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Illinois Anti-Predatory  
Lending Database  
Program

212  
17ST036468h  
Certificate of Exemption



CT

Report Mortgage Fraud  
844-768-1713

Doc#: 1717008231 Fee: \$86.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 06/19/2017 09:49 AM Pg: 1 of 20

The property identified as: PIN: 28-35-405-011-0000

Address:

Street: 3404 Fountainbleau

Street line 2:

City: Hazel Crest

State: IL

ZIP Code: 60429

Lender: BBT Series XVI LLC

Borrower: VPP Holdings LLC

Loan / Mortgage Amount: \$104,000.00

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: 974E825E-8B4D-4698-AFD8-58FCD4760A6C

Execution date: 6/14/2017

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**Prepared by and when recorded return to:**

Robert Gerry, c/o LBT Series XVI LLC  
 712 Main Street, Suite 2200  
 Houston, Texas 77002

**COMMERCIAL MORTGAGE, SECURITY AGREEMENT  
 AND FINANCING STATEMENT**

THIS COMMERCIAL MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (this "**Mortgage**") is made and entered into effective as of the 14th day of June, 2017, from VPP Holdings LLC, an Illinois limited liability company ("**Borrower**"), whose address is 1411 McHenry Road, Suite 226, Buffalo Grove, Illinois 60089, and BBT SERIES XVI LLC, a Texas limited liability company ("**Lender**"), whose address is 712 Main Street, Suite 2200, Houston, Texas 77002.

**RECITALS:**

WHEREAS, Lender is providing financing to Borrower for business purposes, as evidenced by the Note (as hereinafter defined); and

WHEREAS, the Note is to be secured by, among other things, this Mortgage covering, among other things, the real property (herein, the "Real Property") described, as follows:

3404 Fountainbleau, Hazel Crest, IL 60429, more fully described on Exhibit A hereof.

NOW, THEREFORE, in order to secure the performance by Borrower of the Note, Borrower hereby agrees with Lender that the terms and conditions of this Mortgage shall be as follows:

**ARTICLE 1  
 DEFINITIONS**

1.1 **Definitions.** As used herein, the following terms shall have the following meanings herein specified, such definition to be applicable equally to the singular and plural forms of such terms:

**"Event of Default"** shall mean any one of the following:

Failure by Borrower to pay, as and when due and payable, any installments of principal or interest due under the Note, or any deposits for taxes and assessments or insurance premiums due hereunder, or any other sums to be paid by Borrower hereunder or under any other instrument securing the Note.

Failure by Borrower to duly keep, perform and observe any other covenant, condition or agreement in the Note, this Mortgage, any other instrument securing the Note or any other instrument collateral to the Note or executed in connection with the sums secured hereby for a period of ten (10) days after Lender gives written notice specifying the breach.

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If either Borrower or any guarantor or endorser of the Note: (i) files a voluntary petition in bankruptcy, (ii) is adjudicated bankrupt or insolvent; (iii) dies or is judicially determined to be incompetent; (iv) files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors, or (v) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all or any substantial part of the Real Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or (vi) makes any general assignment for the benefit of creditors, or (vii) makes any admission in writing of its inability to pay its debts generally as they become due; or (viii) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Borrower or any guarantor or endorser of the Note, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days whether or not consecutive from the date of entry thereof; or (ix) any trustee, receiver or liquidator of Borrower of all or any substantial part of the Real Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, is appointed without the prior written consent of Lender, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days whether or not consecutive.

Any breach of any warranty or material untruth of any representation of Borrower contained in the Note, this Mortgage or any other instrument securing the Note.

The occurrence of any default under the terms of any mortgage or other security instrument which creates a lien or other security interest on or in the Real Property.

**"Fixtures"** shall mean all materials, fixtures, furnishings, goods and equipment, and articles of personal property, including additions thereto, which Borrower now has or at any time hereafter acquires, and which are now or at any time hereafter attached to or situated upon or affixed to the Land and Improvements, including, but not limited to, all electrification equipment and power lines, whether owned individually or jointly with others, water supply equipment and water tanks; all lighting, plumbing, ventilating, incinerating, radio, communications equipment, call signaling equipment, alarm system equipment, telephone and television equipment and lines, electrical equipment, air conditioning equipment, engines, machinery, generators, transformers, pumps, motors, compressors, sprinklers, fire extinguishing equipment, electrical wiring, and pipe; all built-in equipment as shown by plans and specifications; all accessions and appurtenances thereto, and all renewals and replacements of or substitutions for any of the foregoing; all installations of any kind specially designed for the Mortgaged Property; and all accessories, parts, replacements and substitutions thereof and additions thereto and any item which now or hereafter constitutes a **"Fixture"** as a matter of law and any item now or hereafter considered a **"fixture"** under the Illinois Uniform Commercial Code.

**"Governmental Authority"** shall mean any nation, country, commonwealth, territory, government, state, county, parish, municipality, agency, or other political subdivision and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including, without limitation, any state agencies and Persons responsible in whole or in part for environmental matters in the states in which Borrower is located or otherwise conducting its business activities and the United States Environmental Protection Agency.

**"Impositions"** shall mean all real estate and personal property taxes, water, gas, sewer, electricity and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of or affecting the Mortgaged Property, and all other taxes or common area charges and assessments and any related interest, costs or penalties, of any kind whatsoever whether general or special, ordinary or extraordinary, foreseen or unforeseen, which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Property or the ownership, use, occupancy or enjoyment thereof.

**"Improvements"** shall mean any and all building structures, improvements, parking areas, easement roads, sidewalks, fences, gates, and any and all additions, alterations, replacements, accessions or

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appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

**"Indebtedness"** shall mean the principal of, interest on and all other amounts, payments, and premiums due under, described in or secured by the Note and the Loan Documents and all renewals, supplements, increases, extensions, and modifications thereof, together with and including all other direct and indirect indebtedness now or at any time in the future owing by Borrower, whether as principal, surety, endorser, guarantor, accommodation party, or as a member of any partnership, joint venture or otherwise, regardless of how evidenced, arising, or incurred, secured or unsecured, joint and/or several, including indebtedness acquired by Lender from a third party, it being contemplated that Borrower will become further indebted to Lender in the future.

**"Insurance Policies"** shall mean all insurance policies and certificates required under and in connection with this Mortgage and the other Loan Documents.

**"Land"** shall mean the Real Property, together with all right, title and interest now owned or hereafter acquired by Borrower, its successors and assigns, in the whole or any part of the Real Property or any street, road or alley adjoining or contiguous to the Real Property.

**"Leases"** shall mean any and all leases, subleases, licenses, concessions or grants of other possessory interests granted by Borrower or any other owner of the Land, as lessor, now or hereafter in force, oral or written, covering or affecting the Mortgaged Property, any part thereof or any interest therein, and any and all security therefore and guarantees thereof.

