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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption

Doc#: 1621556020 Fee: \$94.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 08/02/2016 09:00 AM Pg: 1 of 24

Report Mortgage Fraud  
800-532-8785

The property identified as: **PIN:** 17-15-300-022-0000

**Address:**

**Street:** 640 S WABASH AVE

**Street line 2:**

**City:** CHICAGO

**State:** IL

**ZIP Code:** 60605

**Lender:** MANUFACTURERS AND TRADERS TRUST COMPANY

**Borrower:** GD WABASH, LLC

**Loan / Mortgage Amount:** \$36,481,100.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 771/70 et seq. because it is commercial property.

**Certificate number:** 33817D05-FA89-4208-B8C2-D94E8E70F617

**Execution date:** 7/29/2016

898 1473 De 1 of 2

Property of Cook County Clerk's Office

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**Prepared by and  
after recording return to:**  
Christopher M. Sacht  
Hackett Feinberg, PC  
155 Federal Street, 9<sup>th</sup> Floor  
Boston, MA 02110

## CONSTRUCTION AND PERMANENT MORTGAGE AND SECURITY AGREEMENT

### Article I. Definitions and Security Interests

1.1. **Definitions.** The terms used below shall have the meanings there indicated.

Date: July 28, 2016

Lender: Manufacturers and Traders Trust Company  
One M&T Plaza  
Buffalo, NY 14203

Borrower: GD Wabash, LLC  
a Delaware limited liability company  
c/o Gilbane Development Company  
7 Jackson Walkway  
Providence, Rhode Island 02903

Collateral:

- (a) All of the Borrower's accounts, accounts receivable, contract rights, documents, instruments, general intangibles, and rents and profits arising from the Mortgaged Property;
- (b) The Borrower's personal property including inventory, supplies, furniture, furnishings, equipment, and building and construction materials, used or useful in the construction, operation or maintenance of the Mortgaged Property;
- (c) The Borrower's rights as lessee of all property leased by the Borrower now or hereafter located on or used in connection with the operation or maintenance of the Premises;
- (d) To the extent assignable, all contracts, agreements, licenses, permits and approvals for the construction, ownership, maintenance and operation of the Mortgaged Property;

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- (e) The goodwill and trade names owned by the Borrower and any business conducted on the Mortgaged Property by the Borrower, and all service marks and logotypes used in connection therewith;
- (f) All books, records, plans and specifications and operating manuals of Borrower relating to the construction, use, operation, occupancy, and maintenance of the Mortgaged Property;
- (g) The proceeds of any insurance for damage to the property described above as "Collateral"; and
- (h) The proceeds of all judgments, awards of damages, and settlements for, or in lieu of, the taking by eminent domain of all or any part of the property described above as "Collateral".

Commodity Exchange Act:

The Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, any successor statute, and any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof).

Excluded Hedging Obligations:

Any Hedging Obligations if, and to the extent that, all or any portion of this Mortgage is or becomes impermissible under the Commodity Exchange Act by virtue of the Borrower's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time this Mortgage becomes effective with respect to such Hedging Obligations.

Hazardous Materials:

Shall be as defined in a certain Hazardous Materials Indemnification Agreement by the Borrower and Guarantor in favor of the Lender of even date herewith (the "Environmental Indemnification").

Hedging Obligations:

All liabilities of the Borrower to the Lender (or any affiliate of the Lender) under any Hedging Contracts entered into between the Borrower and the Lender (or any affiliate of the Lender).

Loan:

The obligations evidenced by the Loan Documents.

Loan Agreement:

Together, (i) a certain Loan Agreement of even date herewith by and between the Borrower and Lender, relating to the Mortgaged Property and (ii) a certain Construction Disbursement Agreement of even date herewith by and between the Borrower and Lender relating to the Project, as each may be amended, modified, or extended from time to time.

Loan Amount:

\$36,481,100.00.

Loan Documents:

This Mortgage, the Note, the Loan Agreement and all other documents executed and delivered by Borrower in connection therewith.

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- Mortgaged Property:** The Premises and the Collateral; all Collateral shall to the extent possible be deemed real estate, and if not real estate, then fixtures and a part of the real estate, and the balance shall be personal property.
- Note:** A certain Construction-to-Permanent Loan Note of even date herewith from the Borrower to Lender in the maximum principal amount of the Loan Amount, evidencing the debt secured by the Loan Documents.
- Obligations:**
- (a) The payment of the Loan Amount and the performance of all provisions of the Note;
  - (b) The payment and performance of all provisions of all extensions, refinancings and amendments of the Note and all notes issued in substitution therefor;
  - (c) The payment and performance of all provisions of the other Loan Documents, including without limitation, the lien-free completion of the Project; and
  - (d) The payment and performance of all other indebtedness, obligations and liabilities of the Borrower to Lender existing on the date of this Mortgage or arising hereafter, absolute or contingent, matured or unmatured, secured or unsecured arising in connection with the Loan Documents, including, without limitation, all obligations of Borrower to Lender (or Lender's affiliates) which give rise to any Hedging Obligations but excluding any Excluded Hedging Obligations.
- Premises:**
- (a) The fee simple interest in the land (the "Land") known as **640 South Wabash Avenue (a/k/a 30 East Balbo Avenue), Chicago, Illinois**, as more particularly described in Exhibit A attached hereto, with a fee simple interest in all buildings, structures and improvements ("Improvements") now or hereafter thereon, together with all appurtenances thereof and interests therein now or hereafter owned by Borrower, including Borrower's rights in all fixtures now or hereafter attached to, located on or used in connection with the Improvements, and all leases, occupancy agreements, and rents and profits thereof;
  - (b) All materials intended for construction, reconstruction, alteration or repair of the Improvements;
  - (c) All of the Borrower's goods, equipment, inventory and articles of personal property now or hereafter attached to, located on or used in connection with the Improvements, including without limitation, furniture, furnishings, appliances, partitions, screens, window treatments, floor coverings, hall and lobby equipment and cleaning and maintenance equipment and supplies;
  - (d) All replacements of and additions to all of the property described above as the "Premises";
  - (e) The proceeds of any insurance for damage to the property described above as the "Premises"; and

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- (f) The proceeds of all judgments, awards of damages and settlements for, or in lieu of, the taking by eminent domain of any part of the property described above as comprising the "Premises".

