed by Mortgagee, all of which shall be cumulative. Mortgagee is hereby authorized and empowered to enter the Property or other place where the Personalty may be located without legal process, and to take possession of the Personalty without notice or demand, which hereby are waived to the maximum extent permitted by the laws of the State. Upon demand by Mortgagee, Mortgagor shall make the Personalty available to Mortgagee at a place reasonably convenient to Mortgagee. Mortgagee may sell at one or more public or private sales and for such price as Mortgagee may deem commercially reasonable, any and all of the Personalty secured by this Mortgage, and any other security or property held by Mortgagee and Mortgagee may be the purchaser of any or all of the Personalty.

Section 7.7 Other.

Mortgagee may institute and maintain any suits and proceedings as the Mortgagee may deem advisable (i) to prevent any impairment of the Property by any acts which may be unlawful or in violation of this Mortgage, (ii) to preserve or protect its interest in the Property, and (iii) to restrain the enforcement of or compliance with any Laws that may be unconstitutional or otherwise invalid if the enforcement of or compliance with such Laws might impair the security hereunder or be prejudicial to the Mortgagee's interest.

Section 7.8 Remedies Cumulative and Concurrent.

No right, power or remedy of Mortgagee as provided in the Note, the Loan Agreement, this Mortgage, the Guaranty, or the other Loan Documents is intended to be exclusive of any other right, power, or remedy of Mortgagee, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to Mortgagee now or hereafter existing at law or in equity and may be pursued separately, successively or together against Mortgagor, any Guarantor, or any endorser, co-maker, surety or guarantor of the Obligations, or the Property or any part thereof, or any one or more of them, at the sole discretion of Mortgagee. The failure of Mortgagee to exercise any such right, power or remedy shall in no event be construed as a waiver or release thereof.

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Section 7.9 Waiver, Delay or Omission.

No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of Mortgagee to exercise any right, power or remedy shall be construed to waive any such Event of Default or to constitute acquiescence therein.

Section 7.10 Credit of Mortgagee.

To the maximum extent permitted by the laws of the State, upon any sale made under or by virtue of this Article, Mortgagee may bid for and acquire the Property, or any part thereof, and in lieu of paying cash therefor, may apply to the purchase price, any portion of or all of the unpaid Obligations in such order as Mortgagee may elect.

Section 7.11 Sale.

Any sale or sales made under or by virtue of this Article shall operate to divest all the estate, right, title, interest, claim and demand whatsoever at law or in equity, of the Mortgagor and all Persons, except tenants pursuant to Leases approved by Mortgagee, claiming by, through or under Mortgagor in and to the properties and rights so sold, whether sold to Mortgagee or to others.

Section 7.12 Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of the Property by any Governmental Authority, or other judicial proceedings affecting the Mortgagor, any Guarantor, any endorser, co-maker, surety, or guarantor of the Obligations, or any of their respective properties, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire unpaid Obligations at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

Section 7.13 Waiver of Redemption, Notice, Marshalling, Etc.

Mortgagor hereby waives and releases, for itself and anyone claiming through, by, or under it, to the maximum extent permitted by the laws of the State:

(a) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment,

(b) unless specifically required herein, all notices of default, or Mortgagee's actual exercise of any option or remedy under the Loan Documents, or otherwise, and

(c) any right to have the Property marshalled in the event of any sale hereunder of the Property or any part thereof or any interest therein.

Section 7.14 Application of Proceeds.

The proceeds of any sale of all or any portion of the Property shall be applied by Mortgagee first, to the payment of receiver's fees and expenses, if any, and to the payment of all out-of-pocket costs and

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expenses (including, without limitation, reasonable attorneys' fees and expenses) actually incurred by Mortgagee, together with interest thereon at the default rate under the Note from the date so incurred, in connection with any entry, action or proceeding under this Article and, second, in such order as Mortgagee may elect, to the payment of the Obligations. Mortgagor shall be and remain liable to Mortgagee for any difference between the net proceeds of sale and the amount of the Obligations until all of the Obligations have been paid in full.

Section 7.15 Discontinuance of Proceedings.

If Mortgagee shall have proceeded to enforce any right under any Loan Document and such proceedings shall have been discontinued or abandoned for any reason, then except as may be provided in any written agreement between Mortgagor and Mortgagee providing for the discontinuance or abandonment of such proceedings, Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been instituted.

