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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 1620244061 Fee: \$138.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 07/20/2016 02:20 PM Pg: 1 of 51

Report Mortgage Fraud  
800-532-8785

The property identified as: **PIN:** 17-10-113-003-0000

**Address:**

**Street:** 646 North Michigan Avenue

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60611

**Lender:** The Northern Trust Company

**Borrower:** Brick And Mortar Limited Partnership

**Loan / Mortgage Amount:** \$3,000,000.00

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

**Certificate number:** B3293544-B2FF-495F-ADDE-EC69B0D20627

**Execution date:** 6/17/2016

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**Junior Mortgage**  
**(including Security Agreement,**  
**Fixture Filing and Assignment**  
**of Rents & Leases;**  
**Secures Swap Obligations as well**  
**as other Liabilities)**  
**(Secures Obligations of Mortgagor To**  
**Mortgagee)**

**This Document Prepared by:**  
**Mr. Cary K. Kabumoto**  
**Attorney at Law**  
**5204 N. Christiana Avenue**  
**Chicago, Illinois 60625**

**After Recording Mail To:**

**Ms. Elizabeth A. Lerner**  
**Senior Vice President**  
**The Northern Trust Company**  
**62 Green Bay Road**  
**Winnetka, Illinois 60093**

The above space for recorder's use

Dated as of June 17, 2016

This Mortgage (as modified from time to time, the "Mortgage") has been executed by **BRICK AND MORTAR LIMITED PARTNERSHIP**, an Illinois limited partnership, 1474 Techny Road, Northbrook, Illinois 60062, ("Mortgagor"), in favor of THE NORTHERN TRUST COMPANY, as mortgagee (together with any successor, assign or subsequent holder, "Mortgagee"), with an office at 50 South LaSalle, Chicago, IL 60603. If more than one party executes this Mortgage, the term "Mortgagor" refers to each of them individually and some or all of them collectively, and their obligations hereunder shall be joint and several. If any party comprising "Mortgagor" is a trustee(s), "Trust Agreement" means the governing trust agreement and/or instruments governing the trust, as modified from time to time, and all related documents and instruments, and "Mortgagor" also refers to the trustee(s) as such and the trust individually and collectively. Various capitalized terms used in this Mortgage have the meanings set forth in the Section of this Mortgage entitled "DEFINITIONS."

In consideration of Mortgagee's extension of new financial accommodations or continuation of existing financial accommodations to Mortgagor, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Mortgagor agrees as follows:

1. **DEFINITIONS.**

(a) As used in this Mortgage the following terms shall have the indicated meanings:

"Anti-Terrorism Law" means any law relating to terrorism or money-laundering, including Executive Order No. 13224 and the USA Patriot Act.

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“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. §1 et seq.), as amended from time to time, and any successor statute.

“Constituent Documents” means the articles or certificate of incorporation, by-laws, partnership agreement, certificate of limited partnership, limited liability company operating agreement, limited liability company articles of organization or certificate of formation, trust agreement, and all other documents and instruments pertaining to the formation and ongoing existence of any person or entity which is not a natural person.

“Credit Support Party” means any person, or any persons severally, who now or hereafter guarantees payment or collection of all or any part of the Liabilities or provides any collateral for the Liabilities.

“Dollar” and “\$” means lawful money of the United States of America unless otherwise specified.

“Event of Default”--see Section entitled “EVENTS OF DEFAULT.”

“Excluded Swap Obligation” means, with respect to Mortgagor or any Credit Support Party, any Swap Obligation if, and to the extent that, all or a portion of any guaranty thereof by such Mortgagor or Credit Support Party of, or the grant by such Mortgagor or Credit Support Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Mortgagor’s or Credit Support Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Mortgagor or Credit Support Party, or the grant of such security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty or security interest is or becomes illegal.

“Executive Order No. 13224” means Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001.

“Liabilities”--see Section entitled “LIABILITIES.”

The term “margin stock” shall have the same meaning herein as in Federal Reserve Board Regulation U, or any successor regulation, as and if modified from time to time. The verbs “purchase” and “carry” when used with respect to margin stock shall have the same meaning as in such Regulation or successor and applicable authorities thereunder.

“Mortgagee Affiliate” means Northern Trust Corporation or any direct or indirect subsidiary of Northern Trust Corporation (other than Mortgagee itself).

“Note” means the Term Note of even date herewith executed by Mortgagor in favor of Mortgagee in the original principal amount of \$3,000,000.00, as amended, restated, renewed or replaced from time to time, a copy of which is attached hereto as Exhibit B.

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“Permitted Encumbrances” means: (i) this Mortgage; (ii) any other lien in favor of Mortgagee; (iii) liens for ad valorem taxes and special assessments not delinquent; (iv) typical utility easements and utility rights of access; and (v) Chicago Title Insurance Company title commitment number 16010731LFE dated May 4, 2016 Schedule B Exceptions B8, C9, A10, E12, D13, F14 and G15.

The term “person” means any individual, corporation, company, limited liability company, voluntary association, partnership, trust, estate, unincorporated organization, other entity, or government (or any agency, instrumentality, or political subdivision thereof).

“Premises”—see Section entitled “GRANT OF LIEN.”

“Prohibited Person” means: (i) a person that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (iii) a person with whom Mortgagee is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) a person who commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224; (v) a person that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or at any other official publication of such list; and (vi) a person who is affiliated with a person described in clauses (i) – (v) above.

“Related Document(s)” means this Mortgage, the Note, and any agreement, guaranty, Swap Agreement, or other document or instrument previously, now or hereafter delivered to Mortgagee in connection with the Liabilities or this Mortgage.

“Related Party(ies)” means any Credit Support Party, any Subsidiary, and, in addition: (i) as to any Mortgagor which is a natural person, trusts for the benefit of Mortgagor; and (ii) as to any Mortgagor which is not a natural person, to the extent applicable, any general or limited partner, controlling shareholder, joint venturer, member or manager, of Mortgagor.

“Subsidiary” means any corporation, partnership, limited liability company, joint venture, trust, or other legal entity of which Mortgagor owns directly or indirectly 50% or more of the outstanding voting stock or interest, or of which Mortgagor has effective control, by contract or otherwise.

“Swap Agreement” means any agreement, document or instrument executed or delivered by Mortgagor or any Credit Support Party pertaining to any Swap Obligation.

“Swap Obligation” means, with respect to Mortgagor or any Credit Support Party, any obligation to pay or perform under any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1(a)(47) of the Commodity Exchange Act, as amended from time to time, if entered into with Mortgagee or any Mortgagee Affiliate.

“Unmatured Event of Default” means any event or condition that would become an Event of Default with notice or the passage of time or both.

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“USA Patriot Act” means the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (Public Law 107-56, signed into law on October 26, 2001), as amended from time to time.

(b) As used in this Mortgage, unless otherwise specified: the term “including” means “including without limitation;” the term “days” means “calendar days;” and terms such as “herein,” “hereof” and words of similar import refer to this Mortgage as a whole. Unless otherwise defined herein or the context requires otherwise, all terms (including those not capitalized) that are defined in the Uniform Commercial Code of Illinois shall have the same meanings herein as in such Code, as such Code may be amended from time to time (the “UCC”); however, no amendment to the UCC after the date hereof shall limit any rights of Mortgagee hereunder or in connection herewith. Unless the context requires otherwise, wherever used herein the singular shall include the plural and vice versa, and the use of one gender shall also denote the others. Captions herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof; references herein to sections or provisions without reference to the document in which they are contained are references to this Mortgage.

2. **GRANT OF LIEN.** Mortgagor hereby grants, bargains, sells, conveys and mortgages to Mortgagee and its successors and assigns forever, under and subject to the terms and conditions hereof, all of Mortgagor’s right, title and interest in and to the real property located in Cook County, State of Illinois described in Exhibit A attached hereto and by this reference incorporated herein, all or part of which is commonly known as 646 North Michigan Avenue, Chicago, Illinois including all improvements now and hereafter located thereon, **TOGETHER WITH THE FOLLOWING:**

- (a) all rents, issues, profits, royalties and income with respect to the said real estate and improvements and other benefits derived therefrom, subject to the right, power and authority given to Mortgagor to collect and apply same;
- (b) all leases or subleases covering the said real estate and improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Mortgagor thereunder, including all cash or security deposits, advance rentals, and deposits or payments of similar nature;
- (c) all privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said real estate and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the said real estate and improvements;
- (d) all easements, rights-of-way and rights used in connection with the said real estate and improvements or as a means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;
- (e) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the said real estate and improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said real estate and improvements;



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- (f) any and all buildings and improvements now or hereafter erected on the said real estate, including all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements;
- (g) all materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately upon the delivery thereof to the said real estate;
- (h) all fixtures now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the said real estate and improvements, including all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property owned by Mortgagor and used or useful in the operation of the said real estate and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said real estate and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property owned by Mortgagor and placed by it on and in the said real estate and improvements shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the UCC), this Mortgage is deemed to be a security agreement under the UCC for the purpose of creating hereby a security interest in such property, which Mortgagor as debtor hereby grants to Mortgagee as secured party;
- (i) all the estate, interest, right, title, other claim or demand, including claims or demands with respect to any proceeds of insurance related thereto, which Mortgagor now has or may hereafter acquire in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said real estate and improvements or personal property, including any awards resulting from a change of grade of streets and awards for severance damages; and
- (j) without limiting (a)-(i), all proceeds and products of the foregoing

(the said real estate and improvements and the property and interests described in (a) through (j) above, being collectively referred to herein as the "Premises"),

**TO HAVE AND TO HOLD** the same unto Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth. Without limiting any other provision hereof, Mortgagor covenants that it is lawfully seized of the Premises, that the same are unencumbered except for Permitted Encumbrances, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

3. **LIABILITIES.** The Premises shall secure the payment and performance of all obligations and liabilities of Mortgagor:

- (a) to Mortgagee howsoever created, evidenced or arising, whether direct or indirect, absolute or contingent, now due or to become due, or now existing or hereafter arising, joint,

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several or joint and several, including obligations under or with respect to the Note, Swap Agreements, future advances (under the Note and otherwise), and letters of credit issued by Mortgagee for the account of or at the request of Mortgagor and all reimbursement obligations arising therefrom;

(b) to any Mortgagee Affiliate under or in connection with Swap Agreements and letters of credit issued or entered into by any Mortgagee Affiliate for the account of or at the request of Mortgagor and all reimbursement obligations and Swap Obligations arising therefrom;

(c) to Mortgagee or any Mortgagee Affiliate under or in connection with: (i) Related Documents; (ii) any guaranty by Mortgagor of any obligations of any other person to Mortgagee or (a) obligations covered by (b) any Mortgagee Affiliate; (iii) any expenses (including attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee or any Mortgagee Affiliate, in each case whether in or out of court, in original or appellate proceedings or in bankruptcy) incurred or paid by Mortgagee or any Mortgagee Affiliate in connection with the enforcement or preservation of its rights hereunder or under any Related Document; and (iv) interest accruing after filing of a petition in bankruptcy; and

(d) to Mortgagee as to all sums advanced by Mortgagee to perform any of the terms, covenants and provisions of this Mortgage or any of the Related Documents, or otherwise advanced by Mortgagee pursuant to the provisions hereof or thereof to protect the property hereby mortgaged and pledged.

The obligations and liabilities described in the foregoing portion of this Section are sometimes referred to as the "Liabilities". Notwithstanding the foregoing, the term "Liabilities" includes all Swap Obligations except for any Excluded Swap Obligations, which shall not be secured pursuant to the terms hereof. This Mortgage shall continue and remain in effect notwithstanding that at any particular time there may be no Liabilities outstanding. Notwithstanding the foregoing: (x) if Mortgagor is a natural person the Premises shall not secure any Liabilities subject to Regulation Z of the Consumer Financial Protection Bureau unless the Truth in Lending disclosure pertaining to such Liabilities discloses the Premises as security for such Liabilities; and (y) proceeds of Liabilities may not be used directly or indirectly to purchase or carry margin stock unless both Mortgagee has consented thereto and Mortgagor has indicated such in an FR U-1 statement furnished to Mortgagee.

**THE TOTAL AMOUNT OF INDEBTEDNESS SECURED HEREBY SHALL NOT EXCEED NINE MILLION UNITED STATES DOLLARS (\$6,000,000.00) OUTSTANDING AT ANY ONE TIME, PLUS INTEREST THEREON, AND ANY DISBURSEMENTS MADE FOR THE PAYMENT OF TAXES, SPECIAL ASSESSMENTS, OR INSURANCE ON THE PREMISES, WITH INTEREST ON SUCH DISBURSEMENTS AT THE RATE SET FORTH IN OR DETERMINED PURSUANT TO THE NOTE.**

4. **REVOLVING CREDIT--ILLINOIS.** If the Liabilities or any portion thereof evidence a facility under which Mortgagee may advance additional funds, then such facility shall be deemed a "revolving credit" (as that term is defined in the Illinois Compiled Statutes, 815 ILCS 205/4.1, as amended, and any successor statute), by Mortgagee to Mortgagor (or Mortgagor's beneficiary), and this Mortgage secures not only the existing indebtedness under any note or other document evidencing such revolving credit, but also such future advances as are made within twenty (20) years from the date of this Mortgage, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of the execution of this Mortgage and although there may be no

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indebtedness outstanding at the time any advance is made. The lien of this Mortgage, as to third persons without actual notice thereof, shall be valid as to all such indebtedness and future advances from the time this Mortgage is filed of record in the Office of the Recorder of Deeds of the county where the Premises are located.