Project: Shall be as defined in the Loan Agreement.

Superfund and  
Hazardous Waste

Laws: As defined in the Environmental Indemnification.

- 1.2. Other Definitions. Capitalized terms used, but not otherwise defined, herein shall have the same meanings as provided in the Loan Agreement.

## Article II. Grant of Mortgage and Security Interest

- 2.1. Grant of Mortgage. For good and valuable consideration paid, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of securing payment and performance of the Obligations defined in Section 1.1. above, Borrower hereby Grants, Bargains, Sells, Assigns, Mortgages and Conveys unto Lender the Mortgaged Property, subject to, but only to, the Permitted Encumbrances (as defined in the Loan Agreement), to have and to hold the Mortgaged Property unto Lender, its successors and assigns forever and Borrower by executing and delivering this Mortgage, does hereby warrant that Borrower is well and lawfully seized of good, absolute and indefeasible fee simple absolute title to the Mortgaged Property, free and clear of all mortgages, liens, charges, security interests and encumbrances whatsoever, except only the Permitted Encumbrances, and does hereby bind itself, its successors and assigns to warrant and forever defend fee simple absolute title to the Mortgaged Property unto the Lender, and the quiet and peaceful enjoyment and possession thereof, against every person whomsoever claiming the same or any part thereof or interest therein. The condition of these presents is such that if Borrower shall pay or cause to be paid the indebtedness secured hereby as and when the same shall become due and payable and shall observe, perform and discharge the other Obligations in accordance with this Mortgage and the other Loan Documents, then this Mortgage and the other Loan Documents and the estates and rights granted by them shall be released and terminated by Lender.
- 2.2. Grant of Security Interest. The Borrower grants the Lender a first priority security interest in the Collateral under the Uniform Commercial Code in effect in the State of Illinois. Neither this grant of a security interest nor the filing of a financing statement shall, however, be deemed to impair the intention that to the extent possible all property included in the Mortgaged Property is a part of the real estate. THIS MORTGAGE HEREBY ALSO CONSTITUTES A FINANCING STATEMENT FILED TO PERFECT LENDER'S SECURITY INTEREST IN THE COLLATERAL UNDER THE UNIFORM COMMERCIAL CODE IN EFFECT IN THE STATE OF ILLINOIS, AS AMENDED OR RECODIFIED FROM TIME TO TIME.
- 2.3. This Mortgage evidences a debt created by one or more disbursements made by Lender to Borrower to finance the cost of the construction of certain improvements upon the Mortgaged Property in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the Uniform Commercial Code. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute an Event of Default hereunder. Upon the occurrence of any such Event of

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Default (unless such Event of Default is waived in writing by the Lender), the holder of the Note may at its option declare the Obligations immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor (as provided in the Loan Agreement), in which case all money reasonably expended shall be so much additional Obligations and any money reasonably expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the default interest rate set forth in the Note. In the event of a conflict between the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage. All future advances shall be made within five (5) years of the date hereof.

## Article III. Representations, Warranties, and Agreements

3.1. General. The Borrower hereby represents, warrants and agrees with Lender that:

- (a) The Borrower is duly authorized to make and enter into the Loan Documents and to carry out the transactions contemplated therein;
- (b) The Loan Documents, as applicable, have each been duly executed and delivered on behalf of Borrower;
- (c) The Borrower will pay and perform all of the Obligations in accordance with the terms and conditions of the Loan Documents and such other documents or instruments which evidence the Obligations; and
- (d) Upon written request from the Lender, the Borrower shall, at its expense, cause this Mortgage and each amendment thereof and appropriate financing and continuation statements to be recorded and filed in order to establish and preserve the liens and security interests of Lender.

3.2. Title to Property; Other Liens. The Borrower represents, warrants and agrees that:

- (a) The Borrower owns good clear record and marketable fee simple absolute title to the Mortgaged Property, free of all encumbrances except the Permitted Encumbrances. The Borrower shall not permit or suffer to be created, and shall promptly discharge, any mortgage, lien, attachment, lis pendens, or other encumbrance on the Mortgaged Property or any part thereof or interest therein, other than this Mortgage and the Permitted Encumbrances. The Borrower shall promptly give Lender notice of, and, unless Lender requests otherwise, Borrower shall appear in and diligently contest at Borrower's expense, any action or proceeding which purports to affect Borrower's title to the Mortgaged Property, the priority or validity of the lien of this Mortgage, or any rights created or secured by the Loan Documents. Lender shall have the right to intervene or otherwise participate in any such action or proceeding, whether or not a continuing Event of Default exists;
- (b) The Borrower will take all reasonable steps to prevent the recording of any notice of contract, notice of subcontract, or materialman's or mechanic's lien relating to the Mortgaged Property, unless any of the same constitutes a Permitted Encumbrance. The Borrower will take all steps necessary, including bonding, to discharge or remove the same promptly from the record after Borrower has knowledge thereof; and
- (c) The Borrower may, in accordance with Section 3.7(c) below, contest any notice, lien,

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attachment, lis pendens or other encumbrances relating to the Mortgaged Property which are not Permitted Encumbrances, or any tax, assessment or other governmental levy, provided that Borrower contests the same diligently and in good faith and provides Lender with adequate security, in Lender's sole judgment, against the enforcement thereof or loss therefrom during such contest. Borrower acknowledges that certain encumbrances may present such a threat to Lender's security that Lender need not allow Borrower to contest the same or may require Borrower to deliver to Lender cash, or its equivalent, equal in value to the encumbrance.

