

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1728918010

Doc# 1728918010 Fee \$92.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 10/16/2017 01:48 PM PG: 1 OF 28

The property identified as: **PIN:** 18-03-308-042-0000

Address:

Street: 4412 Blanchan Ave.

Street line 2:

City: Brookfield

State: IL

ZIP Code: 60513

Lender: Michael Cordaro

Borrower: Marcin Filip

Loan / Mortgage Amount: \$150,000.00

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

Certificate number: 2A86F5DF-0812-468E-AE53-305E8C627A32

Execution date: 10/13/2017

Rick

UNOFFICIAL COPY

This Instrument Prepared by
and to Returned to:

Rudolph Kaplan LLC
Attn: Seth Kaplan
20 N. Clark St., Suite 2500
Chicago, IL 60602

**MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT**

from

Marcin Filip
(Mortgagor)

to

Michael Cordaro
(Mortgagee)

Dated as of OCTOBER 4, 2017

THIS MORTGAGE CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS, AND ALSO
CONSTITUTES A FINANCING STATEMENT UNDER THE UNIFORM COMMERCIAL CODE.

UNOFFICIAL COPY

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT dated as of 10-9, 2017 (this "**Mortgage**"), is from Marcin Filip, an Individual ("**Mortgagor**"), to Michael Cordaro ("**Mortgagee**").

RECITALS

A. Mortgagor has, concurrently herewith, executed and delivered to Mortgagee its Promissory Note (the "**Note**"), bearing even date herewith, payable to the order of Mortgagee, the terms of which are described in Section 2.1 hereof; and

B. The Note evidences a loan being made by Mortgagee to Mortgagor, for the purpose of providing mortgage financing for the real estate described in Exhibit A attached hereto and the improvements located thereon.

AGREEMENTS

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness hereby secured, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby grants, bargains, sells, conveys, mortgages, and warrants to Mortgagee and its successors and assigns forever, under and subject to the terms and conditions hereinafter set forth, all of Mortgagor's right, title and interest in and to the real estate located in the City of Brookfield, County of Cook, State of Illinois, described in Exhibit A attached hereto and by this reference incorporated herein, including all improvements now and hereafter located thereon;

TOGETHER WITH all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to the following:

(a) All rents, issues, profits, royalties and income with respect to the said real estate and improvements and other benefits derived therefrom, subject to the right, power and authority given to Mortgagor to collect and apply same; and

(b) All leases or subleases covering the said real estate and improvements or any portion thereof now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature, and any and all guarantees of the lessee's obligations under any of such leases and subleases; and

(c) All easements and other rights used in connection with the said real estate and improvements; and

(d) Any and all buildings and improvements now or hereafter erected on the said real estate, including, but not limited to, all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements; and

(e) All materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately upon the delivery thereof to the said real estate; and

UNOFFICIAL COPY

(f) All fixtures attached to or contained in and used in connection with the said real estate and improvements; it being mutually agreed, intended and declared that all the aforesaid property placed by Mortgagor on and in the said real estate and improvements shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the "**Code**" as defined in Section 1.1 hereof), this Mortgage is intended to be a security agreement under the Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as secured party; and

(g) All the estate, interest, right, title and other claims and demands, including claims or demands with respect to any proceeds of insurance related thereto, which Mortgagor now has or may hereafter acquire in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof of the whole or any part of the said real estate and improvements or personal property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages; and

(h) All proceeds of all of the foregoing;

the said real estate and improvements and the property and interests described in (a) through (h) above being collectively referred to herein as the "**Property**"; and as to any portion of the Property constituting property subject to the Code, this Mortgage is intended to be a security agreement under the Code for the purpose of creating hereby a security interest in such portion of the Property, which Mortgagor hereby grants to Mortgagee as secured party.