## 5. REPRESENTATIONS AND WARRANTIES.

(a) Mortgagor represents and warrants to, and agrees in favor of, Mortgagee, that:

(i) (A) If Mortgagor is an organization (including a trust that is a registered organization), then Mortgagor is an entity of the type, and is organized under the laws of the jurisdiction, specified in the preamble hereto. Mortgagor's name as shown in the preamble hereto is the full exact name that appears in Mortgagor's organizational documents. If Mortgagor is a registered organization, Mortgagor's name as shown in the preamble hereto is as shown on the public organic record most recently filed with or issued or enacted by Mortgagor's jurisdiction of organization which purports to state, amend, or restate Mortgagor's name. If Mortgagor is an organization but not a registered organization, if it has only one place of business that place of business is at Mortgagor's address indicated in the preamble hereto, but if it has more than one place of business, its chief executive office is at such address.

(B) If Mortgagor is a trust which is not itself a registered organization, then: (1) if the Trust Agreement specifies a name for the trust, Mortgagor's name as shown in the preamble hereto is the name so specified; (2) Mortgagor has provided the name of its settlor(s) or testator(s) to Mortgagee; and (3) if Mortgagor has only one place of business, that place of business is at Mortgagor's address indicated in the preamble hereto, but if it has more than one place of business, its chief executive office is at such address.

(C) If Mortgagor is a natural person, then:

(1) Mortgagor's principal residence is located at the address shown in the preamble hereto; and

(2) i. if Mortgagor has a driver's license or alternative identification that has not expired and that was issued by the state of Mortgagor's principal residence, Mortgagor's name shown in the preamble hereto is exactly the same as shown on that driver's license or alternative identification card; or

ii. if Mortgagor does not have a driver's license or alternative identification card that has not expired and that was issued by the state of Mortgagor's principal residence, then: (x) Mortgagor's first



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given name and surname are as shown in the preamble hereto; and (y) if Mortgagor obtains a driver's license or alternative identification card from the state of Mortgagor's principal residence, then Mortgagor shall, within thirty (30) days of the issuance of such driver's license or alternative identification card, provide Mortgagee with a true and accurate copy of such driver's license or alternative identification card, showing Mortgagor's name and address, the state of issuance and the expiration date thereof; and

(3) in any event, Mortgagor shall provide Mortgagee notice within thirty (30) days of the happening of each of the following events:

- i. Mortgagor's principal residence has changed;
- ii. the name of Mortgagor on Mortgagor's driver's license or alternative identification card has changed in any manner, no matter how small;
- iii. Mortgagor's driver's license or alternative identification card has been surrendered, suspended, changed or terminated in any manner, no matter how small or for how short a time;
- iv. Mortgagor's driver's license or alternative identification card has expired; or
- v. Mortgagor has changed his or her first given name or surname, whether as a result of marriage, divorce, legal proceeding or otherwise.

(D) The representations and warranties made by Mortgagor in (A)-(C) of this (i), as applicable, would have been accurate at all times during the five years and six months prior to the date hereof except as and if Mortgagor has specifically notified Mortgagee in writing prior to Mortgagor's execution of this Mortgage.

(ii) Mortgagor (if Mortgagor is not a natural person) and any Subsidiary are validly existing and in good standing under the laws of their state of organization or formation, and are duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so would reasonably be expected to have a material adverse impact on the assets, condition or prospects of Mortgagor.

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(iii) The execution, delivery and performance of this Mortgage and all Related Documents: are within Mortgagor's powers and have been authorized by all necessary action required by law and (unless Mortgagor is a natural person) Mortgagor's Constituent Documents; have received any and all necessary governmental approval; and do not and will not contravene or conflict with any provision of law, any Constituent Document or any agreement affecting Mortgagor or its property. This Mortgage and all Related Documents are enforceable against Mortgagor and/or the applicable Related Parties in accord with their terms, except to the extent, if any, that such enforceability may be limited by equitable principles, whether applied in a court of law or equity, or by bankruptcy, insolvency and other laws affecting creditors' rights generally.

(iv) There has been no material adverse change in the business, condition, properties, assets, operations or prospects of Mortgagor or any Related Party since the date of the latest financial statements or other documentation provided by or on behalf of Mortgagor or any Related Party to Mortgagee.

(v) No financing statement, mortgage, notice of judgment or any similar instrument (unless filed on behalf of Mortgagee) covering any Premises is on file in any public office, except as pertains to Permitted Encumbrances.

(vi) Mortgagor is the lawful owner of and has rights in or power to transfer all Premises, free and clear of all liens, pledges, charges, mortgages, and claims other than any in favor of Mortgagee, except for Permitted Encumbrances.

(vii) Mortgagor has filed or caused to be filed all foreign, federal, state, and local tax returns that are required to be filed, and has paid or has caused to be paid all of its taxes, including any taxes shown on such returns or on any assessment received by it, to the extent that such taxes have become due.

(viii) The execution, delivery and performance of this Mortgage and all Related Documents are in Mortgagor's best interest in its current and future operations and will materially benefit Mortgagor. Mortgagor has received adequate, fair and valuable consideration, and at least reasonably equivalent value, to enter into and perform this Mortgage and all Related Documents. Mortgagor's assets at fair valuation exceed the sum of Mortgagor's debts. Mortgagor is able to pay its debts as they become due. Mortgagor does not have unreasonably small capital with which to conduct its business.

(b) The request or application for any Liabilities by Mortgagor shall be a representation and warranty by Mortgagor as of the date of such request or application that: (i) no Event of Default or Unmatured Event of Default has occurred and is continuing as of such date; and (ii) Mortgagor's representations and warranties herein and in any Related Document are true and correct as of such date as though made on such date.

6. **COVENANTS.** Mortgagor agrees to comply with the following covenants so long as this Mortgage remains in effect:

(a) Mortgagor shall pay and perform all Liabilities when due.

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(b) Mortgagor shall provide to Mortgagee, at such times and in such form as Mortgagee shall from time to time require:

(i) a "rent roll" and other information concerning any and all leases, rentals and tenants of any or all of the Premises;

(ii) copies of all assessments, bills and other information pertaining to any and all ad valorem and other taxes and Impositions on or pertaining to any or all of the Premises;

(iii) annual company prepared financial statements of the Borrower due within 90 days of every fiscal year end. Gordon Segal shall attest to the accuracy of each statement;

(iv) each individual Guarantor shall provide an acceptable personal financial statement every year within 75 days of each year end;

(v) annual tax returns for the Borrower shall be provided within 30 days of filing; and

(vi) each individual Guarantor's federal income tax returns, plus all K-1s, shall be provided within 30 days of filing.

(c) Mortgagor shall at all times provide, maintain and keep in force such insurance in such amounts and against such risks on or pertaining to the Premises as Mortgagee shall from time to time reasonably request, and in any event including:

(i) during construction (if any), an all-risks package of builder's risk insurance, including owner's, contractor's, and employer's liability insurance, workmen's compensation insurance, and physical damage insurance;

(ii) insurance against loss by fire, risks covered by the so-called extended coverage endorsement, and other risks as Mortgagee may reasonably require, in amounts equal to not less than one hundred percent (100%) of the full replacement value of the Premises;

(iii) public liability insurance against bodily injury and property damage with such limits as Mortgagee may require;

(iv) steam boiler, machinery, and other insurance of the types and in amounts as Mortgagee may require, but in any event not less than customarily carried by persons owning or operating like properties; and

(v) if the Premises are located in an area that has been identified by the United States Department of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 or other applicable law or regulation, flood insurance in an amount at least equal to the replacement cost of

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any improvements on the Premises or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968 or such other applicable law or regulation, whichever is less.

- (d) All insurance policies required hereby ("Policies") shall:
- (i) contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the Policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against Mortgagor;
  - (ii) provide that the amount payable for any loss shall not be reduced by reason of co-insurance;
  - (iii) be issued by companies and in amounts in each company reasonably satisfactory to Mortgagee; and
  - (iv) name Mortgagor and Mortgagee as insureds, as their respective interests may appear, and have attached thereto a mortgagee's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee.

Mortgagor shall furnish Mortgagee with certificates of insurance in form and substance satisfactory to Mortgagee. Not less than 5 days prior to the date the premium is due for each Policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of the premium. Not less than 30 days prior to the expiration of any certificate of insurance required to be delivered hereunder, Mortgagor shall furnish Mortgagee with a replacement certificate and/or other evidence satisfactory to Mortgagee of the extension and continuance in force of the insurance coverage. Each Policy shall contain a provision that such Policy will not be cancelled, amended or reduced in amount or scope without at least 30 days' prior written notice to Mortgagee.

Unless you provide us with evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including any interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

- (e) Mortgagor agrees to pay or cause to be paid prior to delinquency all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature

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whatsoever, including any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Premises, which are assessed or imposed upon the Premises, or become due and payable, and which create, may create or appear to create a lien upon the Premises, or any part thereof (all of such taxes, assessments and other governmental and non-governmental charges of the above-described or like nature are hereinafter referred to as "Impositions"). Mortgagor shall furnish Mortgagee upon request official receipts evidencing payment thereof. Mortgagor may before any delinquency occurs contest or object to the amount or validity of any Imposition in good faith by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay the collection of the contested Impositions and prevent the sale or forfeiture of the Premises to collect the same; no such contest or objection shall relieve, modify or extend Mortgagor's covenants to pay any such Imposition prior to delinquency unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to so contest or object, and unless, at Mortgagee's sole option, Mortgagor shall furnish a bond or surety in an amount and form as requested by and satisfactory in all respects to Mortgagee.

(f) If requested by Mortgagee, in order to provide moneys for the payment of the Impositions and the premiums on the Policies, Mortgagor shall pay to Mortgagee on a monthly basis on such date(s) as Mortgagee shall require such amount as Mortgagee shall estimate will be required to accumulate, by the date 30 days prior to the due date of the next annual installment of such Impositions and premiums, through substantially equal monthly payments by Mortgagor to Mortgagee, amounts sufficient to pay such next annual Impositions and insurance premiums. Mortgagee shall hold all such payments in escrow, without interest unless required by law. Such amounts held in escrow shall be made available to Mortgagor for the payment of the Impositions and insurance premiums when due, or may be applied thereto directly by Mortgagee if it in its sole discretion so elects.

(g) Mortgagor shall:

(i) keep the Premises, including any sidewalk, road, parking or landscape located thereon, in good condition, repair and order, and free of nuisance;

(ii) not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or governmental regulations) any improvements which are part of the Premises;

(iii) Subject to subsection (h) of this Section, promptly repair and restore any portion of the Premises which may become damaged or be destroyed so as to be of at least equal value and of substantially the same character as prior to such damage or destruction;

(iv) subject to any right to contest set forth herein, pay when due all claims for labor performed and materials furnished to and for the Premises;

(v) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Premises or any part thereof or requiring any alterations or improvements;

(vi) not commit or permit any waste or deterioration of the Premises;



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- (vii) not commit, suffer or permit any act to be done in or upon the Premises in violation of any law, ordinance or regulation;
  - (viii) not initiate or acquiesce in any zoning change or reclassification of the Premises;
  - (ix) pay all utilities incurred for the Premises; and
  - (x) keep the Premises free and clear of all liens and encumbrances of every sort except Permitted Encumbrances.
- (h) As to any damage to or destruction of the Premises:
- (i) Mortgagor shall give Mortgagee prompt written notice of any damage to or destruction of any portion or all of the Premises. If and to the extent Mortgagee so consents in writing, losses covered by insurance may be settled and adjusted by Mortgagor. In all other cases, Mortgagee at its option may settle and adjust any insurance claim without the consent of Mortgagor. In any case Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses so incurred by Mortgagee shall be so much additional indebtedness secured by this Mortgagee, and shall be reimbursed to Mortgagee upon demand.
  - (ii) In the event of any insured damage to or destruction of the Premises or any part thereof the proceeds of insurance payable as a result of such loss shall be applied upon the Liabilities or applied to the repair and restoration of the Premises, as Mortgagee in its sole discretion shall elect.
  - (iii) If Mortgagee shall elect that proceeds of insurance are to be applied to the repair and restoration of the Premises, Mortgagor hereby covenants promptly to repair and restore the same in such manner as Mortgagee may require; if insurance proceeds are not sufficient to pay for the full repair and restoration costs, Mortgagor shall pay such amounts out of its own funds. Mortgagee shall reimburse Mortgagor out of insurance proceeds for costs incurred in repair and restoration in such manner as it shall deem fit (including by use of an escrow or like arrangement and the obtaining of title insurance policies and date-down endorsements thereto confirming the priority of this Mortgage over any mechanics' or other liens arising in connection therewith; Mortgagor agrees to pay for all related costs and fees, which costs and fees shall be additional indebtedness hereby secured until Mortgagor does pay for such). At all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens except Permitted Encumbrances.