3.3. Restrictions on Transfers. The Borrower will not without the prior written approval of Lender in each instance:

- (a) Except as provided in the Loan Agreement and except for Permitted Encumbrances, convey, assign, or permit the conveyance or assignment of all or any part of any legal or beneficial interest in the Premises, except that the Borrower may replace items constituting part of the Collateral where such replacements are at least equal in function, quality and value; or
- (b) Collect funds for the occupancy or use of the Premises or any part thereof from any tenant or other occupant or user in excess of (i) first month's rent, last month's rent, and security deposit for residents who are citizens of the United States and for commercial tenants and (ii) prepaid rent for the entire amount which will be due under each lease and security deposit for any residents who are not citizens of the United States.

3.4. Leases. The Borrower will:

- (a) Not take any action which would adversely affect the Borrower's rights under any existing or future leases or agreements without the prior written consent of Lender which consent shall not be unreasonably withheld, conditioned or delayed;
- (b) Punctually perform all of the terms and conditions to be performed by the Borrower under each lease and occupancy agreement to which the Mortgaged Property is at any time subject, which failure would entitle the tenant to withhold rent or terminate the lease;
- (c) Unless already assigned to the Lender pursuant to the Collateral Assignment of Leases and Rents of even date herewith by the Borrower in favor of the Lender (the "Assignment of Leases"), assign to the Lender all leases and agreements and the rents and profits therefrom pursuant to an assignment in the same form of the Assignment of Leases, and
- (d) Not knowingly permit any occupant of the Mortgaged Property to use any part thereof for the use, generation, treatment, storage, or disposal of Hazardous Materials except for materials commonly used in connection with normal business operations and residential tenancy without the prior written consent of the Lender, and then only to the extent that the Hazardous Materials are licensed and approved in accordance with all applicable laws and regulations.

3.5. Payments. The Borrower will pay when due:

- (a) All principal, interest and other charges, if any, due as and when due under the Loan Documents, subject to any grace periods set forth therein;
- (b) Subject to the Borrower's right to contest set forth herein, all taxes, betterments, assessments

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and other governmental levies, water and sewer charges, insurance premiums, and other charges, to whomever assessed, on the Mortgaged Property or any interest therein; and

- (c) Subject to the Borrower's right to contest set forth herein, all federal, state and municipal taxes of whatever kind and nature which could, if unpaid, result in a lien on the Mortgaged Property or on any interest therein.

### 3.6. Operation of the Mortgaged Property. The Borrower will:

- (a) From and after achievement of Project Completion, make such repairs and replacements and take such other steps as may be reasonably necessary to maintain the Premises in at least as good condition as the same hereafter may be put in, in connection with Project Completion, while this Mortgage is outstanding, deterioration incidental to reasonable wear and tear, casualty and eminent domain takings only excepted, it being understood, however, that the foregoing exception for reasonable wear and tear shall not relieve Borrower from the obligation to repair or replace worn out, inoperative, obsolete or otherwise deficient elements of the Premises;
- (b) Observe all federal, state and local laws, ordinances, rules and regulations relating to the Mortgaged Property or the use thereof;
- (c) Except for the Project and as otherwise permitted under the Loan Agreement, not, except as expressly approved by Lender, make or permit any material alteration or addition to, any removal or demolition of, or any strip or waste of, the Mortgaged Property; and
- (d) Not knowingly permit the use of the Mortgaged Property for any purpose except uses permitted by law.

### 3.7. Taxes Account. The Borrower will:

- (a) Upon written request from the Lender, following the occurrence of an Event of Default (unless such Event of Default is waived in writing by the Lender), deposit with Lender monthly, on each date on which a payment is due under the Note, or on such other date as Lender may specify, one-twelfth of such amount as the Lender estimates will be required to pay all taxes, betterments, assessments and other governmental liens against the Mortgaged Property before the same become due. The Lender shall not be deemed a trustee with respect to such deposits and shall not be required to keep said deposits separate from its general accounts or to pay interest thereon to the Borrower unless required by law. If at any time Lender determines such deposits are or will be insufficient to discharge the amounts actually required to pay such taxes, betterments, assessments and liens as may be due, any deficiency shall be promptly deposited by Borrower with Lender upon written notice from the Lender. If escrowing taxes pursuant hereto, Borrower shall transmit to Lender all bills for such taxes, betterments, assessments and liens as soon as received. Should the amount deposited with Lender by Borrower in any year exceed the amount required, such excess shall be applied to escrow payments for the succeeding year; and
- (b) If at any time the Lender does not require the escrow of tax payments, furnish Lender with evidence of payment of real estate tax and assessments bills for the Mortgaged Property promptly after payment of the same on a timely basis.
- (c) After prior written notice to the Lender, the Borrower may at its own expense (as between



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Lender and Borrower), contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount, validity or application in whole or in part of any of the taxes, betterments, assessments and liens, provided neither the Mortgaged Property nor any part thereof will be in danger of being sold, forfeited, terminated, cancelled or lost and Borrower shall have deposited with Lender adequate reserve for payment of such taxes, betterments, assessments and liens, unless Borrower has paid all of such taxes, betterments, assessments and liens.