**"Legal Requirements"** shall mean, as to any Person, the certificate or articles of incorporation and by-laws or other organizational or governing documents of such Person, all use and other restrictions, declarations, and other covenants affecting all or any portion of the Property, including, without limitation, any applicable law, treaty, ordinance, order, judgment, rule, decree, regulation, or determination of an arbitrator, court, or other Governmental Authority, including, without limitation, rules, decrees, judgments, regulations, orders, and requirements for permits, licenses, registrations, approvals, or authorizations (and any authoritative interpretation of any of the foregoing), in each case as such now exist or may be hereafter amended and are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**"Loan"** shall mean the loan evidenced by the Note and secured by, among other things, this Mortgage.

**"Loan Documents"** shall mean the Note, this Mortgage and any other instrument executed in connection herewith.

**"Mortgaged Property"** shall mean, collectively, all Land, Improvements, Fixtures, Personal Property, and Rents, together with:

(i) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances of Borrower in anyway appertaining thereto (including without limitation, rights of ingress and egress) and all right, title and interest of Borrower in and to any streets, roads, public places, access driveways, alleys, or strips or gores of land, whether existing or prorated, proposed or private, or adjoining to or used in connection with the Land or any part thereof;

(ii) all proceeds of insurance monies, including, without limitation, refunds and amounts paid by reason of loss or damage by lightning, fire, explosion, tornado, windstorm or other hazard to the whole or any part of the Mortgaged Property;

(iii) all additions, betterments, appurtenances, substitutions, replacements, reversions and proceeds thereof and thereto and all reversions and remainders therein;

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(iv) the proceeds from the sale of the Mortgaged Property and property interests comprising the Mortgaged Property which result from the sale or foreclosure thereof by the Lender or any assignee thereof;

(v) all leasehold improvements, chattels and other articles of personal property of whatever nature now owed by Borrower or hereafter acquired, all accessions and appurtenances thereto, and all renewals and replacements of or substitutions for any of the foregoing;

(vi) all of the leases, rents, royalties, bonuses, issues, profits, revenues or other benefits of the Land, the Improvements, the Fixtures, or the Personal Property, including without limitation, cash or securities deposited pursuant to any of the Leases to secure performance by the lessees of their obligations thereunder; and

(vii) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

"**Note**" shall mean the promissory note or notes dated of even date herewith, made by Borrower to the order of Lender, in the aggregate stated principal amount of \$104,000.00, payable in accordance with the terms thereof, secured by, among other things, this Mortgage and by this reference made a part hereof for all purposes, as renewed, extended, or rearranged from time to time.

"**Obligations**" shall mean any and all of the covenants, promises and other obligations (other than for the payment of the Indebtedness) made or owing by Borrower to or due to Lender under or set forth in the Note, this Mortgage, or in any other instrument executed in connection herewith.

"**Person**" shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

"**Personal Property**" shall mean all of the right, title and interest of Borrower in and to all "equipment," "inventory" and all other personal property (other than Fixtures) of any kind or character (as such terms are defined in the Illinois Uniform Commercial Code [Secured Transactions]), now or hereafter located upon, within or about the Land and the Improvements, together with all accessories thereto, replacements and/or substitutions thereof and the proceeds thereof, and all "documents," "instruments," "accounts," "chattel paper," and "general intangibles" (as such terms are defined in the Illinois Uniform Commercial Code [Secured Transactions]) relating, directly or indirectly, in whole or in part, to the ownership, construction, operation or development of the Land, including, without limitation, all monetary deposits given to any public or private utility with respect to utility services furnished to the Mortgaged Property, licenses, permits, plans, specifications, and the proceeds thereof.

"**Rents**" shall mean all of the rents, revenue, income, profits and proceeds derived and to be derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to liquidated damages following default under any such Lease, or payments applicable to a termination of a Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from damage to any part of the Mortgaged Property, all of Borrower's rights to recover monetary amounts from any tenant in bankruptcy, together with any sums of money that may now or at any time hereafter be or become due and payable to Borrower by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Mortgaged Property or any part thereof, and all proceeds and other amounts paid or owing to Borrower under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Mortgaged Property.

All definitions contained in this Mortgage are equally applicable to the singular and plural forms of the terms defined. The words "hereof," "herein," and "hereunder" and words of similar import referring to this Mortgage refer to this Mortgage as a whole and not to any particular provision of this Mortgage. Unless otherwise specified, all Article and Section references pertain to this Mortgage. All other terms used herein shall have the meanings as otherwise stated herein.



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## ARTICLE 2 GRANT

2.1 **Grant.** To secure the payment of the Indebtedness and the performance and discharge of the Obligations, and in consideration of the uses and trusts hereinafter set forth and other good and valuable consideration duly paid to Borrower by the Lender at or before the execution and delivery of this instrument, the full receipt and sufficiency of which are hereby acknowledged, Borrower does by these presents give, transfer, grant, bargain, sell, alienate, remise, release, assign, hypothecate, deposit, pledge, set over, confirm, convey and warrant unto Lender all estate, right, title and interest of Borrower in and to the Mortgaged Property, whether now owned or held or hereafter acquired by Borrower.

TO HAVE AND TO HOLD the Mortgaged Property, together with all and singular rights, privileges, hereditaments and appurtenances thereto in anywise belonging or appertaining unto Lender, and to any successors or substitute trustee forever. Borrower hereby covenants and represents that it is the owner of the Mortgaged Property having the authority to pledge and convey the same, and that the Mortgaged Property is free and clear of all liens and encumbrances; and Borrower hereby binds itself, its heirs, legal representatives, successors and assigns to forever warrant and defend the Mortgaged Property and every part thereof unto the Lender, and unto any successor or substitute trustee and his or their assigns, against the claims and demands of every person whomsoever lawfully claiming or to claim the same or any part thereof.

2.2 **Condition of Grant.** The condition of these presents is such that if Borrower shall pay or cause to be paid the Indebtedness as and when the same shall become due and payable and shall observe, perform and discharge the Obligations, and all obligations of Lender under the Note have terminated, then this Mortgage and the estates and rights granted hereby shall be null and void, otherwise to remain in full force and effect. A written release of the lien granted in and created by this Mortgage, executed by a duly authorized representative of Lender shall be conclusive evidence that the Indebtedness and Obligations have been paid and performed in full.

2.3 **After Acquired Property.** The lien of this Mortgages shall automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Mortgaged Property or any part thereof.

2.4 **Warranty of Title.** Borrower will forever warrant and defend the Mortgaged Property against any and all claims and demands whatsoever except as are specifically set forth in this Mortgage.

## ARTICLE 3 AFFIRMATIVE COVENANTS

In addition to the covenants and agreements set forth in the Note, Borrower hereby unconditionally covenants and agrees with Lender as follows:

3.1 **Payment and Performance.** Borrower shall pay or cause to be paid the Indebtedness, as and when called for in the Note and the Loan Documents and on the due dates thereof, and shall perform all of the other Obligations, in full on the dates same are to be performed. Borrower acknowledges that time is of the essence with respect to Borrower's payment of the Indebtedness and performance of the other Obligations.

3.2 **Payment of Impositions.** Borrower shall duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof. In the event a law, ordinance, or regulation is passed after the date of this Mortgage deducting from the value of the Mortgaged Property for the purpose of taxation of any lien thereon, or changing in any way the laws in force for the taxation of mortgages, deeds of trust or indebtedness thereby secured, or the manner or the operation of any such taxes so as to affect adversely the interest of Lender, then Borrower shall pay the full amount of such taxes, unless and to the extent the payment by Borrower either would be unlawful or would constitute usury or render the Indebtedness wholly or partially in violation of applicable usury laws.