Notwithstanding anything contained in this 5(h) to the contrary, as long as the Mortgagor is not in default and having given Mortgagee written notice as provided above, the Mortgagor shall have the right to settle all losses covered by insurance which losses in any single instance do not exceed Three Hundred Thousand Dollars (\$300,000.00).

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(i) As to any “condemnation” of the Premises:

(i) If the Premises or any part thereof or interest therein are taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Mortgagor receive any notice or other information regarding any such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee.

(ii) Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All proceeds of compensation, awards, damages, rights of action and proceeds awarded to Mortgagor (all such, “Condemnation Awards”) are hereby assigned to Mortgagee, and Mortgagor agrees to execute such further assignments of the Condemnation Awards as Mortgagee may require.

(iii) All Condemnation Awards shall be applied upon the Liabilities or applied to the repair and restoration of the Premises, as Mortgagee in its sole discretion shall elect.

(iv) If Mortgagee shall elect that Condemnation Awards are to be applied to the repair and restoration of the Premises, Mortgagor hereby covenants promptly to repair and restore the same in such manner as Mortgagee may require; if the Condemnation Awards are not sufficient to pay for the full repair and restoration costs, Mortgagor shall pay such amounts out of its own funds. Mortgagee shall reimburse Mortgagor out of Condemnation Award proceeds for costs incurred in repair and restoration in such manner and subject to such conditions as it shall deem fit (including by use of an escrow or like arrangement and the obtaining of title insurance policies and date-down endorsements thereto confirming the priority of this Mortgage over any mechanics’ or other liens arising in connection therewith; Mortgagor agrees to pay for all related costs and fees, which costs and fees shall be additional indebtedness hereby secured until Mortgagor does pay for such). At all times the undisbursed balance of Condemnation Awards remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens except Permitted Encumbrances.

(j) Mortgagee and its agents, after 24 hours prior notice to Mortgagor, are authorized to enter at any time upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts Mortgagee is authorized to perform under the terms of this Mortgage or any of the Related Documents. Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the Premises and shall make such books and records and all supporting vouchers and data available for examination by Mortgagee and its agents at any time during normal business hours, and from time to time on request at the offices of Mortgagee, or at such other location as may be mutually agreed upon.

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(k) Without limiting any other provision hereof or of any Related Document, Mortgagor agrees to provide, cooperate with, and pay for the full cost of any appraisal, environmental audit, report, study, or the like of or pertaining to the Premises or any portion thereof which Mortgagee in its sole discretion may require from time to time.

(l) Except for Permitted Encumbrances, Mortgagor shall not create, suffer or permit to be created or filed against the Premises, or any part thereof or interest therein, any mortgage lien, security interest, or other lien, charge or encumbrance, either superior or inferior to the lien of this Mortgage, without the express written consent of Mortgagee. Mortgagor may contest in good faith and by appropriate proceedings the validity of any such lien, charge or encumbrance, if, as preconditions: (i) Mortgagor shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amounts or form as Mortgagee shall require; and (ii) Mortgagor shall diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien, by depositing in court a bond for the amount claimed, or otherwise giving security for such claim, or in such manner as is or may be prescribed by law, and any amounts expended by Mortgagee in so doing shall be payable by Mortgagor upon demand by Mortgagee, together with interest at five percent (5%) in addition to the interest rate on the Note from the date of demand to the date of payment, and such amounts shall be so much additional indebtedness secured by this Mortgage. If title to the Premises is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein upon the creation of any lien against the Premises shall also be construed as a similar prohibition or limitation against the creation of any lien or security interest upon the beneficial interest under such trust.

(m) If any documentary stamp, intangible, recording or other tax or fee becomes due in respect of the Liabilities or this Mortgage or the recording thereof, Mortgagor shall pay such amount in the manner required by law.

(n) Mortgagor shall keep at its address for notices hereunder its records concerning the Premises, which records shall be of such character as will enable Mortgagee to determine at any time the status of the Premises. Mortgagor shall permit Mortgagee from time to time to inspect, audit, and make copies of, and extracts from, all records and all other papers in the possession or control of Mortgagor pertaining to the Premises.

(o) MORTGAGOR SHALL NOTIFY MORTGAGEE IN WRITING AT LEAST SIXTY (60) DAYS IN ADVANCE OF: (i) ANY CHANGE WHATSOEVER IN THE NAME OF MORTGAGOR; (ii) THE STATE OR JURISDICTION IN WHICH MORTGAGOR IS ORGANIZED OR FORMED OR, IF MORTGAGOR IS A NATURAL PERSON, IN WHICH MORTGAGOR'S PRINCIPAL RESIDENCE IS LOCATED; (iii) ANY NEW NAMES UNDER WHICH MORTGAGOR INTENDS TO DO BUSINESS; AND (iv) ANY NEW ADDRESSES AT OR FROM WHICH MORTGAGOR INTENDS TO DO BUSINESS. IF MORTGAGOR IS A REGISTERED ORGANIZATION, SUCH AS A CORPORATION, LIMITED LIABILITY COMPANY, OR LIMITED PARTNERSHIP, MORTGAGOR AGREES TO NOTIFY MORTGAGEE IMMEDIATELY IF MORTGAGOR'S STATE OR JURISDICTION OF ORGANIZATION DISSOLVES, SUSPENDS OR TERMINATES MORTGAGOR'S EXISTENCE OR PRIVILEGES, OR NOTIFIES MORTGAGOR THAT IT IS NOT IN COMPLIANCE WITH ANY REQUIREMENTS OF SUCH STATE OR OTHER

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JURISDICTION. IF MORTGAGOR IS A NATURAL PERSON THE FOREGOING PORTION OF THIS SUBSECTION DOES NOT LIMIT MORTGAGOR'S AGREEMENTS IN SUBSECTION (a)(i)(C) OF THE SECTION ENTITLED "REPRESENTATIONS AND WARRANTIES."

(p) Termination of Current Lease. In the event that the current lease for the property is terminated and the property is not leased to a comparable replacement tenant (as below under "Interest Reserve") subject to The Northern Trust Company's approval, whose approval shall not be unreasonably withheld, within 210 days, then the failure to have an acceptable tenant is an Event of Default. Notwithstanding anything contained in this paragraph to the contrary, if a new lease is signed, tendered to The Northern Trust Company and approved by The Northern Trust Company, then it shall not be an Event of Default if the lease contains a rent abatement for the first ten months of the lease and an Interest Reserve is established as provided below. Upon the lessor receiving rent payments as provided in the lease, the interest reserve requirement shall cease. If, after the ten month period, rent is not paid as required by the lease, then it shall be an Event of Default.

(q) No Additional Property Indebtedness. Borrower shall not incur any additional property indebtedness without the prior written consent of The Northern Trust Company.

(r) Interest Reserve. There shall be no interest reserve requirement as long as an executed lease exists;

(i) with a tenant (Lessee) of equal or better credit worthiness than the current Lessee; and

(ii) any new lease has the same or better terms as the existing lease.

This includes an extension of the existing lease to the current tenant. However, if a lease as defined above and acceptable to The Northern Trust Company, which acceptance shall be not unreasonably withheld, ceases to exist, the Borrower and Guarantors shall immediately establish an interest reserve equivalent to the amount necessary to service the loan for its remaining term. The interest reserve shall consist of:

(i) cash or cash equivalents such as marketable securities acceptable to The Northern Trust Company; or

(ii) the pledge of availability under an existing line of credit in the amount necessary to service the debt to maturity.

Should an acceptable lease, as defined above, be subsequently executed, such reserve will be eliminated for the duration of the lease.

## 7. DEPOSIT OF GROSS REVENUES.

(a) Until such time as all of the principal of and interest on the Note and all other amounts coming due under this Mortgage and the other Related Documents have been paid in full, if Mortgagee so requests Mortgagor shall deposit all income and receipts with respect to the Premises, including all base rent, additional rent, security deposits and other amounts paid by

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tenants of the Premises (collectively, "Gross Revenues"), promptly upon receipt thereof, into a bank account maintained by Mortgagor with Mortgagee.

(b) If any Event of Default shall occur and be continuing under this Mortgage or any of the other Related Documents, Mortgagor shall cause all Gross Revenues to be applied immediately upon receipt thereof to the payment of the principal of and interest on the Note and other amounts due under the Related Documents. Mortgagor shall indemnify Mortgagee with respect to any Gross Revenues which after the occurrence and during the continuance of any Event of Default under this Mortgage or any of the other Related Documents are not applied to the payment of the principal of and interest on the Note and other amounts due under the Related Documents as required by the foregoing provisions of this Section. Nothing contained in this Section shall be construed to relieve Mortgagor of the obligation to pay the principal of and interest on the Note and other amounts due under the Related Documents when and as same come due in accordance with the terms of the Note and the other Related Documents in the event that the Gross Revenues are not sufficient for the payment thereof when due.

8. **EVENTS OF DEFAULT.** Each of the following shall constitute an "Event of Default" except for it shall not be an Event of Default until ten (10) days after written notice on any monetary event of default and thirty (30) days after written notice on any non-monetary event of default:

- (a) (i) failure to pay, when and as due, any principal payable on any of the Liabilities; (ii) failure to pay, when and as due, any interest or other amounts payable on any of the Liabilities; or (iii) failure to comply with or perform any agreement or covenant of Mortgagor or any Related Party contained herein or in any Related Document, which failure does not otherwise constitute an Event of Default, subject to any applicable notice, grace or cure period; or
- (b) any default, event of default, or similar event shall occur or continue under any Related Document, and shall continue beyond any applicable notice, grace or cure period set forth in such Related Document; or
- (c) there shall occur any default or event of default, any similar event, any event that requires the prepayment of borrowed money or permits the acceleration of the maturity thereof, or any event or condition that might become any of the foregoing with notice or the passage of time or both, under the terms of any evidence of indebtedness or other agreement issued or assumed or entered into by Mortgagor or any Related Party, or under the terms of any document or instrument under which any such evidence of indebtedness or other agreement is issued, assumed, secured, or guaranteed, and such event shall continue beyond any applicable notice, grace or cure period; or
- (d) any representation, warranty, certificate, financial statement, report, notice, or other writing furnished by or on behalf of Mortgagor or any Related Party to Mortgagee is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified; or
- (e) this Mortgage or any Related Document, including any guaranty of or pledge of collateral security for the Liabilities, shall be repudiated or shall become unenforceable or incapable of performance in accord with its terms; or



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- (f) Mortgagor or any Related Party (in each case if not a natural person) shall fail to maintain their existence in good standing in their state of organization or formation or shall fail to be duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so would reasonably be expected to have a material adverse impact on the assets, condition or prospects of Mortgagor or any Related Party; or
- (g) Mortgagor or any Related Party shall die, be declared legally incompetent, dissolve, liquidate, merge, consolidate, or cease to be in existence for any reason; or, if Mortgagor is a partnership or joint venture, any general or limited partner or joint venturer of Mortgagor shall withdraw from Mortgagor, or any general partner shall become a limited partner; or the trust under any Trust Agreement shall terminate in whole or in part or be the subject of a distribution of other than income but, in the case of a distribution, only if such distribution would otherwise cause an Event of Default or Unmatured Event of Default to occur; or
- (h) except for a successor trustee under any Trust Agreement, any person presently not in control of a Mortgagor or Related Party which is not a natural person shall obtain control directly or indirectly of such a Mortgagor or Related Party, whether by purchase or gift of stock or assets, by contract, or otherwise; or
- (i) any proceeding (judicial or administrative) shall be commenced against Mortgagor or any Related Party, or with respect to any of their assets, which would reasonably be expected to have a material and adverse effect on the ability of Mortgagor to repay the Liabilities; or a judgment or settlement shall be entered or agreed to in any such proceeding which would reasonably be expected to have a material and adverse effect on the ability of Mortgagor to repay the Liabilities; or any garnishment, summons, writ of attachment, citation, levy or the like is issued against or served upon Mortgagee for the attachment of any property of Mortgagor or any Related Party in Mortgagee's possession or control; or
- (j) Except for Permitted Encumbrances, Mortgagor shall grant or any person (other than Mortgagee) shall obtain or perfect a mortgage or other lien on the Premises; Mortgagee shall not have a perfected lien or security interest in the Premises or other assets constituting security for the Liabilities, of first-priority and enforceable in accord with this Mortgage (as to the Premises) or the related collateral documents (as to such other assets); or any notice of a federal tax lien against Mortgagor or any Related Party shall be filed with any public recorder; or
- (k) there shall be any material loss or depreciation in the value of any Premises or any other assets constituting security for the Liabilities for any reason; or Mortgagee shall otherwise reasonably deem itself insecure; or
- (l) **DUE ON SALE CLAUSE:** Mortgagor shall sell, transfer, convey or assign the title to all or any portion of the Premises, or in the event any beneficiary of Mortgagor (if Mortgagor is a land trust) shall sell, transfer, convey or assign any beneficial interest under the Trust by which Mortgagor was created (including a collateral assignment thereof), in either case whether by operation of law, voluntarily, or otherwise, or Mortgagor or such a beneficiary shall contract to do any of the foregoing; or Mortgagor or any other person or entity shall grant, or any person other than Mortgagee shall obtain, a security interest in or mortgage or other lien or encumbrance upon the Premises; Mortgagor or any other person shall perfect (or attempt to perfect) such a security interest or encumbrance; a court shall determine that Mortgagee does not have a first-priority mortgage and security interest in the Premises enforceable in accordance with the terms hereof;

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(m) any bankruptcy, insolvency, reorganization, arrangement, readjustment, liquidation, dissolution, or similar proceeding, domestic or foreign, is instituted by or against Mortgagor or any Related Party, and, if instituted against Mortgagor or any Related Party, shall not be dismissed or vacated within sixty (60) days after the filing or other institution thereof; or

(n) Mortgagor or any Related Party shall become insolvent, generally shall fail or be unable to pay its debts as they mature, shall admit in writing its inability to pay its debts as they mature, shall make a general assignment for the benefit of its creditors, shall enter into any composition or similar agreement, or shall suspend the transaction of all or a substantial portion of its usual business.