- 3.8. Notices. The Borrower will deliver to Lender promptly upon receipt of the same, copies of all notices, certificates and documents received by Borrower which materially adversely affect the Mortgaged Property or its use.
- 3.9. Security Agreement Representations. The Collateral shall be used for business purposes, and any Collateral which consists of goods under the Uniform Commercial Code shall be kept at the Premises. When requested by the Lender in writing, Borrower will:
- (a) Provide Lender with inventory listing of the Collateral that consists of furniture, fixtures, or equipment in form reasonably satisfactory to Lender;
  - (b) In connection with the grant of security interest made hereby, Borrower hereby authorizes Lender to file or cause to be filed one or more financing statements, amendments to financing statements and/or in lieu financing statements with any filing office for the purpose of perfecting or continuing the perfection of the security interest in the Collateral; or
  - (c) Provide to Lender such other assurances as may be reasonably required by Lender to establish Lender's first security interest in the Collateral, subject to any Permitted Encumbrances set forth in clause (h) of the definition of "Permitted Encumbrances" set forth in the Loan Agreement.
- 3.10. Borrower's Obligation to Report Defaults. The Borrower will promptly notify Lender upon becoming aware of any event which would constitute an Event of Default hereunder, or which would constitute an Event of Default hereunder if it were to continue after any notice required.

## Article IV. Insurance

- 4.1. Coverage. The Borrower shall, at all times during the term of the Loan, obtain and keep in force the insurance as to the Mortgaged Property required under the Loan Agreement.
- 4.2. Co-Insurance Provision. The terms of all property insurance policies shall be such that no co-insurance provisions apply, unless any policy which does contain a co-insurance provision is maintained in an amount sufficient to prevent the application of the co-insurance provisions.
- 4.3. Insurers. All insurance shall be written by insurers qualified to do business in Illinois and reasonably acceptable to Lender. All Evidence of Insurance shall be deposited with Lender pursuant to the terms of the Loan Agreement.
- 4.4. Expiration of Insurance. Promptly after renewal or replacement of the expiring policies, Borrower shall deliver to Lender evidence of such renewal or replacement of the expiring policies.

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4.5. Policy Provisions. All insurance shall be in form acceptable to Lender where applicable, shall provide (with respect to property coverage only) that proceeds from insurance shall be first payable to Lender, as its interests may appear, pursuant to a noncontributory standard mortgagee endorsement, and shall provide at least thirty (30) days' written notice to the Lender prior to any cancellations or modifications, where available, or such lesser period as provided in the policy) must be given to Lender before any such policy can be canceled, modified or renewal thereof refused. Borrower shall perform all the conditions of all insurance policies covering the Mortgaged Property and, in case of any casualty, Borrower will make proof of loss or claim and give prompt notice to Lender with respect to any casualty in excess of \$50,000.00. Each insurance company is hereby authorized and directed, effective after Project Completion (as such term is defined in the Loan Agreement), to make payment for such property loss directly to Lender instead of to Borrower in case of Borrower's physical damage insurance, provided notice of Lender's request therefor has been timely given to Borrower.

4.6. Application of Proceeds.

(a) If (i) any casualty occurs prior to the achievement of Project Completion, (ii) the Lender reasonably believes that the Improvements can be completed prior to the Completion Date, (iii) no Event of Default has then occurred (unless such Event of Default has been waived in writing by the Lender), and (iv) the Borrower provides the Lender with an updated Project Budget which shows that such insurance proceeds, together with the undistributed portion of the Loan and Borrower equity (provided that the Borrower provides evidence of such equity amount reasonably satisfactory to the Lender), are sufficient to repair such casualty and complete construction of the Project, all proceeds of insurance shall be paid directly to Borrower for the completion of repair, restoration, replacement, and rebuilding of the Mortgaged Property in accordance with the Plans and Specifications and the Borrower shall, upon receipt of such proceeds, promptly commence and complete such repair, restoration, replacement, and rebuilding. If, as and when the Improvements shall again reach the stage of completion which they had attained before the fire or other casualty, and when the proceeds of the fire or other casualty insurance have been fully used by Borrower to pay for the costs and expenses of restoration, the Borrower and the Lender shall thereafter carry out the terms of the Loan Agreement with respect to funding of Advances as if no such damage from fire or other casualty had occurred, unless, in the Lender's reasonable discretion, the restoration using proceeds of the insurance can be accomplished while other elements of the Project can be completed using proceeds of the Loan.

(b) If (i) any casualty occurs after achievement of Project Completion, (ii) the amount of insurance proceeds payable by reason of such casualty is equal to or less than \$250,000.00, and (iii) no Event of Default has then occurred (unless such Event of Default has been waived in writing), all proceeds of insurance shall be paid directly to Borrower for the completion of repair, restoration, replacement, and rebuilding of the Mortgaged Property, and the Borrower shall, upon receipt of such proceeds, promptly commence and complete such repair, restoration, replacement, and rebuilding. If (i) any casualty occurs after achievement of Substantial Completion, (ii) the amount of insurance proceeds payable by reason of such Casualty is greater than \$250,000.00, and (iii) no Event of Default has then occurred (unless such Event of Default has been waived in writing), provided that (1) work of repair and restoration can be completed, in Lender's reasonable discretion, not later than the earlier of (x) the Maturity Date, or (y) twelve (12) months from the date the casualty occurs, (2) the Borrower supplies to the Lender evidence reasonably satisfactory to the Lender of the Borrower's ability to pay all amounts of principal and interest becoming due under the Loan prior to completion of repair and restoration; and (3) the Borrower supplies to the Lender evidence reasonably satisfactory to the Lender that

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sufficient funds are available from insurance proceeds and other sources to complete work of repair, restoration, replacement and rebuilding (including, without limitation, all hard costs and soft costs and a “hard” construction cost contingency in the amount of five percent (5%) of the total costs of construction) (collectively, the “Restoration Funds”), then such Restoration Funds shall be deposited into a construction escrow account maintained with the Lender and applied to pay for repair, restoration, replacement and rebuilding of the Mortgaged Property as costs for such repair, restoration, and rebuilding are incurred by the Borrower, subject to such additional conditions precedent that the Lender may reasonably impose which are consistent for the funding of construction loan financing. If an Event of Default has then occurred at the time of any such Casualty (whether before or after achievement of Substantial Completion) or if an Event of Default occurs at any time after the deposit of Restoration Funds with the Lender, as applicable, the Lender may, in its sole discretion, (A) apply such proceeds to the Borrower’s obligations under the Loan Documents or (B) release such proceeds to the Borrower upon such terms and conditions as the Lender shall determine in its sole discretion.