### 3.3 Insurance.

(a) Borrower shall obtain and maintain the insurance coverage described in and required by the Loan Agreement and such other insurance Lender may reasonably request, and shall furnish to Lender promptly

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upon request a certificate or certificates from the respective insurer(s) setting forth the nature and extent of all such insurance maintained by Borrower and the originals of each insurance policy (or to the extent permitted by Lender, a certified copy of insurance) with premiums fully paid. Borrower shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Lender is included thereon under a standard lender clause (without contribution) acceptable to Lender, with loss payable as provided herein. All insurance shall be primary without right of contribution from any other insurance that may be carried by Borrower or Lender and that all of the provisions thereof shall operate in the manner as if there were a separate policy covering each insured. Borrower shall immediately notify Lender whenever any such separate insurance is taken out and shall promptly deliver to Lender any policy or certificate of such separate insurance.

(b) Not later than ten (10) days before the expiration date of any Insurance Policy, Borrower shall deliver to Lender a binder or certificate of the insurer evidencing the renewal or replacement of that policy, with premiums fully paid, together with (in the case of a renewal) a copy of all endorsements to the policy affecting the Property and not previously delivered to Lender, or (in the case of a replacement) an original or certified copy of the replacement policy. Borrower shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Lender evidence satisfactory to Lender of the timely payment thereof. Borrower shall at all times comply with the requirements of the Insurance Policies required hereunder and in the Loan Agreement and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Mortgaged Property.

(c) If Borrower fails to obtain and/or maintain (or cause to be obtained and maintained) the insurance required under the Loan Agreement and this Mortgage, without in any way limiting any of Lender's rights and remedies as a result thereof: (i) Borrower shall indemnify and hold Lender harmless from and against any damage, loss, liability or expense resulting from all risks that would have been covered by the required insurance if so maintained; (ii) if any loss occurs, Lender shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Borrower, to the same extent as if it had been made payable to Lender; and (iii) Lender has the right (but not the obligation) to obtain such insurance at Borrower's expense, which may at Lender's election be coverage for Lender's interest only, the costs and expenses so expended by Lender shall be due and payable by Borrower on demand as a part of the Obligations, even if in excess of the amount of the Loan, and secured by the Loan Documents. If any hazard, title, or other insurer becomes insolvent or subject to any bankruptcy, receivership or similar proceeding or, if, in Lender's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Borrower shall promptly obtain and deliver to Lender a like policy (or, if and to the extent permitted by Lender, a certified copy of the policy or a satisfactory certificate or insurance) issued by another insurer, which insurer and policy meet the requirements of the Loan Documents.

(d) Upon any foreclosure of this Mortgage or transfer of title to the Land and Improvements in lieu of foreclosure, all of Borrower's right, title and interest in and to the Insurance Policies (including unearned premiums and sums held in escrow to pay such premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee to the extent permissible under such policies.

(e) In the event any of the Mortgaged Property covered by such Insurance Policies is destroyed or damaged by fire or other hazard, casualty or contingency, subject to the terms and provisions of Section 3.5, (i) Lender may, but shall not be obligated to, make proof of loss if such is not promptly made by Borrower, (ii) each insurance company is hereby authorized and directed to make payment of such loss directly to Lender, and (iii) Lender shall disburse the proceeds in accordance with the provisions of Section 3.6, unless an Event of Default shall have occurred and is continuing, in which case, Lender shall have the right at its sole discretion to apply the insurance proceeds first, to reimburse Lender for all costs and expenses, including attorneys' fees incurred in connection with the collection of such proceeds, and second, the remainder of such proceeds shall be applied at the discretion of the Lender to payment of the Indebtedness or any portion thereof, or in accordance with the provisions of Section 3.6, provided that any insurance proceeds held by Lender that are to be applied to the repair, restoration, or replacement of all or any portion of the Mortgaged Property may be commingled with other funds of Lender and shall be so held without payment of or credit for interest to Borrower and shall be paid to or for the benefit of Borrower, but only upon compliance by Borrower with such terms, conditions and requirements as may be imposed by Lender at such time.

(f) No Insurance Policy shall be canceled, endorsed, altered, or reissued to effect a change in coverage for any reason and to any extent whatsoever, contrary to the terms of the Loan Agreement. Without limiting any of the foregoing, Lender may, but shall not be obligated to, make premium payments to prevent any

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cancellation, endorsement, alteration, or reissuance and such payments shall be accepted by the insurer to prevent the same.

**3.4 Tax Escrow.** At the request of Lender, Borrower shall create a fund or reserve for the payment of all Impositions by paying to Lender, with each installment payment under the Note prior to the maturity of the Note, a sum equal to the Imposition next due on the Mortgaged Property, or any part thereof, as estimated by Lender, less all sums paid previously to Lender therefor, divided by the number of installment payments to be made before one month prior to the date when such Imposition will become delinquent, such sums to be held by Lender, without interest, unless interest is required by applicable law, for the purpose of paying such Imposition. Any excess reserve shall, at the discretion of Lender, be credited by Lender on subsequent reserve payments or subsequent payments to be made on the Note, and any deficiency shall be paid by Borrower to Lender before one month prior to the date when such Imposition shall become delinquent. Transfer of legal title to the Mortgaged Property shall automatically transfer the interest of Borrower in all sums deposited with Lender under the provisions hereof or otherwise. Upon assignment of this Mortgage, Lender shall have the right to pay the balance of the escrowed sums then in its possession to its assignee whereupon the Lender shall be completely released from all liability with respect thereto. Upon full payment of the Indebtedness, or at such earlier time as Lender may elect, the balance of the escrowed sums in its possession shall be paid to Borrower and no other party shall have any right or claim thereon. If no Event of Default shall have occurred and be continuing hereunder, the escrowed sums shall be repaid to Borrower in sufficient time to allow Borrower to satisfy Borrower's obligations under this Mortgage and the Loan Documents to pay the impositions or, at the option of Lender, shall be paid directly to the Governmental Authority entitled thereto. If an Event of Default shall have occurred and be continuing hereunder, however, Lender shall have the additional option of crediting the full amount of the escrowed sums or any part thereof against the Indebtedness. Notwithstanding anything to the contrary contained in this Section or elsewhere in this Mortgage, Lender reserves the right to waive the payment by Borrower to Lender of the escrowed sums, and, in the event Lender does so waive such payment, it shall be without prejudice to Lender's right to insist at any subsequent time or times that such payments be made in accordance with these provisions.