Section 7.16 Mortgagee's Actions.

Mortgagee may, at any time without notice to any Person and without consideration, do or refrain from doing any or all of the following actions, and neither the Mortgagor, any Guarantor, any endorser, co-maker, surety or guarantor of the Obligations, nor any other Person (hereinafter in this Section collectively referred to as the "**Obligor**") now or hereafter liable for the payment and performance of the Obligations shall be relieved from the payment and performance thereof, unless specifically released in writing by Mortgagee: (a) renew, extend, amend or otherwise modify the terms of the Loan Agreement, the Note, the Mortgage, the Guaranty or the other Loan Documents; (b) forbear or extend the time for the payment or performance of any or all of the Obligations; (c) apply payments by any Obligor to the reduction of the unpaid Obligations in such manner, in such amounts, and at such times and in such order and priority as Mortgagee may see fit; (d) release any Obligor; (e) substitute or release in whole or in part the Property or any other collateral or any portion thereof now or hereafter held as security for the Obligations without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Mortgage upon the Property which is not released or substituted, or the validity and priority of any security interest of the Mortgagee in such other collateral which is not released or substituted; (f) subordinate the lien of this Mortgage or the lien of any other security interest in any other collateral now or hereafter held as security for the Obligations; (g) join in the execution of a plat or replat of the Land (provided, however, notwithstanding the foregoing, Mortgagee will join in such plat or replat of the Land so long as such plat or replat is acceptable to Mortgagee); (h) join in and consent to the filing of a declaration of condominium or declaration of restrictive covenants regarding all or any part of the Land; (i) consent to the granting of any easement on the Land; and (j) generally deal with any obligor or any other party as Mortgagee may see fit.

Section 7.17 Other Remedies.

Mortgagee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Mortgagor provided under the Loan Documents or by applicable Laws.

Article VIII
[Intentionally Deleted]

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Article IX Miscellaneous.

Section 9.1 Rights, Powers and Remedies Cumulative.

Each right, power and remedy of Mortgagee as provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by Mortgagee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Mortgagee of any or all such other rights, powers or remedies.

Section 9.2 No Waiver by Mortgagee.

No course of dealing or conduct by or among Mortgagee and Mortgagor shall be effective to amend, modify or change any provisions of this Mortgage or the other Loan Documents. No failure or delay by Mortgagee to insist upon the strict performance of any term, covenant or agreement of this Mortgage or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Mortgagee from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, Mortgagee shall not be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations. Neither Mortgagor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or of any other Person to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Mortgagee, or (c) Mortgagee's extending the time of payment or modifying the terms of this Mortgage or any of the other Loan Documents without first having obtained the consent of Mortgagor or such other Person. Regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Mortgagee may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Mortgage or any of the other Loan Documents without in any way impairing or affecting the Lien of this Mortgage or the priority of this Mortgage over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Mortgage. Mortgagee may resort to the security or collateral described in this Mortgage or any of the other Loan Documents in such order and manner as Mortgagee may elect in its sole discretion.

Section 9.3 Waivers and Agreements Regarding Remedies.

To the full extent Mortgagor may do so, Mortgagor hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, exemption from civil process, extension of time for payment and notice of election to accelerate the Obligations;

(b) waives all rights to a marshalling of the assets of Mortgagor, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse

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order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Property without any prior or different resort for collection, or the right of Mortgagee to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded or a compulsory counterclaim. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties.

Section 9.4 Successors and Assigns.

All of the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the Land and shall apply to and bind the successors and assigns of Mortgagor (including any permitted subsequent owner of the Property), and inure to the benefit of Mortgagee, its successors and assigns.

Section 9.5 No Warranty by Mortgagee.

By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Mortgagor or to be given to Mortgagee pursuant to this Mortgage or any of the other Loan Documents, Mortgagee shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Mortgagee.

Section 9.6 Amendments.

This Mortgage may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 9.7 Severability.

In the event any one or more of the provisions of this Mortgage or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of the Loan Documents operates or would prospectively operate to invalidate this Mortgage or any of the other Loan Documents, then and in either of those events, at the option of Mortgagee, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

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Section 9.8 Notices.

