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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*1722245089\*

Doc# 1722245089 Fee \$122.00

RHSP FEE: \$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 08/10/2017 03:08 PM PG: 1 OF 43

The property identified as: **PIN:** 17-09-211-007-0000

**Address:**

**Street:** 110 WEST HURON STREET

**Street line 2:**

**City:** CHICAGO

**State:** IL

**ZIP Code:** 60654

**Lender:** SPECIAL SITUATIONS INVESTING GROUP II, LLC

**Borrower:** AP 100 W. HURON PROPERTY, LLC

**Loan / Mortgage Amount:** \$53,500,000.00

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

8985181 CB 1/3

**Certificate number:** ADF49A4A-21A1-41EE-A89E-5D8FBD570B8D

**Execution date:** 8/4/2017

CCRD REVIEW

A handwritten signature in black ink, appearing to be "JBL", written over a horizontal line.

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This document prepared by and,  
after recording, return to:

Kathleen Wu, Esq.  
Andrews Kurth Kenyon LLP  
1717 Main Street, Suite 3700  
Dallas, Texas 75201



Property of Cook County Clerk's Office

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AP 100 W. HURON PROPERTY, LLC

as grantor

for the benefit of

SPECIAL SITUATIONS INVESTING GROUP II, LLC,

as beneficiary

Dated as of August 10, 2017

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

Property Address:

110 West Huron Street  
Chicago, Illinois 60654

Permanent Tax Index Numbers:

17-09-211-007-0000  
17-09-211-008-0000  
17-09-211-009-0000  
17-09-211-010-0000

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## CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING

THIS CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (this "Mortgage") is entered into and made effective as of August 10, 2017, by AP 100 W. HURON PROPERTY, LLC, a Delaware limited liability company, having its address and principal place of business at 640 North LaSalle Drive, Suite 275, Chicago, Illinois 60654, as grantor ("Borrower"), for the benefit of SPECIAL SITUATIONS INVESTING GROUP II, LLC, a Delaware limited liability company, as beneficiary (together with its successors and/or assigns, "Lender"), having an address of c/o Goldman Sachs & Co., LLC 6011 Connection Drive, Irving, Texas 75039, Attention: Loan Asset Management and Legal Department.

### WITNESSETH:

A. Borrower is the owner of the fee estate of that certain parcel of land which is situated at 110 West Huron Street in the City of Chicago, County of Cook, State of Illinois, more particularly described in Exhibit A attached hereto and incorporated herein by reference.

B. Lender is making a loan (the "Loan") to Borrower under and pursuant to the terms and provisions of that certain Construction Loan Agreement of even date herewith by and between Borrower, as borrower, and Lender, as lender, which Loan is further evidenced by that certain Promissory Note of even date herewith made by Borrower and payable to the order of Lender in the original stated principal amount of FIFTY-THREE MILLION AND FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$53,500,000.00).

C. As a material inducement in order for Lender to make the Loan to Borrower, Borrower has agreed to execute and deliver this Mortgage to and for the benefit of Lender.

D. Borrower and Lender intend for these recitals to be a material part of this Mortgage.

NOW, THEREFORE, in consideration of the Loan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby covenants and agrees as follows:

### ARTICLE I

#### DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

Architectural Barrier Laws: Any and all architectural barrier laws including (but not limited to) the following, as now or hereafter amended: the Americans with Disabilities Act of 1990, P.L. 101-336; and the Environmental Barriers Act, 410 ILCS 25.

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Assignment of Rents: That certain Assignment of Rents and Revenues of even date herewith executed by Borrower and Lender, as the same may hereafter be amended, supplemented or otherwise modified from time to time.

Borrower: The individual or entity described as Borrower in the initial paragraph of this Mortgage and any and all subsequent owners of the Mortgaged Property or any part thereof (without hereby implying Lender's consent to any Disposition of the Mortgaged Property).

Charges: All fees, charges and/or any other things of value, if any, contracted for, charged, received, taken or reserved by Lender in connection with the transaction relating to the Note and the other Loan Documents, which are treated as interest under applicable law.

Code: The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is situated.

Construction Contracts: Collectively, the right, title and interest of Borrower in any and all contracts, subcontracts and agreements, written or oral, between Borrower and any other party, and between parties other than Borrower in any way relating to any restoration, renovation, expansion, repair or construction of all or any portion of the Improvements or the supplying of material (especially fabricated or otherwise), labor, supplies or other services therefor.

Contracts: All of the right, title and interest of Borrower, including equitable rights, in, to and under any and all: (i) agreements relating in any way to the construction and/or development of the Improvements or provision of materials therefor; (ii) contracts for the purchase and/or sale of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments and supplements to and renewals and extensions of the contracts at any time made, and together with all payments, earnings, income and profits arising from the sale of all or any portion of the Mortgaged Property or from the contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the contracts; (iii) contracts, licenses, permits and rights relating to living unit equivalents or other entitlements with respect to water, wastewater and other utility services whether executed, granted or issued by a Person, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, permits, rights and entitlements are now or at any time thereafter existing, including any and all certificates, licenses, zoning variances, permits and no-action letters from each Governmental Authority required: (a) to evidence compliance by Borrower and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property, (b) for the construction and/or development of any improvements on the Mortgaged Property or rehabilitation thereof, if applicable, and (c) to develop and/or operate the Mortgaged Property as a hotel and/or retail project project, as the case may be; (iv) financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; (v) economic incentives or similar agreements or understandings; (vi) agreements relating in any way to the construction, development or rehabilitation of the

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Land or Improvements or provision of materials therefor including all Construction Contracts; (vii) contracts with architects or engineers or others for the preparation or provision of any Plans, including all amendments and supplements to and renewals and extensions of such contracts at any time made; and (viii) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Leases).

Default Interest Rate: The rate of interest specified in the Note to be paid by the maker of the Note from and after the occurrence of an Event of Default but not in excess of the maximum rate of interest which may be contracted for, charged, taken, received or reserved in accordance with applicable law.

Development Contracts: Collectively, the right, title and interest of Borrower in any and all contracts, subcontracts and agreements, written or oral, between Borrower and any other party, and between parties other than Borrower in any way relating to any restoration, renovation, expansion, repair, development or construction of all or any portion of the Improvements or the supplying of material (especially fabricated or otherwise), labor, supplies or other services therefor.

Disposition: Other than a Permitted Disposition, any sale, lease (except as permitted under this Mortgage), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the beneficial ownership interest, held directly or indirectly, in Borrower (if Borrower is a corporation, limited liability company, limited liability partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity).

Environmental Indemnity Agreement: That certain Environmental Indemnity Agreement of even date herewith executed by Borrower and Guarantor for the benefit of Lender, as the same may hereafter be amended, supplemented or otherwise modified from time to time.

Environmental Law: Any federal, state or local law, statute, ordinance or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene or the environmental conditions on, under or about the Land or the Improvements, including the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C.A. § 9601 et seq.; Resource, Conservation and Recovery Act ("RCRA"), 42 U.S.C.A. § 6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C.A. § 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C.A. § 1101 et seq.; Clean Water Act, 33 U.S.C.A. § 1251 et seq.; Clean Air Act, 42 U.S.C.A. § 7401 et seq.; Federal Water Pollution Control Act, 33 U.S.C.A. § 1251 et seq.; and any corresponding state laws or ordinances; and regulations, rules, guidelines or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines and standards are amended from time to time.

Event of Default: Any happening or occurrence described in Article VI hereof.

Excess Interest: As defined in Section 11.7.

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Fixtures: All materials, supplies, equipment, systems, apparatus and other items now owned or hereafter acquired by Borrower and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, which are now owned or hereafter acquired by Borrower and are now or hereafter attached to the Land or the Improvements, including any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including stairways, elevators, escalators and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, lighting, traffic control, waste disposal, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof.

Governmental Authority: Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) or for any quasi-governmental units (development districts or authorities).

Guarantor (individually and/or collectively as the context may require): Those Persons designated as Guarantor in any Guaranty.

Guaranty (individually and/or collectively as the context may require): That instrument or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor to Lender guaranteeing the satisfaction of, or continued compliance with, all or any portion of the Obligations, or both.

Hazardous Substance: Any substance, product, waste or other material which is or becomes listed, regulated or addressed as being a toxic, hazardous, polluting or similarly harmful substance under any Environmental Law, including: (i) any substance included within the definition of "hazardous waste" pursuant to section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to section 101 of CERCLA; (iii) asbestos or asbestos containing materials in any form that are or could become friable; (iv) polychlorinated biphenyls; (v) petroleum products; (vi) underground storage tanks, whether empty, filled or partially filled with any substance; (vii) any radioactive materials, urea formaldehyde foam insulation or radon; and (viii) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

IMF Law: As defined in Section 11.2(a) below.

Impositions: (i) All real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general

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and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever 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, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Mortgaged Property; (iii) raw and potable water, gas, storm and sanitary sewer, electricity, and other utility charges and fees relating to the Mortgaged Property; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property.