- 4.7. Failure to Obtain Insurance. Unless Borrower maintains the insurance coverage required by this Article IV, Lender may purchase insurance at Borrower’s expense to protect Lender’s interest in the Mortgaged Property. This insurance may, but need not, protect Borrower’s interests. The coverage that Lender purchases may not pay any claim that Borrower makes or any claim that is made against the Borrower in connection with the Mortgaged Property. Borrower may later cancel any insurance purchased by Lender, but only after providing evidence that Borrower has obtained insurance as required by this Article IV. If Lender purchases insurance for the Mortgaged Property, Borrower will be responsible for the reasonable costs of that insurance, including the insurance premium, interest and any other reasonable charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The reasonable costs of the insurance may be added to outstanding principal balance of the Obligations. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

## Article V. Eminent Domain

- 5.1. Taking. In case of any condemnation for public use of, or any damage by reason of the action of any governmental entity or authority to, all or any part of the Mortgaged Property (a “Taking”), or the commencement of any proceedings or negotiations which might result in a Taking or a settlement in lieu thereof, Borrower shall, upon becoming aware thereof, promptly give written notice thereof to Lender, describing the nature and extent of the Taking or the nature of such proceedings or negotiations. The Lender may, at its option, appear in any such proceedings or negotiations, and Borrower shall promptly give Lender copies of all notices, pleadings, determinations and other papers. The Borrower shall in good faith and with due diligence file and prosecute Borrower’s claim for any award or payment on account of any Taking. The Borrower shall not settle any such claim without Lender’s prior written consent, which consent shall not be unreasonably delayed, conditioned or withheld.
- 5.2. Application of Award. The Borrower hereby assigns to Lender all of Borrower’s rights in any award received in connection with a Taking or any settlement received in lieu thereof and authorizes such awards and settlements to be paid directly to Lender. If the Borrower collects any such award, Borrower shall promptly pay the same to Lender. Any such award, after deducting therefrom all costs and expenses, including attorneys’ fees incurred by Lender in connection therewith, shall be applied as follows:
- (a) In the case of a partial Taking, if no Event of Default exists and Lender reasonably

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determines that the Mortgaged Property can be economically restored and operated in accordance with the Loan Documents, the Lender shall release to Borrower on terms and conditions reasonably satisfactory to Lender so much of such award, reduced as provided above, as may be necessary to restore the Mortgaged Property, and the balance, if any, shall be applied to the Loan Amount; and

- (b) In the case of a complete Taking, or in the case of a partial taking, if an Event of Default exists or if the Lender reasonably determines that the Mortgaged Property cannot be economically restored and operated in accordance with the Loan Documents, the Lender may, at its option, apply such award, reduced as provided above, to the Loan Amount, with any balance after such application to be paid to Borrower.

## Article VI. Defaults and Remedies

- 6.1. Events of Default. The occurrence of any default under this Mortgage and the expiration of any applicable notice or grace period set forth in the Loan Agreement or any "Event of Default" under and as defined in any other Loan Document, including the Note, the Loan Agreement or any Guaranty of the Loan shall constitute an "Event of Default" under this Mortgage.
- 6.2. Remedies. After the occurrence of an Event of Default (unless such Event of Default is waived in writing by the Lender), the Lender may, at its option and without notice:
  - (a) Exercise any of the Lender's remedies provided in any of the Loan Documents or under the Illinois Act;
  - (b) Declare the Obligations to be immediately due and payable;
  - (c) Apply to the outstanding balance of the Obligations any deposits or other sums credited by or due from Lender to Borrower;
  - (d) Take possession of the Mortgaged Property and operate the Mortgaged Property as a mortgagee in possession with all the same powers as could be exercised by a receiver (the availability of this remedy shall not impair the Lender's remedies under any other Loan Document such as the Collateral Assignment of Leases and Rents of even date herewith);
  - (e) Make any payments required to be made by Borrower under the Loan Documents. The amount of all such payments shall be immediately due and payable by Borrower, and until paid, shall be added to the Obligations and secured by the Loan Documents with the same priority as the face amount of the Mortgage. Such payments may include, but are not limited to, payments for taxes and other governmental levies, water rates, insurance premiums, maintenance, repairs or improvements of the Mortgaged Property. Without limiting the generality of the foregoing, all expenses incurred by the Lender, to the extent reimbursable, under Sections 5/15-1510, 5/15-1512, or any other provision of the Illinois Act (as defined below), whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provisions of this Mortgage, shall be added to the indebtedness secured by this Mortgage and by the judgment of foreclosure;