All Notices required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be mailed or delivered in the manner and to the notice addresses set forth in the Loan Agreement. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Mortgage or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

Section 9.9 Joint and Several Liability.

If Mortgagor consists of two (2) or more Persons, the term "Mortgagor" shall also refer to all Persons signing this Mortgage as Mortgagor, and to each of them, and all of them are jointly and severally bound, obligated and liable hereunder. Mortgagee may release, compromise, modify or settle with any of Mortgagor, in whole or in part, without impairing, lessening or affecting the obligations and liabilities of the others of Mortgagor hereunder or under the Note. Any of the acts mentioned aforesaid may be done without the approval or consent of, or notice to, any of Mortgagor.

Section 9.10 Rules of Construction.

The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Mortgage in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants." The words "include" and "including" shall be interpreted as if followed by the words "without limitation." The headings of this Mortgage are for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Land, Improvements, Personalty, Real Property or Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles or Sections are to the respective Articles or Sections contained in this Mortgage unless expressly indicated otherwise. Any term used or defined in the Uniform Commercial Code of the State, as in effect from time to time, which is not defined in this Mortgage shall have the meaning ascribed to that term in the Uniform Commercial Code of the State. If a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term shall have the meaning specified in Article 9.

Section 9.11 Governing Law.

THE NOTE, THE LOAN AGREEMENT, THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS.

Section 9.12 Time of Essence.

It is specifically agreed that time is of the essence as to all matters provided for in this Mortgage.

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Section 9.13 Survival of Warranties and Covenants.

The warranties, representations, covenants and agreements set forth in this Mortgage shall survive the making of the Loan and the execution and delivery of the Note, and shall continue in full force and effect until all of the Obligations shall have been paid and performed in full.

Section 9.14 Forum.

Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the nonexclusive jurisdiction of any United States Federal court sitting in Cook County, Illinois or Illinois State court sitting in Cook County, Illinois, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Mortgage, or for recognition or enforcement of any judgment, and Mortgagor hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Illinois State or, to the extent permitted by law in such Federal court. Mortgagor hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Mortgage shall affect any right that Mortgagee may otherwise have to bring any action or proceeding relating to this Mortgage against Mortgagor or its properties in the courts of any jurisdiction.

Section 9.15 WAIVER OF JURY TRIAL.

MORTGAGOR AND MORTGAGEE WAIVE TRIAL BY JURY IN RESPECT OF ANY DISPUTE AND ANY ACTION ON DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY MORTGAGOR AND MORTGAGEE, AND MORTGAGOR AND MORTGAGEE HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. MORTGAGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 9.16 Entire Agreement.

The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment by Mortgagee to make the Loan are merged into the Loan Documents. Except as incorporated in writing into the Loan Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

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Section 9.17 State Specific Provisions.

(a) Construction Mortgage. This Mortgage is a "construction mortgage" and this Mortgage secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, within the purview and operation of Illinois Uniform Commercial Code Section 9-313 (810 ILCS 5/9-313). Accordingly, the lien created by this Mortgage shall be a first lien against all fixtures, equipment and other personal property of every kind incorporated in the Property as aforesaid, and such lien shall take precedence and be paramount and superior to any other lien, charge or security interest which any person may claim against such fixtures, equipment or other personal property.

(b) Illinois Collateral Protection Act. Anything to the contrary contained herein notwithstanding, unless Mortgagor provides Mortgagee with evidence of the insurance coverage within the time limits required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor may make or any claim that is made against Mortgagor in connection with the Property. Mortgagor may cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the Property, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges that Mortgagee may impose in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. Without limitation of any other provision of this Mortgage, the cost of such insurance shall be added to the cost of the indebtedness secured hereby. The cost of such insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

(c) Use of Loan Proceeds. The Mortgagor represents and warrants to Mortgagee that the obligations secured hereby constitute a business loan within the purview of Section 4(1)(c) of the Illinois Interest Act (815 ILCS 205/4(1)(c) and the transaction contemplated by the Loan Agreement has been entered into solely for business purposes of the Mortgagor and for the Mortgagor's investment or profit, as contemplated by said section; and that the obligations secured by this Mortgage constitute a loan secured by real estate within the purview of and as contemplated by Section 4(1)(l) of the Illinois Interest Act (815 ILCS 205/4(1)(l)).

