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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1612516040 Fee: \$86.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 05/04/2016 12:55 PM Pg: 1 of 25

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 06-36-407-021-0000

Address:

Street: 2000 WEST LAKE STREET

Street line 2:

City: HANOVER PARK

State: IL

ZIP Code: 60133

Lender: KEYBANK NATIONAL ASSOCIATION

Borrower: MS CLAREMONT, LP

Loan / Mortgage Amount: \$300,000,000.00

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

Certificate number: FFDE3447-0E98-4BB3-8D48-3A655E98B033

Execution date: 4/29/2016

Rv

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This Document Prepared by ~~and~~
~~After Recording Return to:~~ **Record and Return to:**
 Michael F. McGuire **Madison Title Agency, LLC**
 Riemer & Braunstein LLP **National Commercial Dept**
 71 South Wacker Drive, Suite 3515 **1125 Ocean Avenue**
 Chicago, Illinois 60606 **Lakewood, NJ 08701**
MTA US-101738A

PINs: 06-36-407-021-0000 and 06-36-309-033

Property Address:
 2000 West Lake Street (a/k/a 2016 West Lake Street)
 Hanover Park, Illinois 60133

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

This Document Serves as a Fixture Filing under the Illinois Uniform Commercial Code, Chapter 810 ILCS 5/9-502(b) *et seq.* Mortgagor's Organizational Identification Number: 5843489.

KNOW ALL MEN BY THESE PRESENTS that as of the 29 day of [April], 2016, MS CLAREMONT, LP, a Delaware limited partnership having an address at 14390 Clay Terrace Blvd., Suite 205, Carmel, Indiana 46032 (hereinafter called "Mortgagor") for consideration paid, hereby GRANTS, BARGAINS, WARRANTS, CONVEYS, TRANSFERS, ASSIGNS AND SETS-OVER unto KEYBANK NATIONAL ASSOCIATION, a national banking association, as agent under a Credit Agreement dated as of October 30, 2015, (hereinafter, as same may be amended, restated, renewed, replaced, or modified, the "Credit Agreement") among the Mortgagor, Mainstreet Health Holdings, Inc., a Cayman Islands corporation, as "Parent", Mainstreet Health US Holdings, Inc., a Delaware corporation, Mainstreet Health Holdings, L.P., a Delaware limited partnership, as "Parent Borrower" and various other Subsidiaries and Affiliates thereof as "Subsidiary Borrowers" (together with Parent Borrower, individually and collectively, "Borrower") KeyBank National Association and the other lending institutions which become parties to the Credit Agreement (KeyBank National Association and the other lending institutions which become parties to the Credit Agreement are collectively referred to as the "Lenders" and individually as the "Lender"), and KeyBank National Association, as Agent, having a place of business at 225 Franklin Street, Boston, Massachusetts 02110 (hereinafter called "Mortgagee" or "Agent"), all of its right, title and interest in and to the Mortgaged Property (as defined below) to secure the Obligations (as defined below).

The term Mortgagor shall include, wherever the context permits, its successors and

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assigns. The term Agent and the Lenders shall include, wherever the context permits, its successors and assigns as the holder for the time being of this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (hereinafter called this "Mortgage") and the Note and other Obligations hereby secured.

This Mortgage is granted pursuant to the terms, provisions and conditions of the Credit Agreement. Capitalized terms used herein which are not otherwise specifically defined shall have the same meaning herein as in the Credit Agreement.

The term "Mortgaged Property" shall mean and include all of the following described property:

A. Real Estate. The land more particularly described on Exhibit A which is annexed hereto and made a part hereof ("Land") together with the improvements and other structures now or hereafter situated thereon (such improvements being sometimes called the "Improvements") commonly known as and numbered 2000 West Lake Street (a/k/a 2016 West Lake Street), Hanover Park, Cook County, Illinois 60133, together with all rights, privileges, tenements, hereditaments, appurtenances, easements, including, but not limited to, rights and easements for access and egress and utility connections, and other rights now or hereafter appurtenant thereto ("Real Estate");

B. Fixtures. All real estate fixtures or items which by agreement of the parties may be deemed to be such fixtures, now or hereafter owned by Mortgagor, or in which Mortgagor has or hereafter obtains an interest, and now or hereafter located in or upon the Real Estate, or now or hereafter attached to, installed in, or used in connection with any of the Real Estate, including, but not limited to, any and all portable or sectional buildings, bathroom, plumbing, heating, lighting, refrigerating, ventilating and air-conditioning apparatus and equipment, garbage incinerators and receptacles, elevators and elevator machinery, boilers, furnaces, stoves, tanks, motors, sprinkler and fire detection and extinguishing systems, doorbell and alarm systems, window shades, screens, awnings, screen doors, storm and other detachable windows and doors, mantels, partitions, built-in cases, counters and other fixtures whether or not included in the foregoing enumeration ("Fixtures");

C. Additional Appurtenances. All bridges, easements, rights of way, licenses, privileges, hereditaments, permits and appurtenances hereafter belonging to or inuring to the benefit of the Real Estate and all right, title and interest of Mortgagor in and to the land lying within any street or roadway adjoining any of the Real Estate and all right, title and interest of Mortgagor in and to any vacated or hereafter vacated streets or roads adjoining any of the Real Estate and any and all reversionary or remainder rights ("Additional Appurtenances");