Improvements: Any and all buildings, covered garages, air conditioning towers, open parking areas, structures and other improvements of any kind or nature all as more particularly described in the Plans, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

Indebtedness: (i) The principal, interest and other sums evidenced by the Note or any other Loan Document; (ii) any other amounts, payments or premiums payable under any Loan Document; (iii) such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from Lender, its successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured hereby; (iv) any and all other indebtedness, obligations and liabilities of any kind or character of Borrower to Lender, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, including indebtedness, obligations and liabilities to Lender of Borrower as a member of any partnership, joint venture, trust or other type of business association or other legal entity, and whether incurred by Borrower as principal, surety, endorser, guarantor, accommodation party or otherwise; and (v) any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements and extensions of any of the foregoing; it being contemplated by Borrower and Lender that Borrower may hereafter become indebted to Lender in further sum or sums. Notwithstanding the foregoing provisions of this definition, this Mortgage shall not secure any such other loan, advance, debt, obligation or liability with respect to which Lender is by applicable law prohibited from obtaining a lien on real estate, nor shall this definition operate or be effective to constitute or require any assumption or payment by any Person, in any way, of any debt or obligation of any other Person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law.

Land: That certain real property or interest more particularly therein described in Exhibit A attached hereto and incorporated herein by reference, together with all rights, titles, interests and privileges of Borrower in and to (i) all streets, ways, roads, alleys, easements (including any easements under zoning lot development and easement agreements, whether now or hereafter affecting such real property), rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips

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or gores of real property between such real property and abutting or adjacent properties; (iii) all water, water rights and water courses which are appurtenant to, located on, under or above or used in connection with the Mortgaged Property, or any part thereof, whether adjudicated or unadjudicated, conditional or absolute, tributary or non-tributary, surface or underground, designated or undesignated; (iv) timber and crops pertaining to such real property; and (v) all appurtenances, including any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to such real property or now or hereafter transferred to such real property, and all reversions and remainders in or to such real property.

Lease Rent Notice: As defined in Section 7.1(i) below.

Leases: The right, title and interest of Borrower in any and all leases, master leases, subleases, licenses, concessions or other agreements (whether written or oral, now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith, whether entered into before or after the filing by or against Borrower of any petition for relief under the United States Bankruptcy Code, 11 U.S.C. §101, et seq., as amended.

Legal Requirements: Any and all (i) present and future judicial decisions, statutes (including Architectural Barrier Laws, Environmental Laws and Prescribed Laws), laws, rulings, rules, regulations, orders, writs, injunctions, decrees, permits, certificates or ordinances of any Governmental Authority in any way applicable to Borrower, any Constituent Party, Guarantor or the Mortgaged Property, including the generality of the foregoing, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof; (ii) covenants, conditions and restrictions contained in any deeds, other forms of conveyance or in any other instruments of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use or occupancy thereof; (iii) presently or subsequently effective bylaws and articles of incorporation, operating agreement and articles of organization or partnership, limited partnership, joint venture, trust or other form of business association agreement of Borrower or Guarantor; (iv) Contracts; and (v) leases and other contracts (written or oral), other than those described in (iv) above, of any nature that relate in any way to the Mortgaged Property and to which Borrower or Guarantor may be bound, including the generality of the foregoing, any lease or other contract pursuant to which Borrower is granted a possessory interest in and to the Land and/or the Improvements.

Lender: SPECIAL SITUATIONS INVESTING GROUP II, LLC, whose address for notice hereunder is 200 West Street, New York, New York 10282-2198, and the subsequent holder or holders, from time to time, of the Note.

Lender's Agent: Borrower solely for the purpose of and expressly limited to lawfully collecting Rents and applying same as set forth in this Mortgage, which agency shall never be deemed to be that of trustee and beneficiary for any purpose and which agency relationship cannot be terminated by Borrower so long as the Loan Documents are in effect.

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Loan Agreement: That certain Construction Loan Agreement of even date herewith by and between Borrower and Lender, governing advances under the loan evidenced by the Note and secured, inter alia, by this Mortgage, as the same may hereafter be amended, supplemented or otherwise modified from time to time.

Loan Documents: The Loan Agreement, the Note, this Mortgage, the Environmental Indemnity Agreement, the Assignment of Rents, the Guaranty and any and all other agreements, documents and instruments now or hereafter executed by Borrower, Guarantor or any other Person or party in connection with the loan evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, extensions and supplements hereof and thereof.

Maximum Lawful Rate: Shall have the same meaning as given to the term "Maximum Lawful Rate" in the Loan Agreement.

Minerals: All right, title and interest of Borrower, if any, in and to all substances in, on, under or above the Land which are now, or may become in the future, intrinsically valuable, that is, valuable in themselves, and which now or may be in the future enjoyed through extraction or removal from the Land, including oil, gas and all other hydrocarbons, coal, lignite, carbon dioxide and all other non-hydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores.

Mortgaged Property: The Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Plans, Construction Contracts, Development Contracts, Leases, Rents, Reserves and any interest of Borrower now owned or hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Construction Contracts, Plans, Development Contracts, Leases, Rents and Reserves, together with 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, together with any and all proceeds of any of the foregoing. As used in this Mortgage, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any part of the above and all or, where the context permits or requires, any interest therein.

Note: That certain Promissory Note of even date herewith, incorporated herein by this reference, executed by Borrower and payable to the order of Lender in the principal amount of FIFTY-THREE MILLION AND FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$53,500,000.00) and any and all renewals, modifications, rearrangements, reinstatements, enlargements or extensions of such promissory note or of any promissory note or notes given in renewal, substitution or replacement therefor.

Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor or any other Person or party to the Loan Documents to Lender or others as set forth in the Loan Documents, in the Leases, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

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Permitted Disposition: The sale, transfer or exchange of any portion of the Mortgaged Property or ownership interest in Borrower permitted under the Loan Agreement or with respect to which Lender executes and delivers a release of its lien held pursuant to this Mortgage.

Permitted Exceptions: The liens, easements, restrictions, security interests and other matters, if any, expressly listed as special exceptions (*i.e.*, not pre-printed or standard exceptions) to coverage in the title insurance policy insuring the lien of this Mortgage and the liens and security interests created by the Loan Documents.

Personalty: All of the right, title and interest of Borrower in and to: (i) furniture, furnishings, equipment, machinery, tangible personal property and goods located within, used in the operation of or derived from the Improvements; (ii) crops, farm products, timber and timber to be cut, and extracted Minerals; (iii) general intangibles (including payment intangibles), money, insurance proceeds (whether or not such insurance was requested or required by Lender), accounts, contract and subcontract rights, trademarks, trade names, copyrights, monetary obligations, chattel paper (including electronic chattel paper), instruments, investment property, documents, letter of credit rights, inventory and commercial tort claims; (iv) all cash funds, fees (whether refundable, returnable or reimbursable), deposit accounts or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Borrower with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, Construction Contracts, Development Contracts or Personalty, including those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (v) the Construction Contracts, Plans (subject to applicable copyright laws) and all building and construction materials and equipment; and (vi) all other personal property of any kind or character as defined in and subject to the provisions of the Code; any and all of which are now owned or hereafter acquired by Borrower, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, design, development, construction, financing, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof.

Plans: Any and all plans, specifications, shop drawings and other technical descriptions as may be prepared for the construction or rehabilitation of the Improvements or, as applicable, the development of the Land and all supplements thereto and amendments and modifications thereof.

Protective Advances: As defined in Section 11.2(d).

Rents: Any and all rents, revenues, royalties, income, issues, proceeds, bonus monies, profits, security and other types of deposits (after Borrower acquires title thereto) and other benefits paid or payable by parties to the Leases and/or Contracts (other than Borrower) for

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using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying all or any portion of the Mortgaged Property.

Reserves: All sums on deposit or due under any of the Loan Documents now or hereafter executed by Borrower for the benefit of Lender including (i) the accounts into which the Reserves have been deposited; (ii) all insurance on said accounts; (iii) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto; (iv) all sums now or hereafter therein or represented thereby; (v) all replacements, substitutions or proceeds thereof; (vi) all instruments and documents now or hereafter evidencing the Reserves or such accounts; (vii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom); and (viii) all proceeds of the foregoing.

Subordinate Mortgage: Any mortgage, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, covering all or any portion of the Mortgaged Property executed and delivered by Borrower, the lien of which is subordinate and inferior to the lien of this Mortgage.

1.2 Additional Definitions; Rules of Construction. All capitalized terms used herein but not defined in Section 1.1 hereof shall have the meanings ascribed to such terms in the Loan Agreement. As used herein, the following terms shall have the following meanings: (i) "hereof," "hereby," "hereto," "hereunder," "herewith," and similar terms mean of, by, to, under and with respect to, this Mortgage or to the other documents or matters being referenced; (ii) "heretofore" means before, "hereafter" means after, and "here with" means concurrently with the date of this Mortgage; (iii) all pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require; (iv) "including" means including without limitation; and (v) all terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

1.3 Not a Revolver Facility. It is expressly understood and agreed that neither the Loan nor any Indebtedness is intended to be a "revolver" facility and that no principal amount repaid by Borrower may be re-borrowed by Borrower.