## 9. DEFAULT REMEDIES.

(a) Notwithstanding any provision of any document or instrument evidencing or relating to any Liability: (i) upon the occurrence of any Event of Default specified in (a)-(l) of the Section entitled "EVENTS OF DEFAULT," Mortgagee at its option may declare the Liabilities immediately due and payable without notice or demand of any kind, **ALL OF WHICH ARE HEREBY EXPRESSLY WAIVED BY MORTGAGOR** (except as and if otherwise specifically set forth herein); and (ii) upon the occurrence of an Event of Default specified in (m)-(n) of the Section entitled "EVENTS OF DEFAULT", the Liabilities shall be immediately and automatically due and payable without notice, demand or other action of any kind on the part of Mortgagee, **ALL OF WHICH ARE HEREBY EXPRESSLY WAIVED BY MORTGAGOR**.

(b) Upon the occurrence of any Event of Default, Mortgagee may exercise any rights and remedies under this Mortgage (including as set forth below in this Section) or any Related Document, at law or in equity, and, without limiting the foregoing or any other provision hereof, may: (i) either in person or by agent, with or without bringing any action or proceeding, if applicable law permits, enter upon and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof; or (ii) commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; or (iii) exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of Illinois, and any notice of sale, disposition or other intended action by Mortgagee, sent to Mortgagor at its address specified herein, at least five (5) days prior to such action, shall constitute reasonable notice to Mortgagor.

(c) When the Liabilities, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Liabilities or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Liabilities, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's 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 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

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condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this subsection mentioned, and such expenses and fees as may be incurred in the protection of the Premises 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, any of the Related Documents or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage and immediately due and payable with interest thereon at a rate equal to five percent (5%) in addition to the rate on the Note. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

(d) The proceeds of any foreclosure sale of the Premises or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in (c) of this Section; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as therein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any excess to Mortgagor, its successors or assigns, as their rights may appear.

(e) Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises or any portion thereof. 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 Premises, and Mortgagee or any holder of the Note may be appointed as such receiver. Such receiver shall have power: (i) to collect the Gross Revenues during the pendency of such foreclosure suit, 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; (ii) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew, beyond the maturity date of the indebtedness secured by this Mortgage 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 Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Mortgage, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in its hands in payment in whole or in part of the indebtedness secured by this Mortgage, or found due or secured by any judgment 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.

(f) In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in repairing and restoring the Premises, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

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(g) Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the Related Documents or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this Mortgage or any of the Related Documents to Mortgagee or to which it may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by Mortgagee; Mortgagee may pursue inconsistent remedies. Failure by Mortgagee to exercise any right which it may exercise hereunder, delay in exercising any such right, or the acceptance by Mortgagee of partial payments, shall not be deemed a waiver by Mortgagee of any default or of its right to exercise any such rights thereafter.

(h) Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession.

(i) To the extent permitted by applicable law, Mortgagor agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but rather waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor hereby expressly waives any and all rights of redemption from sale or from or under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of Mortgagor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the state in which the Premises are located.

10. **RIGHTS OF MORTGAGEE.** If Mortgagor fails to make any payment or to do any act as and in the manner provided herein or in any of the Related Documents, Mortgagee in its own discretion, without obligation so to do and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation:

(a) to enter upon and take possession of the Premises;



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- (b) to make additions, alterations, repairs and improvements to the Premises which it may consider necessary and proper to keep the Premises in good condition and repair;
- (c) to appear and participate in any action or proceeding affecting or which may affect the Premises, the security hereof or the rights or powers of Mortgagee;
- (d) to pay any Impositions asserted against the Premises and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition;
- (e) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Mortgagee may affect or appears to affect the Premises or the security of this Mortgage or which may be prior or superior hereto; and
- (f) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to inside and outside counsel or other consultants, contractors, agents and other employees.

Mortgagor irrevocably appoints Mortgagee its true and lawful attorney in fact, at Mortgagee's election, to do and cause to be done all or any of the foregoing in the event Mortgagee shall be entitled to take any or all of the action provided for in this Section. Mortgagor shall immediately, upon demand therefor by Mortgagee, pay all costs and expense incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including costs of evidence of title, court costs, appraisals, surveys, attorney's fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, in each and every case whether in or out of court, in original or appellate proceedings or in bankruptcy, all of which shall constitute so much additional indebtedness secured by this Mortgage immediately due and payable, with interest thereon at a rate equal to five percent (5%) per year in addition to the interest rate on the Note.

- 11. **ESTOPPEL LETTERS.** Mortgagor shall furnish from time to time within 15 days after Mortgagee's request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.
- 12. **DECLARATION OF SUBORDINATION TO LEASES.** At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases and subleases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of the county wherein the Premises are situated, of a unilateral declaration to that effect.
- 13. **OBLIGATIONS UNCONDITIONAL; WAIVER OF DEFENSES.** No fact or circumstance whatsoever which might at law or in equity constitute a discharge or release of, or defense to or offset against the obligations of, a co-signer, accommodation party, guarantor or surety shall limit or affect any obligations of Mortgagor under this Mortgage or any Related Document. Without limiting the generality of the foregoing:

- (a) Mortgagee may at any time and from time to time, without notice to Mortgagor, take any or all of the following actions without affecting or impairing the liability of Mortgagor under this Mortgage and any Related Document:



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- (i) renew or extend time of payment of the Liabilities;
- (ii) accept, substitute, release or surrender any security for the Liabilities;  
and
- (iii) release any person primarily or secondarily liable on the Liabilities (including any Credit Support Party and any other Related Party).

(b) No delay in enforcing payment of the Liabilities, nor any amendment, waiver, change, or modification of any terms of any Related Document, shall release Mortgagor from any obligation hereunder. The obligations of Mortgagor under this Mortgage are and shall be primary, continuing, unconditional and absolute (notwithstanding that at any time or from time to time all of the Liabilities may have been paid in full), irrespective of the value, genuineness, regularity, validity or enforceability of any Related Documents. In order to hold Mortgagor liable or exercise rights or remedies hereunder, there shall be no obligation on the part of Mortgagee, at any time, to resort for payment to any Related Party or to any other security for the Liabilities. Mortgagee shall have the right to enforce this Mortgage irrespective of whether or not other proceedings or steps are being taken against any other property securing the Liabilities or any other party primarily or secondarily liable on any of the Liabilities.

(c) Except as and if otherwise specifically set forth herein, Mortgagor irrevocably waives presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration, demand, diligence, grace, notice of dishonor or default, notice of nonpayment, notice of acceptance, notice of any loans made, extensions granted or other action taken in reliance hereon, and all other demands and notices of any kind in connection with this Mortgage or the Liabilities.

14. **MORTGAGEE MAY ALSO BE FIDUCIARY.** Mortgagor hereby irrevocably waives, releases and forever relinquishes any claim or right of any nature whatsoever based upon the fact that a trustee or other fiduciary of any Mortgagor or Related Party is or may be Mortgagee itself or a Mortgagee Affiliate, and irrevocably consents to any such circumstance. The rights and powers of Mortgagee shall not in any way be restricted by reason of any such present or future circumstance.

15. **ARM'S LENGTH TRANSACTIONS.** Mortgagor acknowledges and agrees that:

- (a) The transactions contemplated by the Related Documents are arm's length commercial transactions among Mortgagor, Mortgagee and any other parties thereto.
- (b) In connection with such transactions, Mortgagee is acting solely as a principal and not as an agent or a fiduciary of Mortgagor or any Related Party.
- (c) With respect to any advances of Liabilities or the process leading thereto (whether or not Mortgagee or any Mortgagee Affiliate has advised or is currently advising Mortgagor or any Related Party on other matters), Mortgagee has not assumed a fiduciary responsibility in favor of Mortgagor or any Related Party or any other obligation of Mortgagor or any Related Party.
- (d) Mortgagor and the Related Parties have consulted with their own legal and financial advisors to the extent they deem appropriate in connection with the transactions contemplated by the Related Documents.

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16. **ENVIRONMENTAL MATTERS.** Without limiting Mortgagor's obligations under any provision of any environmental indemnity agreement or other Related Document:

- (a) Mortgagor covenants, represents and warrants that to the best of its knowledge:
- (i) no substances, including asbestos or any substance containing more than 0.1 percent asbestos, the group of compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances ("Hazardous Material(s)") (any mixture of a Hazardous Material, regardless of concentration, with other materials shall be considered a Hazardous Material) under any Hazardous Material Law (as defined below) have been or shall be installed, used, generated, manufactured, treated, handled, refined, produced, processed, stored or disposed of, or otherwise present in, on or under the Premises. This provision does not prohibit (1) the use of unrecycled fuel oil as a boiler fuel; (2) the normal use of consumer products; or (3) the normal use of materials such as cleaning products, copier toner, and similar materials routinely used in offices. "Hazardous Material Law(s)" means any law, regulation, order or decree relating to environmental conditions and industrial hygiene, including the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601-2629, the Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and all similar federal, state and local environmental statutes and ordinances and the regulations, orders, and decrees now or hereafter promulgated thereunder.
- (ii) No activity has been or shall be undertaken on the Premises which would cause: (A) the Premises to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Premises within the ambit of, RCRA or any other Hazardous Material Law; (B) a release or threatened release of Hazardous Material from the Premises within the meaning of, or otherwise bring the Premises within the ambit of, CERCLA or SARA or any other Hazardous Material Law; or (C) the discharge of Hazardous Material into any watercourse, body of surface or subsurface water or wetland, or the discharge into the atmosphere of any Hazardous Material which would require a permit under any Hazardous Material Law.
- (iii) No activity has been or shall be undertaken with respect to the Premises which would cause a violation of or support a claim under any Hazardous Material Law.

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- (iv) No underground storage tanks or underground Hazardous Material deposits are or were located on the Property and subsequently removed or filled.
- (v) No investigation, administrative order, litigation or settlement with respect to any Hazardous Materials is threatened or in existence with respect to the Premises.
- (vi) No notice has been served on Mortgagor from any entity, governmental body, or individual claiming any violation of any Hazardous Material Law, or requiring compliance with any Hazardous Material Law, or demanding payment or contribution for environmental damage or injury to natural resources.
- (b) Mortgagor agrees unconditionally to indemnify, defend, and hold Mortgagee harmless against any
- (i) loss, liability, damage, expense (including attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, in each and every case whether in or out of court, in original or appellate proceedings or in bankruptcy), claim or defect in title arising from the imposition or recording of a lien, the incurring of costs of required repairs, clean up or detoxification and removal under any Hazardous Material Law with respect to the Premises, or liability to any third party arising out of any violation of any Hazardous Material Law; and
- (ii) other loss, liability, damage, expense (including attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, in each and every case whether in or out of court, in original or appellate proceedings or in bankruptcy), or claim which may be incurred by or asserted against Mortgagee, including loss of value of the Premises directly or indirectly resulting from the presence on or under, or the discharge, emission or release from, the Premises into or upon the land, atmosphere, or any watercourse, body of surface or subsurface water or wetland, arising from the installation, use, generation, manufacture, treatment, handling, refining, production, processing, storage, removal, clean up or disposal of any Hazardous Material, whether or not caused by Mortgagor.
- (c) Mortgagor shall pay when due any judgments or claims for damages, penalties or otherwise against Mortgagee, and shall assume the burden and expense of defending all suits and proceedings of any description with all persons, political subdivisions or government agencies arising out of the occurrences set forth in (b) of this Section. In the event that such payment is not made Mortgagee, at its sole discretion, may proceed to file suit against Mortgagor to compel such payment.
- (d) THIS SECTION SHALL APPLY TO ANY CLAIM, DEMAND OR CHARGE CONTEMPLATED BY THIS MORTGAGE MADE OR ASSERTED AT ANY TIME, AND, WITHOUT LIMITATION, SHALL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THAT ALL OBLIGATIONS OF MORTGAGOR AND ANY OTHER PERSON OR ENTITY UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY RELATED DOCUMENT OR MATTER HAVE BEEN PAID, RELEASED OR FULFILLED IN

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FULL. Any claim, demand or charge asserted at any time relating to the period of time set forth in this paragraph shall be subject to the terms and conditions of this Mortgage. Notwithstanding the above, this Mortgage shall not be construed to impose any liability on Mortgagor for divisible loss or damage resulting solely from Hazardous Material placed, released or disposed on the Property after foreclosure or sale of the Premises pursuant to the agreement or acceptance by Mortgagee of a deed in lieu of foreclosure.