D. Awards. Subject to the terms of Section 7.7 of the Credit Agreement, all of the right, title and interest of Mortgagor in and to any award or awards heretofore made or hereafter to be made by any municipal, county, state or federal authorities to the present or any subsequent owners of any of the Real Estate or the Land, or the Improvements, or the Fixtures, or the Additional Appurtenances, or the Leases or the Personal Property, including, without limitation, any award or awards, or settlements or payments, or other compensation hereafter made resulting from (x) condemnation proceedings or the taking of the Real Estate, or the Land, or the Improvements, or the Fixtures, or the Additional Appurtenances, or the Leases or the Personal Property, or any part thereof, under the power of eminent domain, or (y) the alteration of grade or the location or discontinuance of any street adjoining the Land or any portion thereof, or (z)

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any other injury to or decrease in value of the Mortgaged Property (as hereinafter defined)("Awards");

E. Leases. All leases or subleases now or hereafter entered into of the Real Estate, or any portion thereof (including, without limitation, the Symphony Lease and Mortgagor's interest in any subleases thereof), and all rents, issues, profits, revenues, earnings and royalties therefrom, and all right, title and interest of Mortgagor thereunder, including, without limitation, cash, letters of credit, or securities deposited thereunder to secure performance by the tenants or occupants of their obligations thereunder, whether such cash, letters of credit, or securities are to be held until the expiration of the terms of such leases, subleases or occupancy agreements or applied to one or more of the installments of rent coming due prior to the expiration of such terms including, without limitation, the right to receive and collect the rents thereunder ("Leases"); and

F. Personal Property. All tangible and intangible personal property now owned or at any time hereafter acquired by Mortgagor of every nature and description, and used in any way in connection with the Real Estate, the Fixtures, the Additional Appurtenances, or any other portion of the Mortgaged Property, including, without limitation express or implied upon the generality of the foregoing, all Equipment, Goods, Inventory, Fixtures, Accounts, Instruments, Documents and General Intangibles (as each such capitalized term is defined in the Uniform Commercial Code in effect in the State of Illinois (as amended from time to time, the "UCC")) and further including, without any such limitation, the following whether or not included in the foregoing: materials; supplies; furnishings; chattel paper; money; bank accounts; security deposits; utility deposits; any insurance or tax reserves deposited with Agent; any cash collateral deposited with Agent; claims to rebates, refunds or abatements of real estate taxes or any other taxes; contract rights; plans and specifications; licenses, permits, approvals and other rights; the rights of Mortgagor under contracts with respect to the Real Estate or any other portion of the Mortgaged Property; signs, brochures, advertising, the name by which the Mortgaged Property is known and any variation of the words thereof, and good will; copyrights, service marks, and all goodwill associated therewith; and trademarks; subject to the terms of Section 7.7 of the Credit Agreement, all proceeds paid for any damage or loss to all or any portion of the Real Estate, the Fixtures, the Additional Appurtenances, any other Personal Property or any other portion of the Mortgaged Property ("Insurance Proceeds"); all Awards; all Leases; all books and records; and all proceeds, products, additions, accessions, substitutions and replacements to any one or more of the foregoing (collectively, the "Personal Property").

The term "Obligations" shall mean and include:

A. The payment of the principal sum, interest at variable rates as may be adjusted from time to time, charges and indebtedness evidenced by certain promissory notes (hereinafter individually and collectively referred to as the "Note") issued under the Credit Agreement, including any extensions, renewals, replacements, increases, modifications and amendments thereof, in the original aggregate amount of up to THREE HUNDRED MILLION DOLLARS (\$300,000,000.00) given by Borrower to the order of the respective Lenders;

B. The payment, performance, discharge and satisfaction of each covenant, warranty, representation, undertaking and condition to be paid, performed, satisfied and complied with by Borrower under and pursuant to this Mortgage or the Credit Agreement and also by Borrower under and pursuant to each of the other Loan Documents referred to in, or executed in

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connection with, the Credit Agreement;

C. The payment of all costs, expenses, legal fees and liabilities incurred by Agent or any Lender in connection with the enforcement of any of Agent's or any Lender's rights or remedies under this Mortgage, the other Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and

D. The payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower to Agent or any Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation express or implied upon the generality of the foregoing, each liability and obligation of Borrower under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby, including, without limitation, those arising in connection with any Hedge Obligations.

This instrument is sometimes referred to as "this Mortgage".

Mortgagor hereby grants to Agent, on behalf of the Lenders, a continuing security interest in all of the Mortgaged Property in which a security interest may be granted under the UCC including, without limitation, the Fixtures and the Personal Property, together with all proceeds and products, whether now or at any time hereafter acquired and used in any way in connection with the development, construction, marketing or operation of the Real Estate, or in connection with the Mortgaged Property, to secure all Obligations.

Mortgagor covenants, warrants, represents and agrees with Agent, its successors and assigns, that:

1. Title. Mortgagor has good record and marketable title to the Mortgaged Property and has good right, full power and lawful authority to grant and convey the same in the manner aforesaid; and that the Mortgaged Property are free and clear of all encumbrances and exceptions, except for the schedule of exceptions, if any, listed in the title insurance policy insuring Agent's interest in the Mortgaged Property and all other exceptions permitted by the Credit Agreement (the "Permitted Title Exceptions"). Mortgagor shall make any further assurances of title that Agent may in good faith and reasonably require including, without limitation, such further instruments as may be requested by Agent to confirm the assignment to Agent of all Awards, subject in all cases to the terms of the Credit Agreement.
2. Performance of Obligations. Mortgagor shall pay the Note and interest thereon as the same shall become due and payable in accordance with the terms of the Credit Agreement, and pay and perform and observe all of the obligations and conditions set forth in each of the Note, this Mortgage, the Assignment of Leases and Rents, the Credit Agreement, and each of the other Loan Documents or other agreements, if any, executed by Mortgagor in connection with the Loan.
3. Protection and Maintenance. Mortgagor shall protect and maintain, or cause to be maintained, in good, first-class and substantial order, repair and tenantable condition at all times, consistent with the construction of the Improvements contemplated by the

