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Doc#: 1616615044 Fee: \$110.00  
RHSP Fee:\$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 06/14/2016 02:13 PM Pg: 1 of 37

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption

Report Mortgage Fraud  
800-532-8785

The property identified as: **PIN:** 17-03-221-010-0000

**Address:**

**Street:** 860 NORTH DEWITT PLACE

**Street line 2:**

**City:** CHICAGO

**State:** IL

**ZIP Code:** 60111

**Lender:** FIRST MIDWEST BANK

**Borrower:** GOLD COAST CITY APARTMENTS LLC

**Loan / Mortgage Amount:** \$0.00

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:** FB3D86A0-DD25-41C0-89EC-3C6FE35CC7ED

**Execution date:** 6/3/2016

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This instrument was prepared by ~~and,~~  
~~after recording, return to:~~

Allen C. Balk  
 Meltzer, Purtil & Stelle LLC  
 300 South Wacker Drive, Suite 2300  
 Chicago, Illinois 60606

*Permanent Real Estate Tax Index No.:*  
 See **Exhibit A** attached hereto

*Address:*  
 See **Exhibit A** attached hereto

*This space reserved for Recorder's use only*

**LEASEHOLD MORTGAGE AND SECURITY AGREEMENT**

**GOLD COAST CITY APARTMENTS**

**THIS LEASEHOLD MORTGAGE AND SECURITY AGREEMENT** ("Mortgage"), dated as of this ~~3<sup>rd</sup>~~ <sup>2<sup>nd</sup></sup> day of ~~May~~ <sup>June</sup>, 2016, is made by **GOLD COAST CITY APARTMENTS LLC**, a Delaware limited liability company ("Mortgagor"), in favor of **FIRST MIDWEST BANK**, its successors and assigns ("Mortgagee").

**RECITALS:**

Mortgagee has agreed to loan to Mortgagor the principal amount of Twenty-Five Million and No/100 Dollars (\$25,000,000.00) ("Loan"). The Loan is evidenced by that certain Promissory Note of even date herewith (as amended, restated or replaced from time to time, "Note") in the principal amount of the Loan in and by which said Note, Mortgagor promises to pay the said principal sum and interest in the manner and at the rate as provided therein.

The unpaid principal amount and all accrued and unpaid interest due under the Loan as described in that certain Loan Agreement ("Loan Agreement") of even date herewith by and between Mortgagor and Mortgagee, as evidenced by the Note, if not sooner paid, shall be due on ~~May~~ <sup>June</sup> **3**, 2021 ("Maturity Date"). All such payments on account of the indebtedness evidenced by the Note shall be applied as set forth in the Note and being made payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, at the address indicated in Paragraph 24 hereof, or at such other address as Mortgagee may from time to time designate in writing. Terms not defined herein shall have the meaning ascribed to such term in the Loan Agreement.

**ACCORDINGLY**, Mortgagor, to secure: (i) the payment of said principal sum of money and all interest, late charges and other indebtedness evidenced by the Note and by any extensions, renewals or refinancings thereof; (ii) the performance and observance of the covenants, terms, conditions and agreements contained in the Note, this Mortgage and the Loan Documents (as hereinafter defined); and (iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting

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additional indebtedness under or secured by this Mortgage or any of the Loan Documents, with interest thereon as provided herein or therein; and also in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, ASSIGN, REMISE, RELEASE, WARRANT, AND CONVEY unto Mortgagee, its successors and assigns, all of Mortgagor's estate, right, title and interest in the real estate, legally described in **Exhibit A** attached hereto and made a part hereof the ("Real Estate"), together with the tangible and intangible property hereinafter described, is collectively referred to herein as "Property". It being understood and agreed that this Mortgage constitutes a Leasehold Mortgage from Mortgagor with respect to the Property and the Leasehold Estate (as defined below), and WITHOUT LIMITING THE FOREGOING, THIS MORTGAGE SHALL ENCUMBER ONLY MORTGAGOR'S INTEREST IN THE GROUND LEASE (AS DEFINED BELOW), AND NOT THE PROPERTY OF LANDLORD.

**TOGETHER** with the leasehold estate attached to the Real Estate ("Leasehold Estate"), which Leasehold Estate is held by Mortgagor pursuant to that certain Indenture of Lease dated March 1, 1960 by and between 199 Lake Shore Drive, Inc. ("Original Landlord") and American National Bank and Trust Company of Chicago as Trustee under Trust No. 15196 ("Original Tenant") as recorded in the office of the Recorder of Deeds of Cook County, Illinois as Document No. 17792948, as amended by that Modification of Lease Agreement for Annual Rent Increases dated August 31, 1984 and by that Acknowledgement of Annual Rent Increases dated November 6, 2009 (as amended, "Ground Lease"), which such Original Landlord's interest has been assigned to Chicago Title Land Trust Company, not individually or personally, but only as Successor Trustee under the provisions of a Trust Agreement dated July 28, 1986 and known as Trust No. 43663 ("Landlord") and such Original Tenant's interest has been assigned to Mortgagor;

**TOGETHER** with all of the rights, title and interest of Mortgagor in buildings and improvements now or hereafter constructed upon or erected upon or located on the Real Estate, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the Real Estate, and all rents, issues, royalties, income, proceeds, profits, letter-of-credit rights (as defined in the Code hereinafter defined) and other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, other than personal property owned by lessees of the Real Estate, for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and to the extent of Mortgagor's interest therein, all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, refrigerators, curtain and drapery fixtures, partitions, attached floor coverings, all fixtures, apparatus, equipment, systems, articles, mechanical devices and piping now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing): all fixtures, apparatus, equipment and articles, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned;

**TOGETHER** with all of Mortgagor's right, title and interest in "general intangibles" including "payment intangibles" and "software," each as defined in the Code (as hereinafter

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defined), now owned or hereafter acquired and related to the Property, including, without limitation, all of Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Mortgagor is or may become a party and which relate to the Property; (ii) all obligations and indebtedness owed to Mortgagor thereunder; (iii) all intellectual property related to the Property; and (iv) all causes of action relating to the Property;

**TOGETHER** with all of Mortgagor's right, title and interest in accounts now owned or hereafter created or acquired with respect to the ownership and operation of the Property, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) cash, securities, certificates of deposits; (ii) accounts, contract rights, health-care-insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (iii) Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iv) Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (v) monies due or to become due to Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of Mortgagor); (vi) "securities", "investment property", "financial assets", and "securities entitlements" (each as defined in the Code); and (vii) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Mortgagor with respect to the Property;

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the Real Estate or does not constitute a "fixture" (within the meaning of Section 9-102(41) of the Uniform Commercial Code of Illinois ("Code"), as amended and in effect from time to time), this Mortgage is hereby deemed to also be a Security Agreement under the Code for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as Secured Party (as defined in the Code), as more particularly provided in Paragraph 37 of this Mortgage.