- (e) Mortgagor shall immediately advise Mortgagee in writing of:
- (i) any governmental or regulatory actions instituted or threatened under any Hazardous Material Law affecting the Premises or the matters indemnified hereunder including any notice of inspection, abatement or noncompliance;
  - (ii) all claims made or threatened by any third party against Mortgagor or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material;
  - (iii) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises to be classified in a manner which may support a claim under any Hazardous Material Law; and
  - (iv) Mortgagor's discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject Mortgagor or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Material Law.

Mortgagor shall immediately deliver to Mortgagee copies of any documentation or records as Mortgagee may request in connection with any matters covered by (i)-(iv) of this subsection, and shall advise Mortgagee promptly in writing of any subsequent developments.

(f) Mortgagee shall give written notice to Mortgagor of any action against Mortgagee which might give rise to a claim by Mortgagee against Mortgagor under this Section. If any action is brought against Mortgagee, Mortgagor, at Mortgagee's sole option and Mortgagor's expense, may be required to defend against such action with counsel satisfactory to Mortgagee and, with Mortgagee's sole consent and approval, to settle and compromise any such action. However, Mortgagee may elect to be represented by separate counsel, at Mortgagor's expense, and if Mortgagee so elects any settlement or compromise shall be effected only with the consent of Mortgagee. Mortgagee may elect to join and participate in any settlements, remedial actions, legal proceedings or other actions included in connection with any claims under this Mortgage.

17. **FIXTURE FILING.** Mortgagor and Mortgagee agree, to the extent permitted by law, that:

- (a) All of the goods described in Section 2(h) or elsewhere herein as fixtures are or are to become fixtures on the real property described in Exhibit A.
- (b) This instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-102 and 9-502 of the UCC; and

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(c) Mortgagor is the record owner of the real property described in Exhibit A.

## 18. FURTHER PROVISIONS.

(a) The recitals hereto are hereby made a part of this Mortgage. All the covenants hereof shall run with the land. Time is of the essence of this Mortgage and of each and every provision hereof.

(b) To the extent that proceeds of the indebtedness secured by this Mortgage are used to pay an outstanding lien, charge or prior encumbrance against the Premises, Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, and shall have the benefit of the priority thereof, irrespective of whether said liens, charges or encumbrances are released.

(c) Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the judgment of Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired or arising.

(d) No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Liabilities.

(e) If the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured by this Mortgage, or if such lien is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the indebtedness secured by this Mortgage shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the indebtedness secured by this Mortgage, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Mortgage.

(f) Nothing herein or in any Related Document contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively: (i) to require Mortgagor to pay interest at a rate greater than is lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate; or (ii) to require Mortgagor to make any payment or do any act contrary to law; and if any provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and Mortgagee shall be given a reasonable time to correct any such error.

(g) In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from the covenants and/or



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undertakings hereunder, and without Mortgagee waiving its rights to accelerate the Liabilities as set forth herein.

(h) Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Premises, or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to this Mortgage or any Related Documents and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability of any person or entity personally obligated for any Liabilities, but shall extend the lien hereof as against the title of all parties having interest in said security which interest is subject to the indebtedness secured by this Mortgage.

19. **NOTICES.** Except as and if otherwise provided herein, all notices, requests and demands to or upon the respective parties pursuant hereto shall be in writing and shall be deemed to have been given or made five business days after a record has been deposited in the mail, postage prepaid, or one business day after a record has been deposited with a recognized overnight courier, charges prepaid or to be billed to the sender, or on the day of delivery if delivered manually with receipt acknowledged, in each case addressed or delivered:

(a) if to Mortgagee to **The Northern Trust Company, Attention: Credit Administration Team, IL-CD-BB-11, 50 South La Salle, Chicago, IL 60603**, with a copy to Elizabeth A. Lesner, Senior Vice President; and

(b) if to Mortgagor to its address indicated in the preamble hereto,

or to such other address as may be hereafter designated in writing by the respective parties hereto by a notice in accord with this Section.

20. **MISCELLANEOUS.** Except as and if otherwise specifically agreed in any Related Document, and only as to such Related Document, this Mortgage and the Related Documents shall be: (i) governed by and construed in accordance with the internal law of the State of Illinois; and (ii) deemed to have been executed in the State of Illinois. This Mortgage shall bind Mortgagor, its (his)(her) heirs, trustees (including successor and replacement trustees), executors, personal representatives, successors and assigns, and shall inure to the benefit of Mortgagee, its successors and assigns, except that Mortgagor may not transfer or assign any rights or obligations hereunder without the prior written consent of Mortgagee. If an Event of Default has occurred and is continuing, Mortgagor agrees to pay upon demand all expenses (including attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, in each case whether in or out of court, in original or appellate proceedings or in bankruptcy) incurred or paid by Mortgagee in connection with the enforcement or preservation of its rights hereunder or under any Related Document. This Mortgage may be executed in two or more counterparts, and (if there is more than one party) by each party on separate counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument. **Delivery of an executed counterpart of a signature page of this Mortgage, whether with or without the remainder hereof, by facsimile or in electronic (e.g., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart hereof, provided that Mortgagor agrees to execute and deliver to Mortgagee such manually-executed counterparts of this Mortgage as Mortgagee shall reasonably request.** If there shall be more than one person constituting Mortgagor, each of them shall be

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primarily, jointly and severally liable for all obligations hereunder. To the maximum extent permitted by applicable law, Mortgagee is hereby authorized by Mortgagor without notice to Mortgagor to fill in any blank spaces and dates herein or in any Related Document to conform to the terms of the transaction and/or understanding evidenced hereby. This Mortgage may not be amended, waived or terminated without the prior written consent of Mortgagee, and shall remain in effect notwithstanding that at any particular time there shall be no Liabilities outstanding. This Mortgage shall continue to be effective or be automatically reinstated, as the case may be, if at any time a payment made to Mortgagee is rescinded or otherwise must be restored or returned by Mortgagee upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Mortgagor, as though such payment had not been made. **THIS MORTGAGE AND THE RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AS TO THE SUBJECT MATTER HEREOF AND THEREOF, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

21. **NO PUNITIVE DAMAGES. NO PARTY HERETO MAY SEEK OR RECOVER PUNITIVE DAMAGES IN ANY PROCEEDING BROUGHT UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY RELATED DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE TO EXTEND CREDIT SECURED BY THE PREMISES.**

22. **AUTHORIZATION TO RECORD PHONE CALLS. FOR ITSELF AS WELL AS ANY RELATED PARTY AND ANY AGENT, DIRECTOR, EMPLOYEE, MANAGER, MEMBER, OFFICER, OR PARTNER OF MORTGAGOR, AS APPLICABLE, MORTGAGOR IRREVOCABLY CONSENTS TO MORTGAGEE'S RECORDING OF ANY TELEPHONE CONVERSATION PERTAINING TO THIS MORTGAGE.**

23. **ANTI-TERRORISM LAW.**

(a) Mortgagee hereby notifies Mortgagor and any Related Party that, pursuant to the requirements of the USA Patriot Act, Mortgagee may be required to obtain, verify and record information that identifies Mortgagor and any Related Party, which information may include the name and address of Mortgagor and any Related Party and other information that will allow Mortgagee to identify Mortgagor and any Related Party in accord with the USA Patriot Act. Mortgagor hereby agrees to take any action necessary to enable Mortgagee to comply with the requirements of the USA Patriot Act.

(b) Mortgagor covenants, represents and warrants as follows:

(i) Neither Mortgagor nor any Related Party is or, to the best of Mortgagor's knowledge, will be in violation of any Anti-Terrorism Law.

(ii) Neither Mortgagor nor any Related Party is or, to the best of Mortgagor's knowledge, will be a Prohibited Person.

(iii) Neither Mortgagor nor any Related Party: (A) conducts any business or engages in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person; (B) deals in, or otherwise engages in any

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transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(iv) Neither Mortgagor nor any Related Party will engage in any of the activities described in (iii) of this subsection (b) in the future.

(v) Mortgagor and each Related Party will ensure that the proceeds of the Liabilities are not used to violate any foreign asset control regulations of the U.S. Office of Foreign Assets Control ("OFAC") or of any enabling statute or any Executive Order relating thereto.

(vi) Mortgagor will deliver to Mortgagee any certification or other evidence requested from time to time by Mortgagee in its sole reasonable discretion, confirming Mortgagor's and any Related Party's compliance with this Section.

(vii) Mortgagor has implemented procedures, and will consistently apply those procedures while this Mortgage is in effect, to ensure that the representations and warranties in this Section remain true and correct while this Mortgage is in effect.

**24. JURISDICTION AND VENUE. Notwithstanding the terms of any Related Document to the contrary, Mortgagor and (by its acceptance hereof) Mortgagee:**

(a) agree irrevocably that all suits, actions or other proceedings with respect to this Mortgage shall be subject to litigation in courts having situs within or jurisdiction over the State and County where the Premises are located;

(b) consent and submit to the jurisdiction of any such court; and

(c) waive any right to transfer or change the venue of any suit, action or other proceeding brought in accordance with this Section, or to claim that any such proceeding has been brought in an inconvenient forum.

**25. WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR AND (BY ITS ACCEPTANCE HEREOF) MORTGAGEE VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT THEY OR ANY OF THEM MAY HAVE TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG MORTGAGOR AND MORTGAGEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE, ANY RELATED DOCUMENT, OR ANY RELATIONSHIP BETWEEN MORTGAGEE AND MORTGAGOR.**

**26. RELEASE FEES. Any time that the Mortgagee shall issue a full or partial release of this Mortgage, then the Mortgagee shall be entitled to a reasonable fee for issuing said full or partial release.**

To the extent applicable under any state law, Mortgagor executed and Mortgagee accepted this Mortgage as of the date stated at the top of the first page, intending to create an instrument executed under seal.

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**MORTGAGOR:**

BRICK AND MORTAR LIMITED PARTNERSHIP AN ILLINOIS LIMITED PARTNERSHIP

BY: 646 MICHIGAN, LTD., AN ILLINOIS CORPORATION

ITS: GENERAL PARTNER

By: *Gordon I. Segal* (SEAL)

Print Name: GORDON I. SEGAL

Title: PRESIDENT

ATTEST: *Harvey Silverstone* (SEAL)

Print Name: HARVEY SILVERSTONE

Title: SECRETARY

State of Illinois }  
County of COOK } ss.

I, Diana Perri, a Notary Public in and for said County, DO HEREBY CERTIFY that GORDON I. SEGAL, President of 646 MICHIGAN, LTD., an Illinois corporation and HARVEY SILVERSTONE, Secretary, of said corporation, who is(are) personally known to (or was adequately identified to me) me to be the same person(s) whose names are subscribed to the foregoing instrument, appeared before me and acknowledged that as President and Secretary (s)he(they) signed, sealed and delivered the said instrument as his(her)(their) free and voluntary act, and the free and voluntary act of 646 MICHIGAN, LTD., AN ILLINOIS CORPORATION, as indicated above, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17 day of June, 2016.

*Diana Perri* (SEAL)  
NOTARY PUBLIC



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EXHIBIT A

LEGAL DESCRIPTION

THE NORTHEAST 1/4 (EXCEPT THE EAST 75.00 FEET THEREOF TAKEN FOR WIDENING NORTH MICHIGAN AVENUE) OF BLOCK 34 IN KINZIE'S ADDITION TO CHICAGO, SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 646 NORTH MICHIGAN AVENUE, CHICAGO, IL

PERMANENT INDEX NO.: 17-10-113-003-0000

Property of Cook County Clerk's Office



**UNOFFICIAL COPY****EXHIBIT B**

Obligor File Name	Obligor #	Obligation Number	Officer #	Amount
				\$3,000,000.00

Dated as of June 17, 2016

**TERM NOTE**  
(any borrower type)

This Note (as modified from time to time, the "Note") has been executed by **BRICK AND MORTAR LIMITED PARTNERSHIP, an Illinois limited partnership**, ("Borrower"), with Borrower's principal residence or office at 1474 Techny Road, Northbrook, Illinois 60062. If more than one party executes this Note, "Borrower" refers to each of them individually and some or all of them collectively, and their obligations hereunder shall be joint and several. If any party comprising "Borrower" is a trustee(s), "Trust Agreement" means the governing trust agreement and/or instruments governing the trust, as modified from time to time, and all related documents and instruments, and "Borrower" also refers to the trustee(s) in its capacity as such and the trust individually and collectively. Various capitalized terms have the meanings set forth in the Section entitled "DEFINITIONS."