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Credit Agreement, the buildings and structures now standing or hereafter erected on the Mortgaged Property, and any additions and improvements thereto, and all Personal Property now or hereafter situated therein, and the utility services, the parking areas and access roads, and all building fixtures and equipment and articles of personal property now or hereafter acquired and used in connection with the operation of the Mortgaged Property. Mortgagor shall promptly replace any of the aforesaid which may become lost, destroyed or unsuitable for use with other property of similar character.

4. Insurance Coverages. Mortgagor shall comply with Section 7.7 of the Credit Agreement.
5. Insurance Proceeds. The proceeds of any hazard insurance shall be applied in accordance with Section 7.7 of the Credit Agreement.
6. Eminent Domain. The Awards of damages on account of any condemnation for public use of, or injury to, the Mortgaged Property shall be applied in accordance with Section 7.7 of the Credit Agreement.
7. No Waste; Compliance With Law. Mortgagor shall not commit or suffer any strip or physical waste of the Mortgaged Property, or any portion thereof, or any violation of any law, rule, regulation, ordinance, license or permit, or the requirements of any licensing authority affecting the Mortgaged Property or any business conducted thereon, and shall not commit or suffer any demolition, removal or material alteration of any of the Mortgaged Property (except for the replacement of Fixtures and Personal Property in the ordinary course of business, so long as items of comparable value and quality are installed free and clear of liens in favor of any other party), without the express prior written consent of Agent in each instance which consent shall not be unreasonably withheld or delayed, and shall not violate nor suffer the material violation of the covenants and agreements, if any, of record against the Mortgaged Property, and in all material respects Mortgagor shall do all things necessary to comply with, and keep in full force and effect all licenses, permits and other governmental authorizations for the operation of the Mortgaged Property for its intended purposes, including, without limitation express or implied, the licenses, permits and authorizations referenced in the Credit Agreement.
8. Environmental and Related Matters; Indemnification. The Mortgagor shall at all times comply with all of the terms, conditions and provisions imposed on Mortgagor under the Environmental Indemnity.
9. Payment of Taxes and Prevention of Liens. Mortgagor shall comply with Section 7.8 of the Credit Agreement.
10. Due On Sale; No Other Encumbrances; No Transfer of Ownership Interests; Failure to Comply with Permitted Title Exceptions. Except as otherwise specifically provided for in the Credit Agreement, or in this Mortgage, it shall be an Event of Default under the Credit Agreement if, without Agent's prior written consent in each instance, which consent may be granted, withheld or conditionally granted in Agent's sole discretion: (a) there is any sale, conveyance, transfer (other than (i) a transfer by a tenant of its interest

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in a Lease without Mortgagor's consent, to the extent permitted by the terms of such Lease, or (ii) a sale, conveyance or transfer in compliance with the terms of Section 5.4 of the Credit Agreement) or encumbrance of, or lien imposed upon, all or any portion of the Mortgaged Property; or (b) there is a failure to comply with the provisions of, or there is a default under, any of the Permitted Title Exceptions unless cured within any applicable grace period provided for in the applicable Permitted Title Exception.

11. Agent's and Lenders' Rights. If Mortgagor shall neglect or refuse: (a) to comply with Section 3 hereof, or (b) to maintain and pay the premiums for insurance which may be required by this Mortgage or the Credit Agreement, or (c) to pay and discharge all taxes - of whatsoever nature, assessments and charges of every nature and to whomever assessed, as required by this Mortgage or the Credit Agreement, or (d) to pay the sums required to be paid by this Mortgage or the Credit Agreement, or (e) to satisfy any other terms or conditions of this Mortgage, or any instrument secured hereby, Agent may, at its election in each instance, but without any obligation whatsoever to do so, upon thirty (30) days prior written notice (except in the case of (i) an emergency where there is danger to person or property, or (ii) required insurance coverage would lapse, or (iii) an Event of Default exists, in each of which events no notice shall be required), cause such repairs or replacements to be made, obtain such insurance or pay said taxes, assessments, charges, and sums, incur and pay reasonable amounts in protecting its rights hereunder and the security hereby granted, pay any balance due under any conditional agreement of sale (or lease) of any property included as a part of the Mortgaged Property, and pay any amounts as Agent deems reasonably necessary or appropriate to satisfy any term or condition of this Mortgage, which Mortgagor shall have failed to satisfy, or to remedy any breach of such term or condition, and any amounts or expenses so paid or incurred, together with interest thereon from the date of payment by Agent or the Lenders at the Default Rate as provided in the Note or Credit Agreement shall be immediately due and payable by Mortgagor to Agent and the Lenders and until paid shall be secured hereby equally and ratably, and the same may be collected as part of said principal debt in any suit hereon or upon the Note. No payment by Agent or the Lenders shall relieve Mortgagor from any default hereunder or impair any right or remedy of Agent consequent thereon.
12. Reserved.
13. Certain Expenses. If any action or proceeding is commenced, including, without limitation, an action to foreclose this Mortgage or to collect the debt hereby secured, to which action or proceeding Agent or any Lender is made a party by reason of the execution of this Mortgage, or by reason of entry or any other action under this Mortgage, or if in Agent's reasonable judgment it becomes necessary in connection with legal proceedings or otherwise to defend or uphold the mortgage hereby granted or the lien hereby created or any act taken to defend or uphold the mortgage hereby granted or the lien hereby created or any act taken under this Mortgage, all sums reasonably paid or incurred by Agent or any Lender for the expense of any litigation or otherwise, in connection with any rights created by this Mortgage or any other Loan Document, shall be paid by Mortgagor, or may at the option of Agent, if not so paid, be added to the debt secured hereby and shall be secured hereby equally and ratably and shall bear interest until paid at the Default Rate set forth in the Note or the Credit Agreement.