(d) Applicability of Illinois Mortgage Foreclosure Law. To ensure the maximum degree of flexibility of the Loan Documents under the Foreclosure Act, if any provision of this Mortgage is inconsistent with any applicable provision of the Foreclosure Act, the provisions of the Foreclosure Act will take precedence over the provisions of this Mortgage, but the Foreclosure Act will not invalidate or render unenforceable any other provision of this Mortgage that can be fairly construed in a manner consistent with the Foreclosure Act. Without in any way limiting any of the Mortgagee's rights, remedies, powers and authorities provided in this Mortgage or otherwise, and in addition to all of such rights, remedies, powers and authorities, Mortgagee will also have all rights, remedies, powers and authorities permitted to the holder of a mortgage under the Foreclosure Act. If any provision of this Mortgage will grant to Mortgagee any rights, remedies, powers or authorities upon default of the Mortgagor which are more limited than what would be vested in Mortgagee under the Foreclosure Act in the absence of such provision, Mortgagee will have such rights, remedies, powers and authorities that would be otherwise vested in it under the Foreclosure Act. Without limitation, all expenses (including attorneys' fees and costs) incurred by Mortgagee to the extent reimbursable under 735 ILCS 5/15-1510, 5/15-1512 or any other provision of the Foreclosure Act, whether incurred before or after any judgment of foreclosure, will be added to the indebtedness secured hereby and included in the judgment of foreclosure.

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(e) Waiver of Homestead and Other Exemptions. To the extent permitted by law, Mortgagor hereby waives all rights to any homestead or other exemption to which Mortgagor would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law, including all rights under the homestead and exemption laws of the State of Illinois. Mortgagor acknowledges that the Property does not include “agricultural real estate” or “residential real estate” as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b), Mortgagor waives any and all rights of redemption from sale under any order of foreclosure of this Mortgage, or other rights of redemption, which may run to Mortgagor or any other Owner of Redemption, as that term is defined in 735 ILCS 5/15-1212. Mortgagor waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by Illinois law.

[Signature page follows.]

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EXHIBIT A

Legal Description

PARCEL 1:

The East Half of Lot 5 and all of Lots 6 and 7 (except the South 18-1/2 feet of said Lots 5, 6 and 7) in Block 1 in Whaple's Subdivision; also Lots 9 and 10 (except the South 18-1/2 feet thereof) in Hoard and Others' Subdivision of Lot 1 (except the North 100.00 feet thereof) in Niles Subdivision of Lots 10 to 16, both inclusive, and the West 13 feet of Lot 17 in Skinner's Subdivision, all of above being in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

Lots 1 and 2 in 1121-23 Lake Street Building Partnership Subdivision, a subdivision in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, Village of Oak Park, Cook County, Illinois.

PARCEL 3:

INTENTIONALLY DELETED.

PARCEL 4:

The West 10 feet of Lot 11 (except the North 18 1/2 feet conveyed for street) in Hoard and Others' Subdivision of Lot 1 (except the North 100 feet) in Niles Subdivision of Lots 10 to 16 inclusive, and the West 13 feet of Lot 17 in Skinner's Subdivision of the Southwest corner of the Northwest 1/4 of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Lot 8 (except the South 92 feet and except the North 18 1/2 feet conveyed for street) in Block 1 in Whaple's Subdivision of land in the Southwest 1/4 of the Northwest 1/4 of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

That part of Lot 9 in Block 1 in Whaple's Subdivision of land in the Southwest 1/4 of the Northwest 1/4 of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian lying North of a line described as follows:

Commencing at a point on the West line of Lot 9, 98.92 feet North of the North line of North Boulevard as occupied, thence East on a line parallel with the North line of North Boulevard 50.00 feet to the East line of Lot 9 (except the North 18 1/2 feet conveyed for street) in Whaple's Subdivision of land in the Southwest 1/4 of the Northwest 1/4 of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 5:

Lots 22, 23, 24 and the East 15 feet of Lot 25 in Hoard & Others' Subdivision of Lot 1 (except the North 100 feet thereof) in Niles' Subdivision of Lots 10 to 16, inclusive and the West 13 feet of Lot 17 in Skinner's Subdivision of Land in the Southwest corner of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

The West 10 feet of Lot 25, all of Lot 26 and Lot 27 (except the West 6 inches thereof) in Hoard & Others' Subdivision of Lot 1 (except the North 100 feet thereof) in Niles' Subdivision of Lots 10 to 16, inclusive and