**TO HAVE AND TO HOLD** the Property unto the said Mortgagee, its participants, successors and assigns, forever, for the purposes and uses herein set forth, together with all right to possession of the Property after any Event of Default (as hereinafter defined); Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

**IT IS FURTHER UNDERSTOOD AND AGREED THAT:**

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1. **Title.**

Mortgagor represents and covenants that (a) Mortgagor is the holder of good and marketable title in the leasehold interest to the Property (including without limitation the Leasehold Estate), free and clear of all liens and encumbrances, except Permitted Encumbrances under the Loan Agreement, and (b) Mortgagor has legal power and authority to mortgage and convey the Property.

2. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.**

Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Property which may become damaged or be destroyed, to a condition consistent with Mortgagor's past operation of the Property; (b) keep the Property in good condition and repair (ordinary wear and tear excepted), without physical waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right to contest by appropriate proceedings diligently prosecuted the validity or amount of any such lien as set forth in the Loan Agreement; (c) subject to the right to contest as set forth in the Loan Agreement, immediately pay when due any indebtedness which may be secured by a lien or charge on the Property superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; (d) complete within a reasonable time any buildings or any other improvements now or at any time in process of construction upon the Property; (e) comply, in all material respects, with all requirements of law, municipal ordinances and restrictions of record with respect to the Property and the use and development thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) except as otherwise expressly permitted by the Loan Documents, make no material structural or non-structural alterations to the Property or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed), except for renovations and repairs conducted in the ordinary course of business; (g) not suffer or permit a change in the general nature of the occupancy of the Property, without the prior written consent of Mortgagee; (h) not initiate or acquiesce in any zoning reclassification without the prior written consent of Mortgagee; (i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note; and (j) duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Note, the Loan Agreement or in the Loan Documents on the part of Mortgagor to be performed and observed. As used in this Paragraph and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Mortgagee thereunder, and all other sums at any time secured by this Mortgage.

3. **Payment of Taxes and Assessments.**

Mortgagor shall pay before any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Property, or any interest therein, of any nature whatsoever when due, and shall furnish to Mortgagee duplicate receipts of payment therefor promptly upon

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Mortgagee's request. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid on or prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall have the right to protest any taxes assessed against the Property, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted and Mortgagor shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Mortgagee, insuring over any exception created by such protest. So long as Mortgagor timely makes the escrow payments required under Paragraph 4 in amounts required by Mortgagee, then an Event of Default shall not have occurred under this Paragraph 3.

#### 4. Tax and Insurance Deposits.

Mortgagor shall deposit monthly with Mortgagee, a sum equal to (a) one-twelfth (1/12<sup>th</sup>) of the annual taxes and assessments (general and special) on the Property, as reasonably determined by Mortgagee based on the most recent tax bills, and (b) upon the written request of Mortgagee after the Mortgagor's failure to timely pay insurance premiums, one-twelfth (1/12<sup>th</sup>) of the annual premiums payable for the insurance required to be maintained in accordance with Paragraph 6 hereof commencing on the same day of each month installments of interest or principal are due under the Note. In addition to the foregoing, if requested in writing by Mortgagee, Mortgagor shall deposit with Mortgagee an amount of money, which together with the aggregate of the monthly deposits to be made pursuant to (a) above as of one month prior to the date on which the installment of taxes and assessments for the current period becomes due, shall be sufficient to pay in full the total installment of taxes and assessments estimated by Mortgagee to become due and payable with respect to the Property for the current period, and an amount of money, when together with the aggregate deposits to be made pursuant to (b) above as of one month prior to the date on which the next annual insurance premium becomes due, shall be sufficient to pay in full the total annual insurance premium estimated by Mortgagee to next become due and payable with respect to the Property. Such deposits are to be held without any allowance of interest and are to be used for the payment of taxes and assessments (general and special) and insurance premiums, respectively, on the Property next due and payable when they become due. Mortgagee may, at its option, itself pay such taxes, assessments and insurance premiums when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for payment of such taxes, assessments and insurance premiums. If the funds so deposited are insufficient to pay any such taxes, assessments (general or special) and premiums for any installment when the same shall become due and payable, Mortgagor shall within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such taxes, assessments (general and special) and premiums then due. If the funds so deposited exceed the amount required to pay such taxes, assessments (general and special) and premiums for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee.

#### 5. Mortgagee's Interest In and Use of Deposits.

If an "Event of Default" (as hereinafter defined) occurs pursuant to any of the provisions contained in this Mortgage or the Note secured hereby, Mortgagee may at its option, without

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being required so to do, and upon written notice to Mortgagor, apply any monies at the time on deposit pursuant to Paragraph 4 hereof in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits under Paragraph 4 hereof shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, so long as no Event of Default has occurred, shall have requested Mortgagee in writing to make application of such funds to the payment of which they were deposited, accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of Mortgagor, any appropriate taxing authority or insurer.

## 6. Insurance.

(a) Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property owned by Mortgagor now or hereafter situated on the Property insured against loss or damage by fire and such other hazards as required under the Loan Agreement.

(b) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgage clause acceptable to Mortgagee. Mortgagor immediately shall notify Mortgagee whenever any such separate insurance is taken out and promptly shall deliver to Mortgagee the policy or policies of such insurance.

(c) In the event of loss Mortgagor shall give immediate notice to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for any such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly. Any insurance proceeds so received by Mortgagee, or any part thereof, shall be applied by Mortgagee, after the payment of all of Mortgagee's expenses, including costs and reasonable attorneys' fees, to the restoration or repair of the property damaged as provided in Paragraph 22 hereof. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

## 7. Condemnation.

If all or any part of the Property are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its expenses, including costs and attorneys'

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fees, to the restoration or repair of the property damaged as provided in Paragraph 22 hereof, if in the reasonable judgment of Mortgagee the property can be restored or repaired to the condition existing immediately prior to the taking. If in the reasonable judgment of Mortgagee the said property cannot be restored or repaired to the condition existing immediately prior to the taking, then such award or monies received after the payment of expenses of Mortgagee as aforesaid shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable and, at any time from and after the taking, upon thirty (30) days prior written notice to Mortgagor, Mortgagee may declare the whole of the indebtedness hereby secured to be due and payable. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the property and expenses of Mortgagee as aforesaid, then such excess monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. Any application to the unpaid principal balance of the Note pursuant to this Paragraph 7 shall not extend the due date or reduce the amount of the principal and interest installments required to be paid under the Note.