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14. Regarding Leases. Except as otherwise provided in the Credit Agreement, Mortgagor shall not enter into any leases or occupancy agreements with respect to the Mortgaged Property and shall not modify or amend any lease or occupancy agreement to decrease the rent payable thereunder or shorten the term thereof, or terminate or cancel any such leases or occupancy agreements or waive any rights thereunder, or accept a voluntary surrender of any such lease or occupancy agreement, in each instance without the prior written consent of Agent, which consent shall not be unreasonably withheld, conditioned or delayed. As to all leases and occupancy agreements, after the occurrence and during the continuance of an Event of Default, Agent, at its option from time to time, may require that all security deposits and similar funds or security provided by a lessee or occupant be deposited with Agent, or with an escrow agent satisfactory to Agent, subject to the rights of the lessee or occupant, but otherwise subject to a security interest in favor of Agent.
15. Declaration of Subordination. At the option of Agent, which may be exercised at any time or from time to time, by written notice to Mortgagor and to any applicable tenant, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or condemnation proceeds), to any and all leases of all or any part of the Mortgaged Property upon the execution by Agent and recording or filing thereof, at any time hereafter in the appropriate official records of the county wherein the Mortgaged Property are situated of a unilateral declaration to that effect.
16. Assignment of Rents. (i) As further security for the repayment of the Obligations, Mortgagor does hereby sell, assign and transfer to Agent, for the benefit of the Lenders, all rents, leases, issues, deposits and profits now due and which may hereinafter become due under or by reason of any lease or any letting of, or any agreement for the use, sale, or occupancy of the Mortgaged Property or any portion thereof (whether written or verbal), which may have been heretofore or may hereafter be made or agreed to or which may be made or agreed to by Agent under the powers herein granted, including without limitation sale contracts, leases, escrow and other agreements, it being Mortgagor's intention hereby to establish an absolute transfer and assignment of all such leases, contracts, escrows and agreements pertaining thereto (such leases, contracts, escrows and agreements being collectively referred to hereinbelow as "agreements" and any such individual lease, contract, escrow or other agreement being referred to hereinbelow as an "agreement"), and all the avails thereof, to Agent, for the benefit of the Lenders.

After the occurrence and during the continuance of an Event of Default, Mortgagor does hereby irrevocably appoint Agent as its true and lawful attorney in its name and stead (with or without taking possession of the Mortgaged Property) to rent, lease, let, or sell all or any portion of the Mortgaged Property to any party or parties at such price and upon such term as Agent in its sole and absolute discretion may determine, to exercise any and all rights including rights of first refusal and options of any Mortgagor to purchase and otherwise acquire title to all or any part of the Mortgaged Property, and to collect all of such rents, issues, deposits, profits and avails now due or that may hereafter become due under any and all of such agreements or other tenancies now or hereafter existing on the Mortgaged Property, with the same rights and powers

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and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Agent would have upon taking possession of the Mortgaged Property pursuant to the provisions set forth hereinbelow.

This assignment confers upon Agent a power coupled with an interest and it cannot be revoked by Mortgagor.

(ii) Except as otherwise permitted by the Credit Agreement, Mortgagor represents and agrees that without the prior written consent of Agent, which consent shall not be unreasonably withheld, no rent for right of future possession will be paid by any person in possession of any portion of the Mortgaged Property in excess of one installment thereof paid in advance and that no payment of rents to become due for any portion of the Mortgaged Property has been or will be waived, conceded, released, reduced, discounted, or otherwise discharged or compromised by Mortgagor. Mortgagor waives any right of set-off against any person in possession of any portion of the Mortgaged Property. Mortgagor agrees that it will not assign any of such rents, issues, profits, deposits or avails.

(iii) Mortgagor further agrees to assign and transfer to Agent, for the benefit of the Lenders, all future leases and agreements pertaining to all or any portion of the Mortgaged Property and to execute and deliver to Agent, promptly upon demand of Agent, all such further assurances and assignments pertaining to the Mortgaged Property as Agent may from time to time reasonably require.

(iv) Mortgagor shall, at its own cost appear in and defend any action or other proceeding arising out of or in any manner connected with said leases and other agreements, and to pay any and all costs of Agent incurred by reason of or in connection with said proceedings, including, without limitation, reasonable attorneys' fees, expenses and court costs.

(v) Although it is the intention of Mortgagor and Agent that the assignment, including, without limitation, the power of attorney appointment, contained in this Section 16 is a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Agent shall not exercise any of the rights and powers conferred upon it herein unless and until an Event of Default has occurred, and is continuing.