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- (f) Perform any and all obligations of Borrower under the Loan Documents without waiving any rights or releasing Borrower from any obligations thereunder;
- (g) Exercise any of the rights and remedies of a secured party under the Uniform Commercial Code in effect in the State of Illinois, including but not limited to:
  - i. Either personally or by means of a receiver, take possession of all or any of the Collateral and exclude therefrom Borrower, and all others claiming under Borrower, and thereafter store, use, operate, manage, make repairs, replacements, alterations and additions to and exercise all rights and powers of Borrower with respect to the Collateral or any part thereof;
  - ii. Without notice to or demand upon Borrower, make such payments and do such acts as Lender may deem necessary to protect its security interest in the Collateral, including without limitation, paying, contesting or compromising any encumbrance or lien which is prior to the security interest granted hereunder, and in exercising any such powers to pay all reasonable expenses incurred in connection therewith;
  - iii. Require Borrower to assemble the Collateral or any portion thereof, at the Premises and promptly to deliver possession of such Collateral to Lender or an agent designated by Lender. Lender and its agents shall have the right to enter upon any of Borrower's property to exercise Lender's rights hereunder;
  - iv. Sell, lease or otherwise dispose of the Collateral at private or public sale, with or without having the Collateral at the place of sale, and upon such terms and in such manner as Lender may determine. Lender may be a purchaser at such sale; and
  - v. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Borrower at least ten (10) days' prior written notice of the time and place of any private or public sale of the Collateral or other intended disposition thereof;
- (h) Exercise the STATUTORY POWER OF SALE; and
- (i) Take such other legal actions or proceedings as Lender deems necessary or advisable to protect its interest in the Mortgaged Property.

6.3. Statutory Power of Sale. This Mortgage is on the STATUTORY CONDITION and upon the further condition that all agreements of the Borrower contained in the Loan Documents be fully performed for any breach of which beyond any applicable grace or cure period Lender shall have the STATUTORY POWER OF SALE. In the event of the exercise of the STATUTORY POWER OF SALE, Lender may foreclose on and sell all or any part of the Mortgaged Property, and thereafter Lender shall continue to have the STATUTORY POWER OF SALE so long as any portion of the Mortgaged Property remains subject to this Mortgage.

6.4. No Waiver or Release. No delay or omission on the part of Lender in exercising any right hereunder or under the Loan Documents shall operate as a waiver of such right or of any other right, and a waiver of any such right on any one occasion shall not be construed as a bar to or a waiver of any such right on any other occasion. No sale of any of the Mortgaged Property, no forbearance on the part of Lender, no release or partial release of any of the Mortgaged Property, except as provided in

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Section 2.1 above, and no extension, whether oral or in writing, of the time for the payment of the whole or any part of the Obligations or any other indulgence given by Lender to Borrower or any other person or entity, shall operate to release or in any manner affect the lien of this Mortgage or the liability of Borrower, notice of any such extensions or indulgences being hereby waived by Borrower.

- 6.5. Cumulative Rights and Remedies. The Lender shall have the right to exercise any and all remedies under the Loan Documents until all Events of Default have been cured or waived in writing by the Lender, and such remedies may be exercised individually, sequentially or in concert, all such remedies being cumulative, the exercise of one not being deemed a waiver of any of the others or a cure of any default.
- 6.6. Borrower's Waiver of Certain Rights. The Borrower waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Mortgaged Property, (b) all rights of reinstatement, redemption, valuation, appraisalment, homestead, moratorium, exemption, extension, stay of execution, notice of election to mature or declare due the whole of the Obligations in the event of foreclosure of the liens hereby created, (c) all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State of Illinois pertaining to the rights and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or any other Obligations, (e) any rights, legal or equitable, to require marshalling of assets or to require foreclosure sales in a particular order, and (f) any rights it may have to receive notice of any action or proceeding to enforce Lender's rights under any Loan Document other than the notices herein provided for or otherwise required by law. Without limiting the generality of the preceding sentence, Borrower, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of reinstatement or redemption from sale or from or under any order, judgment or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Borrower, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshaled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness. The Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided herein. The Lender shall have the right to determine the order in which any or all portions of the Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein.
- 6.7. Effect of Exercise of Rights. Intentionally omitted.
- 6.8. Illinois Act. If any provision of this Mortgage is inconsistent with any applicable provision of the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes Chapter 735, Section 5/15-1101 et seq. (the "Illinois Act"), the provisions of the Illinois Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Illinois Act. If any provision of this Mortgage shall grant to the Lender any rights, remedies, powers or authorities upon an Event of Default by Borrower which are more limited than the rights that would otherwise be vested in the Lender under the Illinois Act in the absence of said provision, the Lender shall be vested with all of

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the rights, remedies, powers and authorities granted in the Illinois Act to the fullest extent permitted by law.

## Article VII. General

- 7.1. Lender's Expenses. To the extent permitted by law, from and after the occurrence of an Event of Default (unless such Event of Default is waived in writing by the Lender), if the Lender retains an attorney to collect any sums due under this Mortgage, enforce any of the provisions hereof, or otherwise protect Lender's interests, the Borrower agrees to pay Lender, on demand, all reasonable costs and expenses in connection therewith, including all court costs and reasonable attorneys' fees, whether or not suit is brought or prosecuted to completion, together with interest thereon at the rate applicable under the Note to amounts past due.
- 7.2. Indemnification. The Borrower agrees to hold harmless and indemnify Lender from all liability, loss, cost, damage, and expense from any claim for damage to property or death or injury to persons which may arise in connection with the construction, use, or occupancy of the Mortgaged Property, not otherwise covered by insurance, including any liability, loss, cost, damage or expense arising from a violation of the Spill and Hazardous Waste Laws, provided that the Borrower shall not be obligated to indemnify the Lender for any liability, loss, cost, damage, or expense arising (a) as a result of the Lender's gross negligence or willful misconduct or (b) after the Borrower no longer holds title to the Mortgaged Property (unless the damage, death, or injury which is the basis for any such liability, loss, cost, damage, or expense occurred during Borrower's ownership or control of the Mortgaged Property).
- 7.3. Joint and Several Liability. If more than one party executes this Mortgage the term Borrower shall mean all of them, and each of them shall be jointly and severally liable hereunder.
- 7.4. Captions. Captions are used for convenience of reference only and are not to be construed as part of the terms of this Mortgage.
- 7.5. Severability. The invalidity of any provisions of this Mortgage shall in no way affect the validity of any other provision.
- 7.6. Singular and Plural. Where required by the context the singular shall include the plural and the plural shall mean the singular.
- 7.7. Gender. The masculine, feminine and neuter forms shall be interpreted interchangeably wherever the text requires.
- 7.8. Successors and Assigns. This Mortgage is binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.
- 7.9. Notices. Any notice, request, demand or other communication required or permitted hereunder shall be given in the manner required under the Loan Agreement.
- 7.10. Service of Process. The Borrower waives personal service of process upon the Borrower, and agrees that all such service of process may be made by registered mail directed to the Borrower at the address set forth on Page 1 hereof (or such other address for Borrower of which the Lender has received notice) and service so made will be deemed to be completed upon actual receipt.