## 8. Stamp Tax.

If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage or the issuance of the Note hereby secured, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may extend by reason of the imposition of any tax on the issuance of the Note secured hereby. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

## 9. Observance of Lease Assignment.

As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained in the Loan Documents, Mortgagor, as lessor, has assigned to Mortgagee the entire lessor's right, title and interest in and to all leases and subleases, which now or hereafter affect all or any portion of the Property and in and to all rents, issues, income and profits of or from all or any portion of the Property pursuant to the Assignment of Leases. All of the provisions of the Assignment of Leases are incorporated herein as if fully set forth at length in the text of this Mortgage.

## 10. Effect of Extensions of Time.

If the payment of said indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the indebtedness be released, all persons now or at any time hereafter liable therefor, or interested in the Property or having an interest in Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.



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## 11. Effect of Changes In Laws Regarding Taxation.

In the event of the enactment after this date of any law of the state in which the Property are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Property, or the manner of collection of taxes, so as to adversely affect this Mortgage or the indebtedness secured hereby or the holders thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall indemnify and hold Mortgagee harmless from and against any and all losses and costs resulting from such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee.

## 12. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee.

If an Event of Default has occurred and is continuing, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof or redeem from any tax sale or forfeiture affecting the Property or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Property. If an Event of Default has occurred, Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of any uncompleted buildings or other improvements now or at any time hereafter on the Property, and rent, operate and manage the Property and such buildings and improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Property and such buildings and improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies disbursed by Mortgagee in regard to any tax referred to in Paragraph 8 or to protect the Property or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become due and payable within ten (10) days after written notice from Mortgagee and with interest thereon at the Default Rate (as defined in the Note) after the passage of such ten (10) day period. In addition to the foregoing, any costs, expenses and fees reasonably incurred, including reasonable attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting and enforcing any of Mortgagee's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Note, this Mortgage, the Property or any guarantor or co-maker of the Note or this Mortgage, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable within ten (10) days after written notice from Mortgagee and with interest thereon at the Default Rate after the passage of such ten (10) day period. The interest accruing under this Paragraph 12 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Inaction of Mortgagee shall never be

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considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or disbursed by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the loan evidenced by the Note, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Property or any part thereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

### 13. Mortgagee's Reliance on Tax Bills and Claims for Liens.

Mortgagee in making any payment is hereby authorized: (a) relating to taxes and assessments, to do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, to do so without inquiry as to the validity or amount of any claim for lien which may be asserted, provided that if no Event of Default then exists hereunder Mortgagee shall give to Mortgagor ten (10) days prior written notice thereof, and shall not pay such claim if Mortgagor is contesting such claim as provided in the Loan Agreement.

### 14. Acceleration of Indebtedness in Event of Default.

Each of the following, after the passage of all applicable grace periods or notice and cure periods, shall constitute an "Event of Default" for purposes of this Mortgage:

(a) Mortgagor fails to pay (i) within ten (10) days of the date when due, any installment of principal or interest payable pursuant to the Note, or (ii) within ten (10) days after written notice, any other amount payable pursuant to the Note, this Mortgage, the Loan Agreement or any of the other Loan Documents;

(b) Failure by Mortgagor to promptly perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under this Mortgage, the Loan Agreement, the Note or any other Loan Document, within thirty (30) days after written notice; provided, however, that if such condition, covenant, term, agreement or provision is such that it cannot with the exercise of reasonable diligence be performed within said thirty (30) days and Mortgagor diligently undertakes said performance within said thirty (30) day period, and thereafter diligently pursues such performance, the time to so perform shall be extended for an additional period, not to exceed sixty (60) days total, to effect such performance, unless the default is the result of Mortgagor's willful misconduct or negligence or the continued operation or safety of the Property, or the priority, validity or enforceability of the lien created by this Mortgage, the Loan Agreement or any other Loan Document or the value of the Property is materially impaired, threatened or jeopardized;

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(c) The existence of any material inaccuracy or untruth in any representation, covenant, or warranty contained in this Mortgage, the Loan Agreement or any of the other Loan Documents, or in any statement or certification as to facts delivered to Mortgagee by Mortgagor, any co-maker or guarantor of the Note, or any applicant for the loan evidenced by the Note;

(d) At any time, Mortgagor or any Guarantor or co-maker of the Note is the subject of an Insolvency Proceeding; provided, however, if such Insolvency Proceeding is an "Involuntary" proceeding under 11 U.S.C. § 303, then provided that no other Event of Default has occurred, Borrower shall have thirty (30) days to obtain dismissal of such involuntary bankruptcy filing;

(e) Any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of Paragraph 26 of this Mortgage;

(f) The occurrence of an "Event of Default" under: (i) the Note, (ii) the Loan Agreement, (iii) this Mortgage, or (iv) any other document or instrument evidencing or securing the Note or delivered to induce Mortgagee to disburse the proceeds thereof (the documents described in sections (i) through (iv) above being hereinafter collectively referred to as "Loan Documents");

(g) The death or declaration of legal incompetence of Guarantor unless such person is replaced by a replacement guarantor reasonably acceptable to Lender within ninety (90) days of such death or declaration with a guarantor that has the real estate experience and financial standing comparable to Guarantor as of Loan Opening Date, and such replacement guarantor executes a replacement guaranty and replacement environmental indemnity agreement in form and substance similar to the Guaranty and Environmental Indemnity Agreement;

(h) Mortgagor enters into any secondary, additional or mezzanine financing agreements or arrangements of any kind whatsoever secured by the Property (including without limitation, any financing secured, in whole or in part by all or any part of or interest in the Property or Mortgage) without the prior consent of Mortgagee;

(i) The filing of any tax lien against the Property that is not released within thirty (30) days of such filing;

(j) The Property is subjected to actual material physical waste, or all or any material part thereof is removed, demolished, or altered without the prior written consent of Mortgagee; provided, however, Mortgagor shall have thirty (30) days after notice of such event to cure such physical waste, removal, demolition or alteration;