(vi) After the occurrence and during the continuance of an Event of Default, Agent, in the exercise of the rights and powers conferred upon it herein, shall have full power to use and apply the rents, issues, deposits, profits and avails of the Mortgaged Property to the payment of or on account of the following, in such order as Agent may, in its sole and absolute discretion determine:

(a) operating expenses of the Mortgaged Property (including, without limitation, all costs of management, sale and leasing thereof, which shall include reasonable compensation to Agent and its agents, if management be delegated thereto, reasonable attorneys' fees, expenses and court costs, and lease or sale

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commissions and other compensation and expenses of seeking and procuring tenants or purchasers and entering into leases or sales), establishing any claims for damages, and premiums on insurance authorized hereinabove;

(b) taxes, special assessments, water and sewer charges on the Mortgaged Property now due or that may hereafter become due;

(c) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Mortgaged Property (including, without limitation, the cost from time to time of installing or replacing personal property therein, and of placing the Mortgaged Property in such condition as will, in the sole judgment of Agent, make them readily rentable or salable);

(d) any Obligations or any deficiency that may result from any foreclosure sale pursuant thereto; and

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

(vii) After the occurrence and during the continuance of an Event of Default, Mortgagor does further specifically authorize and instruct each and every present and future lessee or purchaser of all or any portion of the Mortgaged Property to pay all unpaid rentals or deposits agreed upon in any lease or agreement pertaining to the Mortgaged Property to Agent, for the benefit of the Lenders, upon receipt of demand from Agent to pay the same without any further notice or authorization by Mortgagor, and Mortgagor hereby waives any rights or claims it may have against any lessee by reason of such payments to Agent.

(viii) Neither Agent nor any Lender shall be obligated to perform or discharge, nor does Agent or any Lender hereby undertake to perform or discharge, any obligation, duty or liability under any lease or agreement pertaining to the Mortgaged Property, and Mortgagor shall and does hereby agree to indemnify and hold Agent and the Lenders harmless from and against any and all liability, loss and damage that Agent or any Lender may or might incur under any such lease or agreement or under or by reason of the assignment thereof with respect to the period prior to the foreclosure of this Mortgage, as well as any and all claims and demands whatsoever which may be asserted against Agent or any Lender by reason of any alleged obligations or undertakings on Agent's or any Lender's part to perform or discharge any of the terms, covenants or conditions contained in such leases or agreements with respect to the period prior to the foreclosure of this Mortgage, except to the extent caused by the negligence or omissions of Agent or any of its agents in the exercise of its rights and remedies. Should Agent or any Lender incur any such liability, loss or damage under any such lease or agreement, or under or by reason of the assignment thereof, or in the defense of any claims or demands relating thereto, Mortgagor shall reimburse Agent and such Lender for the amount thereof (including, without limitation, reasonable attorneys' fees, expenses and court costs) immediately upon demand

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(ix) Nothing herein contained shall be construed as making or constituting Agent or any Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by Agent pursuant to the provisions set forth herein. In the exercise of the powers herein granted Agent, no liability shall be asserted or enforced against Agent or any Lender, all such liability being expressly waived and released by Mortgagor.

(x) Intentionally Omitted.

(xi) Without limitation of the provisions of Section 16 or of the absolute nature of the assignment of the rents, leases, issues, deposits and profits as set forth hereinabove, Mortgagor and Agent agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as rents, leases, issues, deposits and profits, and (c) such security interest shall extend to all rents, leases, issues, deposits and profits acquired by the estate after the commencement of any case in bankruptcy. Without limitation of the provisions of Section 16 or of the absolute nature of the assignment of the rents, leases, issues, deposits and profits hereunder, to the extent Mortgagor (or Mortgagor's bankruptcy estate) shall be deemed to hold any interest in any such rents, leases, issues, deposits and profits after the commencement of a voluntary or involuntary bankruptcy case, Mortgagor hereby acknowledges and agrees that all such rents, leases, issues, deposits and profits are and shall be deemed to be "cash collateral" under Section 363 of the Bankruptcy Code. Mortgagor may not use the cash collateral without the consent of Agent and/or an order of any bankruptcy court pursuant to 11 U.S.C. 363(c)(2), and Mortgagor hereby waives any right it may have to assert that such rents, leases, issues, deposits and profits do not constitute cash collateral. No consent by Agent to the use of cash collateral by Mortgagor shall be deemed to constitute Agent's approval, as the case may be, of the purpose for which such cash collateral was expended.

17. Security Agreement; UCC Filing. (i) This Mortgage shall be deemed a "Security Agreement" as defined in the UCC, and creates a security interest in favor of Agent, for the benefit of the Lenders, in all Mortgaged Property including, without limitation, (a) all sums at any time on deposit for the benefit of Mortgagor or held by Agent (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Mortgaged Property or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the Code) which property is hereinafter referred to as "Personal Property", and all replacements of, substitutions for, additions to and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to Agent, for the benefit of the Lenders, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Agent, for the benefit of the Lenders, all to secure payment of the Obligations.

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(ii) Mortgagor upon Agent's written request shall promptly cause this Mortgage and any required financing statements to be recorded and re-recorded, registered and re-registered, filed and re-filed at such times and places as may be required by law or reasonably deemed advisable by Agent to create, preserve or protect the priority hereof and of any lien created hereby upon the Mortgaged Property or any part thereof; and Mortgagor shall from time to time do and cause to be done all such things as may be required by Agent, or required by law, including all things which may from time to time be necessary under the UCC fully to create, preserve and protect the priority hereof and of any lien created hereby upon said property. Mortgagor hereby irrevocably appoints Agent, or any agent designated by Agent, the true and lawful attorney-in-fact of Mortgagor, with full power of substitution, to execute, acknowledge and deliver any such things on behalf of Mortgagor which Mortgagor fails or refuses to do.