## ARTICLE II

### GRANT

2.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Borrower hereby irrevocably MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS, CONVEYS AND CONFIRMS to Lender, and grants to Lender a security interest in, the Mortgaged Property; TO HAVE AND TO HOLD the Mortgaged Property to Lender, its successors and assigns, and Borrower does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Lender.

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## ARTICLE III

### WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents to Lender as of the date hereof and at all times during the term of this Mortgage as follows:

3.1 Title and Lien. Borrower has a first and prior fee estate in the Land and Improvements, and good and marketable title to the Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests, claims, easements, restrictions, options, leases, covenants and other rights, titles, interests or estates of any nature whatsoever, except the Permitted Exceptions. This Mortgage constitutes a valid, subsisting first lien on the Land, the Improvements, the Leases and the Fixtures; a valid, subsisting first priority security interest in and to the Personalty, Contracts, Plans, Development Contracts and Rents and to the extent that the term "Leases" include items covered by the Code, in and to the Leases; all in accordance with the terms hereof; and all subject to the Permitted Exceptions. The foregoing warranty of title shall survive the foreclosure or other enforcement of this Mortgage and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to the Mortgaged Property pursuant to any foreclosure or otherwise.

3.2 Incorporation of Warranties and Representations. All the warranties, representations, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

3.3 Separate Tax Parcel; Legal Lot. To the best of Borrower's actual knowledge, the Mortgaged Property is taxed separately without regard to any other real estate and the Land constitutes a legally subdivided lot under all applicable Legal Requirements (or, if not subdivided, no subdivision or platting of the Land is required under applicable Legal Requirements) and for all purposes may be mortgaged, conveyed or otherwise dealt with as an independent parcel.

3.4 No Commencement of Construction. As of the date of this Mortgage, no work or construction of any kind has been commenced on the Land. As of the date of this Mortgage, there are no outstanding bills for labor and materials relating to the Mortgaged Property due and owing to any contractor, subcontractor or supplier.

## ARTICLE IV

### AFFIRMATIVE COVENANTS

Borrower hereby unconditionally 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, as follows:

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4.1 Payment and Performance. Borrower will pay the Indebtedness as and when specified in the Loan Documents and will perform and discharge all of the Obligations, in full and on or before the dates same are to be performed.

4.2 First Lien Status. Borrower will protect the first lien and security interest status of this Mortgage and the other Loan Documents and will not permit to be created or to exist in respect of the Mortgaged Property or any part thereof any lien or security interest on a parity with, superior to or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions.

4.3 Insurance. Borrower will, at Borrower's own expense, obtain, maintain and keep in full force and effect insurance upon and relating to the Mortgaged Property with such insurers, in such amounts and covering such risks as Lender may reasonably require or as may be set forth in the Loan Agreement.

4.4 Payment for Labor and Materials. Borrower will promptly pay all bills for labor, materials and specifically fabricated materials incurred by Borrower or on behalf of Borrower in connection with the Mortgaged Property and never permit to exist in respect of the Mortgaged Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event never permit to be created or exist in respect of the Mortgaged Property, or any part thereof, any other or additional lien or security interest on a parity with, superior or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions.

4.5 Tax on Mortgage. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage, or upon any rights, titles, liens or security interests created hereby, or upon the Indebtedness or any part thereof, Borrower will promptly pay all such taxes; provided that if such law as enacted makes it unlawful for Borrower to pay such tax, Borrower shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Borrower to pay such taxes, then Borrower must prepay the Indebtedness in full within one hundred and twenty (120) days after written demand therefor by Lender.

4.6 Incorporation of Affirmative Covenants, Conditions and Agreements. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Borrower (i) agrees to insure, repair, maintain and restore damage to the Mortgaged Property, pay all Impositions and comply with Legal Requirements, all in accordance with the Loan Agreement, and (ii) agrees that the proceeds of insurance and awards for condemnation shall be settled, held and applied in accordance with the Loan Agreement.

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## ARTICLE V

### NEGATIVE COVENANTS

Borrower hereby unconditionally 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, as follows:

5.1 Use Violations. Except to the extent permitted under the Loan Agreement, Borrower shall not knowingly initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction limiting or defining the uses which may be made of the Mortgaged Property. If under applicable zoning provisions the use of the Mortgaged Property is or shall become a nonconforming use, Borrower shall use commercially reasonable efforts to not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Lender, except to the extent permitted under the Loan Agreement. Borrower will not use, maintain, operate or occupy, or knowingly allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which (i) materially violates any Legal Requirement; (ii) is likely to be materially dangerous, unless safeguarded as required by law and/or appropriate insurance; (iii) constitutes a public or private nuisance; (iv) makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto; (v) prevents the use of the Mortgaged Property as contemplated in the Loan Documents; (vi) permits or suffers to occur any material waste on or to the Mortgaged Property; or (vii) converts the Mortgaged Property to a condominium or cooperative form of ownership.

5.2 No Drilling. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof; provided, however, extraction of Minerals from the subsurface of the Land shall not be deemed to violate this Section 5.2 so long as such extraction is done from an offsite location consistent with all Legal Requirements and in a manner such that no material negative effect or danger whatsoever occurs with respect to the surface of the Mortgaged Property.

5.3 No Disposition or Encumbrance. Neither Borrower nor any shareholder, member or partner of Borrower will make a Disposition without obtaining Lender's prior written consent, other than a Permitted Disposition. Borrower will not create, incur, assume or suffer to exist any lien or encumbrance against all or any portion of the Mortgaged Property, other than as expressly permitted pursuant to the Loan Agreement.

5.4 No Subordinate Mortgages. Borrower will not create, place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain any Subordinate Mortgage regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents with respect to the Mortgaged Property, other than the Permitted Exceptions.

5.5 No Commencement of Construction. Subject to the provisions of Section 3.4 hereof, Borrower will not commence construction or development of any sort on the Mortgaged

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Property (including clearing and grading), unless Borrower first receives Lender's written authorization, which shall not be unreasonably withheld, conditioned or delayed.

5.6 Incorporation of Covenants, Conditions and Agreements. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

## ARTICLE VI

### EVENTS OF DEFAULT

6.1 The term "Event of Default", as used herein, shall have the same meaning described for such term in the Loan Agreement.

## ARTICLE VII

### REMEDIES

7.1 Lender's Remedies Upon Events of Default. Upon the occurrence of an Event of Default, then this Mortgage is subject to foreclosure as provided by law and Lender may, at Lender's option, exercise any of its rights or remedies at law or in equity and, in addition exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

(a) Right to Perform Borrower's Covenants. If Borrower has failed to keep or perform any covenant whatsoever contained in this Mortgage or the other Loan Documents, beyond any applicable notice and cure period, Lender may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness, and Borrower promises, upon written demand, to pay to Lender, at the place where the Note is payable, all sums reasonably so advanced or paid by Lender, with interest from the date when paid or incurred by Lender at the Default Interest Rate. No such payment by Lender shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Lender shall be subrogated to all rights, titles, liens and security interests securing the payment of any debt, claim, tax or assessment for the payment of which Lender may make an advance or which Lender may pay.

(b) Right of Entry. Lender may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records and accounts relating thereto and to exercise without interference from Borrower any and all rights which Borrower has with respect to the management, possession, operation, protection or preservation of the Mortgaged Property, including the right to rent the same for the account of Borrower and to apply such Rents as provided in Article IX hereof. All such reasonable costs, expenses and liabilities incurred by Lender in collecting such Rents and

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in managing, operating, maintaining, protecting or preserving the Mortgaged Property (but excluding overhead costs, and Lender's administrative and operating costs and similar costs unless otherwise required to be paid pursuant to the Loan Documents), if not paid out of Rents as set forth in the Assignment of Rents, shall constitute a demand obligation owing by Borrower and shall bear interest from the date of expenditure until paid at the Default Interest Rate, all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, Lender may invoke any and all legal remedies to dispossess Borrower, including specifically one or more actions for forcible entry and detainer, trespass to try title and restitution. In connection with any action taken by Lender pursuant to this subsection, Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of Lender in managing the Mortgaged Property unless such loss is caused by the willful misconduct or negligence of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. **EXCEPT FOR LIABILITY, LOSS OR DAMAGE CAUSED BY LENDER'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, BORROWER SHALL AND DOES HEREBY AGREE TO INDEMNIFY LENDER FOR, AND HOLD LENDER HARMLESS FROM, ANY AND ALL LIABILITY, LOSS OR DAMAGE, WHICH MAY OR MIGHT BE INCURRED BY LENDER UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN ANY SUCH LEASE. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, BORROWER SHALL NOT BE OBLIGATED FOR ANY CLAIMS WITH RESPECT TO MATTERS FIRST ARISING AFTER LENDER OR ITS NOMINEE OR DESIGNEE SHALL HAVE TAKEN TITLE TO THE PROPERTY, WHETHER BY FORECLOSURE, DEED IN LIEU OF FORECLOSURE OR OTHERWISE (BUT ONLY TO THE EXTENT THAT SUCH CLAIMS ARE NOT THE RESULT OF ANY ACT OR OMISSION OF ANY AFFILIATE OR AGENT OF BORROWER).** Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees (but excluding overhead costs, and Lender's administrative and operating costs and similar costs unless otherwise required to be paid pursuant to the Loan Documents), together with interest thereon from the date of expenditure until paid at the Default Interest Rate, shall be secured hereby, and Borrower shall reimburse Lender therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation or responsibility upon Lender for the control, care, management, leasing or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall any provision of this Mortgage operate to make Lender responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties, or for any Hazardous Substance in, on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the

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management, leasing, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Borrower hereby assents to, ratifies and confirms any and all actions of Lender with respect to the Mortgaged Property taken under this subsection.