**1. SINGLE PRINCIPAL PAYMENT TERM LOAN.**

(a) *FOR VALUE RECEIVED, on or before August 31, 2020 (the "Scheduled Maturity Date"), Borrower promises to pay to the order of **THE NORTHERN TRUST COMPANY, an Illinois banking corporation** (hereafter, together with any subsequent holder hereof, called "Lender"), at its banking office at 50 South LaSalle Street, Chicago, Illinois 60603, or at such other place as Lender may direct, the principal amount of THREE MILLION UNITED STATES DOLLARS (\$3,000,000.00) (together with portions thereof outstanding from time to time hereunder, as applicable, individually and collectively, the "Loan"). Notwithstanding any other provision hereof, there shall be only one advance of principal by Lender hereunder.*

(b) Lender has no obligation to refinance this Note.

(c) Without limiting any other rights of Lender under this Note or any Related Document, Lender shall have no obligation to make the Loan:

(i) if an Event of Default or Unmatured Event of Default has occurred and is continuing, or would be caused by or exist after the making of the Loan; and

(ii) until Borrower has furnished to Lender all Related Documents and such certified copies of Constituent Documents, resolutions, legal opinions, and other documents, all as Lender may request and in such form as Lender may request. Borrower agrees to furnish all such items to Lender prior to the making of the Loan. Any failure by Lender to require all such items as a precondition to the making of the Loan shall not be construed as a waiver of such requirements.

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(d) If a payment under this Note (principal, interest or other) is fifteen (15) or more days late, Borrower may be charged, and if charged Borrower agrees to pay immediately, a late fee of five percent (5%) of the unpaid portion of the payment.

## 2. DEFINITIONS.

(a) As used in this Note the following terms shall have the indicated meanings:

“Anti-Terrorism Law” means any law relating to terrorism or money-laundering, including Executive Order No. 13224 and the USA Patriot Act.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. §1 et seq.), as amended from time to time, and any successor statute.

“Constituent Document” means the articles or certificate of incorporation, by-laws, partnership agreement, certificate of limited partnership, limited liability company operating agreement, limited liability company articles of organization or certificate of formation, trust agreement, and all other documents and instruments pertaining to the formation and ongoing existence of any person or entity which is not a natural person.

“Credit Support Party” means any person, or any persons severally, who now or hereafter guarantees payment or collection of all or any part of this Note or provides any collateral for this Note.

“Dollar” and “\$” means lawful money of the United States of America, unless otherwise specified.

“Event of Default”—see Section entitled “EVENTS OF DEFAULT.”

“Executive Order No. 13224” means Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001.

“Lender Affiliate” means Northern Trust Corporation or any direct or indirect subsidiary of Northern Trust Corporation (other than Lender itself).

The term “margin stock” shall have the same meaning herein as in Federal Reserve Board Regulation U, or any successor regulation, as and if modified from time to time. The verbs “purchase” and “carry” when used with respect to margin stock shall have the same meaning as in such Regulation or successor and applicable authorities thereunder.

The term “person” means any individual, corporation, company, limited liability company, voluntary association, partnership, trust, estate, unincorporated organization, other entity, or government (or any agency, instrumentality, or political subdivision thereof).

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**“Prohibited Person”** means: (i) a person that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (iii) a person with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) a person who commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224; (v) a person that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or at any other official publication of such list; and (vi) a person who is affiliated with a person described in clauses (i) – (v) above.

**“Related Document(s)”** means this Note as well as any note, agreement, guaranty, Swap Agreement, or other document or instrument previously, now or hereafter delivered to Lender in connection with this Note.

**“Related Party(ies)”** means any Credit Support Party, any Subsidiary, and, in addition: (i) as to any Borrower which is a natural person, trusts for the benefit of Borrower; and (ii) as to any Borrower which is not a natural person, to the extent applicable, any general or limited partner, controlling shareholder, joint venturer, member or manager, of Borrower.

**“Subsidiary”** means any corporation, partnership, limited liability company, joint venture, trust, or other legal entity of which Borrower owns directly or indirectly 50% or more of the outstanding voting stock or interest, or of which Borrower has effective control, by contract or otherwise.

**“Swap Agreement”** means any agreement, document or instrument executed or delivered by Borrower or any Credit Support Party pertaining to any Swap Obligation.

**“Swap Obligation”** means, with respect to Borrower or any Credit Support Party, any obligation to pay or perform under any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1(a)(47) of the Commodity Exchange Act, as amended from time to time, if entered into with Lender or any Lender Affiliate.

**“Unmatured Event of Default”** means any event or condition that would become an Event of Default with notice or the passage of time or both.

**“USA Patriot Act”** means the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (Public Law 107-56, signed into law on October 26, 2001), as amended from time to time.

(b) As used in this Note, unless otherwise specified: the term “including” means “including without limitation;” the term “days” means “calendar days;” and terms such as “herein,” “hereof” and words of similar import refer to this Note as a whole. Unless otherwise defined herein or the context requires otherwise, all terms (including those not capitalized) that are defined in the Uniform Commercial Code of Illinois shall have the same meanings herein as in such Code, as such Code may be amended from time to time (the “UCC”); however, no amendment to the UCC after the date hereof shall limit any rights of Lender hereunder or in connection herewith. Unless the context requires otherwise, wherever used herein the singular shall include the plural and vice

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versa, and the use of one gender shall also denote the others. Captions herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof; references herein to sections or provisions without reference to the document in which they are contained are references to this Note.

### 3. INTEREST; PAYMENTS & PREPAYMENTS.

(a) Borrower agrees to pay interest on the unpaid principal amount from time to time outstanding hereunder at a rate per year equal to the "LIBOR-Based Rate," which shall be equal to the sum of Auto Reprice LIBOR plus the Rate Margin. For purposes hereof:

"Auto Reprice LIBOR" means that periodically fixed rate of interest for deposits with maturity periods of overnight in United States dollars offered to Lender in or through the London interbank market, as determined by Lender in accord with its customary practices based on information supplied directly or indirectly by a LIBOR Publisher (subject to such adjustments or corrections as Lender determines are appropriate, and provided that if such rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Note), for or as of the borrowing, maintenance or conversion date requested by Borrower or applicable hereunder, divided by one minus any applicable reserve requirement (expressed as a decimal) on Eurodollar deposits of the same amount and maturity as determined by Lender in its discretion. As to days which are not LIBOR Banking Days, Lender will determine and apply a rate in accord with its customary practices based on information supplied directly or indirectly as of a recent or subsequent date by a LIBOR Publisher (provided that if any such supplied rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Note), subject to such adjustments or corrections as Lender determines are appropriate.

"Rate Margin" means Three-Quarters percent (0.75%).

The maturity periods referred to in the definition of Auto Reprice LIBOR are referred to as "Interest Period(s)." The last day of any Interest Period is referred to as an "Interim Maturity Date." "LIBOR Publisher" means ICE Benchmark Administration, Limited or another source selected by Lender and believed by Lender to be widely used by commercial lenders to determine the London Interbank Offered Rate; and "LIBOR Banking Day" means a day for which a LIBOR Publisher publishes rates for deposits in dollars in London corresponding to Interest Periods. If an Interest Period would otherwise end on a day for which there is no numerically corresponding day in the last month of the Interest Period, the Interest Period will end on the last day of such month. Interest Periods may not extend beyond the Scheduled Maturity Date unless Lender consents otherwise. The definitions above and the application thereof are subject to adjustment as provided in subsection (i) of this Section below.

(b) Notwithstanding the foregoing, if an Event of Default has occurred and is continuing, Borrower agrees to pay interest on the Loan at a rate equal to five percent (5%) per year in addition to the rate otherwise applicable under this Note

(c) Without notice to or consent of Borrower, upon the expiration of each Interest Period, the remaining outstanding Loan principal shall accrue interest for a (each) succeeding Interest Period

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at the then-applicable LIBOR-Based Rate, as determined by Lender effective as of the first day of each such succeeding Interest Period (on a continual, "rolling" basis).

(d) Borrower agrees to pay accrued interest on the first (1st) day of each month of each year, beginning with the first of such dates to occur after the date of the Loan, at maturity of this Note, and upon payment in full, whichever is earlier or more frequent. After maturity, whether by acceleration or otherwise, interest shall be payable upon demand.

(e) The maintenance of the Loan outstanding at the LIBOR-Based Rate shall be subject to the following additional terms and conditions:

(i) If Lender notifies Borrower that

(A) United States dollar deposits in the Loan amount for a maturity corresponding to any Interest Period are not available to Lender in or through the London interbank market, or

(B) Reasonable means do not exist for Lender to determine Auto Reprice LIBOR for the amount requested, or

(C) Rates obtained by Lender in or through the London interbank market do not adequately reflect Lender's own funding costs,

all as determined by Lender in its sole discretion, then Lender may substitute another rate based on an index chosen by Lender in its reasonable discretion and add the Rate Margin to that, and Borrower will pay interest at a rate per year equal to the sum of such rate plus the Rate Margin. The provisions of this Section (subsections (a) through (i) inclusive) shall apply to any such substituted total rate based on any such index, as fully as if such total rate were the LIBOR-Based Rate.

(ii) If any treaty, statute, regulation, interpretation thereof, or any directive, guideline, or otherwise by a central bank or fiscal authority (whether or not having the force of law) shall either prohibit or extend the time at which any principal subject to the LIBOR-Based Rate, or corresponding deposits, may be purchased, maintained, or repaid, then Lender may substitute another index chosen by Lender in its reasonable discretion and add the Rate Margin to that, and Borrower will pay interest at a rate per year equal to the sum of such rate (index) plus the Rate Margin. The provisions of this Section (subsections (a) through (i) inclusive) shall apply to any such substituted total rate based on any such index, as fully as if such total rate were the LIBOR-Based Rate.

(iii) All payments of principal and interest shall be made net of any taxes, costs, fees, losses and expenses incurred or charged by Lender resulting from having principal outstanding hereunder at the LIBOR-Based Rate, including:



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(A) Taxes (or the withholding of amounts for taxes) of any nature whatsoever including income, excise, and interest equalization taxes (other than income taxes imposed by the United States or any state thereof on the income of Lender), as well as all levies, imposts, duties, or fees whether now in existence or resulting from a change in, or promulgation of, any treaty, statute, regulation, interpretation thereof, or any directive, guideline, or otherwise, by a central bank or fiscal authority (whether or not having the force of law) or a change in the basis of, or time of payment of, such taxes and other amounts resulting therefrom;

(B) To the extent not included within the definition of Auto Reprice LIBOR, any reserve or special deposit requirements against assets or liabilities of, or deposits with or for the account of, Lender with respect to principal outstanding at Auto Reprice LIBOR (including those imposed under Regulation D of the Federal Reserve Board) or resulting from a change in, or the promulgation of, such requirements by treaty, statute, regulation, interpretation thereof, or any directive, guideline, or otherwise by a central bank or fiscal authority (whether or not having the force of law);

(C) Any other costs resulting from compliance with treaties, statutes, regulations, interpretations, or any directives or guidelines, or otherwise by a central bank or fiscal authority (whether or not having the force of law);

(D) Any breakage fees and other losses and expenses (including interest rate margin and any other losses of anticipated profits, and any minimum breakage fee charged by Lender from time to time) incurred or charged by Lender by reason of the liquidation or re-employment of deposits or other funds acquired by Lender to make the Loan or maintain principal outstanding at the LIBOR-Based Rate:

(1) As the result of a voluntary prepayment at a date other than the applicable Interim Maturity Date; or

(2) As the result of Borrower's failure to borrow the Loan; or

(3) As the result of a mandatory repayment at a date other than the applicable Interim Maturity Date as a result of: (x) exceeding any applicable borrowing base, such as being out of compliance with any "Minimum Liquidity Balance" requirement in any Related Document; (y) the occurrence of an Event of Default and the acceleration of any portion of the indebtedness hereunder; or (z) the Scheduled Maturity Date occurring prior to the then-current Interim Maturity Date; or

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(4) As the result of a prohibition on making, maintaining, or repaying principal outstanding at the LIBOR-Based Rate.

If Lender incurs or charges any such taxes, costs, fees, losses and expenses, Borrower, upon demand in writing specifying the amounts thereof, shall promptly pay them; save for manifest error Lender's specification shall be presumptively deemed correct. The Loan shall be conclusively deemed to have been funded by or on behalf of Lender in the London interbank market by the purchase of U.S. Dollar deposits or other funds corresponding in amount and maturity to the amounts and Interest Periods applicable to the Loan or portions thereof.

(f) Any prepayment of an amount bearing interest at the LIBOR-Based Rate at a date other than the applicable Interim Maturity Date shall be subject to the provisions of subsection (e) of this Section. Prepayments shall be applied toward principal installments hereunder in the inverse order of maturity and shall not relieve Borrower of its obligation to make remaining payments as scheduled.