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the West 13 feet of Lot 17 in Skinner's Subdivision of Land in the Southwest corner of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

The South 92 feet of Lot 8 in Block 1 in Whaple's Subdivision of land in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, and the West 6 inches of Lot 27 in Hoard & Others' Subdivision of Lot 1 (except the North 100 feet thereof) in Niles' Subdivision of Lots 10 to 16, inclusive and the West 13 feet of Lot 17 in Skinner's Subdivision of land in the Southwest corner of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

That part of Lot 9 in Block 1 in Whaple's Subdivision of land in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, lying South of a line described as follows: Commencing at a point on the West line of Lot 9, 98.92 feet North of the North line of North Boulevard as occupied; thence East on a line parallel with the North line of North Boulevard 50.0 feet to the East line of Lot 9, all in Cook County, Illinois.

A strip of land 20 feet more or less, lying immediately South of and adjoining the South line of Lots 8 and 9 in Block 1 in Whaple's Subdivision of Land in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, and North of North line of North Boulevard in Village of Oak Park as actually laid out and established, all in Cook County, Illinois.

PARCEL 6:

The East 15 feet of Lot 11 (except the North 18.5 feet thereof) and all of Lots 12 and 13 (except the North 18.5 feet of each of said Lots) in Hoard and Others' Subdivision of Lot 1 (except the North 100 feet thereof) in Niles' Subdivision of Lots 10, 11, 12, 13, 14, 15, 16 and the West 13 feet of Lot 17 in Skinner's Subdivision in the Southwest 1/4 of the Northwest 1/4 of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 7:

Those portions of the alleys vacated pursuant to Ordinance No. 15-724 of the Village of Oak Park recorded March 9, 2016 as Document No. 1606916005 and as described and depicted on the Plat of Vacation recorded March 9, 2016 as Document No. 1606916006, in Cook County, Illinois, described as follows:

VACATION AREA NO. 1

That part of a 15 foot wide public alley lying North of Lots 5 to 10 inclusive, in and established by Hoard and Others' Subdivision of Lot 1 (except the North 100 feet thereof) in Niles Subdivision of Lots 10 to 16 inclusive and the West 13 feet of Lot 17 of Skinners Subdivision of land in the Southwest corner of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, and lying West of the Southerly extension of the East line of Lot 1 in 1121-23 Lake Street Building Partnership Subdivision, being a subdivision of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, according to the plat thereof recorded May 6, 1994 as Document No. 94413163, all in Cook County, Illinois.

VACATION AREA NO. 2

That part of a 15 foot wide public alley lying South of Lots 11 to 16 inclusive, North of Lots 22 to 27 inclusive and West of the Southerly extension of the East line of Lot 13, all in and established by Hoard and Others' Subdivision of Lot 1 (except the North 100 feet thereof) in Niles Subdivision of Lots 10 to 16 inclusive and the West 13 feet of Lot 17 of Skinners Subdivision of land in the Southwest corner of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

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PARCEL 8:

An exclusive easement in favor of LMC Oak Park Holdings, LLC, a Delaware limited liability company, and its successors, assigns and successors-in-title to the Project Property, dated March 7, 2016, and recorded March 9, 2016, as Document 1606929049 for and in the air rights over that portion of Westgate Street within the Village of Oak Park for the purposes of constructing, using, widening, operating, maintaining, renovating, repairing and replacing the Bridge over Westgate Street connecting the North Building and the South Building for pedestrian access, ingress and egress over Westgate Street, more particularly described as follows:

That part of Westgate Street as widened and adjoining Block 1 in Whaple's Subdivision lying above an elevation of 646.10 feet and below an elevation of 662.10 feet (NAVD 88), in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, described as follows:

Commencing at the intersection of the South line of Westgate Street as widened and the East line of Lot 13 in Hoard & Others' Subdivision; thence South 88 degrees 30 minutes 15 seconds West along said South line, 75.00 feet to the East line of Lot 8 in said Block 1 in Whaple's Subdivision; thence South 88 degrees 30 minutes 15 seconds West along said South line, 18.37 feet to the Point of Beginning; thence South 88 degrees 30 minutes 15 seconds West along said South line, 11.00 feet, thence North 01 degree 29 minutes 45 seconds West, 70.00 feet to the North line of Westgate Street also being the North line of the South 18-1/2 feet of Lot 7 in said Block 1 in Whaple's Subdivision; thence North 88 degrees 30 minutes 15 seconds East along said North line, 11.00 feet; thence South 01 degree 29 minutes 45 seconds East, 70.00 feet to the Point of Beginning.