The remedies in this subsection are in addition to the remedies set forth in Article XI of this Mortgage and to other remedies available to Lender and the exercise of the remedies in this subsection shall not be deemed to be an election of non-judicial or judicial remedies otherwise available to Lender. The remedies in this Article VII are available under and governed by the real property laws of Illinois and are not governed by the personal property laws of Illinois, in accordance with the provisions of Section 9-604 of the Code, including the power to dispose of personal property in a commercially reasonable manner under Section 9-627 of the Code or the application of proceeds under Section 9-615 of the Code. No action by Lender taken pursuant to this subsection shall be deemed to be an acceptance of collateral in satisfaction of obligations under Section 9-620 of the Code. Any receipt of consideration received by Lender pursuant to this subsection shall be immediately credited against the Indebtedness (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness.

(c) Right to Accelerate. Lender may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration or any other notice or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to Lender shall not be deemed to be a waiver of any rights or remedies of Lender under the Loan Documents, at law or in equity.

(d) Lender's Judicial Remedies. Lender, upon request of Lender, may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the Obligations in accordance with the terms hereof, of the Note and the other Loan Documents, to foreclose the liens and security interests of this Mortgage as against all or any part of the Mortgaged Property and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. To the fullest extent permitted by applicable law, this remedy shall be cumulative of any other judicial or non-judicial remedies available to Lender with respect to any of the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Lender.

(e) Foreclosure and Sale. Lender may immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions or any of the Indebtedness secured hereby, pursuant to the statutes in such case made and provided, and sell the Mortgaged Property or cause the Mortgaged Property to be sold in accordance with the requirements and procedures provided by said statutes in a single

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parcel or in several parcels at the option of Lender in its sole and absolute discretion. Should Lender desire that more than one sale or other disposition of the Mortgaged Property be conducted, Lender shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or on such different days or at such different times and in such order as Lender may designate in its sole and absolute discretion, and no such sale or disposition shall terminate or otherwise affect the liens and security interests of this Mortgage on any part of the Mortgaged Property not sold or disposed of until all of the Indebtedness has been paid in full and the Obligations have been fully performed and discharged. In the event foreclosure proceedings are instituted or filed by Lender, all expenses incident to such proceedings, including court costs and attorneys' fees and expenses (but excluding overhead costs, and Lender's administrative and operating costs and similar costs unless otherwise required to be paid pursuant to the Loan Documents), shall be paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Indebtedness evidenced by the Note. The secured Indebtedness and all other Obligations secured by this Mortgage, including interest at the Default Interest Rate, any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and expenses (but excluding overhead costs, and Lender's administrative and operating costs and similar costs unless otherwise required to be paid pursuant to the Loan Documents) and any other amounts due and unpaid to Lender under the Loan Documents, may be bid by Lender in the event of a foreclosure sale hereunder. Without limiting the foregoing or any other rights or remedies available to Lender, Lender may also commence and prosecute a judicial foreclosure action under applicable law.

(f) Multiple Parcels. If the Mortgaged Property consists of multiple parcels, then in any sale of the Mortgaged Property pursuant to Lender's exercise of its remedies after an Event of Default (including any judicial foreclosure sale and any non-judicial sale under applicable law), the multiple parcels may be sold in a single sale or, at the option of Lender in its sole and absolute discretion, a sale of any one or more of such parcels separately. Any such separate sales may be made in whatever order Lender determines in its sole and absolute discretion. Lender may, in its sole and absolute discretion, cause the entire Mortgaged Property to be offered for sale as a single auction lot and may also cause bids to be solicited for individual parcels of the Mortgaged Property as separate auction lots in any order but shall be under no obligation to proceed in either manner or the other. Borrower acknowledges that if Lender sells multiple parcels individually, no fair value or deficiency hearing shall be required after each sale.

(g) Lender's Right to Appointment of Receiver. Lender, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of the Obligations, without notice to Borrower and without any showing of insolvency, fraud or mismanagement on the part of Borrower, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof and, to the extent permitted by law, of the Rents. Borrower, for itself and on behalf of each other Person

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liable for payment of the Indebtedness or performance and discharge of the Obligations, hereby: (i) waives, and authorizes Lender to waive, any requirement that a receiver post a bond; (ii) waives any requirement for notice of appointment of a receiver; and (iii) irrevocably consents to the appointment of a receiver or receivers. Any receiver(s) appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(h) Lender's Uniform Commercial Code Remedies. Lender may exercise any or all of the remedies available to a secured party under the Code, and in conjunction with, in addition to or in substitution for the rights and remedies under the Code, Borrower agrees as follows:

(i) Lender may, without demand or notice to Borrower enter upon the Mortgaged Property to take possession of, assemble, receive and collect the Personalty, or any part thereof, or to render it unusable; and

(ii) Lender may require Borrower to assemble the Personalty and make it available at a place Lender designates which is mutually convenient to allow Lender to take possession or dispose of the Personalty; and

(iii) written notice mailed to Borrower as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice; and

(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Mortgaged Property and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under Section 9-601(a) of the Code; and

(v) in the event of a foreclosure sale, the Personalty and the other Mortgaged Property may, at the option of Lender, be sold as a whole; and

(vi) it shall not be necessary that Lender take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale; and

(vii) prior to application of proceeds of disposition of the Personalty to the Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by Lender; and

(viii) after notification, if any, hereafter provided in this subsection, Lender may sell, lease or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Lender's offices or

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elsewhere, for cash, on credit or for future delivery. Upon the request of Lender, Borrower shall assemble the Personalty and make it available to Lender at any place designated by Lender that is reasonably convenient to Borrower and Lender. Borrower agrees that Lender shall not be obligated to give more than ten (10) days' written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of such matters. Borrower shall be liable for all expenses of retaking, holding, preparing for sale or the like and all attorneys' fees, legal expenses and other costs and expenses incurred by Lender in connection with the collection of the Indebtedness and the enforcement of Lender's rights under the Loan Documents. Lender shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of Section 7.4 of this Mortgage. Borrower shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. Borrower waives all rights of marshalling in respect of the Personalty; and

(ix) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Indebtedness, the occurrence of any Event of Default, Lender having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(x) Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender.

(i) Rights Relating to Rents. Borrower has, pursuant to Article IX of this Mortgage, assigned to Lender all Rents under each of the Leases covering all or any portion of the Mortgaged Property. Lender may at any time, and without notice, either in person by agent or by receiver to be appointed by a court, enter and take possession of the Mortgaged Property or any part thereof and, in its own name, sue for or otherwise collect the Rents. Borrower hereby agrees that Lender shall upon the occurrence of an Event of Default, automatically, and without further action of any kind or nature by Lender, terminate the License granted to Borrower in Section 9.2 hereof, and thereafter direct the lessee under the Leases ("Lease Rent Notice") to pay direct to Lender the Rents due and to become under the Leases and in respect of all other obligations thereunder direct to Lender without any obligation on the part of Lender to determine whether an Event of Default does in fact exist or has in fact occurred. It shall never be necessary for Lender to institute legal proceedings to enforce any provision of Article IX of this Mortgage. All Rents collected by Lender shall be applied as provided for in Article IX of this Mortgage; provided, however, that if the costs, expenses and attorneys' fees shall exceed the amount of Rents collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Interest Rate, and shall be immediately due and payable. The entrance upon and

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possession of the Mortgaged Property, the collection of Rents and the application of Rents so collected as set forth above shall not cure or waive any Event of Default or notice of default, if any, nor invalidate any action pursuant to such notice. Failure or discontinuance by Lender at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Lender of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power or authority herein granted to Lender shall be, or shall be construed to be, an affirmation by it of any tenancy, lease or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Mortgage, to any such tenancy, lease or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any collateral given by Borrower to Lender. In addition, from time to time, Lender may elect, and notice hereby is given to each lessee of such right, to subordinate the lien of this Mortgage to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election, the lien of this Mortgage shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each instance, such subordination will not affect or be applicable to (and will expressly exclude) any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant, and other rights, titles, interests or estates of any nature whatsoever with respect to all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of this Mortgage and the execution of the Lease identified in such instrument of subordination.

(j) Other Rights. Lender (i) may surrender the insurance policies maintained pursuant to Section 4.3 hereof or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of Section 7.4 hereof, and, in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such premiums; and (ii) apply the reserve for Impositions and insurance premiums, if any, required by the provisions of this Mortgage or any other Loan Document toward payment of the Indebtedness; and (iii) shall have and may exercise any and all other rights and remedies which Lender may have at law or in equity, or by virtue of any Loan Document or under the Code or other applicable law, or otherwise.