From the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Section 9-502(b) of the UCC with respect to the Collateral and the goods described herein, which goods are or are to become fixtures related to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Agent (Secured Party) are set forth below. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or the counties where the Mortgaged Property is located. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

MS Claremont, LP
14390 Clay Terrace Blvd., Suite 205
Carmel, Indiana 46032

(b) Name and Address of Secured Party:

KeyBank National Association
225 Franklin Street
Boston, Massachusetts 02110

- (c) This document covers goods which are or are to become fixtures.
- (d) Debtor is the record owner of the Land.
- (e) Debtor's chief executive office is located at 14390 Clay Terrace Blvd., Suite 205, Carmel, Indiana 46032.
- (f) Debtor's state of formation is Delaware.
- (g) Debtor's exact legal name is as set forth in the first paragraph of this Mortgage.
- (h) Debtor's organizational identification number is 5843489.
- (i) Debtor agrees that:

(A) Where Collateral is in possession of a third party, Mortgagor will join with

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Agent in notifying the third party of Agent's interest and using commercially reasonable efforts to obtain an acknowledgment from the third party that it is holding the Collateral for the benefit of Agent;

(B) Mortgagor will reasonably cooperate with Agent in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(C) Until the Obligations are paid in full, Mortgagor will not change the state where it is located or change its company name without giving Agent at least thirty (30) days prior written notice in each instance.

18. Right to Deal with Successor. Agent may, without notice to any person, deal with any successor in interest of Mortgagor herein regarding this Mortgage and the debt hereby secured in all respects as it might deal with Mortgagor herein, without in any way affecting the liability hereunder or upon the debt hereby secured of any predecessor in interest of the person so dealt with; and no sale of the premises hereby mortgaged, nor any forbearance on the part of Agent, nor any extension by Agent of the time for payment of the debt hereby secured, shall operate to release, discharge, modify, change or affect the original liability of any predecessor in interest of the equity owner at the time of such sale, forbearance or extension.

19. Compliance with the Illinois Mortgage Foreclosure Law.

(i) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *et. seq.* (as amended from time to time the "IMF Law"), the provision of the IMF Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF Law.

(ii) Mortgagor and Agent, on behalf of the Lenders, shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Law which is specifically referred to herein may be repealed, Agent, for the benefit of the Lenders, shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(iii) If any provision of this Mortgage shall grant to Agent any rights or remedies upon default of Mortgagor or otherwise which are more limited than the rights that would otherwise be vested in Agent under the IMF Law in the absence of said provision, Agent shall be vested with the rights granted in the IMF Law to the full extent permitted by law.

(iv) All advances, disbursements and expenditures made or incurred by Agent or any Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage, the other Loan Documents or by the IMF Law (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the IMF Law, including, without limitation,

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those provisions of the IMF Law herein below referred to:

(a) all advances by Agent or any Lender in accordance with the terms of this Mortgage or the other Loan Documents to: (1) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (2) preserve the lien of this Mortgage or the priority thereof; or (3) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the IMF Law;

(b) payments by Agent or any Lender of (1) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien or encumbrance); (2) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (3) other obligations authorized by this Mortgage; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the IMF Law;

(c) advances by Agent or any Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien);

(d) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d) and 15-1510 of the IMF Law; (2) in connection with any action, suit or proceeding brought by or against Agent for the enforcement of this Mortgage or arising from the interest of Agent and the Lenders hereunder; or (3) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Mortgaged Property;

(e) Agent's and the Lenders' fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection 15-1508(b)(1) of the IMF Law;

(f) expenses deductible from proceeds of sales referred to in Subsections 15-1512(a) and (b) of the IMF Law; and

(g) expenses incurred and expenditures made by Agent or any Lender for any one or more of the following: (1) premiums for casualty and liability insurance paid by Agent whether or not Agent or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property imposed by Subsection 15-1704(c)(1) of the IMF Law; (2) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (3) payments deemed by Agent to be required for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged

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Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; and (4) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property.

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 from the date of the advance until paid at the rate of interest payable after default under the terms of the Notes.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the IMF Law.

All 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 IMF Law, apply to and be included in:

(A) any determination of the amount of indebtedness secured by this Mortgage at any time;

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

(C) if the right of redemption has not been waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections 5-1603(d)(2) and (e) of the IMF Law;

(D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the IMF Law;

(E) application of income in the hands of any receiver or mortgagee in possession; and

(F) computation of any deficiency judgment pursuant to Subsections 15-1508(b)(2), 15-1508(e) and Section 15-1511 of the IMF Law.

(v) In addition to any provision of this Mortgage authorizing Agent to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Agent shall have the right, in accordance with Sections 15-1701 and 15-1702 of the IMF Law, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Agent, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMF Law.

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20. Acceleration of Debt; Foreclosure of Mortgage. (i) Upon the occurrence and during the continuance of any Event of Default, at the option of Agent, the entire indebtedness hereby secured shall become immediately due and payable without further notice.

(ii) Upon the occurrence and during the continuance of any Event of Default, Agent may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Real Estate is located and to exercise any other remedies of Agent provided herein or in the other Loan Documents, or which Agent may have at law or in equity. Any failure by Agent to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

21. Additional Rights of Agent. The provisions of this Section 21 shall only apply after the occurrence and during the continuance of an Event of Default.