(g) Interest shall be computed for the actual number of days elapsed on the basis of a year consisting of 360 days, including the date the Loan is made and excluding the date the Loan or any portion thereof is paid or prepaid. **Calculating interest on the basis of a year other than a calendar year may result in a higher effective interest rate than any numeric rate stated in or determined pursuant to this Note.**

(h) Notwithstanding the foregoing or any other provision hereof or of any Related Document, in no event shall the interest rate under this Note (i) be less than three-quarters percent (0.75%) per year at any time or (ii) exceed the maximum interest rate allowed under applicable law.

(i) If at any time(s) Borrower and Lender enter into any Swap Agreement pertaining to this Note, then Lender in its reasonable discretion may adjust, to coordinate with its and/or industry practices pursuant to the Swap Agreement, any or all of: (i) the capitalized terms defined in this Section, and the determination and application thereof; and (ii) interest and principal payment dates. In such circumstances the remainder of this Section and this Note shall continue to apply without change. Borrower confirms that its obligations under any Swap Agreement are in addition to and not in contravention of its obligations under this Note. Any full or partial repayment or prepayment of this Note shall not in and of itself relieve Borrower from its obligations under any Swap Agreement.

#### 4. CROSS-REFERENCES.

(a) This Note is secured without limitation as provided in the following and all related documents, in each case as amended, restated or replaced from time to time:

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Mortgage or deed of trust dated as of June 17, 2016 on real property all or part of which is commonly known as 646 North Michigan Avenue, Chicago, Illinois 60611.

(b) Payment of fifty percent (50%) of this Note has been unconditionally guaranteed by Gordon I. Segal.

5. **USE OF PROCEEDS.** Borrower agrees not to use proceeds of the Loan directly or indirectly to purchase or carry margin stock unless both: (a) Lender has consented thereto; and (b) if the Loan is secured directly or indirectly by margin stock, Borrower has indicated such in an FR U-1 statement furnished to Lender.

Borrower represents and warrants that the proceeds of this Note will be used solely for business purposes, and not for personal, family or household use, within the meaning of Federal Truth-in-Lending and similar state laws and regulations. If Borrower is a natural person or is a trust which by its terms is revocable by a settlor thereof who is living, then Borrower represents and warrants that the business in which Borrower is engaged is \_\_\_\_\_ n/a \_\_\_\_\_ and the purpose for which the proceeds of this Note will be used is \_\_\_\_\_ n/a \_\_\_\_\_.

6. **REPRESENTATIONS AND WARRANTIES.**

(a) Borrower represents and warrants to, and agrees in favor of, Lender that:

(i) (A) If Borrower is an organization (including a trust that is a registered organization), then Borrower is an entity of the type, and is organized under the laws of the jurisdiction, specified in the preamble hereto. Borrower's name as shown in the preamble hereto is the full exact name that appears in Borrower's organizational documents. If Borrower is a registered organization, Borrower's name as shown in the preamble hereto is as shown on the public organic record most recently filed with or issued or enacted by Borrower's jurisdiction of organization which purports to state, amend, or restate Borrower's name. If Borrower is an organization but not a registered organization, if it has only one place of business that place of business is at Borrower's address indicated in the preamble hereto, but if it has more than one place of business, its chief executive office is at such address.

(B) If Borrower is a trust which is not itself a registered organization, then: (1) if the Trust Agreement specifies a name for the trust, Borrower's name as shown in the preamble hereto is the name so specified; (2) Borrower has provided the name of its settlor(s) or testator(s) to Lender; and (3) if Borrower has only one place of business, that place of business is at Borrower's address indicated in the preamble hereto, but if it has more than one place of business, its chief executive office is at such address.

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(C) If Borrower is a natural person, then:

(1) Borrower's principal residence is located at the address shown in the preamble hereto; and

(2) i. if Borrower has a driver's license or alternative identification that has not expired and that was issued by the state of Borrower's principal residence, Borrower's name shown in the preamble hereto is exactly the same as shown on that driver's license or alternative identification card; or

ii. if Borrower does not have a driver's license or alternative identification card that has not expired and that was issued by the state of Borrower's principal residence, then: (x) Borrower's first given name and surname are as shown in the preamble hereto; and (y) if Borrower obtains a driver's license or alternative identification card from the state of Borrower's principal residence, then Borrower shall, within thirty (30) days of the issuance of such driver's license or alternative identification card, provide Lender with a true and accurate copy of such driver's license or alternative identification card, showing Borrower's name and address, the state of issuance and the expiration date thereof; and

(3) in any event, Borrower shall provide Lender notice within thirty (30) days of the happening of each of the following events:

i. Borrower's principal residence has changed;

ii. the name of Borrower on Borrower's driver's license or alternative identification card has changed in any manner, no matter how small;

iii. Borrower's driver's license or alternative identification has been surrendered, suspended, changed or terminated in any manner, no matter how small or for how short a time;

iv. Borrower's driver's license or alternative identification card has expired; or

v. Borrower has changed his or her first given name or surname, whether as a result of marriage, divorce, legal proceeding or otherwise.

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(D) The representations and warranties made by Borrower in (A)-(C) of this (i), as applicable, would have been accurate at all times during the five years and six months prior to the date hereof except as and if Borrower has specifically notified Lender in writing prior to Borrower's execution of this Note.

(ii) Borrower (if Borrower is not a natural person) and any Subsidiary are validly existing and in good standing under the laws of their state of organization or formation, and are duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so would reasonably be expected to have a material adverse impact on the assets, condition or prospects of Borrower.

(iii) The execution, delivery and performance of this Note and all Related Documents: are within Borrower's powers and have been authorized by all necessary action required by law and (unless Borrower is a natural person) Borrower's Constituent Documents; have received any and all necessary governmental approval; and do not and will not contravene or conflict with any provision of law, any Constituent Document or any agreement affecting Borrower or its property. This Note and all Related Documents are enforceable against Borrower and/or the applicable Related Parties in accord with their terms, except to the extent, if any, that such enforceability may be limited by equitable principles, whether applied in a court of law or equity, or by bankruptcy, insolvency and other laws affecting creditors' rights generally.

(iv) There has been no material adverse change in the business, financial condition, properties, assets, operations or prospects of Borrower or any Related Party since the date of the latest financial statements or other documentation provided by or on behalf of Borrower or any Related Party to Lender.

(v) Borrower has filed or caused to be filed all foreign, federal, state, and local tax returns that are required to be filed, and has paid or has caused to be paid all of its taxes, including any taxes shown on such returns or on any assessment received by it, to the extent that such taxes have become due.

(vi) The execution, delivery and performance of this Note and all Related Documents are in Borrower's best interest in its current and future operations and will materially benefit Borrower. Borrower has received adequate, fair and valuable consideration, and at least reasonably equivalent value, to enter into and perform this Note and all Related Documents. Borrower's assets at fair valuation exceed the sum of Borrower's debts. Borrower is able to pay its debts as they become due. Borrower does not have unreasonably small capital with which to conduct its business.

(vii) This sub-subsection applies if and only if "Borrower" consists of two or more persons. Each person comprising "Borrower" acknowledges that by acting together to borrow on a combined joint and several basis, each Borrower is able to and does obtain a larger amount of credit, better terms and conditions and at a lower cost of funds than would otherwise be available to each Borrower



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individually. Each Borrower acknowledges that it thereby receives fair, reasonable and equivalent value for the joint and several obligations undertaken under this Note. Each Borrower's obligations hereunder shall not be subject to any setoff, defense or counterclaim that is or would be available at law or in equity to a guarantor, surety or accommodation party, all of which setoffs, defenses or counterclaims each Borrower hereby expressly waives. Each party comprising Borrower shall be jointly and severally liable hereunder and under the Related Documents regardless of whether such Borrower has received the proceeds of any Loan or has benefited from any Loan.

(b) The request or application for the Loan shall be a representation and warranty by Borrower as of the date of such request or application that: (i) no Event of Default or Unmatured Event of Default has occurred and is continuing as of such date; and (ii) Borrower's representations and warranties herein and in any Related Document are true and correct as of such date as though made on such date.

7. **EVENTS OF DEFAULT.** Each of the following shall constitute an "Event of Default" except for it shall not be an Event of Default until ten (10) days after written notice on any monetary event of default and thirty (30) days after written notice on any non-monetary event of default:

(a) (i) failure to pay, when and as due, any principal, interest or other amounts payable hereunder or under any Related Document; (ii) failure to comply with or perform any agreement or covenant of Borrower or any Related Party contained herein or in any Related Document, which failure does not otherwise constitute an Event of Default, subject to any applicable notice, grace or cure period; or (iii) if Borrower or any Related Party is a natural person, failure to furnish or cause to be furnished to Lender when and as requested by Lender, but not more often than once every twelve months, fully completed personal financial statements of Borrower or such Related Party on Lender's then-standard form together with such supporting information pertaining to creditworthiness of Borrower or such Related Party as Lender may reasonably request; or

(b) any default, event of default, or similar event shall occur or continue under any Related Document, and shall continue beyond any applicable notice, grace or cure period set forth in such Related Document; or

(c) there shall occur any default or event of default, any similar event, any event that requires the prepayment of borrowed money or permits the acceleration of the maturity thereof, or any event or condition that might become any of the foregoing with notice or the passage of time or both, under the terms of any evidence of indebtedness or other agreement issued or assumed or entered into by Borrower or any Related Party, or under the terms of any document or instrument under which any such evidence of indebtedness or other agreement is issued, assumed, secured, or guaranteed, and such event shall continue beyond any applicable notice, grace or cure period; or

(d) any representation, warranty, certificate, financial statement, report, notice, or other writing furnished by or on behalf of Borrower or any Related Party to Lender is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified; or

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- (e) this Note or any Related Document, including any guaranty of or pledge of collateral security for this Note, shall be repudiated or shall become unenforceable or incapable of performance in accord with its terms; or
- (f) Borrower or any Related Party (in each case if not a natural person) shall fail to maintain their existence in good standing in their state of organization or formation or shall fail to be duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so would reasonably be expected to have a material adverse impact on the assets, condition or prospects of Borrower or any Related Party; or
- (g) Borrower or any Related Party shall die, be declared legally incompetent, dissolve, liquidate, merge, consolidate, or cease to be in existence for any reason; or, if Borrower is a partnership or joint venture, any general or limited partner or joint venturer of Borrower shall withdraw from Borrower, or any general partner shall become a limited partner; or the trust under the Trust Agreement shall terminate in whole or in part or be the subject of a distribution of other than income but, in the case of a distribution, only if such distribution would otherwise cause an Event of Default or Unmatured Event of Default to occur; or
- (h) except for a successor trustee under the Trust Agreement, any person or entity presently not in control of a Borrower or Related Party which is not a natural person shall obtain control directly or indirectly of such a Borrower or Related Party, whether by purchase or gift of stock or assets, by contract, or otherwise; or
- (i) any proceeding (judicial or administrative) shall be commenced against Borrower or any Related Party, or with respect to any of their assets, which would reasonably be expected to have a material and adverse effect on the ability of Borrower to repay this Note; or a judgment or settlement shall be entered or agreed to in any such proceeding which would reasonably be expected to have a material and adverse effect on the ability of Borrower to repay this Note; or any garnishment, summons, writ of attachment, citation, levy or the like is issued against or served upon Lender for the attachment of any property of Borrower or any Related Party in Lender's possession or control; or
- (j) Lender shall not have a perfected security interest in any collateral for this Note, of first-priority and enforceable in accord with the applicable Related Documents; or any notice of a federal tax lien against Borrower or any Related Party shall be filed with any public recorder; or
- (k) there shall be any material loss or depreciation in the value of any collateral for this Note for any reason (except that the preceding part of this subsection shall not apply if Borrower and any Related Party are in compliance with any "Minimum Liquidity Balance" or other specific borrowing base or like requirement under all Related Documents); or Lender shall otherwise reasonably deem itself insecure; or, unless expressly permitted by this Note or the Related Documents, all or any part of any such collateral or any direct, indirect, legal, equitable or beneficial interest therein is assigned, transferred or sold without Lender's prior written consent; or
- (l) any bankruptcy, insolvency, reorganization, arrangement, readjustment, liquidation, dissolution, or similar proceeding, domestic or foreign, is instituted by or against Borrower or any Related Party, and, if instituted against Borrower or any Related Party, shall not be dismissed or vacated within sixty (60) days after the filing or other institution thereof; or

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(m) Borrower or any Related Party shall become insolvent, generally shall fail or be unable to pay its debts as they mature, shall admit in writing its inability to pay its debts as they mature, shall make a general assignment for the benefit of its creditors, shall enter into any composition or similar agreement, or shall suspend the transaction of all or a substantial portion of its usual business.