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- 7.11. Governing Law. This Mortgage shall be interpreted in accordance with and governed by the laws of the State of Illinois.
- 7.12. Jurisdiction. The Borrower submits to personal jurisdiction in the State of Illinois and waives any and all personal rights to object to such jurisdiction. Borrower agrees that personal jurisdiction may be obtained by serving Borrower in accordance with Section 7.10 above.
- 7.13. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE OR ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS MORTGAGE AND THE OTHER DOCUMENTS CONTEMPLATED HEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION AND (c) CERTIFIES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE.
- 7.14. Changes in Writing. This Mortgage may not be changed, waived, or terminated except in a writing signed by the party against whom enforcement of the change, waiver, or termination is sought.
- 7.15. Other Representations and Warranties. All statements contained in the other Loan Documents or in any certificate or other instrument delivered by Borrower to Lender or Lender's representatives under the terms of the Loan Documents shall constitute representations and warranties made by Borrower hereunder.
- 7.16. Other Loan Documents. If there are any conflicts or inconsistencies between this Mortgage and either the Security Agreement of even date herewith (the "Security Agreement") or the Collateral Assignment of Interest in Licenses, Permits and Agreements of even date herewith (the "Assignment of Licenses") with respect to the Collateral (other than the Licenses and Rights (as defined in the Assignment of Licenses)), the grant of security interest therein, or the Borrower's and Lender's respective rights and obligations with respect thereto, the Security Agreement shall control to the extent of any such conflict or inconsistency, provided that the Assignment of Licenses shall control with respect to any conflict or inconsistency between this Mortgage and the Assignment of Licenses with respect to the Licenses and Rights, the grant of security interest therein, or the Borrower's and Lender's respective rights and obligations with respect to the Licenses and Rights.
- 7.17. Incorporation of State Law Provisions. Certain provisions and/or sections of this Mortgage and certain additional provisions and/or sections that are required by laws of the State of Illinois may be amended, described, and/or set forth in more detail on **Exhibit B** attached hereto and incorporated into this Mortgage by reference. In the event of any conflict between such State law and any provision herein, the State law provision shall control.



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EXECUTED under seal as of the date first above written.

**BORROWER:**

GD WABASH, LLC

By: Gilbane Development Company, its Manager



By: \_\_\_\_\_  
Name: Matthew P. Lawrence  
Title: Senior Vice President

Property of Cook County, Illinois

STATE OF RHODE ISLAND

Providence County, ss.

On this 28<sup>th</sup> day of July, 2016, before me, the undersigned notary public, personally appeared Matthew P. Lawrence as Senior Vice President of Gilbane Development Company, the sole Manager of GD Wabash, LLC, and proved to me through satisfactory evidence of identification, which was a state driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, and as the free act and deed of Gilbane Development Company and GD Wabash, LLC.



Notary Public  
My commission expires: 3/11/20

DANIEL P. STEVENSON  
NOTARY PUBLIC  
STATE OF RHODE ISLAND  
MY COMMISSION EXPIRES 03/11/2020  
ID #: 52938

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**EXHIBIT A  
TO  
MORTGAGE AND SECURITY AGREEMENT**

**(Legal Description of Premises)**

LOTS 1 AND 2 OF LOT 9 IN BLOCK 14 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, IN TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Pins: 7-15-300-022  
Address: 640 S. Wabash Ave. Chicago, IL 60605

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## EXHIBIT B TO MORTGAGE AND SECURITY AGREEMENT

### (State Specific Provisions)

1. Construction Mortgage: The Note which is secured by this Mortgage evidences a debt created by one or more disbursements made by Lender to Borrower for the purpose of financing costs in connection with the Mortgaged Property (as hereinafter defined) including costs of construction of the improvements to be located on the Mortgaged Property. All disbursements shall be made in accordance with the terms and provisions of the Loan Agreement, as the same from time to time may be amended, supplemented or modified and the terms and conditions of which are hereby incorporated herein by reference. Borrower hereby covenants and agrees to perform and fulfill or cause to be performed and fulfilled, all the terms, covenants and conditions of the Loan Agreement, and the occurrence of an Event of Default under the Loan Agreement shall constitute an Event of Default under this Mortgage.
2. Obligatory Advances. It is specifically understood and agreed that all funds which are advanced by Lender and employed in performance of the Obligations of Borrower under this Mortgage, the Loan Agreement or the other Loan Documents or in the exercise of Lender's judgment that the same are necessary or desirable to complete, operate, maintain or market the Project or to protect Lender's security under the Loan Documents shall because of economic necessity and compulsion be deemed advanced by Lender under an obligation to do so regardless of the identity of the person or persons to whom such funds are furnished and shall be added to the Obligations and shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof.
3. Illinois Collateral Protection Act. Borrower is hereby notified pursuant to the Illinois Collateral Protection Act (815 ILCS 180/1 et. seq.) that unless Borrower provides Lender with evidence of the insurance coverage required by this Agreement, Lender may purchase the required insurance at Borrower's expense to protect Lender's interest in the Mortgaged Property. This insurance may, but need not, protect Borrower's interests. The coverage that Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Mortgaged Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by this Mortgage. If Lender purchases insurance for the Mortgaged Property, Borrower will be responsible for the costs of that insurance, including interest at the Interest Rate (as defined in the Note) and any other charges Lender may impose in connection with the placement of the insurance until the effective date of the cancellation or the expiration of the insurance. The costs of the insurance shall be added to Borrower's total outstanding balance or obligation and shall constitute additional Obligations. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own. Wherever provisions in this Mortgage or the other Loan Documents require that insurance policies bear Lender clauses or other loss payable clauses or endorsements in favor of Lender, or confer authority upon Lender to settle or participate in the settlement of losses under such policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Lender shall continue in Lender as judgment creditor or Lender until confirmation of the sale.
4. Foreclosure Expenditures. In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional Obligations in the decree of sale, all expenditures and expenses authorized by the Illinois Act and all other expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to