21.1 Enter and Perform. Mortgagor authorizes Agent, in addition to all other rights granted by law or by this Mortgage, or by any of the other Loan Documents, upon the occurrence and during the continuance of an Event of Default under the Credit Agreement, to enter and take possession of all or any part of the Mortgaged Property and to use, lease, operate, manage and control the same and conduct the business thereof, and perform lessor's obligations under any lease or Mortgagor's obligations under any other agreement affecting all or any part of the Mortgaged Property, and collect the rents, profits and all receipts of every nature therefrom as Agent shall deem best.

21.2 Appointment of Receiver. Upon, or at any time prior or after, the filing of any complaint to foreclose the lien of this Mortgage or instituting any other foreclosure of the liens and security interests provided for in this Mortgage or any other legal proceedings under this Mortgage, Agent may, at Agent's sole option, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Mortgaged Property, as a matter of strict right and without notice to Mortgagor, and Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Agent, but nothing herein is construed to deprive Agent of any other right, remedy or privilege Agent may now have under the law to have a receiver appointed; provided that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Agent to receive payment of all of the rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Mortgage. Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Obligations; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Agent hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the IMF Law, including the power to take possession, control and care of the Mortgaged Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Obligations, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its devisees, legatees, administrators, legal

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representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then existing leases and make new leases of the Mortgaged Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

21.3 Foreclosure Sale. In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Agent or any Lender may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

21.4 Repairs and Improvements. Upon every such entry, Agent may from time to time at the expense of Mortgagor make all such repairs, replacements, alterations, additions and improvements to the Mortgaged Property as Agent may deem proper, but in no event shall Agent be obligated to do so, and may, but shall not be obligated to, exercise all rights and powers of Mortgagor, either in the name of Mortgagor, or otherwise as Agent shall determine. Without limitation express or implied upon the generality of the foregoing, Agent shall have the right to do all things necessary or desirable in order to keep in full force and effect all applicable licenses, permits and authorizations and any amendments thereto.

21.5 Pay Costs and Expenses. Upon such entry, Agent may, at its option, but without any obligation to do so, do any one or more of the following: pay and incur all expenses necessary or deemed by it appropriate for the holding and operating of the Mortgaged Property, the conduct of any business thereon, the maintenance, repair, replacement, alteration, addition and improvement of the Mortgaged Property, including without limitation payments of taxes, assessments, insurance, wages of employees connected with the Mortgaged Property or any business conducted thereon, charges and reasonable compensation for services of Agent, its attorneys and accountants and all other persons engaged or employed in connection with the Mortgaged Property or of any business conducted thereon and, in addition, Agent, at its option, may, but shall not be obligated to, make payments or incur liability with respect to obligations arising prior to the date it takes possession.

21.6 Add to Secured Indebtedness. All obligations so paid or incurred by Agent shall be reimbursed or paid for by Mortgagor upon demand and prior to the repayment thereof shall be added to the debt secured hereby and shall bear interest at the Default Rate provided for in the Credit Agreement, and shall be secured hereby equally and ratably. Agent may also reimburse itself therefor from the income or receipts of the Mortgaged Property or any business conducted thereon, or from the sale of all or any portion of the Mortgaged Property. Agent may also apply toward any of the Obligations any tax or insurance reserve account, deposit or any sum credited or due from Agent to Mortgagor without first enforcing any other rights of Agent against

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Mortgagor or the against any endorser or guarantor of any of the Obligations or against the Mortgaged Property.

21.7 Attorney-In-Fact. Mortgagor hereby irrevocably constitutes and appoints Agent, or any agent designated by Agent, for so long as this Mortgage remains undischarged of record, as attorney-in-fact of Mortgagor to execute, acknowledge, seal and deliver all instruments, agreements, deeds, certificates and other documents of every nature and description in order to carry out or implement the exercise of Agent's rights hereunder and under the other Loan Documents.

22. Contest of Laws. Mortgagor shall have the right to contest by appropriate legal proceedings, but without cost or expense to Agent or any Lender, the validity of any Legal Requirements affecting the Mortgaged Property subject to the provisions of the Credit Agreement and the Environmental Indemnity dealing with the right to contest, but only if compliance may be so contested without: (a) the imposition of any charge, lien or liability against the Mortgaged Property unless Agent is furnished with security satisfactory to Agent in its reasonable discretion against any loss or injury by reason of such charge, lien or liability, (b) the loss or suspension of any license, right or permit with respect to the Mortgaged Property, and (c) causing any Default to exist under the Credit Agreement or any other Loan Document. Subject to the foregoing, Mortgagor may postpone compliance therewith until the final determination of any such proceedings, provided it shall be prosecuted with due diligence and dispatch, and if any lien or charge is incurred, Mortgagor may, nevertheless, make the contest and delay compliance, provided Agent is furnished with security satisfactory to Agent in its reasonable discretion against any loss or injury by reason of such noncompliance or delay and provided further that the same is and may be done without causing any Default to exist under the Credit Agreement or any of the other Loan Documents.
23. Notices. Any demand, notice or request by either party to the other shall be given in the manner provided therefor in the Credit Agreement.
24. Agent/Lender Not Obligated; Cumulative Rights. Nothing in this instrument shall be construed as obligating Agent or any Lender to take any action or incur any liability with respect to the Mortgaged Property or any business conducted thereon, and all options given to Agent are for its benefit and shall and may be exercised in such order and in such combination as Agent in its sole discretion may from time to time decide.
25. Severability. In case any one or more of the provisions of this Mortgage are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. Each of the provisions of every such agreement, document or instrument shall be enforceable by Agent to the fullest extent now or hereafter not prohibited by applicable law.
26. No Waiver. No consent or waiver, express or implied, by Agent to or of any Default by Mortgagor shall be construed as a consent or waiver to or of any other Default at the same time or upon any future occasion.