## 8. DEFAULT REMEDIES.

(a) Upon the occurrence of any Event of Default specified in (a)-(k) of the Section entitled "EVENTS OF DEFAULT," Lender at its option may declare this Note (principal, interest and other amounts) immediately due and payable without notice or demand of any kind, ALL OF WHICH ARE HEREBY EXPRESSLY WAIVED BY BORROWER (except as and if otherwise specifically set forth herein), whereupon the entire unpaid principal balance of this Note, all interest accrued thereon, and any other amounts payable hereunder shall thereupon at once mature and become due and payable. Upon the occurrence of any Event of Default specified in (l)-(m) of the Section entitled "EVENTS OF DEFAULT," this Note (principal, interest and other amounts) shall be immediately and automatically due and payable without notice, demand or other action of any kind, **ALL OF WHICH ARE HEREBY EXPRESSLY WAIVED BY BORROWER**. Upon the occurrence of any Event of Default, Lender may exercise any rights and remedies under this Note or any Related Document (including any Related Document pertaining to collateral), and at law or in equity. The time of payment of this Note is also subject to acceleration if an Event of Default occurs.

(b) Lender may, by written notice to Borrower, at any time and from time to time, waive any Event of Default or Unmatured Event of Default which shall be for such period and subject to such conditions as shall be specified in any such notice. In the case of any such waiver, Lender and Borrower shall be restored to their former position and rights hereunder, and any Event of Default or Unmatured Event of Default so waived shall be deemed to be cured and not continuing; but no such waiver shall extend to or impair any subsequent or other Event of Default or Unmatured Event of Default. No failure to exercise, and no delay in exercising, on the part of Lender of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of Lender herein provided are cumulative and not exclusive of any rights or remedies provided by law.

(c) Except as and if otherwise specifically set forth herein, Borrower irrevocably waives presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration, demand, diligence, grace, notice of dishonor or default, notice of nonpayment, notice of acceptance, notice of any loans made, extensions granted or other action taken in reliance hereon, and all other demands and notices of any kind in connection with this Note.

**9. NO INTEREST OVER LEGAL RATE.** It is the intent of Lender and Borrower in the execution of this Note and all other instruments now or hereafter securing this Note to contract in strict compliance with applicable usury law. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained in this Note, or in any other instrument executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law; that neither the undersigned nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment of this Note shall ever be obligated or required to pay interest on

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this Note at a rate in excess of the maximum interest that may be lawfully charged under applicable law; and that the provisions of this paragraph shall control over all other provisions of this Note and any other instruments now or hereafter executed in connection herewith which may be in apparent conflict herewith. The holder of this Note expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of this Note is accelerated. If the maturity of this Note shall be accelerated for any reason or if the principal of this Note is paid prior to the end of the term of this Note, and as a result thereof the interest received for the actual period of existence of the Loan evidenced by this Note exceeds the applicable maximum lawful rate, the holder of this Note shall, at its option, either refund to the undersigned the amount of such excess or credit the amount of such excess against the principal balance of this Note then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. In the event that Lender or any other holder of this Note shall contract for, charge or receive any amount or amounts and/or any other thing of value which are determined to constitute interest which would increase the effective interest rate on this Note to a rate in excess of that permitted to be charged by applicable law, an amount equal to interest in excess of the lawful rate shall, upon such determination, at the option of the holder of this Note, be either immediately returned to the undersigned or credited against the principal balance of this Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By execution of this Note Borrower acknowledges that it believes the Loan evidenced by this Note to be non-usurious and agrees that if, at any time, Borrower should have reason to believe that the Loan is in fact usurious, it will give the holder of this Note notice of such condition, and the undersigned agrees that said holder shall have ninety (90) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. The term "applicable law" as used in this Note shall mean the laws of the State of Illinois or the laws of the United States, whichever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.

10. **PAYMENTS, ETC.** All payments hereunder shall be made in immediately available funds, and shall be applied first to accrued interest and then to principal; however, if an Event of Default occurs, Lender may, in its sole discretion, and in such order as it may choose, apply any payment to interest, principal and/or lawful charges and expenses then accrued. Borrower shall receive immediate credit on payments received during Lender's normal banking hours if made in cash, immediately available funds, or by debit to available balances in an account at Lender; otherwise payments shall be credited after clearance through normal banking channels. Borrower authorizes Lender to charge any account of Borrower maintained with Lender for any amounts of principal, interest, taxes, duties, or other charges or amounts due or payable hereunder or under any Related Document, with the amount of such payment subject in Lender's discretion to availability of collected balances. Unless Borrower instructs otherwise, the Loan shall be credited to an account(s) of Borrower with Lender. All payments shall be made without deduction for or on account of any present or future taxes, duties or other charges levied or imposed on this Note, the proceeds, Lender, Borrower or any Related Party by any government or political subdivision thereof. Borrower shall upon request of Lender pay all such taxes, duties or other charges in addition to principal and interest, including all documentary stamp and intangible taxes, but excluding income taxes based solely on Lender's income.

11. **SETOFF.** If an Event of Default has occurred and is continuing, then, to the maximum extent permitted by law, any account, deposit or other indebtedness owing by Lender to Borrower, and any securities or other property of Borrower delivered to or left in the possession of Lender or any affiliate or subsidiary of Lender, or its or their nominee or bailee, may (at any time and without notice of any kind) be set off against and applied in payment of any obligation hereunder or under any Related Document.



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12. **NOTICES.** Except as and if otherwise provided herein, all notices, requests and demands to or upon the respective parties hereto shall be in writing and shall be deemed to have been given or made five business days after a record has been deposited in the mail, postage prepaid, or one business day after a record has been deposited with a recognized overnight courier, charges prepaid or to be billed to the sender, or on the day of delivery if delivered manually with receipt acknowledged, in each case addressed or delivered:

- a. if to Lender to **The Northern Trust Company, Attention: Credit Administration Team, IL-CD-BB-11, 50 South LaSalle, Chicago, IL 60603**, , with a copy to Elizabeth A. Lesner, Senior Vice President; and
- b. if to Borrower to its address indicated in the preamble hereto,

or to such other address as may be hereafter designated in writing by the respective parties hereto by a notice in accord with this Section. Notwithstanding the foregoing, unless otherwise provided herein to the contrary: Borrower may request the Loan (including directions to disburse Loan proceeds) and select among interest rate options (if this Note provides for more than one interest rate option) orally, by e-mail or such other means as Lender and Borrower may establish from time to time; and Lender may rely upon such request and selections.

13. **MISCELLANEOUS.** Except as and if otherwise specifically agreed in any Related Document, and only as to such Related Document, and to the extent, if any, that the UCC or other law provides for the application of the law of a different state, this Note and the Related Documents shall be: (i) governed by and construed in accordance with the internal law of the State of Illinois; and (ii) deemed to have been executed in the State of Illinois. This Note shall bind Borrower, its(his)(her) heirs, trustees (including successor and replacement trustees), executors, personal representatives, successors and assigns, and shall inure to the benefit of Lender, its successors and assigns, except that Borrower may not transfer or assign any rights or obligations hereunder without the prior written consent of Lender. If an Event of Default has occurred and is continuing, Borrower agrees to pay upon demand all expenses (including reasonable attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Lender, in each case whether in or out of court, in original or appellate proceedings or in bankruptcy) incurred or paid by Lender in connection with the enforcement or preservation of its rights hereunder or under any Related Document. Time is of the essence in the performance of all obligations under this Note. This Note is, and is intended to take effect as, an instrument under seal. Whenever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent and duration of such prohibition or invalidity without invalidating the remainder of such provision, the applicability of such provision in any other instance, or the remaining provisions of this Note. To the maximum extent permitted by applicable law, Lender is hereby authorized by Borrower without notice to Borrower to fill in any blank spaces and dates herein or in any Related Document to conform to the terms of the transaction and/or understanding evidenced hereby. This Note may not be amended, waived or terminated without the prior written consent of Lender, and shall remain in effect notwithstanding that at any particular time there shall be no amounts outstanding hereunder. This Note shall continue to be effective or be automatically reinstated, as the case may be, if at any time a payment made to Lender hereunder is rescinded or otherwise must be restored or returned by Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, as though such payment had not been made. **THIS NOTE AND THE RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AS TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR**



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**SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

14. **NO PUNITIVE DAMAGES. NO PARTY HERETO MAY SEEK OR RECOVER PUNITIVE DAMAGES IN ANY PROCEEDING BROUGHT UNDER OR IN CONNECTION WITH THIS NOTE OR ANY RELATED DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE LOAN(S).**

15. **TELEPHONIC INSTRUCTIONS; AUTHORIZATION TO RECORD PHONE CALLS. LENDER AT ITS OPTION MAY MAKE THE LOAN HEREUNDER UPON TELEPHONIC INSTRUCTIONS AND IN SO DOING SHALL BE FULLY ENTITLED TO RELY SOLELY UPON INSTRUCTIONS, INCLUDING INSTRUCTIONS TO MAKE TRANSFERS TO THIRD PARTIES, REASONABLY BELIEVED BY LENDER TO HAVE BEEN GIVEN BY AN AUTHORIZED PERSON, WITHOUT INDEPENDENT INQUIRY OF ANY TYPE. FOR ITSELF AS WELL AS ANY RELATED PARTY AND ANY AGENT, DIRECTOR, EMPLOYEE, MANAGER, MEMBER, OFFICER, OR PARTNER OF BORROWER, AS APPLICABLE, BORROWER IRREVOCABLY CONSENTS TO LENDER'S RECORDING OF ANY TELEPHONE CONVERSATION PERTAINING TO THE LOAN UNDER THIS NOTE.**

16. **ANTI-TERRORISM LAW.**

(a) **By its acceptance of this Note as evidenced by its making of the Loan Lender hereby notifies Borrower and any Related Party that, pursuant to the requirements of the USA Patriot Act, Lender may be required to obtain, verify and record information that identifies Borrower and any Related Party, which information may include the name and address of Borrower and any Related Party and other information that will allow Lender to identify Borrower and any Related Party in accord with the USA Patriot Act. Borrower hereby agrees to take any action necessary to enable Lender to comply with the requirements of the USA Patriot Act.**

(b) **Borrower covenants, represents and warrants as follows:**

(i) **Neither Borrower nor any Related Party is or, to the best of Borrower's knowledge, will be in violation of any Anti-Terrorism Law.**

(ii) **Neither Borrower nor any Related Party is or, to the best of Borrower's knowledge, will be a Prohibited Person.**

(iii) **Neither Borrower nor any Related Party: (A) conducts any business or engages in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person; (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.**

(iv) **Neither Borrower nor any Related Party will engage in any of the activities described in (iii) of this subsection (b) in the future.**

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(v) Borrower and each Related Party will ensure that the proceeds of the Loan are not used to violate any foreign asset control regulations of the U.S. Office of Foreign Assets Control (“OFAC”) or of any enabling statute or any Executive Order relating thereto.

(vi) Borrower will deliver to Lender any certification or other evidence requested from time to time by Lender in its sole reasonable discretion, confirming Borrower’s and any Related Party’s compliance with this Section.

(vii) Borrower has implemented procedures, and will consistently apply those procedures while this Note is in effect, to ensure that the representations and warranties in this Section remain true and correct while this Note is in effect.

**17. JURISDICTION AND VENUE.** Except as and if otherwise specifically agreed in any Related Document, and only as to suits, actions or other proceedings pertaining to such Related Document, Borrower and (by its acceptance hereof) Lender:

- (a) agree irrevocably that all suits, actions or other proceedings with respect to, arising out of or in connection with this Note or any Related Document shall be subject to litigation in courts having situs within or jurisdiction over Cook County, State of Illinois;
- (b) consent and submit to the jurisdiction of any such court; and
- (c) waive any right to transfer or change the venue of any suit, action or other proceeding brought in accordance with this Section, or to claim that any such proceeding has been brought in an inconvenient forum.

**18. WAIVER OF JURY TRIAL.** TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND (BY ITS ACCEPTANCE HEREOF) LENDER VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT THEY OR ANY OF THEM MAY HAVE TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS NOTE, ANY RELATED DOCUMENT, OR ANY RELATIONSHIP BETWEEN LENDER AND BORROWER.

To the extent applicable under any state law, Borrower executed this Note as of the date stated at the top of the first page, intending to create an instrument executed under seal.

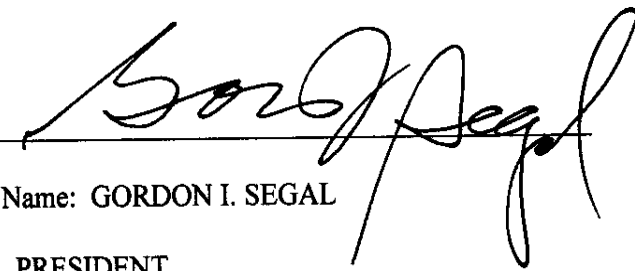
**BORROWER:**

BRICK AND MORTAR LIMITED PARTNERSHIP, AN  
ILLINOIS LIMIED PARTNERSHIP

BY: 646 MICHIGAN, LTD., AN ILLINOIS CORPORTION

ITS: GENERAL PARTNER

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By: 

(SEAL)

Print Name: GORDON I. SEGAL

Title: PRESIDENT

Attest: 

Print Name: HARVEY SILVERSTONE

Title: SECRETARY

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