PARCEL 9:

Nonexclusive easements in favor of LMC Oak Park Holdings, LLC, a Delaware limited liability company, and its successors, assigns and successors-in-title to the Project Property, dated March 7, 2016, and recorded March 9, 2016, as Document 1606929050 for the purposes of (1) constructing, using, maintaining, repairing and replacing columns with caissons directly below, on, over, under, across and through the "Columns Easement Area" more particularly described below as Tract 1; and (2) installing, constructing, using, maintaining, repairing and replacing an underground concrete encased cable on, over, under, across and through the "Cable Easement Area" more particularly described below as Tract 2:

TRACT 1 – COLUMNS EASEMENT AREA:

That part of a public alley established by Hoard & Others' Subdivision, being a subdivision in the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, described as follows:

Beginning at the intersection of the North line of North Boulevard and the East line of Lot 22 in Hoard & Others' Subdivision; thence North 01 degree 57 minutes 17 seconds West along said East line, 105.00 feet to the Northeast corner of said Lot 22 being on the South line of an intersecting alley; thence South 88 degrees 27 minutes 26 seconds West along said South line, 87.24 feet to the Southerly extension of the East line of Lot 13 in said Hoard & Others' Subdivision; thence North 01 degree 50 minutes 00 seconds West along said extension, 3.00 feet; thence North 88 degrees 27 minutes 26 seconds East parallel with said South line, 90.23 feet; thence South 01 degree 57 minutes 17 seconds East, 108.00 feet to the Easterly extension of the North line of North Boulevard from aforesaid Lot 22; thence South 88 degrees 27 minutes 26 seconds West along said North line, 3.00 feet to the Point of Beginning.

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TRACT 2 - CABLE EASEMENT AREA:

That part of Westgate Street as widened in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, described as follows:

Commencing at the intersection of the South line of Westgate Street as widened and the East line of Lot 13 in Hoard & Others' Subdivision, thence South 88 degrees 30 minutes 15 seconds West along said South line, 23.60 feet to the Point of Beginning; thence South 88 degrees 30 minutes 15 seconds West along said South line, 5.10 feet, thence North 12 degree 51 minutes 16 seconds West, 71.40 feet to the North line of Westgate Street also being the North line of the South 18-1/2 feet of Lot 9 in said Hoard and Others' Subdivision; thence North 88 degrees 30 minutes 15 seconds East along said North line, 5.10 feet; thence South 12 degrees 51 minutes 16 seconds East, 71.40 feet to the Point of Beginning.

PARCEL 10:

A temporary construction easement in favor of LMC Oak Park Holdings, LLC, a Delaware limited liability company, and its successors, assigns and successors-in-title to the Project Property, dated March 7, 2016, and recorded March 9, 2016, as Document 160 1929051 for the staging of construction materials and the location and operation of construction cranes and construction trailers on, over, under, across and through that portion Westgate Street within the Village of Oak Park, more particularly described as follows:

That part of Westgate Street lying East of the Southerly extension of the Westerly line of Maple Avenue and lying West of the West line of Marion Street, in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

PROPERTY ADDRESS:

1133 Westgate Street &
1118 North Boulevard
Oak Park, Illinois 60301

PERMANENT INDEX NUMBERS:

16-07-124-036-0000 (affects part of Parcel 1)
16-07-124-037-0000 (affects remainder of Parcel 1)
16-07-124-039-0000 (affects part of Parcel 2)
16-07-124-040-0000 (affects remainder of Parcel 2)
16-07-125-006-0000 (affects part of Parcel 4)
16-07-125-026-0000 (affects part of Parcel 4)
16-07-125-030-0000 (affects remainder of Parcel 4)
16-07-125-023-0000 (affects part of Parcel 5)
16-07-125-025-0000 (affects part of Parcel 5)
16-07-125-029-0000 (affects remainder of Parcel 5)
16-07-125-007-0000 (affects Parcel 6)