(k) Lender as Purchaser. Lender may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be upon any foreclosure of the liens and security interests hereof, or otherwise, and Lender shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Indebtedness. Lender, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Lender's purchase shall be applied in accordance with Section 7.4 of this Mortgage.

(l) Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Borrower hereby irrevocably and unconditionally waives and releases (i) all benefit that might accrue to Borrower by virtue of any present or future

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statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (ii) except as otherwise expressly required by the Loan Documents, all notices of any Event of Default or of Lender's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (iii) any right to a marshalling of assets or a sale in inverse order of alienation.

7.2 Other Rights of Lender. Should any part of the Mortgaged Property come into the possession of Lender, whether before or after an Event of Default, Lender may (for itself or by or through other persons, firms or entities) hold, lease, manage, use or operate the Mortgaged Property for such time and upon such terms as Lender may deem prudent under the circumstances (making such repairs, alterations, additions and improvements thereto and taking such other actions as Lender may from time to time deem necessary or desirable) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Lender in respect of the Mortgaged Property. Borrower covenants to promptly reimburse and pay to Lender on demand, at the place where the Note is payable, the amount of all expenses (including the cost of any insurance, property taxes, impositions or other charges, but excluding overhead costs, and Lender's administrative and operating costs and similar costs unless otherwise required to be paid pursuant to the Loan Documents) incurred by Lender in connection with Lender's custody, preservation, use or operation of the Mortgaged Property, together with interest thereon from the date incurred by Lender at the Default Interest Rate; and all such expenses, costs, taxes, interest and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Mortgaged Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Lender's possession.

7.3 Possession After Foreclosure. In the event there is a sale or sales pursuant to Section 7.1(e) hereof (or if the liens or security interests hereof shall be otherwise foreclosed), the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Borrower or Borrower's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Borrower and Borrower's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.4 Application of Proceeds. The proceeds from any sale, lease or other disposition made pursuant to this Article VII, or the proceeds from the surrender of any insurance policies pursuant to any of the Loan Documents, or any Rents collected by Lender from the Mortgaged

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Property (following any application of such Rents in accordance with Section 9.3 hereof), or sums received pursuant to Section 8.1 hereof which Lender elects to apply to the Indebtedness in accordance with the applicable provisions of the Loan Agreement, or proceeds from insurance received pursuant to Section 8.2 hereof which Lender elects to apply to the Indebtedness in accordance with the applicable provisions of the Loan Agreement, shall be applied by Lender to the Indebtedness in the following order and priority: (i) to the payment of all expenses of advertising, selling and conveying the Mortgaged Property or part thereof and/or prosecuting or otherwise collecting Rents, proceeds, premiums or other sums including reasonable attorneys' fees and legal expenses incurred by Lender; (ii) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness, and third, to prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (iii) the balance, if any and to the extent applicable, remaining after the full and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or the mortgagee of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (Lender shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (iv) the cash balance, if any, to Borrower. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness, like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

**7.5 Abandonment of Sale.** In the event a foreclosure hereunder is commenced by Lender in accordance with Section 7.1(e) hereof, at any time before the sale, Lender may, but shall not be obligated to, abandon the sale, and Lender may then institute suit for the collection of the Indebtedness and for the foreclosure of the liens and security interests hereof and of the other Loan Documents. If Lender should institute a suit for the collection of the Indebtedness and for a foreclosure of the liens and security interests, Lender may, at any time before the entry of a final judgment in said suit, dismiss the same and sell the Mortgaged Property or any part thereof in accordance with the provisions of this Mortgage.

**7.6 Payment of Fees.** If any of the Obligations shall be enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or if the Note or any other part of the Indebtedness shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to Lender to mature same, or if Lender becomes a party to any suit where this Mortgage or the Mortgaged Property or any part thereof is involved, Borrower agrees to pay Lender's attorneys' fees and expenses incurred, and such fees shall be and become a part of the Indebtedness and shall bear interest from the date such costs are incurred at the Default Interest Rate.

**7.7 Miscellaneous.**

(a) **Discontinuance of Remedies.** In case Lender shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right so to do and, in such event, Borrower and Lender shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the

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Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

(b) Other Remedies. In addition to the remedies set forth in this Article, upon the occurrence of an Event of Default, Lender shall, in addition, have all other remedies available at law or in equity.

(c) Remedies Cumulative; Non-Exclusive; Etc. All rights, remedies and recourses of Lender granted in this Mortgage, the Loan Agreement, the Note, the other Loan Documents, any other pledge of collateral or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against Borrower, the Mortgaged Property, or any one or more of them, at the sole discretion of Lender; (iii) may be exercised as often as occasion therefor shall arise (it being agreed by Borrower that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse); (iv) shall be nonexclusive; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Mortgaged Property prior to Lender bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) in the event Lender elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Borrower prior to exercising any remedies in relation to the Mortgaged Property, all liens and security interests, including the lien of this Mortgage, shall remain in full force and effect and may be exercised at Lender's option.

(d) Partial Release; Etc. Lender may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests evidenced by this Mortgage or the other Loan Documents or affecting the obligations of Borrower or any other party to pay the Indebtedness or perform and discharge the Obligations. For payment of the Indebtedness, Lender may resort to any of the collateral therefor in such order and manner as Lender may elect. No collateral heretofore, herewith or hereafter taken by Lender shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered and held as cumulative.

(e) Waiver and Release by Borrower. To the full extent Borrower may do so under applicable law, Borrower agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption and, Borrower, for Borrower and Borrower's representatives, successors and assigns, and for any and all Persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, exemption from civil process, notice of intention to mature or declare due the whole or any part of the Indebtedness or Obligations, notice of election to mature or declare due the whole or any part of the Indebtedness or Obligations and all rights to a marshalling of the assets of Borrower, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests created hereby and by the other Loan Documents. Borrower shall not have, or assert, any right under any statute or rule of law pertaining to the marshalling of assets, sale in

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inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Lender under the terms of this Mortgage to a sale of the Mortgaged Property for the collection of the Indebtedness or Obligations without any prior or different resort for collection, or the right of the Lender under the terms of this Mortgage to the payment of such Indebtedness or Obligations out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatever. If any law referred to in this Section 7.7(e) and currently in force, of which Borrower or Borrower's representatives, successors and assigns and such other Persons claiming any interest in the Mortgaged Property might take advantage despite this Section 7.7(e), shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 7.7(e).

(f) No Implied Covenants. Borrower and Lender mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Mortgage and the other Loan Documents. All agreed contractual duties are set forth in this Mortgage, the Loan Agreement, the Note, and the other Loan Documents.

(g) Real Property Laws Govern. The remedies in this Article VII shall be available under and governed by the real property laws of the State of Illinois and shall not be governed by the personal property laws of the State of Illinois, including but not limited to) the power to dispose of personal property in a commercially reasonable manner under Section 9-527 of the Code, provided, Lender elects to proceed as to the Fixtures and Personalty together with the other Mortgaged Property under and pursuant to the real property remedies of this Article VII.

(h) Servicer. Lender may delegate any and all rights and obligations of Lender hereunder to Servicer upon notice by Lender to Borrower, whereupon any notice or consent from Servicer to Borrower, and any action by Servicer on Lender's behalf, shall have the same force and effect as if Servicer were Lender. Such Servicer shall act as Lender's agent hereunder with such powers as are specifically delegated by Lender to Servicer, whether pursuant to the terms of this Mortgage, any servicing agreement or otherwise, together with such other powers as are reasonably incidental thereto. Borrower shall pay any reasonable fees and expenses of Servicer including, but not limited to, servicing fees, operating or trust advisor fees (if any), work-out fees and liquidation fees. All indemnification provisions from Borrower to Lender shall also extend to Servicer.

## ARTICLE VIII

### SPECIAL PROVISIONS

8.1 Condemnation Proceeds. Lender shall be entitled to receive any and all sums which may be awarded and become payable to Borrower for condemnation of the Mortgaged Property or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Borrower for damages caused by public works or construction on or near the Mortgaged Property. All such sums are

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hereby assigned to Lender, and Borrower shall, upon request of Lender, make, execute, acknowledge and deliver any and all additional assignments and documents as may be necessary from time to time to enable Lender to collect and receipt for any such sums. Lender shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Any sums received by Lender as a result of condemnation shall be applied or disbursed in accordance with the terms of the Loan Agreement.

8.2 Insurance Proceeds. The proceeds of any and all insurance upon the Mortgaged Property shall be collected by Lender to be applied or disbursed in accordance with the terms of the Loan Agreement (whether or not such insurance was required or requested by Lender).