(k) Mortgagor or any endorser or guarantor of the Note (if a corporation) is liquidated or dissolved or its charter expires or is revoked, or Mortgagor or such endorser or guarantor (if a partnership or business association) is dissolved or partitioned, provided, however, that if Mortgagor or such endorser or guarantor is involuntarily dissolved, such involuntarily dissolved party shall have thirty (30) days to bring it back to good standing;

(l) The filing by any person or entity of any claim in any legal or equitable proceeding challenging the first priority lien of this Mortgage, subject only to the Permitted

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Encumbrances, and such filing shall remain undismissed or undischarged for a period of thirty (30) days from the filing thereof; or

(m) Without the prior written consent of Mortgagee, Mortgagor enters into, or terminates or cancels any agreement pertaining to management of the Property, in violation of the Assignment and Subordination of Management Agreement.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable as provided in this Paragraph 14 to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate. If while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Property, as set forth in Paragraph 22 hereof, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

## 15. Foreclosure; Expense of Litigation.

Upon an Event of Default, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. It is further agreed that if an Event of Default occurs as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part of this Mortgage, the lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness without exhausting the power to foreclose and to sell the Property pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale, or to

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take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

In any suit to foreclose or partially foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

16. **Application of Proceeds of Foreclosure Sale.**

The proceeds of any foreclosure (or partial foreclosure) sale of the Property shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraphs 12 and 15 hereof; second, all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; fourth, satisfaction of claims in order of priority adjudicated in the judgment of foreclosure or order confirming the sale; and fifth, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

17. **Appointment of Receiver.**

Upon, or at any time after the filing of a complaint to foreclose (or partially foreclose) this Mortgage, the court in which such complaint is filed may appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of, and the right to sell, the Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and

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operation of the Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his, her or its hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

## 18. Mortgagee's Right of Possession After an Event of Default.

After an Event of Default, Mortgagor shall forthwith and upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of the Property or any part thereof personally, or by its agents or attorneys. Mortgagee's rights and remedies under this Paragraph 18 shall be effective whether before or after the whole principal sum secured hereby is declared to be immediately due and payable hereunder, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder. In the event Mortgagee is entitled to take possession of the Property, Mortgagee in its discretion may, with applicable process of law, enter upon and take and maintain possession of all or any part of said Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property relating thereto, and may exclude Mortgagor or its employees, agents or servants, wholly therefrom. In such case Mortgagee, under the powers herein granted, may hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, actions, in forcible detainer and actions in distress for rent, Mortgagee shall have full power:

(a) To cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;

(b) To elect to disaffirm any lease or sublease which is then subordinate (and not otherwise subject to a subordination, non-disturbance and attornment agreement that has not been rejected by Tenant) to the lien hereof;

(c) To extend or modify any then existing leases and to enter new leases, which extensions, modifications and 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 indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) To make any repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property as to it may seem judicious;

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(e) To insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and

(f) To receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease or any obligation, duty or liability of Mortgagor. To the extent provided by law, Mortgagor shall and does hereby agree to protect, indemnify, defend and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease or in connection with any obligation, duty or liability of Mortgagor, except for such claims and demands as result directly from the negligent or willful actions of Mortgagee. Should Mortgagee incur any such liability, loss or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable on demand.

19. **Application of Income Received by Mortgagee.**

Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) To the payment of the operating expenses of the Property, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents), if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases, established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) To the payment of taxes and special assessments now due or which may hereafter become due on the Property;

(c) To the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Property, including the cost from time to time of installing or replacing refrigeration and gas or electric stoves therein, and of placing the Property in such condition as will, in the judgment of Mortgagee, make it readily rentable; and

(d) To the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

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## 20. Rights Cumulative.

Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or any other document given to secure the Note or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

## 21. Mortgagee's Right of Inspection.

Mortgagee and/or its representative shall have the right to inspect the Property at all reasonable times on reasonable prior notice, and access thereto shall be permitted for that purpose, subject to the rights of tenants.

## 22. Disbursement of Insurance or Eminent Domain Proceeds.

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a material portion of the Property, whether by fire or other casualty or by a taking under the power of eminent domain, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, which approval shall not be unreasonably withheld.

(b) Prior to the payment or application of insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Property as provided in Paragraphs 6 and 7 above, Mortgagee shall be entitled to evidence of the following:

(i) That no Unmatured Event of Default or Event of Default exists which has not been, or will not be, cured to the reasonable satisfaction of Mortgagee, in Mortgagee's sole and absolute judgment;

(ii) That Mortgagor, through the collection of rents from Tenants or rent loss/business interruption insurance, shall maintain the Debt Service Coverage Ratio required under the Loan Agreement;

(iii) That Mortgagee shall be given reasonably satisfactory proof that either (A) such improvements have been fully restored, as reasonably determined by Mortgagee, or (B) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Property, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage;



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(iv) That in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore or rebuild the said improvements, Mortgagor or Tenant(s) shall provide evidence of such funds equaling such deficiency, which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Property; and

(v) That prior to the disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 22 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of Mortgagor's architect, certifying the extent of the repair and restoration completed to the date thereof, and such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Property, and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Property, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Property as provided in Paragraphs 6 and 7 above there shall have been delivered to Mortgagee the following:

(i) A waiver of subrogation from any insurer who claims that no liability exists as to Mortgagor or the then owner or other insured under the policy of insurance in question; and

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are reasonably required by Mortgagee.

(d) In the event Mortgagor shall fail to commence to restore, repair or rebuild the improvements upon the Property within a reasonable time subject to force majeure, then Mortgagee, at its option, and upon not less than thirty (30) days written notice to Mortgagor, may commence to restore, repair or rebuild the said improvements for or on behalf of Mortgagor, and for such purpose, may perform all necessary acts to accomplish such restoration, repair or rebuilding. In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Property, such excess shall be applied on account of the unpaid principal balance of the Note irrespective of whether such balance is then due and payable.

(e) In the event Mortgagor commences the repair or rebuilding of the improvements located on the Property, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 22; or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Property within a reasonable time subject to force majeure, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above; then Mortgagee may, at its option, accelerate the indebtedness evidenced by the Note and apply all or

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any part of the insurance proceeds or condemnation award against the indebtedness secured hereby.