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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 assurance with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be reasonably incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Lender in any litigation or proceedings affecting this Mortgage, the Guaranty or the Mortgaged Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Obligations and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

5. Inconsistent Provisions. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Act, the provisions of the Illinois Act shall take precedence over the inconsistent provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Illinois Act. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Illinois Act, whether incurred before or after any decree or judgment of foreclosure, and whether otherwise enumerated in this Mortgage, shall be added to the Obligations and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid or shall be included in the judgment of foreclosure.

6. Enforcement of Security Interest. Upon the occurrence of an Event of Default (unless such Event of Default is waived in writing by Lender), Lender may proceed to protect and enforce the rights of the Lender hereunder: (a) by the foreclosure of this Mortgage pursuant to the Illinois Act or as otherwise permitted by law, with respect to either (and at Lender's option) the entire amount of Borrower's obligations, or any delinquent installment or installments of the Obligations secured hereby without accelerating the due date of the entire Obligations, in which case any sale of the Mortgaged Property under such a foreclosure proceeding shall be subject to and shall not affect the unmatured part of the Obligations secured hereby and this Mortgage shall be and continue as a lien on the Mortgaged Property securing such unmatured Obligations, or (b) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.

7. Waivers. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this Mortgage, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Lender may determine in its sole discretion. Lender shall have the right to become the purchaser at any sale made under or by virtue of this Mortgage, and Lender so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Lender with the amount payable to Lender out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Obligations, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Illinois Act, or residential real estate, as defined in Section 5/15-1219 of the Illinois Act. To the fullest extent permitted by law, Borrower, on behalf of Borrower, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date

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of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives: (i) any and all rights of redemption pursuant to Section 5/15-1601(b) of the Illinois Act; and (ii) any and all rights of reinstatement.

8. Moratorium Laws; Further Waivers. Borrower shall 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, and hereby waives the benefit of such laws. To the fullest extent permitted by law, Borrower hereby voluntarily and knowingly waives any and all rights of redemption as allowed under Section 15-1601(b) of the Illinois Act, and to the fullest extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption and moratorium laws under any state or federal law, all on behalf of Borrower, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons.

9. Deed-In-Lieu. Lender, from time to time before a public sale or Deed-in-Lieu of foreclosure, may rescind any such notice of breach or default and of election to foreclose. The exercise by Lender of such right of rescission shall not constitute a waiver of any breach or Event of Default then existing or subsequently occurring, or impair the right of Lender to execute and deliver notices of breach or default, and of election to foreclosure to satisfy the obligations hereof, nor otherwise affect any provision, agreement, covenant or condition of the Guaranty and/or of this Mortgage or any of the rights, obligations or remedies of the parties hereunder.

10. Protective Advances. (a) Advances, disbursements, and expenditures made by Lender after the occurrence of an Event of Default (which has not been waived in writing by Lender) for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Mortgage, constitute "Protective Advances":

- (i) all advances by Lender in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Illinois Act;
- (ii) payments by Lender of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Mortgaged Property, as referred to in Section 5/15-1505 of the Illinois Act;
- (iii) advances by Lender in settlement or compromise of any claims asserted by claimants under any prior liens;
- (iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Illinois Act;

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(B) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of this Mortgage or arising from the interest of the Lender hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

- (v) Lender's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Illinois Act;
- (vi) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage and the Loan Agreement;
- (vii) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Illinois Act; and
- (viii) expenses incurred and expenditures made by Lender for any one or more of the following:
  - (A) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Lender takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Illinois Act; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments required or deemed by Lender to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Property; (E) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

(b) All Protective Advances shall be so much additional Obligations, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

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

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Illinois Act, apply to and be included in the:

- (i) determination of the amount of the Obligations secured hereby at any time;
- (ii) indebtedness found due and owing to the Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Illinois Act;

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- (iv) application of income in the hands of any receiver or Lender in possession; and
- (v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Illinois Act.

11. Use of Loan Proceeds. Borrower covenants and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Borrower, and the entire principal obligation secured hereby constitutes: (a) a "business loan" as that term is defined in, and for all purposes of, the Illinois Interest Act, 815 ILCS 205/4(1)(c); and (b) "a loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

12. Maximum Amount Secured. This Mortgage is given to secure payment of the Note, whether the entire amount thereof shall have been advanced to the Borrower at the date hereof, or at a later date, and to secure the payment and performance of all Obligations, and any other amount or amounts that may be added to the Obligations by the terms of this Mortgage or any other Loan Documents, all of which Obligations are being equally secured with and having the same priority as any amounts advanced at the date hereof. The total amount of Obligations that may be so secured by this Mortgage may increase or decrease from time to time, but the total unpaid balance so secured at any one time, plus interest thereon, plus any disbursements made for the payment of taxes, levies, insurance or other liens, charges or encumbrances on the Premises, plus interest on such disbursements at the applicable rate of interest, shall not exceed Five Hundred Percent (500%) of the face amount of the Note.