## ARTICLE IX

### ASSIGNMENT OF RENTS

9.1 Present Assignment. In consideration of the Indebtedness and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged and confessed, Borrower has absolutely and unconditionally GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does absolutely and unconditionally GRANT, BARGAIN, SELL and CONVEY, the Rents unto Lender, in order to provide a source of future payment of the Indebtedness and the Obligations, subject only to the Permitted Exceptions applicable thereto and the License; it being the intention of Borrower and Lender that this conveyance be presently and immediately effective and is neither conditional nor security for the repayment of the Indebtedness and the Obligations, TO HAVE AND TO HOLD the Rents unto Lender, forever, and Borrower does hereby bind itself, its successors and assigns, to warrant and forever defend the title to the Rents unto Lender against every Person whomsoever lawfully claiming or to claim the same or any part thereof.

9.2 Limited License. Lender hereby grants to Borrower the License, subject to termination of the License and the other terms and provisions of Section 7.1(j) hereof, to exercise and enjoy all incidences of the status of a lessor with respect to the Rents, including the right to collect, demand, sue for, attach, levy, recover and receive the Rents, and to give proper receipts, releases and acquittances therefor. Borrower hereby agrees to receive all Rents and hold the same as Lender's Agent to be applied, and to apply the Rents so collected, first to the payment of the Indebtedness, next to the performance and discharge of the Obligations, and next to the payment of Operating Expenses. Thereafter, Borrower may use the balance of the Rents collected in any manner not inconsistent with the Loan Documents. Neither the assignment of Rents herein nor the receipt of Rents by Lender as a result of the assignment herein provided shall effect a *pro tanto* payment of the Indebtedness, and such Rents shall be applied as provided in this Section 9.2. Furthermore, and notwithstanding the provisions of this Section 9.2, no credit shall be given by Lender for any Rents until the money constituting the Rents collected is actually received by Lender, and no such credit shall be given for any Rents collected or released after termination of the License, after foreclosure or other transfer of the Mortgaged Property (or part thereof from which Rents are derived pursuant to this Mortgage) to Lender or any other third party.

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9.3 Reliance Upon Lease Rent Notice. Upon receipt from Lender of a Lease Rent Notice, each lessee under the Leases is hereby authorized and directed to pay directly to Lender all Rents thereafter accruing and the receipt of Rents by Lender shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Lease Rent Notice shall be sufficient authorization for such lessee to make all future payments of Rents directly to Lender and each such lessee shall be entitled to rely on such Lease Rent Notice and shall have no liability to Borrower for any Rents paid to Lender after receipt of such Lease Rent Notice. Rents so received by Lender for any period prior to foreclosure under this Mortgage or acceptance of a deed in lieu of such foreclosure shall be applied by Lender to the payment of the following (in such order and priority as Lender shall determine): (a) all Operating Expenses; (b) all expenses incident to taking and retaining possession of the Mortgaged Property and/or collecting Rent as it becomes due and payable; and (c) the Indebtedness. In no event will this Article IX reduce the Indebtedness except to the extent, if any, that Rents are actually received by Lender and applied upon or after said receipt to such Indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Lender may, at its option, at any time and from time to time release to Borrower, Rents so received by Lender or any part thereof. As between Borrower and Lender, and any Person claiming through or under Borrower, other than any lessee under the Leases who has not received a Lease Rent Notice, the assignment of Rents herein provided is intended to be absolute, unconditional and presently effective (and not an assignment for additional security), and the Lease Rent Notice hereof is intended solely for the benefit of each such lessee and shall never inure to the benefit of Borrower or any Person claiming through or under Borrower, other than a lessee who has not received such Lease Rent Notice. It shall never be necessary for Lender to institute legal proceedings of any kind whatsoever to enforce the provisions of this Mortgage with respect to Rents. **BORROWER SHALL HAVE NO RIGHT OR CLAIM AGAINST ANY LESSEE FOR THE PAYMENT OF ANY RENTS TO LENDER HEREUNDER, AND BORROWER HEREBY INDEMNIFIES AND AGREES TO HOLD FREE AND HARMLESS EACH LESSEE FROM AND AGAINST ALL LIABILITY, LOSS, COST, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY SUCH LESSEE BY REASON OF SUCH LESSEE'S COMPLIANCE WITH ANY DEMAND FOR PAYMENT OF RENTS MADE BY LENDER CONTEMPLATED BY THIS MORTGAGE.**

9.4 Collection of Rent. At any time during which Borrower is receiving Rents directly from any of the lessees under the Leases, Borrower shall, upon receipt of written direction from Lender, make demand and/or sue for all Rents due and payable under one or more Leases, as directed by Lender, as same becomes due and payable, including Rents which are past due and unpaid. If Borrower fails to timely take such action, or at any time during which Borrower is not receiving Rents directly from lessees under the Leases, Lender shall have the right (but shall be under no duty or obligation) to demand, collect and sue for, in its own name or in the name of Borrower, all Rents due and payable under the Leases, as same becomes due and payable, including Rents which are past due and unpaid.

9.5 Termination. Upon payment in full of the Indebtedness, the delivery and recording of a reconveyance, release, satisfaction or discharge of the Mortgage duly executed by Lender the assignment of Rents herein provided shall terminate, become null and void and shall be of no further force and effect.

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## ARTICLE X

### SECURITY AGREEMENT

10.1 Security Interest. This Mortgage (i) shall be construed as a mortgage on real property and (ii) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of the Code until the grant of this Mortgage shall terminate as provided in Section 12.1 hereof, a first and prior security interest under the Code as to property within the scope thereof and in the state where the Mortgaged Property is located with respect to the Personalty, Fixtures, Contracts, Plans, Development Contracts, Rents and Leases. To this end, Borrower has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Lender, a first and prior security interest in all of Borrower's right, title and interest in, to, under and with respect to the Personalty, Fixtures, Contracts, Plans, Development Contracts, Rents and Leases to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Borrower and Lender that this Mortgage encumber all Leases and that all items contained in the definition of "Leases" which are included within the Code be covered by the security interest granted in this Article X and that all items contained in the definition of "Leases" which are excluded from the Code be covered by the provisions of Article II hereof.

10.2 Financing Statements. Borrower hereby agrees with Lender to execute and deliver to Lender, in form and substance satisfactory to Lender, such "Financing Statements" and such further assurances as Lender may, from time to time, reasonably consider necessary to create, perfect and preserve Lender's security interest herein granted, and Lender may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Without limiting the foregoing, Borrower hereby specifically authorizes Lender to prepare, file of record or otherwise effectuate new financing statements, financing statement amendments and financing statement continuations which describe all or any portion of the Mortgaged Property as collateral thereunder and Borrower specifically agrees that Lender may cause same to be filed without any signature of a representative of the Borrower appearing thereon where such filings are permitted by applicable law.

10.3 Construction Mortgage and Fixture Filing. This Mortgage secures future advances to be used for construction of Improvements on the Land pursuant to the Loan Agreement. Accordingly, this Mortgage constitutes a "construction mortgage" under the Code. This Mortgage shall also constitute a "fixture filing" for the purposes of the Code. All or part of the Mortgaged Property are or are to become fixtures; information concerning the security interest herein granted may be obtained from the parties hereto at the addresses set forth on the first page hereof. For purposes of the security interest herein granted, the address of Debtor (Borrower) and the address of Secured Party (Lender) is set forth in the first paragraph of this Mortgage and in Sections 11.6(a) and 11.6(b), respectively.

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## ARTICLE XI

### SPECIAL ILLINOIS PROVISIONS

11.1 Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article XI and the other provisions of this Mortgage, the terms and conditions of this Article XI shall control and be binding.

11.2 Compliance with the Illinois Mortgage Foreclosure Law.

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

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

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

(d) All advances, disbursements and expenditures made or incurred by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage, the other Loan Documents or by the IMF Law (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the IMF Law, including those provisions of the IMF Law herein below referred to:

(i) all advances by Lender in accordance with the terms of this Mortgage or the other Loan Documents to: (A) preserve, 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 15-1302 of the IMF Law;

(ii) payments by Lender of (A) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien or encumbrance); (B) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part

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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, as referred to in Section 15-1505 of the IMF Law;

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

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

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

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

(vii) 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 mortgagee takes possession of the Mortgaged Property imposed by Subsection 15-1704(c)(1) of the IMF Law; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments deemed by Lender to be required for the benefit of the Mortgaged Property or required to be made by the owner 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; and (D) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Interest Rate.

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

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All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the IMF Law, apply to and be included in:

- (i) any determination of the amount of indebtedness secured by this Mortgage at any time;
- (ii) the indebtedness found due and owing to 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) if the right of redemption has not been waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections 5-1603(d)(2) and (e) of the IMF Law;
- (iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the IMF Law;
- (v) application of income in the hands of any receiver or mortgagee in possession; and
- (vi) computation of any deficiency judgment pursuant to Subsections 15-1508(b)(2), 15-1508(e) and Section 15-1511 of the IMF Law.

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

11.3 Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the Mortgaged Property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption and reinstatement under the IMF Law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on

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behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Law or residential real estate as defined in Section 5/15-1219 of the IMF Law.

11.4 Use of Proceeds. Borrower represents and warrants to Lender (i) that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(I) (or any substitute, amended or replacement statute), and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(I), and (ii) that the Loan evidenced by the Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 et seq.