**3.5 Restoration Following Casualty.** If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Mortgaged Property, Borrower will promptly give notice thereof to Lender. In such event, the following provisions shall apply:

(a) if (i) all or any portion of the Mortgaged Property is demolished, destroyed, or substantially damaged by fire or other casualty, and an Event of Default shall have occurred and be continuing, then in any such event, the entirety of the sums so paid to Lender shall be applied by it to payment of the Indebtedness in the order Lender determines in its sole discretion, or (ii) the Mortgaged Property is partially destroyed and in Lender's sole and absolute discretion need not be rebuilt, restored or repaired in any manner, then in any such event the entirety of the sums so paid to Lender shall be applied by it to payment of the Indebtedness in the order Lender determines in its sole discretion; or

(b) if (i) all or any portion of the Mortgaged Property is demolished, destroyed, or substantially damaged by fire or other casualty, (ii) no Event of Default has occurred and is continuing, (iii) Borrower has delivered to Lender plans and specifications for such rebuilding, restoration, or repair which are acceptable to Lender and comply with such other terms and conditions relating thereto which Lender may then require in its reasonable discretion (which may include, without limitation, that construction of the Improvements be completed prior to the Completion Date, as such term is defined in the Loan Agreement and is hereafter used), (iv) fee simple title to the Mortgaged Property is held by Borrower, (v) the restoration of the Improvements on the Mortgaged Property can be completed at a cost which does not exceed the net amount of the available insurance proceeds, or in the event that such insurance proceeds are inadequate, Borrower shall have deposited with Lender, within thirty (30) days following Lender's receipt of the insurance proceeds, an amount equal to the excess of the estimated cost of restoration over the amount of such insurance proceeds (which collectively shall be disbursed by Lender to Borrower in accordance with the terms of the Loan Agreement), and (vi) Borrower shall commence the rebuilding, restoration, or repair and complete same, all in accordance with the plans and specifications approved by Lender and with the terms of the Loan Agreement (if applicable), then the Lender shall, subject to the conditions in this Section (as applicable), make available to Borrower, in accordance with the provisions of Section 4.6, amounts expended or incurred by Borrower in connection with the restoration of the Mortgaged Property (which collectively shall be disbursed by Lender to Borrower in accordance with the terms of the Loan Agreement), the net proceeds of any hazard insurance received by Lender in payment for any loss under the aforesaid fire and



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extended coverage insurance for the restoration of the Mortgaged Property. Advances of net insurance proceeds shall be made to Borrower in accordance with such general procedures as are required by Lender in the Loan Agreement for advances of the Loan, including, without limitation, the submission of invoices, certificates of architects, and lien waivers and otherwise in accordance with Lender's requirements, but in no event more frequently than monthly, less, in each case, all amounts previously advanced and a retainage of ten percent (10%) ("Retainage") of such advance. The Retainage shall be returned after the completion of all work, receipt of final lien waivers or the expiration of the time period under Illinois law during which a lien may be filed under the provisions of Illinois Statutes. If such restoration and repair is not substantially completed in a good and workmanlike manner within the time period provided under and in accordance with the Loan Agreement and any Approved Lease (as such term is defined in the Loan Agreement) after the date of such casualty loss, the undisbursed balance of insurance proceeds may, at the option of Lender, be applied against the reduction of the Note or the completion of the Improvements. Further, nothing herein shall constitute a waiver by Lender that the Improvements be completed by the Completion Date, all in accordance with the terms and provisions of the Loan Agreement.

(c) notwithstanding any term in the Loan Agreement, if any act or occurrence of any casualty on which insurance was not obtained or obtainable shall result in damage to or loss or destruction of the Mortgaged Property, Borrower shall give immediate notice thereof by mail to the Lender and, unless otherwise so instructed by the Lender, shall promptly, at Borrowers' sole cost and expense, restore, repair, replace and rebuild the Mortgaged Property to the condition and character immediately prior to such damage, loss or destruction.

**3.6 Application of Proceeds.** All proceeds received by Lender with respect to a casualty, loss, or diminution in value of the Mortgaged Property shall be applied in the following order of priority:

- (a) first, to reimburse Lender for all reasonable costs and expenses, including, without limitation, attorneys' fees, incurred in connection with collection of such proceeds;
- (b) next, to rebuild, restore, and repair the Mortgaged Property in accordance with the terms and provisions of this Mortgage; and
- (c) thereafter, if there shall be any balance, to the order of priority recited in Section 7.11(b) through (e).

#### ARTICLE 4 NEGATIVE COVENANTS

In addition to the covenants and agreements set forth in the Loan Agreement, Borrower hereby covenants and agrees with Lender that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

**4.1 Use Violations.** Borrower shall not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Mortgaged Property or any portion thereof in any manner (a) which violates any Legal Requirement, (b) which may be dangerous unless safeguarded as required by law, (c) which constitutes a public or private nuisance, (d) which makes void, voidable, or cancelable any insurance then in force, or (e) as Borrower's principal residence or homestead property. Borrower hereby represents to Lender that the Mortgaged Property is and shall not be used or claimed by Borrower as homestead property.

**4.2 Alterations.** Borrower shall not remove or demolish any building or other property forming a part of the Mortgaged Property without the written consent of Lender. Borrower shall not permit, commit, or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof, and shall keep the same and improvements thereon in good condition and repair. Borrower shall notify Lender in writing within five (5) days of any injury, damage or impairment of or occurring on the Mortgaged Property. Lender may, at Lender's discretion, have the Mortgaged Property inspected at any time and Borrower shall pay all costs incurred by Lender in executing such inspection.

**4.3 Replacement of Fixtures and Personalty.** Borrower shall not, without the prior written consent of Lender, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements

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unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is immediately replaced by an article of equal suitability and value, owned by Borrower, free and clear of any lien or security interest except such as may be first approved in writing by Lender.

**4.4 No Management Change.** Borrower shall not retain or contract to retain any person, firm, corporation, or business entity to manage the Mortgaged Property, or any part thereof, without the prior written consent of the Lender and as provided for in the Loan Agreement, nor shall there be any termination or change in management entities without Lender's prior written consent.

**4.5 Utility Capacity.** Borrower shall not transfer, sell, assign or convey, either in whole or in part, other than to Beneficiary, any capacity for utilities which may be available to the Mortgaged Property. Borrower acknowledges that without the availability of utilities to the Mortgaged Property the value of the collateral would be significantly diminished and that the credit being extended under the Loan is based upon such availability.

## ARTICLE 5 CONDEMNATION

**5.1 General.** Immediately upon its obtaining knowledge of the institution of any proceeding, or threatened proceeding, for a condemnation affecting the Mortgaged Property or any part thereof, Borrower shall notify Lender of such fact. Borrower shall, upon the institution of any such proceeding, if requested by Lender, file or defend its claim thereunder and pursue the defense with due diligence to its final disposition and shall cause any awards or settlements to be paid over to Lender for disposition pursuant to the terms of this Mortgage. Borrower may be the nominal party in such proceeding but Lender shall be entitled to participate in and to control the same and to be represented therein by counsel of its own choice, and Borrower will deliver or cause to be delivered, to Lender such instruments as may be requested by it from time to time to permit such participation. Lender shall in no event be liable or responsible for failure to collect, or exercise diligence in the collection of, any condemnation proceedings, judgments, decrees or awards. If the Mortgaged Property is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Borrower by virtue of its interest in the Mortgaged Property shall be, and is hereby, assigned, transferred and set over unto Lender to be held by it, subject to the lien and security interest of this Mortgage and the terms and provisions of the Approved Leases (as that term is defined in the Loan Agreement) and disbursed as follows:

(a) if (i) all of the Mortgaged Property is taken, (ii) so much of the Mortgaged Property is taken, or the Mortgaged Property is so diminished in value, that the remainder thereof is not suitable for the affected portion's intended business operations, (iii) an Event of Default shall have occurred because of the taking or otherwise, or (iv) the Mortgaged Property is partially taken or diminished in value as a result of taking or closing of any parking lot or adjacent drive and is not suitable for the affected portion's intended business operations, then in any such event the entirety of the sums so paid to Lender shall be applied by it to payment of the Indebtedness in the order Lender determines in its sole discretion; or

(b) if (i) none of the facts recited in Section 5.1(a) exists; (ii) Borrower has delivered to Lender evidence satisfactory in the exercise of Lender's good faith business judgment indicating that the affected portion of the Mortgaged Property has access to public streets and roads and to all water, sanitary sewer and storm drainage facilities necessary for the intended use of the Mortgaged Premises immediately prior to such taking or diminution; (iii) fee simple title to the Mortgaged Property is held by Borrower; (iv) Borrower shall have delivered to Lender the plans and specifications for such rebuilding, restoration or repair acceptable to Lender and comply with such other terms and conditions relating thereto which Lender may then require in its sole discretion (which may include, without limitation, that construction of the Improvements be completed prior to the Completion Date); (v) the restoration of the Improvements on the Mortgaged Property can be completed at a cost which does not exceed the net amount of the available condemnation proceeds; and (vi) Borrower shall thereafter commence the rebuilding, restoration or repair and complete same, all in accordance with the plans and specifications approved by Lender (and with the terms of the Loan Agreement) and within three (3) months after the date of such taking or diminution in value or such earlier time as may be required by any of the Leases, then such sums shall be paid to Borrower in the order recited in Section 5.2 to reimburse Borrower for money spent in the rebuilding, restoration or repair; otherwise the same shall be applied by Lender to payment of the Indebtedness in the order Lender determines in its sole discretion. Further, nothing herein shall constitute a waiver by Lender that the Improvements be completed by the Completion Date, all in accordance with the Loan Agreement.

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**5.2 Application of Proceeds.** All proceeds received by Lender with respect to a taking or a diminution in value of the Mortgaged Property shall be applied in the following order of priority:

- (a) first, to reimburse Lender for all reasonable costs and expenses, including attorneys' fees, incurred in connection with collection of such proceeds;
- (b) thereafter, if there shall be any balance, to the order of priority recited in Section 7.11(b) through (e); subject, however, to the provisions of Section 6.1(b) requiring (under the circumstances therein specified) that such proceeds be applied to reimburse Borrower for the rebuilding, restoration, or repair of the Mortgaged Property.

## ARTICLE 6 SECURITY AGREEMENT

**6.1 Security Interest.** This Mortgage constitutes a "Security Agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code, as adopted by the state of Illinois, with respect to the Fixtures, Personal Property and all other Mortgaged Property governed by the Uniform Commercial Code, and Borrower grants to Lender a security interest in the Fixtures, Personal Property, and all other Mortgaged Property governed by the Uniform Commercial Code.

**6.2 Financing Statements.** Borrower agrees to and shall execute and deliver to Lender, in form and substance satisfactory to Lender, such financing statements, continuation statements and such further assurances as Lender may from time to time consider reasonably necessary to create, perfect, preserve and maintain in full force and effect Lender's liens upon the Fixtures, Personal Property and all other Mortgaged Property governed by the Uniform Commercial Code, and to give public notice thereof, and Lender, at the expense of Borrower, may or shall cause such statements and assurances to be recorded and rerecorded, filed and refiled, at such times and places as may be required or permitted by law to so create, perfect, preserve and maintain such liens and public notice thereof.

**6.3 Uniform Commercial Code.** Lender shall have all the rights and remedies with respect to the Fixtures, Personal Property, and all other Mortgaged Property governed by the Uniform Commercial Code, afforded to it by the Uniform Commercial Code as adopted by the state of Illinois, in addition to, but not in limitation of, the other rights and remedies afforded Lender by this Mortgage and the Loan Agreement. If Lender should dispose of any of the Mortgaged Property pursuant to the Uniform Commercial Code, ten (10) days written notice by Lender to Borrower (and all others entitled to notice under applicable law) shall be deemed to be reasonable notice; provided, however, Lender may dispose of such property in accordance with the foreclosure procedures set forth in Section 7.1(a) and otherwise in this Mortgage in lieu of proceeding under the Uniform Commercial Code.

**6.4 Notice of Changes.** Borrower shall give advance notice in writing to Lender of any proposed change in Borrower's name, identity, or structure and shall execute and deliver to Lender, prior to or concurrently with the occurrence of any such change, all additional financing statements that Lender may require to establish and maintain the validity and priority of Lender's security interest with respect to any of the Mortgaged Property described or referred to herein.

**6.5 Fixtures.** Some of the items of the Mortgaged Property described herein are goods that are or are to become Fixtures related to the Land, and it is intended that, as to those goods, this Mortgage shall be effective as a financing statement filed as a Fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Lender, as secured party, at the address of Lender stated above. The mailing address of Borrower, as debtor, is as stated above.

## ARTICLE 7 DEFAULT AND FORECLOSURE

**7.1 Remedies.** If an Event of Default shall occur and be continuing, Lender may, at its option, exercise any, some or all of the following remedies, concurrently or consecutively:

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(a) **Acceleration:** If an Event of Default shall have occurred, Lender may declare the outstanding principal balance of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and payable immediately. Upon such declaration such principal and interest and other sums shall immediately be due and payable without demand or notice.

(b) **Remedies after Default:** Upon an event of default, Lender may proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to: (a) enforce payment of the Note or the performance of any term hereof or any other right; (b) foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property under the judgment or decree of a court or courts of competent jurisdiction; (c) collect all rents, issues, profits, revenue, income and other benefits from the Mortgaged Property; (d) appoint a receiver to enter upon and take possession of the Mortgaged Property and to collect all rents, issues, profits, revenue, income, and other benefits thereto and apply the same as a court may direct and such receiver shall have all rights and powers permitted under law or as authorized by a court, including, but not limited to, the right and power to sell, transfer and convey the Mortgaged Property; and (e) pursue any other remedy available to it including, but not limited to taking possession of the Mortgaged Property without notice or hearing to Borrower. Lender shall take action either by such proceedings or by the exercise of its power with respect to entry or taking possession, or both, as Lender may determine. Borrower further agrees that, in the event that a receiver is appointed pursuant to the provisions of subparagraph (d) above, such receiver, with full power of substitution, shall be and is hereby, designated as Borrower's true and lawful attorney-in-fact with full irrevocable power and/or authority in the place and stead of Borrower to sell, transfer and convey the Mortgaged Property (or any portion thereof) and to take any action deemed necessary or advisable by the Lender or by a court or courts of competent jurisdiction to either protect the Lender's interests or exercise Lender's rights under this Mortgage. Borrower agrees and acknowledges that this power of attorney is coupled with an interest and as such, is irrevocable by Borrower. The rights, powers and authority of the aforesaid attorney-in-fact to exercise, perform and cause to be done any and all acts whatsoever requisite and necessary by virtue of the authority granted herein shall remain in full force and effect and are binding upon Borrower, its legal representatives, successors and assigns until all obligations of Borrower to Lender have been fully satisfied and discharged.