## 23. Release Upon Payment and Discharge of Mortgagor's Obligations.

Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of reasonable expenses incurred by Mortgagee in connection with the execution of such release. Mortgagee shall also issue partial releases of the lien of this Mortgage in accordance with and subject to the terms and conditions contained in the Loan Agreement. Such partial release shall not impair in any manner the validity or priority of this Mortgage on the portion of the Property or the security remaining, nor release the personal liability of any person, persons or entity obligated to pay any indebtedness secured hereby, for the full amount of the indebtedness remaining unpaid.

## 24. Notices.

Any notice, request, demand, statement, authorization, approval, consent or acceptance made hereunder shall be in writing and shall be (a) hand delivered, or (b) sent by overnight delivery via a reputable overnight courier service, or (c) sent by registered or certified mail, postage prepaid with return receipt requested, or (d) sent by facsimile (with a confirmatory duplicate copy sent by a reputable overnight courier service for overnight delivery) and shall be deemed given (i) upon delivery, if delivered in person, or (ii) one (1) business day after being deposited with a reputable overnight courier service for overnight delivery, or (iii) three (3) business days after being postmarked if sent by registered or certified mail, return receipt requested, or (iv) upon receipt if sent by facsimile, in each case addressed as follows:

To Mortgagee: First Midwest Bank  
770 West Dundee Road  
Arlington Heights, Illinois 60004  
Attention: Rob Treleven  
Telephone: (847) 870-2512  
Facsimile: (847) 870-2588

With a copy to: Meltzer, Purtill & Stelle LLC  
300 South Wacker Drive, Suite 2300  
Chicago, Illinois 60606  
Attention: Allen C. Balk  
Telephone: (312) 461-4334  
Facsimile: (312) 987-9854

To Mortgagor: Gold Coast City Apartments LLC  
c/o City Club Apartments LLC  
31700 Middlebelt Road, Suite 140  
Farmington Hills, Michigan 48334  
Attention: Jonathan Holtzman  
Telephone: (248) 851-9600  
Facsimile: (248) 851-6161

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With a copy to:

Honigman Miller Schwartz and Cohn LLP  
 39400 Woodward Avenue, Suite 101  
 Bloomfield Hills, Michigan 48304  
 Attention: Jonathan R. Borenstein  
 Telephone: (248) 566-8412  
 Facsimile: (248) 566-8413

Each party may designate a change of address or facsimile number by notice to the other party sent pursuant to this Paragraph 24, given at least fifteen (15) days before such change of address is to become effective.

25. **Waiver of Rights.**

Mortgagor hereby covenants and agrees that to the extent permitted by law, Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws, except with respect to Mortgagee's breach of the Loan Documents or willful misconduct. To the extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety.

26. **Transfer of Property; Further Encumbrance.**

In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor, Guarantor, Mortgagor's members and any co-maker of the Note (if applicable), found it acceptable and relied and continues to rely upon same as the means of repayment of the Note. Mortgagee also evaluated the background and experience of Mortgagor, Mortgagor's members, Guarantor, and any co-maker of the Note (if applicable) in owning and operating property such as the Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Property which is Mortgagee's security for the Note. Mortgagor, Mortgagor's members, Guarantor, and co-maker of the Note (if applicable) are well-experienced in borrowing money and owning and operating property such as the Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary, mezzanine or junior financing placed upon the Property, other than as contemplated by the Loan Agreement, (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Property should Mortgagee come into possession thereof with the intention of selling same; and (d) would impair

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Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Property.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment and of value of the Property; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and collect assumption fees; and (iv) keeping the Property or any interest in the Property free of subordinate financing liens, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one, and that, any sale, conveyance, assignment, further encumbrance or other transfer of title to the Property, or any interest in the Property, including without limitation, the entering into of an installment agreement for the sale of the Property, the placement or granting of liens on all or any part of the Property or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create a lien on the personal property utilized in the operation of the Property, or the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, without Mortgagee's prior written consent shall be an Event of Default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events (unless such events are Permitted Transfers), shall be deemed to be an unpermitted transfer of title to the Property and therefore an Event of Default hereunder:

- (a) Other than residential Leases entered into in the ordinary course of Mortgagor's business or commercial leases permitted under the Loan Agreement, any sale, conveyance, assignment or other transfer of, or the grant of a possessory interest (other than residential Leases entered into in the ordinary course of Mortgagor's business or commercial leases permitted under the Loan Agreement) or security interest in, all or any part of the title to the Ground Lease or Leasehold Estate; or
- (b) Any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any interest in Mortgagor, its Members or membership interest in the Manager; or
- (c) Any transfer which results in a breach under the terms of the Loan Agreement; or
- (d) Any interest in Mortgagor or its Members shall be transferred or assigned, or any security interest or other lien or encumbrance shall be created on any interest, directly or indirectly in Mortgagor, or Guarantor fails to control Mortgagor, or on the proceeds of or distribution rights with respect to any such membership interest; or
- (e) Any ownership interest in any entity that directly or indirectly owns a membership interest in Mortgagor shall be transferred or assigned, or any security interest or other lien or encumbrance shall be created on any ownership interest in any such entity or on the proceeds of or distribution rights with respect to any ownership interest in any such entity.

Any consent by Mortgagee, or any waiver by Mortgagee of an Event of Default under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of

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Mortgagee upon a subsequent Event of Default under this Paragraph 26. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 26 (each, "Prohibited Transfer") shall be void and of no force or effect.

## 27. Single Purpose Entity

(a) Mortgagor covenants and agrees that it has not and shall not:

(i) Engage in any business or activity other than the acquisition, ownership, operation and maintenance of the Property, and activities incidental thereto;

(ii) Acquire or own any material asset other than (i) the Property, and (ii) such incidental personal property as may be necessary for the operation of the Property;

(iii) Merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure (except as permitted under Section 9.25 of the Loan Agreement), without in each case Mortgagee's consent;

(iv) Fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Mortgagee, amend, modify, terminate or fail to comply with the provisions of Mortgagor's Articles of Organization or Formation, Operating Agreement, Limited Liability Company Agreement or similar organizational documents, as the case may be (except as permitted under Section 9.25 of the Loan Agreement);

(v) Own any subsidiary or make any investment in or acquire the obligations or securities of any other person or entity without the consent of Mortgagee;

(vi) Commingle its assets with the assets of any of its partner(s), members, shareholders, affiliates, or of any other person or entity or transfer any assets to any such person or entity other than distributions on account of equity interests in Mortgagor permitted hereunder and properly accounted for;