11.5 No Lien Management Agreements and Broker Agreements. Borrower shall include a "no lien" provision in any property management or hotel operator agreement hereafter entered into by Borrower with a property manager or hotel operator for the Mortgaged Property, whereby such property manager or hotel operator waives and releases any and all mechanics' lien rights that such property manager or hotel operator, or anyone claiming through or under such property manager or hotel operator, may have pursuant to the Illinois Mechanics Lien Act, 770 ILCS 60/1 et seq. Such property management or hotel operator agreement containing such "no lien" provision or a short form thereof shall, at Lender's request, be recorded with the Recorder of Deeds of Cook County, Illinois, as appropriate. In addition, Borrower shall cause such property manager or hotel operator to enter into a subordination of management agreement with Lender, in recordable form, whereby such property manager or hotel operator subordinates present and future lien rights and those of any party claiming by, through or under such property manager or hotel operator, to the lien of this Mortgage. Any agreement entered into hereafter by Borrower with any "broker" (as defined in the Real Estate License Act of 2000, 225 ILCS 454/1 et seq.) that is an affiliate of Borrower for the purpose of selling, leasing or otherwise conveying an interest in the Mortgaged Property shall contain a "no lien" provision whereby such broker waives and releases any and all lien rights that such broker, or anyone claiming through or under such broker, may have pursuant to the Commercial Real Estate Broker Lien Act, 770 ILCS 15/1 et seq. Borrower shall cause each such broker to enter into a subordination agreement with Lender, in recordable form, whereby such broker, on its own behalf or on behalf of any party claiming by, through or under such broker, subordinates present and future lien rights to the lien of this Mortgage.

11.6 Fixture Financing Statement. From the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Section 9-502(b) of the Illinois Uniform Commercial Code (as amended from time to time) with respect to the

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Mortgaged Property and the goods described herein, which goods are or are to become fixtures related to the Mortgaged Property. The addresses of Borrower (Debtor) and Lender (Secured Party) are set forth below. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or the counties where the Mortgaged Property is located. For this purpose, the following information is set forth.

(a) Name and Address of Debtor: AP 100 W. Huron Property, LLC, 640 North LaSalle Drive, Suite 275, Chicago, IL 60654

(b) Name and Address of Secured Party: SPECIAL SITUATIONS INVESTING GROUP II, LLC, c/o Goldman Sachs & Co., LLC 6011 Connection Drive, Irving, Texas 75039, Attention: Loan Asset Management and Legal Department.

(c) This document covers goods which are or are to become fixtures.

(d) Debtor is the record owner of the Land.

(e) Debtor's chief executive office is located in the State of Illinois.

(f) Debtor's state of formation is Delaware.

(g) Debtor's exact legal name is as set forth in the first paragraph of this Mortgage.

(h) Debtor's organizational identification number is 5380016.

(i) Debtor agrees that:

(i) where the Mortgaged Property is in possession of a third party, Borrower will join with Lender in notifying the third party of Lender's interest and obtaining an acknowledgment from the third party that it is holding the Mortgaged Property for the benefit of Lender;

(ii) Borrower will cooperate with Lender in obtaining control with respect to Mortgaged Property consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iii) until the Indebtedness is paid in full, Borrower will not change the state where it is located or change its company name without giving Lender at least thirty (30) days prior written notice in each instance.

11.7 Interest Laws. It being the intention of Lender and Borrower to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note, the Loan Agreement, this Mortgage or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the

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Note, the Loan Agreement, this Mortgage or any of the other Loan Documents, then in such event: (a) the provisions of this Section 11.7 shall govern and control; (b) neither Borrower nor any other party obligated under the terms of the Note or any of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any Excess Interest that Lender may have received hereunder shall, at the option of Lender, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the pay or thereof, or (iii) any combination of the foregoing; (d) the Interest Rate (as that term is defined in the Note) shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Note, the Loan Agreement, this Mortgage and the other Loan Documents shall be deemed to be automatically reformed and modified to reflect such reduction in the Interest Rate; and (e) neither Borrower nor any other party obligated under the terms of the Note or any of the other Loan Documents shall have any action against Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest.

11.8 Other Amounts Secured; Maximum Indebtedness. Borrower acknowledges and agrees that this Mortgage secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Lender in connection with the Loan, all in accordance with the loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed FIFTY THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$53,500,000.00). It is agreed that any future advances made by Lender for the benefit of Borrower from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Lender, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the indebtedness secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

11.9 Adjustable Mortgage Loan Provision. The Note which this Mortgage secures is an adjustable note on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Note.

11.10 Deed of Trust. If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

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11.11 Collateral Protection Act. Unless Borrower provides Lender with evidence of the insurance required by this Mortgage or any other Loan Document, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Mortgaged Property or any other collateral for the indebtedness secured hereby. This insurance may, but need not, protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Mortgaged Property or any other collateral for the indebtedness secured hereby. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required under this Mortgage or any other Loan Document. If Lender purchases insurance for the Mortgaged Property or any other collateral for the indebtedness secured hereby, Borrower shall be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 et seq., Borrower hereby acknowledges Lender's right pursuant to this Section to obtain collateral protection insurance.

11.12 Rights of Tenants. Lender shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Lender. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the Obligations, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

11.13 Construction Loan. The Note 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 a Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the 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 any 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 Default, the holder of the Note may at its option declare the Indebtedness immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefore, in which case all money expended shall be so much additional Indebtedness and any money 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. In the event of a conflict between the terms of 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 twenty (20) years of the date hereof.

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## ARTICLE XII

### MISCELLANEOUS

12.1 Release. If the Indebtedness is paid in full in accordance with the terms of this Mortgage, the Note, the Loan Agreement and the other Loan Documents, and if Borrower shall well and truly perform each and every one of the Obligations to be performed and discharged in accordance with the terms of the Loan Documents, then this conveyance shall become null and void and be released at Borrower's request and expense, and Lender shall have no further obligation to make advances under and pursuant to the provisions of this Mortgage or the other Loan Documents.

12.2 Performance at Borrower's Expense. Borrower shall (i) pay all reasonable legal fees incurred by Lender in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases or waivers granted thereunder); (ii) reimburse Lender, promptly upon demand, for all amounts expended, advanced or incurred by Lender to satisfy any obligation of Borrower under the Loan Documents, which amounts shall include all court costs, reasonable attorneys' fees (including for trial, appeal or other proceedings), reasonable fees of auditors and accountants and other investigation expenses reasonably incurred by Lender in connection with any such matters (but shall exclude overhead costs, and Lender's administrative and operating costs and similar costs unless otherwise required to be paid pursuant to the Loan Documents); and (iii) pay and all other costs and expenses of performing or complying with any and all of the Obligations. Except to the extent that costs and expenses are included within the definition of "Indebtedness" the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

12.3 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of 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; provided, however, that nothing contained in this section shall limit the obligations of Borrower as otherwise set forth herein.

12.4 Recording and Filing. Borrower will cause the Loan Documents (requested by the Lender) and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Lender shall request, and Borrower will pay all such recording, filing, re-recording and re-filing taxes, documentary stamp taxes, fees and other charges.

12.5 Notices. All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be considered as properly given if provided in a manner consistent with the notice provisions in the Loan Agreement.

12.6 Covenants Running with the Land. All Obligations contained in this Mortgage and the other Loan Documents are intended by Borrower and Lender to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Mortgage has been fully released by Lender.

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12.7 Successors and Assigns. All of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their successors, assigns, heirs and legal representatives and all other Persons claiming by, through or under them.

12.8 No Waiver; Severability. Any failure by Lender to insist, or any election by Lender not to insist, upon strict performance by Borrower or others 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 terms, provisions or conditions thereof, and Lender shall have the right at any time or times thereafter to insist upon strict performance by Borrower or others of any and all of such terms, provisions and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other Persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.9 Counterparts. To facilitate execution, this Mortgage may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Mortgage to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

12.10 APPLICABLE LAW. **THE PROVISIONS OF THIS MORTGAGE REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF ILLINOIS. ALL OTHER PROVISIONS OF THIS MORTGAGE WILL BE GENERALLY GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS); PROVIDED, HOWEVER, THAT TO THE EXTENT THAT ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING.** Borrower, for itself and its successors and assigns, hereby irrevocably: (i) submits to the non-exclusive jurisdiction of the state and federal courts in New York County, New York and Cook County, Illinois; (ii) waives, to the fullest extent permitted by law, any objection that it may now or in the future have to the laying of venue of any litigation arising out of or in connection with any Loan Document brought in the applicable state court in New York County, New York and Cook County, Illinois or in the United States District Court for the Southern District of New York and for the Northern District of Illinois; (iii) waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum; and

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(iv) agrees that any legal proceeding against any party to any Loan Document arising out of or in connection with any of the Loan Documents may be brought in one of the foregoing courts. Borrower agrees that service of process upon it may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of Lender to serve process in any other manner permitted by law or shall limit the right of Lender to bring any action or proceeding against Borrower or with respect to any of Borrower's property in courts in other jurisdictions. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Borrower acknowledges that these waivers are a material inducement to Lender's agreement to enter into agreements and obligations evidenced by the Loan Documents and that Lender has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in this Section are irrevocable, meaning that they may not be modified either orally or in writing, and these waivers apply to any future renewals, extensions, amendments, modifications or replacements in respect of the applicable Loan Document. In connection with any litigation, this Mortgage may be filed as a written consent to a trial by the court.