**7.2 Remedies Cumulative and Concurrent.** The rights and remedies of Lender as provided in the Note, this Mortgage, and Loan Agreement, and in the guaranty of any guarantor shall be cumulative and concurrent and may be pursued separately, successively or together against Borrower, the maker of the Note if different from Borrower, any guarantor or the Mortgaged Property or any part or parcel thereof or any one or more of them, at the sole discretion of Lender, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by the laws of the state in which the Land is situated. If Lender elects to proceed under one right or remedy under this Mortgage, the Loan Agreement, the Note, or any other Loan Document, Lender may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under this Mortgage, the Loan Agreement, the Note, or any other Loan Document. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

**7.3 No Waiver.** No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any event of default shall exhaust or impair any such right, power or remedy or shall be construed to waive any Event of Default or to constitute acquiescence therein.

**7.4 No Conditions Precedent to Exercise of Remedies.** Neither Borrower nor any other person now or hereafter obligated for payment of all or any part of the Indebtedness shall be relieved of such obligation by reason of the failure of Lender to comply with any request of Borrower or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage, the Note or the Loan Agreement, or by reason of the release, regardless of consideration, of all or any part of the Mortgaged Property, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Lender extending the time of payment or modifying the terms of this Mortgage or the Note or Loan Agreement without first having obtained the consent of Borrower, the maker of the Note (if different from Borrower) or any guarantor or such other person; and in the latter event, Borrower and each guarantor and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Lender.

**7.5 Release of Collateral, Effect on Subordinate Liens.** Lender may release, regardless of consideration, any part of the Mortgaged Property or the Obligations without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or its priority over any subordinate lien. The holder of any subordinate lien by the acceptance of such subordinate lien agrees to be bound by the terms of this Section 7.7.



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**7.6 Other Collateral.** For payment of the Indebtedness, Lender may resort to any other security therefor, if any, held by Lender in such order and manner as Lender may elect without affecting its remedies under this Mortgage, to the maximum extent permitted by the laws of the state in which the Land is situated.

**7.7 Marshalling and Other Matters.** Borrower waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Borrower expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Borrower, 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 and on behalf of all persons to the extent permitted by applicable law.

**7.8 Discontinuance of Proceedings.** In case Lender shall have proceeded to enforce any right under the Note or this Mortgage and such proceedings shall have been discontinued or abandoned for any reason, then in every such case Borrower and Lender shall be restored to their former positions and the rights, remedies and powers of Lender shall continue as if no such proceedings had been instituted.

## ARTICLE 8 MISCELLANEOUS

**8.1 Loan Agreement.** The Note, this Mortgage and the Loan Agreement evidence, secure and provide for the disbursement of and other matters related to the Loan and shall always be taken and read together as constituting parts of a single loan transaction. The Loan Agreement provides for and governs the method of disbursements of the principal sum evidenced by the Note and secured by this Mortgage as therein specified.

**8.2 Successors and Assigns.** Whichever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Borrower or Lender, shall bind and inure to the benefits of their respective heirs, successors and assigns, whether or not so expressed.

**8.3 Partial Release.** Lender at all times shall have the right to release any part of the Mortgaged Property now or hereafter subject to the lien hereof or any other security Lender now has or may hereafter have securing payment of all or any part of the Indebtedness, without releasing any other part of the Mortgaged Property or other security, and without affecting the lien and security interest hereof as to the part or parts thereof not so released.

**8.4 Notification of Lawsuits.** Borrower will promptly notify Lender in writing of the commencement of any legal or administrative proceedings affecting the Mortgaged Property or any part thereof and will take such action as may be necessary to preserve Lender's rights affected thereby; and should Borrower fail or refuse to take any such action, Lender may, at Lender's election, take such action on behalf and in the name of Borrower and at Borrower's cost and expense.

**8.5 Final Maturity of Indebtedness.** The final maturity of the Indebtedness shall be as stated in the Note, as may be extended by written agreement between Borrower and Lender.

**8.6 Third Party Pledge.** To the extent Borrower is executing this Mortgage for the benefit of a third party obligated on the Indebtedness (or any portion thereof, Borrower hereby waives all rights available to a surety at law or in equity including, without limitation, any rights of a surety to insist upon a creditor first exhausting all remedies against the original obligor of a debt or other collateral securing the Indebtedness.

**8.7 Lender's Right to Perform the Obligations.** If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Agreement and the Loan Documents, then at any time thereafter, and without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Lender may have by reason thereof, Lender may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter the Land and Improvements for such purpose and to take all such action thereon and with respect to the Mortgaged Property as it may deem necessary or appropriate. Borrower shall indemnify Lender for all losses, expenses, damage, claims and causes of action, including attorneys' fees,

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incurred or accruing by reason of any acts performed by Lender pursuant to the provisions of this Section or by reason of any other provision in the Loan Agreement and the Loan Documents, except as a result of Lender's gross negligence or willful misconduct. All sums paid by Lender pursuant to this Section and all other reasonable sums expended by Lender to which it shall be entitled to be indemnified, together with interest thereon at the maximum non-usurious rate allowed by law from the date of such payment or expenditure, shall constitute additions to the Indebtedness, shall be secured by the Loan Documents and shall be paid by Borrower to Lender upon demand.

**8.8 Survival of Obligations.** Each and all of the Obligations shall survive the execution and delivery of the Loan Agreement and the Loan Documents, and the consummation of the loan called for therein, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

**8.9 Subrogation.** If any or all of the proceeds of the Note have been or ever shall be used to extinguish, extend or renew any indebtedness previously existing against any portion of the Mortgaged Property, then, to the extent of such funds so used, the Indebtedness and the lien of this Mortgage shall be subrogated to all of the rights, claims, liens, titles and interests previously existing against the Mortgaged Property to secure the indebtedness so extinguished, extended or renewed and the former rights, remedies, claims, liens, titles and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the satisfaction of the Obligations.

**8.10 Entire Agreement and Modification.** The Loan Agreement and the Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative thereto which are not contained herein or therein are terminated. The Loan Agreement and the Loan Documents may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

**8.11 No Waiver.** Any failure by Lender to insist, or any election by Lender not to insist, upon strict performance by Borrower of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof, and Lender shall have the right at any time or times thereafter to insist upon strict performance by Borrower of any and all of such terms, provisions and conditions.

**8.12 Vendor's Lien.** A portion of the indebtedness may represent purchase money indebtedness in connection with the acquisition of all or a portion of the Mortgaged Property. This Mortgage is cumulative of and in addition to vendor's liens retained in deeds to Borrower, as grantee, and it is expressly agreed that the same shall not operate as a waiver of the lien and the rights created by this Mortgage, it being agreed that said lien and the rights created by this instrument shall be cumulative of and in addition to the vendor's liens above mentioned, and the owner and holder of the indebtedness hereby secured may foreclose under said vendor's liens or pursuant to the provisions of this Mortgage.