(vii) Incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Indebtedness, except unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Property in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due and provided in any event the outstanding principal balance of such debt shall not exceed at any one time one percent (1%) of the outstanding Indebtedness;

(viii) Allow any person or entity to pay its debts and liabilities or fail to pay its debts and liabilities solely from its own assets;

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(ix) Fail to maintain its records, books of account and bank accounts separate and apart from those of the shareholders, partners, members, principals and affiliates of Mortgagor, the affiliates of a shareholder, partner or member of Mortgagor, and any other person or entity or fail to prepare and maintain its own financial statements as required under Section 15.18(1) the Loan Agreement;

(x) Enter into any contract or agreement with any shareholder, partner, member, principal or affiliate of Mortgagor, any guarantor of all or a portion of the Indebtedness or any shareholder, partner, member, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any shareholder, partner, member, principal or affiliate of Mortgagor, or any shareholder, partner, member, principal or affiliate thereof;

(xi) Seek dissolution or winding up in whole, or in part;

(xii) Fail to correct any known misunderstandings regarding the separate identity of Mortgagor;

(xiii) Guarantee or become obligated for the debts of any other entity or person or hold itself out to be responsible or pledge its assets or credit-worthiness for the debts of another person or entity or allow any person or entity to hold itself out to be responsible or pledge its assets or credit-worthiness for the debts of Mortgagor;

(xiv) Make any loans or advances to any third party, including any shareholder, partner, member, principal or affiliate of Mortgagor, or any shareholder, partner, member, principal or affiliate thereof;

(xv) Fail to file its own tax returns or to use separate contracts, purchase orders, stationary, invoices and checks;

(xvi) Fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the entity with which such other party is transacting business, or (ii) to suggest that Mortgagor is responsible for the debts of any third party (including any shareholder, partner, member, principal or affiliate of Mortgagor, or any shareholder, partner, member, principal or affiliate thereof);

(xvii) Fail to allocate fairly and reasonably among Mortgagor and any third party, any overhead for common employees, shared office space or other overhead and administrative expenses;

(xviii) Allow any person or entity to pay the salaries of its own employees or fail to maintain a sufficient number of employees for its contemplated business operations;

(xix) Fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its

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contemplated business operations; provided, however, that the foregoing shall not require any direct or indirect members of Mortgagor to make any additional capital contributions to Mortgagor;

(xx) File a voluntary petition or otherwise initiate proceedings to have Mortgagor or any general partner or managing member adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against Mortgagor or any general partner or managing member, or file a petition seeking or consenting to reorganization or relief of Mortgagor or any general partner or managing member as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to Mortgagor or any general partner or managing member; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of Mortgagor or any general partner or managing member or of all or any substantial part of the properties and assets of Mortgagor or any general partner or managing member, or make any general assignment for the benefit of creditors of Mortgagor or any general partner or managing member, or admit in writing the inability of Mortgagor or any general partner or managing member to pay its debts generally as they become due or declare or effect a moratorium on Mortgagor or any general partner or managing member debt or take any action in furtherance of any such action;

(xxi) Share any common logo with or hold itself out as or be considered as a department or division of (i) any shareholder, partner, principal, member or affiliate of Mortgagor, (ii) any affiliate of a shareholder, partner, principal, member or affiliate of Mortgagor, or (iii) any other person or entity or allow any person or entity to identify Mortgagor as a department or division of that person or entity; or

(xxii) Conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of Mortgagor or the creditors of any other person or entity.

## 28. Expenses Relating to Note and Mortgage.

Mortgagor will pay all reasonable expenses, charges, costs and fees incurred by Mortgagee relating to the Loan secured by this Mortgage or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing, enforcement and closing of the Note, this Mortgage and the other Loan Documents, all filing, registration or recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Mortgagor recognizes that, during the term of the Mortgage, Mortgagee:

(a) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements,

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insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Property are involved directly or indirectly;

(b) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(c) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Property, which event may or may not actually occur;

(d) May make preparations for and commence other private or public actions during the continuance of an Event of Default hereunder, which other actions may or may not be actually commenced;

(e) May enter into negotiations with Mortgagor, any member, guarantor or co-maker of the Note, or any of their respective agents, employees or attorneys, in connection with the existence or curing of any Event of Default hereunder, the sale of the Property, the assumption of liability for any of the indebtedness represented by the Note or the transfer of the Property in lieu of foreclosure; or

(f) May enter into negotiations with Mortgagor, any member of Mortgagor or guarantor or co-maker of the Note, or any of their respective agents, employees or attorneys, pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor, any member of Mortgagor, or any guarantor or co-maker of the Note, which approval is required by the terms of this Mortgage.

All expenses, charges, costs and fees described in this Paragraph 28 shall be so much additional indebtedness secured hereby. If an Event of Default has occurred and is continuing, such amounts shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand. If no Event of Default has occurred and is continuing, such amounts shall be paid within five (5) business days after demand.

## 29. **Business Purpose.**

Mortgagor covenants that the proceeds of the loan evidenced by the Note and secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4 (1994), as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said paragraph.

## 30. **Financial Statements.**

Mortgagor shall cause to be delivered to Mortgagee such financial statements and other financial reports as required pursuant to the Loan Agreement.



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## 31. Statement of Indebtedness.

Mortgagor, within seven (7) days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that to its current, actual, knowledge, no offsets or defenses exist against the Mortgage debt or, if such offsets or defenses are alleged to exist, the nature thereof.

## 32. Further Instruments.

Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents, so long as such actions do not increase Mortgagor's liability under this Mortgage or under the Loan Documents.

## 33. Indemnity.

Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability, except with respect to Mortgagee's breach of the Loan Documents or willful misconduct. Except to the extent caused by Mortgagee's gross negligence or willful misconduct, Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: the making of the loan evidenced by the Note and secured by this Mortgage; any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; the offer for sale or sale of all or any portion of the Property; and/or the ownership, leasing, use, operation or maintenance of the Property. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

## 34. Waiver of Right of Redemption.

Mortgagor hereby releases and waives any and all rights to retain possession of the Property after the occurrence of an Event of Default hereunder and any and all rights of redemption from sale under any order or decree of foreclosure to the extent waiveable under applicable law, pursuant to rights therein granted, on behalf of Mortgagor and each and every person acquiring any interest in, or title to, the Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of 735 ILCS 5/15-1601 of the Illinois Compiled Statutes or other applicable law or replacement statutes.