12.11 Controlling Agreement. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable New York law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under New York law) and that this section shall control every other covenant and agreement in the Loan Documents. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under any of the Loan Documents, or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or if Lender's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of the Note and all other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. Notwithstanding anything to the contrary contained in any of the Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

12.12 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged

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Property, then, to the extent of such funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, 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 performance and discharge of the Obligations.

12.13 Rights Cumulative. Lender shall have all rights, remedies and recourses granted in the Loan Documents and available at law or in equity (including those granted by the Code and applicable to the Mortgaged Property or any portion thereof), and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively or concurrently against Borrower or others obligated for the Indebtedness or any part thereof, or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Lender, (iii) may be exercised as often as occasion therefor shall arise (it being agreed by Borrower that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse), and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Lender hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Mortgaged Property.

12.14 Headings. The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing, the text of such Articles, Sections or Subsections.

12.15 Loan Agreement. Reference is hereby made for all purposes to the Loan Agreement of even date herewith between Lender and Borrower pertaining to the construction of Improvements on the Land, and the funding of the principal amount of the Note. In event of a conflict between the terms and provisions hereof and the Loan Agreement, the Loan Agreement shall govern.

12.16 Construction. All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

**12.17 ENTIRE AGREEMENT; AMENDMENT. THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. THE PROVISIONS OF**

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**THIS MORTGAGE MAY BE AMENDED OR WAIVED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY BORROWER AND LENDER.**

**12.18 WAIVER OF RIGHT TO TRIAL BY JURY. EACH OF BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY BORROWER OR LENDER IN THE OBLIGATIONS THEREUNDER OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS.**

**12.19 NOTICE OF INDEMNIFICATION. BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT THIS MORTGAGE CONTAINS CERTAIN INDEMNIFICATION PROVISIONS, INCLUDING SECTION 7.1 AND SECTION 9.3 HEREOF, WHICH MAY, IN CERTAIN INSTANCES, INCLUDE INDEMNIFICATION BY BORROWER OR OTHERS AGAINST LENDER'S OWN NEGLIGENCE.**

**12.20 Construction Loan.** The Note 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 a Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the 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 any 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 Default, the holder of the Note may at its option declare the Indebtedness immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefore, in which case all money expended shall be so much additional Indebtedness and any money 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. In the event of a conflict between the terms of 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 twenty (20) years of the date hereof.

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EXECUTED to be effective as of the date first above written.

**BORROWER:**

**AP 100 W. HURON PROPERTY, LLC,**  
a Delaware limited liability company

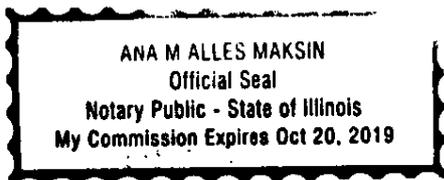
By: AP Manager, LLC, a Delaware limited liability company,  
its Manager

By:   
Name: Rajen Shastri  
Title: Manager

STATE OF ILLINOIS     )  
  )  
  )     SS:  
COUNTY OF COOK     )

On the 4<sup>th</sup> day of August, 2017, before me, the undersigned, personally appeared RAJEN Shastri, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument

  
Notary Public  
My commission expires: Oct. 20, 2019



List of Exhibit(s):

Exhibit A - Land Description

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## EXHIBIT A

### Land Description

#### PARCEL 1:

LOTS 24, 25, 26 AND 27 IN BLOCK 30 IN WOLCOTT'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

A NON-EXCLUSIVE TEMPORARY EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT OF PERMANENT EASEMENTS FOR CONSTRUCTION, ENCROACHMENTS, ADJOINING IMPROVEMENTS AND MAINTENANCE DATED OCTOBER 26, 2015 AND RECORDED NOVEMBER 3, 2015 AS DOCUMENT 1530734049 FROM 710 N. CLARK STREET, LLC (GRANTOR) TO AP 100 W. HURON PROPERTY, LLC (GRANTEE) FOR THE PURPOSE OF:

(A) AN EASEMENT TO ALLOW CONSTRUCTION CRANES AND LOADS TO SWING OVER, ABOVE AND THROUGH THE AIR SPACE OF 710 N. CLARK PROPERTY (AS DEFINED IN SAID DOCUMENT) DURING THE INSTALLATION, LOCATION, CONSTRUCTION, REPAIR, MAINTENANCE OR RECONSTRUCTION OF THE 100 W. HURON IMPROVEMENTS DURING THE CONSTRUCTION PERIOD (AS DEFINED IN SAID DOCUMENT);

(B) EASEMENT FOR INGRESS AND EGRESS OVER THE 710 N. CLARK PROPERTY TO ERECT AND ATTACH NETTING UPON AND SAFETY ITEMS OVER PORTIONS OF THE 710 N. CLARK IMPROVEMENTS DURING THE CONSTRUCTION PERIOD;

(C) EASEMENT TO INSTALL, LOCATE, MAINTAIN, CONSTRUCT AND RECONSTRUCT STRUCTURAL MEMBERS, FOOTINGS, CAISSONS, CAISSON BELLS, UNDERPINNING AND OTHER SUPPORTING COMPONENTS BELOW THE SURFACE OF THE 710 N. CLARK PROPERTY GREATER THAN 20 FEET BELOW-GRADE DURING THE CONSTRUCTION PERIOD;

(D) EASEMENT TO INSTALL, LOCATE, CONSTRUCT, MAINTAIN AND RECONSTRUCT AN ADJACENT OR ADJOINING EXTERIOR WALL, TOGETHER WITH SHARED WEATHER PROOFING, FLASHING, PARAPETS, CAPPING DEVICES AND OTHER RELATED FACILITIES UPON THE 710 N. CLARK IMPROVEMENTS AND THE 100 W. HURON IMPROVEMENTS (AS DEFINED IN SAID DOCUMENT) DURING THE CONSTRUCTION PERIOD; OVER THE FOLLOWING DESCRIBED LAND:

LOT 23 IN BLOCK 30 IN WOLCOTT'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY OF PERMANENT EASEMENTS FOR CONSTRUCTION, ENCROACHMENTS, ADJOINING IMPROVEMENTS AND MAINTENANCE DATED OCTOBER 26, 2015 AND RECORDED NOVEMBER 3, 2015 AS DOCUMENT 1530734049 FROM 710 N. CLARK STREET, LLC (GRANTOR) TO AP 100 W. HURON PROPERTY, LLC (GRANTEE) FOR THE PURPOSE OF:

(A) AN EASEMENT ALLOWING THE PERMANENT ENCROACHMENTS OF STRUCTURAL MEMBERS, FOOTINGS, CAISSONS, CAISSON BELTS, UNDERPINNING AND OTHER SUPPORT COMPONENTS;

(B) AN EASEMENT ALLOWING THE PERMANENT ENCROACHMENTS OF AN ADJACENT OR ADJOINING EXTERIOR WALL, TOGETHER WITH SHARED WEATHER PROOFING, FLASHING, PARAPETS, CAPPING DEVICES AND OTHER RELATED FACILITIES WHICH ARE PART OF THE 100 W. HURON IMPROVEMENTS AND SHALL BE LOCATED ON THE 710 N. CLARK PROPERTY PURSUANT TO SECTION 1-D OF SAID DOCUMENT;

(C) AN EASEMENT ALLOWING ANY MINOR, NON-MATERIAL, NON-INTENTIONAL INCIDENTAL ENCROACHMENTS;

(D) AN EASEMENT FOR INGRESS AND EGRESS OVER, UPON, UNDER AND THROUGH THE 710 N. CLARK PROPERTY TO PERMIT THE MAINTENANCE, REPAIR OR RECONSTRUCTION OF ANY BELOW GRADE CAISSONS OR CAISSON BELLS, ANY ADJACENT OR ADJOINING WALLS OR FLASHING USED TO BRIDGE THE GAP BETWEEN ANY ADJACENT WALLS; OVER THE FOLLOWING DESCRIBED LAND:

LOT 23 IN BLOCK 30 IN WOLCOTT'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PINS:

17-09-211-007-0000

THIS TAX NUMBER AFFECTS PART OF PIQ AND NO OTHER PROPERTY. LOT 24.

17-09-211-008-0000

THIS TAX NUMBER AFFECTS PART OF PIQ AND NO OTHER PROPERTY. LOT 25.

17-09-211-009-0000

THIS TAX NUMBER AFFECTS PART OF PIQ AND NO OTHER PROPERTY. PART LOT 26.

17-09-211-010-0000

THIS TAX NUMBER AFFECTS PART OF PIQ AND NO OTHER PROPERTY. PART LOT 26 AND LOT 27

## CKA:

110 W. HURON

CHICAGO ILLINOIS 60654