**8.13 Survival of Warranties and Covenants.** The warranties, representations, covenants and agreements set forth in this Mortgage shall survive the making of the Loan and the execution and delivery of the Note, and shall continue in full force and effect until the Indebtedness shall have been paid in full and the Obligations fully performed and fulfilled.

**8.14 No Representation by Lender.** By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Lender, pursuant to this Mortgage, including, but not limited to, any officer's certificate, balance sheet, statement of income, profit and loss or other financial statement, survey or appraisal, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Lender.

**8.15 Notice.** All notices, demands, requests and other communications required under this Mortgage and the Note shall be in writing and shall be deemed to have been properly given when presented personally or deposited in the United States mail, registered or certified, postage prepaid, addressed to the party for whom it is intended at its address as set forth on the first page of this Mortgage and as set forth in the Loan Agreement. Any party may designate a change of address by written notice to the others, given at least ten (10) days before such change of address is to become effective.

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**8.16 Severability.** In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other instrument securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

**8.17 Modification.** This Mortgage may not be changed, waived, discharged, released or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge, release or termination is asserted.

**8.18 APPLICABLE LAW. THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS IN EFFECT IN THE STATE OF Illinois.**

**8.19 Strict Performance.** Any failure by Lender to insist upon strict performance by Borrower of any of the terms and provisions of this Mortgage or of the Note shall not be deemed to be a waiver of any of the terms or provisions of this Mortgage or the Note, and Lender shall have the right thereafter to insist upon strict performance by Borrower of any and all of them.

**8.20 Headings.** The article headings and the section titles hereof are inserted for convenience of reference only, and shall in no way alter or modify the text or substance of such articles and sections.

**8.21 Gender, Etc.** The use of any gender shall include all other genders. The singular shall include the plural and the plural shall include the singular.

**8.22 NO ORAL AGREEMENTS. THIS WRITTEN MORTGAGE AND THE OTHER DOCUMENTS EXECUTED SUBSTANTIALLY CONTEMPORANEOUSLY WITH THIS MORTGAGE REPRESENT THE FINAL AGREEMENT OF THE PARTIES 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.**

**8.23 Relationship Not a Partnership.** The relationship between Borrower and Lender hereunder is that of debtor and creditor, and nothing contained herein or in any other agreement relating to this transaction shall be construed to create a joint venture or partnership relationship between Borrower and Lender.

**8.24 Waiver of Jury Trial. BORROWER AND LENDER IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

**8.25 Future Advances.** This Mortgage is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of Lender, or otherwise, as are made within twenty years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed twice the face amount of the Note, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Mortgaged Property, with interest on such disbursements at the Default Rate as hereafter defined.

**8.26 No Limitation of Future Advance Rights.** Borrower covenants and agrees with Lender that:

(a) Borrower waives and agrees not to assert any right to limit future advances under this Mortgage, and any such attempted limitation shall be null, void and of no force and effect. Any correspondence by Borrower regarding the future advances must be sent to Lender at the address set forth above.

(b) An event of default under this Mortgage shall automatically exist: (i) if Borrower executes any instrument which purports to have or would have the effect of impairing the priority of or limiting any future advance which might ever be made under this Mortgage or (ii) if Borrower takes, suffers or permits any action or occurrence which would adversely affect the priority of any future advance which might ever be made under this Mortgage.

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**8.27 Appraisals.** Borrower covenants and agrees that Lender may obtain an appraisal of the Mortgaged Property when required by the regulations of the Federal Reserve Board or the Office of the Comptroller of the Currency or at such other times as the Lender may reasonably require. Such appraisals shall be performed by an independent third party appraiser selected by the Lender. The cost of such appraisal shall be borne by the Borrower. Borrower's failure or refusal to sign such an engagement letter however shall not impair Lender's right to obtain such an appraisal. Borrower agrees to pay the cost of such appraisal within ten (10) days after receiving an invoice for such appraisal.

**8.28 Obligation of Borrower.** Borrower shall pay the cost of releasing or satisfying this Mortgage of record.

**8.29 No Transfer.** It is understood and agreed by Borrower that as part of the inducement to Lender to make the loan evidenced by the Note, Lender has considered and relied on the creditworthiness and reliability of Borrower. Borrower covenants and agrees not to sell, convey, transfer, lease or further encumber any interest in or any part of the Mortgaged Property without the prior written consent of Lender, and any such sale, conveyance, transfer, lease or encumbrance made without Lender's prior written consent shall be void. If any person should obtain an interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall be deemed to be a transfer by Borrower and an event of default hereunder.

**8.30 Default Rate.** The Default Rate shall be the Highest Lawful Rate.

**8.31 Changes to Mortgage.** No modifications to this Mortgage or to any other loan document executed in connection herewith shall be valid or effective unless the same is in writing and signed by Borrower and Lender.

**8.32 Hazardous Waste.** Borrower warrants and represents to Lender after thorough investigation:

(a) That neither Borrower nor any other person to Borrower's knowledge, after reasonable inquiry, has ever used the Mortgaged Property as a facility for the storage, treatment or disposal of any "Hazardous Substances," as that term is hereinafter defined.

(b) That the Mortgaged Property is now and at all times hereafter will continue to be in full compliance with all Federal, state and local "Environmental Laws" (as that term is defined hereinafter), including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601, *et seq.*, the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law 99-499, 100 Stat. 1613, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901, *et seq.*, as the same may be amended from time to time and all ordinances, regulations, codes, plans, orders, and decrees now existing or in the future enacted, promulgated, adopted, entered or issued, both within and outside present contemplation of Borrower and Lender.

(c) That (i) as of the date hereof there are no hazardous or toxic materials, substances, wastes or other environmentally regulated substances (including solids or gaseous products and any materials containing asbestos), the presence of which is limited, regulated or prohibited by any state, federal or local governmental authority or agency having jurisdiction over the Mortgaged Property, or which are otherwise known to pose a hazard to health or safety of occupants of the Mortgaged Property, located on, in or under the Mortgaged Property or used in connection therewith, or (ii) Borrower has fully disclosed to Lender in writing the existence, extent and nature of any such hazardous or toxic material waste or other environmentally regulated substance, which Borrower is legally authorized and empowered to maintain on, in or under the Mortgaged Property or use in connection therewith, and Borrower has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals.

(d) That Borrower shall notify Lender of any change in the nature or extent of any hazardous or toxic materials, substances or wastes maintained on, in or under the Mortgaged Property or used in connection therewith, and will transmit to Lender copies of any governmental or non-governmental communication, citations, orders, or notices received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Mortgaged Property.



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(e) That Borrower is not aware of, nor has the Borrower nor any of its subsidiary or affiliated entities received notice of, any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent compliance or continued compliance with Environmental Laws or any ordinance, regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, or which may give rise to any common law or legal liability, or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Substance.

(f) That there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice or demand letter, notice of violation, investigation, or proceeding pending or threatened against Borrower or the Mortgaged Property, relating in any way to any Environmental Laws or any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder.