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## 35. Miscellaneous.

(a) Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its successors and permitted assigns, any subsequent owner or owners of the Property who acquire the Property subject to this Mortgage and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Invalidity of Provisions. In the event one or more of the provisions contained in this Mortgage or the Note or in any security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage and the Note it secures are to be construed and governed by the substantive laws of the State of Illinois.

(c) Municipal and Zoning Requirements. Mortgagor shall not by act or omission permit any building or other improvement on real estate which are not subject to the lien of this Mortgage to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Property or any interest therein to be so used. Similarly, no building or other improvement on the Property shall rely on any real estate not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Property as a single zoning lot separate and apart from all other real estate. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) Rights of Tenants. Mortgagee 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 Property having an interest in the Property prior to that of Mortgagee. The failure to join any such tenant or tenants of the 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 indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) Option of Mortgagee to Subordinate. At the option of Mortgagee, in its sole and absolute discretion, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Property upon the execution by

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Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county wherein the Property are situated, of a unilateral declaration to that effect.

(f) Use of Proceeds. Mortgagor warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

(g) Mortgagee in Possession. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Property by Mortgagee pursuant to this Mortgage.

(h) Relationship of Mortgagee and Mortgagor. Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any beneficiary, lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a Mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

(i) Time of the Essence. Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage.

(j) No Merger. It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(k) Value for Purposes of Insurance. Upon request by Mortgagee, Mortgagor agrees to furnish evidence of replacement value, without cost to Mortgagee, of the type which is regularly and ordinarily made for insurance companies, with respect to the buildings and improvements on the Property.

(l) Late Charges. All late charges set forth in the Note shall be secured hereby as indebtedness, as that term is defined in Paragraph 2 hereof.

## 36. Subordination of Commercial Broker's and Property Manager's Lien.

Any commercial broker or property management agreement for the Property entered into hereafter by Mortgagor with a property manager, shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have pursuant to 770 ILCS 60.01 (1994), as amended, of the Illinois Compiled Statutes. In addition, Mortgagor shall cause the property manager to enter into a Subordination of Management Agreement with Mortgagee, in recordable form, whereby the property manager subordinates present and future

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lien rights and those of any party claiming by, through or under the property manager, to the lien of this Mortgage.

37. **Security Agreement and Financing Statement.**

(a) Mortgagor represents and warrants that: (i) Mortgagor is the record owner of the Property; (ii) Mortgagor's state of organization as a limited liability company is the State of Delaware; (iii) Mortgagor's exact legal name is as set forth herein; and (iv) Mortgagor's organizational identification number in the State of Delaware is 5477924 and in the State of Illinois is 04647955, and Mortgagor is qualified to conduct its business in the State of Illinois.

(b) Mortgagor and Mortgagee agree that: (i) this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to all sums on deposit with Mortgagee pursuant hereto ("Deposits") and with respect to any property included in the definition herein of the word "Property" which property may not be deemed to form a part of the Real Estate or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the Code), and all replacements of such property, substitutions for such property, additions to such property, books and records relating to the Property and operation thereof and the proceeds thereof and the "supporting obligations" (as defined in the Code) (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as "Collateral"); (ii) a security interest in and to the Collateral and the Deposits is hereby granted to Mortgagee; and (iii) the Deposits and all of Mortgagor's right, title and interest therein are hereby collaterally assigned to Mortgagee; all to secure payment of the indebtedness hereby secured and to secure performance by Mortgagor of the terms, covenants and provisions hereof.

(c) Upon an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Property. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If Mortgagee so elects, the Property and the Collateral may be

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sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

(d) Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Property any of the Collateral except that so long as no Event of Default has occurred, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Property, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby.

(e) Mortgagor shall, from time to time, upon written request of Mortgagee and at Mortgagor's sole cost, deliver to Mortgagee: (i) such further security documents and assurances as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. Mortgagor represents and covenants that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereof, unless Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others, except as permitted hereunder and/or as referenced in the Loan Agreement. If the Collateral is sold in connection with a sale of the Property, Mortgagor shall notify Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser specifically agree to assume Mortgagor's obligations as to the security interests herein granted and to execute whatever agreements and filings are deemed necessary by Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral and the Deposits.

(f) This Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth herein. This Mortgage is to be filed for recording with the Recorder of Deeds of the county where the Property is located. Mortgagor is the record owner of the Property and has rights in and the power to transfer the Collateral.

(g) Mortgagor hereby irrevocably authorizes Mortgagee at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial

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Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the date of this Mortgage.

(h) Mortgagor agrees that:

(i) Where Collateral is in possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;

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

(iii) Until the indebtedness secured hereby is paid in full, Mortgagor will not change the state where it is located or change its limited liability company name without giving Mortgagee at least thirty (30) days prior written notice in each instance.

## 38. Compliance with Environmental Laws.

Mortgagor acknowledges that concurrently herewith, Mortgagor has executed and delivered to Mortgagee an Environmental Indemnity Agreement ("Indemnity Agreement") pursuant to which Mortgagor and Guarantor have indemnified Mortgagee for certain environmental matters concerning the Property, as more particularly described therein. The provisions of the Indemnity Agreement are herein incorporated and this Mortgage shall secure the obligations of Mortgagor thereunder. Mortgagor agrees to abide by all of the provisions of the Indemnity Agreement. An Event of Default under the Indemnity Agreement shall constitute an Event of Default hereunder.