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27. Conflict. In the event of any conflict between the terms of this Mortgage and the terms of the Credit Agreement, the Credit Agreement shall control.
28. Waivers By Mortgagor. To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "moratorium law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the Mortgaged Property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and reinstatement under the IMF Law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Agent, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Notes. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Law or residential real estate as defined in Section 5/15-1219 of the IMF Law.
29. Business Loan. Mortgagor represents and warrants to Agent and the Lenders (i) that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(l) (or any substitute, amended or replacement statute), and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(l), and (ii) that the Loan evidenced by the Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 *et seq.*
30. Headings. Headings and captions in this Mortgage are for convenience and reference only and the words and phrases contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of any of the provisions hereof.
31. Time of Essence. Time shall be of the essence of each and every provision of this Mortgage.

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32. Other Amounts Secured; Maximum Indebtedness. Mortgagor acknowledges and agrees that this Mortgage secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the Loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Agent or any Lender in connection with the Loan, all in accordance with the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed Six Hundred Million and No/100 Dollars (\$600,000,000.00). It is agreed that this Mortgage secures a revolving line of credit and any future advances made by Agent or the Lenders for the benefit of Mortgagor from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Agent or the Lenders, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the indebtedness secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.
33. Adjustable Mortgage Loan Provision. The Note which this Mortgage secures is an adjustable note on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Note.
34. Deed in Trust. If title to the Mortgaged Property 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 Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.
35. Governing Law; Litigation. **THIS MORTGAGE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO NEW YORK CHOICE OF LAW PRINCIPLES), EXCEPT WITH RESPECT TO THE ENFORCEMENT HEREOF AGAINST THE MORTGAGED PROPERTY IN THE STATE OF ILLINOIS, WHICH ENFORCEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS (WITHOUT GIVING EFFECT TO ILLINOIS CHOICE OF LAW PRINCIPLES). TO THE EXTENT THAT THIS MORTGAGE MAY OPERATE AS A SECURITY AGREEMENT UNDER THE UCC, AGENT SHALL HAVE ALL RIGHTS AND REMEDIES CONFERRED THEREIN FOR THE BENEFIT OF A SECURED PARTY, AS SUCH TERM IS DEFINED THEREIN, THE ENFORCEMENT OF WHICH SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS (WITHOUT GIVING EFFECT TO ILLINOIS CHOICE OF LAW PRINCIPLES).**

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TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THE ENFORCEMENT OF REMEDIES UNDER THIS MORTGAGE SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURT LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK, OR, AT THE SOLE OPTION OF AGENT, IN ANY OTHER COURT IN WHICH AGENT SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY, EXCEPT THAT ANY ACTION TO FORECLOSE THE MORTGAGE, TO OBTAIN POSSESSION OF THE MORTGAGED PROPERTY, TO HAVE A RECEIVER APPOINTED FOR THE MORTGAGED PROPERTY OR TO ENFORCE ANY OTHER REMEDY HEREIN AFFECTING THE MORTGAGED PROPERTY, INCLUDING, BUT NOT LIMITED TO, INJUNCTIVE RELIEF, SHALL BE BROUGHT IN THE COUNTY OF COOK, STATE OF ILLINOIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION WITH RESPECT TO THE ENFORCEMENT OF REMEDIES UNDER THIS MORTGAGE TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED IN THIS MORTGAGE AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

36. JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF MORTGAGOR AND AGENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MORTGAGE, OR IN ANY WAY CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE DEALINGS OF MORTGAGOR AND AGENT AND LENDERS WITH RESPECT TO THIS MORTGAGE, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF MORTGAGOR AND AGENT HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT MORTGAGOR OR AGENT MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF MORTGAGOR AND AGENT TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST AGENT OR LENDERS ON THE THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

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37. Collateral Protection Act. Unless Mortgagor provides Agent with evidence of the insurance required by this Mortgage or any other Loan Document, Agent may purchase insurance at Mortgagor's expense to protect Agent's and the Lenders' interest in the Mortgaged Property or any other collateral for the Obligations. This insurance may, but need not, protect Mortgagor's interests. The coverage Agent purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the indebtedness secured hereby. Mortgagor may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Mortgagor has obtained insurance as required under this Mortgage or any other Loan Document. If Agent purchases insurance for the Mortgaged Property or any other collateral for the Obligations, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Agent may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 *et. seq.*, Mortgagor hereby acknowledges Agent's right pursuant to this Section 37 to obtain collateral protection insurance.
38. Rights of Tenants. Agent and the Lenders shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Agent. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Obligations, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed and delivered as of the date first written above.

MORTGAGOR:

MS CLAREMONT, LP,
a Delaware limited partnership

By: 

Name: Scott D. Higgs

Title: Chief Financial Officer

[Signatures Continue on Following Page]

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EXHIBIT "A" ANNEXED TO AND MADE A PART OF THE
MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
GIVEN BY MS CLAREMONT, LP

LEGAL DESCRIPTION

Lots 2 and 3 in Virons Subdivision, Hanover Park, Illinois, being a subdivision of the south half of Section 36, Township 41 North, Range 9, East of the Third Principal Meridian, according to the plat thereof recorded June 15, 2009, as Document Number 0916610047, in Cook County, Illinois.

PINs: 06-36-407-021-0000 and 06-36-309-033

Address: 2000 West Lake Street (a/k/a 2016 West Lake Street), Hanover Park, Illinois 60133

Property of Cook County Clerk's Office

EX A-1