(g) Borrower hereby agrees to indemnify, reimburse, defend and hold harmless Lender, its officers, directors, employees, successors and assigns from and against all demands, claims, civil or criminal actions or causes of action, liens, assessments, civil or criminal penalties or fines, losses, damages, liabilities, obligations, costs, disbursements, expenses or fees of any kind or of any nature (including, without limitation, cleanup costs, attorneys', consultants' or experts' fees and disbursements and costs of litigation at trial and appellate levels) which may at any time be imposed upon, incurred by or asserted or awarded against, Lender directly or indirectly, resulting from: (i) any acts or activities of Borrower, its agents, employees or contractors, at, on or about the Mortgaged Property which contaminate air, soils, surface waters or groundwaters over, on or under the Mortgaged Property; (ii) arising from or out of any Hazardous Substance on, in or under the Mortgaged Property; (iii) pursuant to or in connection with the application of any Environmental Law to the acts or omissions of Borrower or any other person and any environmental damage alleged to have been caused, in whole or in part, by the transportation, treatment, storage, or disposal of any Hazardous Substance or (iv) arising from or in relation to the presence, whether past, present or future, of any Hazardous Substances on the Mortgaged Property.

Without limiting the foregoing, this indemnification provision specifically protects Lender against any claim or action from activities described in (i), (ii), (iii) or (iv) above, based in whole or in part upon any environmental statute, rule, regulation or policy, including but not limited to Illinois Statutes, the Illinois Administrative Code, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601, et seq., as amended, the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., and other laws, whether now in existence or enacted in the future.

Borrower's indemnification obligation hereunder shall be one of strict liability and shall be enforceable without regard to any fault or knowledge of Lender with respect to any act or omission or condition or event which is the basis of the claim under such indemnification obligation. Borrower's obligation under this section shall not be limited to any extent by the term of the Note or other obligations secured hereby, and such obligation shall continue, survive and remain in full force and effect notwithstanding payment in full or other satisfaction or release of said Note (and other obligations secured hereby) and this Mortgage, or any foreclosure under this Mortgage, or any delivery of a deed in lieu of foreclosure. The provisions of this Section shall be deemed to survive and continue in full force and effect after any foreclosure or other proceeding by which the Lender, and its successors and assigns succeed to ownership of the Mortgaged Property.

As used herein, "Environmental Law" means any federal, state, or local statutory or common law relating to pollution or protection of the environment, including without limitation, any common law of nuisance or trespass, and any law or regulation relating to emissions, discharges, releases or threatened releases of Hazardous Substances into the environment (including without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

As used herein, "Hazardous Substance" means any substance or material (i) identified in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), as the same may be amended from time to time, or (ii) determined to be toxic, a pollutant or contaminant, under federal, state or local statute, law, ordinance, rule or regulation or judicial or administrative order or decision, as same may be amended from time to time, including but not limited to petroleum and petroleum products.

(h) Lender shall have the right, in its sole discretion, to require Borrower to periodically (but not more frequently than annually unless an Environmental Complaint is then outstanding) perform (at Borrower's expense) an

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environmental audit and, if deemed necessary by Lender, an environmental risk assessment, each of which must be satisfactory to Lender in its sole discretion, of the Mortgaged Property, hazardous waste management practices and/or hazardous waste disposal sites used by Borrower. Such audit and/or risk assessment must be by an environmental consultant satisfactory to Lender. Should Borrower fail to perform such environmental audit or risk assessment within thirty (30) days of the Lender's written request, Lender shall have the right but not the obligation to retain an environmental consultant to perform such environmental audit or risk assessment. All costs and expenses incurred by Lender in the exercise of such rights shall bear interest at the default rate set forth in the Note and shall be secured by this Mortgage and shall be payable by Borrower upon demand or charged to Borrower's loan balance at the discretion of Lender.

(i) Any breach of any warranty, representation or agreement contained in this Section shall be an Event of Default hereunder and shall entitle Lender to exercise any and all remedies provided in this Mortgage, or otherwise permitted by law.

**8.33 Documentary Stamp Tax/Intangible Tax.** Borrower its heirs, personal representatives, successors and assigns, indemnify and agree to defend and hold Lender harmless against Illinois documentary stamp and intangible taxes, if any, imposed upon Lender by virtue of its execution and acceptance of this document or its ownership of the Note, and as from time to time further modified and restated, including any penalties, interest, and attorneys' fees incurred by Lender in connection therewith, and all such charges shall be secured by the lien of the Mortgage, and as from time to time amended, and bear interest at the default rate provided in the Note from the date of advance by Lender until paid by Borrower. The provisions of this paragraph shall survive the repayment of the Note and the indebtedness evidenced thereby, and satisfaction of the Mortgage, and shall continue for so long as a claim may be asserted by the State of Illinois or any of its agencies.

**8.34 Additional Representations and Warranties.** Borrower represents and warrants to Lender as follows, and acknowledges that such representations and warranties shall be continuing representations and warranties from Borrower to Lender:

(a) Borrower is and shall remain in compliance with the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation, regulations or executive orders relating thereto, and the Uniting and Strengthening America By Providing Appropriate Tools Required To Intercept and Disrupt Terrorism Act (USA Patriot Act of 2001), as amended, and any other enabling legislation, regulations or executive orders relating thereto;

(b) Borrower is and shall remain in compliance with 31 U.S.C., Section 5313, as amended, 31 C.F.R. Section 103.22, as amended, and any similar laws or regulations involving currency transaction reports or disclosures relating to transactions in currency of more than \$10,000.00, or of more than any other minimum amount specified by any laws or regulations; and

(c) Borrower (i) is not a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) does not engage in any dealings or transactions prohibited by Section 2 of such executive order, or are otherwise associated with any such person in any manner violative of Section 2, or (iii) is not a person or entity on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order.

Borrower covenants and agrees with Lender that no part of any Loan proceeds or advances evidenced by or referenced in this Mortgage, and no part of any other amounts or sums derived from any property which secures repayment of such Loan proceeds or advances, including, without limitation, any accounts, payment intangibles, money, rents, issues or profits, will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

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

VPP Holdings LLC, an Illinois limited liability company

By: Jeffrey Wong, Manager

STATE OF ILLINOIS )

) ss

County of COOK )

This instrument was acknowledged before me on this 14<sup>th</sup> day of June, 2017, before me, the undersigned, a Notary Public in and for the State of Illinois, duly commissioned and sworn, by Jeffrey Wong, as Manager of VPP Holdings LLC, an Illinois limited liability company, known to me as the person that executed the within and foregoing instrument, and acknowledged the said instrument to be his free and voluntary act and for the uses and purposes therein mentioned. WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.



*Ivette Hernandez*

Notary Public for the State of Illinois

My Commission Expires: 8/24/19

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## EXHIBIT A

### Legal Description of Real Property

**LOT 32 IN CHATEAUX CAMPAGNE SUBDIVISION UNIT S-1, BEING PART OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 35, TOWNSHIP 36 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED JUNE 25, 1970 AS DOCUMENT 21193990**

PIN (for reference only, not part of legal description)  
28-35-405-011-0000

Street address: (for reference only, not part of legal description)  
3404 Fountainbleau, Hazel Crest, IL 60429