## 39. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law 735 ILCS 5/15-1101 *et seq.* (1994), as amended (herein called "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under any Paragraph of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Paragraphs 8 or 12 of

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this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

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

#### 40. Leasehold Mortgage Provisions.

(a) Mortgagor hereby covenants, warrants and represents as follows:

(i) The Ground Lease is in full force and effect, unmodified by any writing or otherwise;

(ii) All rent, additional rent and/or other charges reserved in or payable under the Ground Lease have been paid to the extent that they are payable as of the date hereof;

(iii) Mortgagor is in possession of the Leasehold Estate and Mortgagor's right to continue such possession is not being disputed;

(iv) Mortgagor has not received any written notice declaring that it is in default under any of the terms of the Ground Lease;

(v) Mortgagor has delivered to Mortgagee a true, accurate and complete copy of the Ground Lease;

(vi) Mortgagor promptly shall perform and observe, in all material respects, all of the terms, covenants and conditions required to be performed and observed by the tenant under the Ground Lease, the breach of which could permit Landlord to terminate the Ground Lease (including, but without limiting the generality of the foregoing, any payment obligations), and shall do all things necessary to preserve and to keep unimpaired its rights under the Ground Lease;

(vii) Mortgagor shall not cancel or terminate the Ground Lease or modify or amend, in any material respect, any provisions thereof or surrender the Ground Lease or possession of the Leasehold Estate or agree to any such cancellation, termination, amendment, modification or surrender or waive, excuse or discharge any of the obligations of Landlord under the Ground Lease which would affect any of Mortgagee's rights under this Mortgage, the Note or any of the Loan Documents without Mortgagee's prior written consent in each instance;

(viii) Mortgagor shall deliver to Mortgagee copies of all notices of default by any party under the Ground Lease, all notices from the Landlord under the Ground Lease of its intention to terminate the Ground Lease or to reenter and take possession of the real property comprising the Leasehold Estate, promptly upon delivery

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or receipt of such notice, as the case may be, and copies of all such information as Mortgagee shall request;

(ix) Mortgagor shall not consent to the subordination of the Ground Lease (or the Leasehold Estate) to any mortgage of the fee interest in the Property; and

(x) Any event of default under the Ground Lease (after the passage of all applicable notice and cure periods under the Ground Lease) that is continuing shall constitute an Event of Default hereunder until Mortgagor has received notice from Landlord under the Ground Lease that such Event of Default has been cured.

(b) In the event of default by Mortgagor in the performance in any material respect of any of its obligations under the Ground Lease that is continuing, Mortgagee may, at its option, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Mortgagor thereunder in the name of and on behalf of Mortgagor. Mortgagor shall, on demand, reimburse Mortgagee for all advances made and expenses reasonably incurred by Mortgagee in curing any such default (including, without limiting the generality of the foregoing, reasonable attorneys' fees and disbursements).

(c) Mortgagor shall give Mortgagee notice of its intention to exercise each and every option, if any, to extend the term of the Ground Lease, at least thirty (30) days prior to the expiration of the time to exercise such option under the terms thereof. In the event of a default by Mortgagor that is continuing, Mortgagor hereby appoints Mortgagee its attorney-in-fact to execute and deliver all such instruments and documents in the name, and on behalf of, Mortgagor. This power, being coupled with an interest, shall be irrevocable as long as any indebtedness remains unpaid or any obligations remain to be performed.

(d) This Mortgage shall not constitute an assignment of the Ground Lease within the meaning of any provision thereof prohibiting its assignment and Mortgagee shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage. Mortgagee shall be liable for the obligations of the tenant arising under the Ground Lease for only that period of time which Mortgagee is in actual possession of the Leasehold Estate or has acquired, by foreclosure or otherwise, and is holding all of Mortgagor's right, title and interest therein.

(e) It is hereby agreed that the Landlord's fee title and the Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either the Landlord under the Ground Lease, Mortgagor or a third party, whether by purchase or otherwise.

(f) If the Ground Lease is canceled or terminated and if Mortgagee or its nominee shall acquire an interest in any new lease of any portion of the Property, Mortgagor shall have no right, title or interest in, to or under such new lease or the leasehold estate created thereby.

#### 41. Collateral Protection Act.

Pursuant to the terms of the Illinois Collateral Protection Act (815 ILCS 180/1 *et seq.*, as amended), Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with



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evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property, which insurance may, but need not, protect the interest of Mortgagor in the Property. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required hereunder. If Mortgagee purchases insurance for the Property, Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total obligation secured by this Mortgage. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.

42. **Maximum Indebtedness.**

Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to three hundred percent (300%) of the Loan; provided however, in no event shall Mortgagee be obligated to advance funds in excess of the face amount of the Note.

43. **CONSENT TO JURISDICTION.**

**TO INDUCE MORTGAGEE TO ACCEPT THE NOTE, MORTGAGOR AND MORTGAGEE IRREVOCABLY AGREE THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS. MORTGAGOR AND MORTGAGEE HEREBY CONSENT AND SUBMIT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS, WAIVE PERSONAL SERVICE OF PROCESS, AND AGREE THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO THE PARTIES AT THE ADDRESSES STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.**

44. **WAIVER OF JURY TRIAL.**

**MORTGAGOR AND MORTGAGEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AND MORTGAGEE AGREE THAT THEY WILL NOT ASSERT ANY CLAIM AGAINST**

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**EACH OTHER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.**

[Signatures on the following page]

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**IN WITNESS WHEREOF**, Mortgagor has caused this Mortgage to be executed as of the day and year first above written.

**MORTGAGOR:**

**GOLD COAST CITY APARTMENTS LLC**, a Delaware limited liability company

By: CCA #3 LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_

Name: Jonathan Holtzman

Its: Authorized Signatory

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STATE OF Michigan )  
 ) SS.  
COUNTY OF Oakland )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Jonathan Holtzman, the Authorized Signatory of CCA #3 LLC, the Managing Member of GOLD COAST CITY APARTMENTS LLC, a Delaware limited liability company ("Mortgagor"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Authorized Signatory, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, as the free and voluntary act of said Mortgagor, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 23<sup>rd</sup> day of May, 2016.

Kathy L. Souder  
Notary Public

(SEAL)

KATHY L. SOUDER  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF OAKLAND  
MY COMMISSION EXPIRES Apr 5, 2017  
ACTING IN COUNTY OF Oakland

My Commission Expires: \_\_\_\_\_

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## EXHIBIT A

### LEGAL DESCRIPTION

LAND SITUATED IN THE CITY OF CHICAGO IN THE COUNTY OF COOK IN THE STATE OF ILLINOIS:

LOT 34 (EXCEPT THE WEST 15 1/2 FEET) AND ALL OF LOTS 35 AND 36 IN LAKE SHORE DRIVE ADDITION TO CHICAGO, A SUBDIVISION OF PART OF BLOCKS 14 AND 20 IN CANAL TRUSTEE'S SUBDIVISION OF SOUTH FRACTIONAL 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN NUMBER: 17-03-221-010-0000

ADDRESS 360 NORTH DEWITT PLACE, CHICAGO, ILLINOIS 60611-5781

Property of Cook County Clerk's Office

When Recorded Return to:  
Title Source, Inc. -  
Commercial Team  
662 Woodward Avenue  
Detroit, MI 48226

TSI#: 61343684mV