TO HAVE AND TO HOLD the same unto Mortgagee and its successors and assigns forever, in fee simple, for the purposes and uses herein set forth

FOR THE PURPOSE OF SECURING the following:

(a) Payment of the indebtedness evidenced by the Note, and including the principal thereof and interest thereon and any and all modifications, extensions and renewals thereof, and performance of all obligations of Mortgagor under the Note; and

(b) Performance and observance by Mortgagor of all of the terms, covenants and provisions of this Mortgage; and

(c) Performance and observance by the parties thereto, other than Mortgagee, of all of the terms, covenants and provisions of the other "**Loan Documents**" (as defined in Section 1.1 hereof); and

(d) Payment of all sums advanced by Mortgagee to perform any of the terms, covenants and provisions of this Mortgage or any of the other Loan Documents, or otherwise advanced by Mortgagee pursuant to the provisions hereof or any of such other documents to protect the property hereby mortgaged and pledged; and

(e) Performance and observance of all of the terms, covenants and provisions of any other instrument given to evidence or further secure the payment and performance of any indebtedness hereby secured or any obligation secured hereby;

UNOFFICIAL COPY

(f) Payment of any future or further advances which may be made by Mortgagee at its sole option to and for the benefit of Mortgagor, its successors, assigns and legal representatives; and

(g) Payment of any and all other indebtedness now owing or which may hereafter be owing by Mortgagor to Mortgagee, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements and extensions thereof.

PROVIDED, HOWEVER, that if Mortgagor shall pay the principal and all interest as provided in the Note and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released at the cost of Mortgagor, otherwise to remain in full force and effect.

TO PROTECT THE SECURITY OF THIS MORTGAGE AND SECURITY AGREEMENT, MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. The terms defined in this Section (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Mortgage shall have the respective meanings specified in this Section.

"Code" means the Uniform Commercial Code of the State of Illinois as from time to time in effect.

"Default" means, when used in reference to this Mortgage or any other document, or in reference to any provision of or obligation under this Mortgage or any other document, the occurrence of an event or the existence of a condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default under this Mortgage or such other document, as the case may be.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material, in each case as now or hereafter in force and effect.

"Event of Default" means --

(i) when used in reference to this Mortgage, an Event of Default specified in Section 5.1 hereof; and

(ii) when used in reference to any other document, a default or event of default under such document that has continued after the giving of any applicable notice and the expiration of any applicable grace or cure periods.

UNOFFICIAL COPY

"Hazardous Material" means any hazardous substance or any pollutant or contaminant defined as such in, or for purposes of, any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, in each case as now or hereafter in force and effect; asbestos or any substance or compound containing asbestos; polychlorinated biphenyls or any substance or compound containing any polychlorinated biphenyl; petroleum and petroleum products; pesticides; and any other hazardous, toxic or dangerous waste, substance or material.

"Impositions" means Impositions as defined in Section 2.6(a) hereof.

"Loan" means the loan to be made by Mortgagee to Mortgagor in accordance with the terms and conditions of the Note and this Mortgage.

"Loan Documents" means the Note, this Mortgage, the Guaranty, and all other documents and instruments at any time evidencing and/or securing the indebtedness secured by this Mortgage.

"Loan Service:" means the Michael Cordaro.

"Mortgage" means this Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated as of 10-4, 2017, from Mortgagor to Mortgagee.

"Mortgagee" means Marcin Filip, an individual.

"Mortgagor" means Michael Cordaro

"Note" means the Promissory Note of Mortgagor dated 10-4, 2017, in the principal amount of \$150,000 made payable to the order of Mortgagee, and which evidences the Loan.

"Permitted Encumbrances" means those exceptions to title approved by Mortgagee on the Closing Date.

"Permitted Materials" means materials customarily used in the construction and maintenance of buildings, and cleaning materials, office products and other materials customarily used in the operation of properties such as the Property, provided that, in each case, such materials are stored, handled, used and disposed of in compliance with applicable laws and regulations and are individually and in the aggregate not in such quantities as may result in contamination of the Property or any part thereof.

"Property" means the real estate described in Exhibit A attached hereto and all improvements now and hereafter located thereon, and all other property, rights and interests described in the foregoing granting clauses of this Mortgage.

ARTICLE II

COVENANTS AND AGREEMENTS OF MORTGAGOR

Section 2.1. Payment of Indebtedness. Mortgagor covenants and agrees that it will pay when due the principal of and interest on the indebtedness hereby secured evidenced by

UNOFFICIAL COPY

the Note, all other sums which may become due pursuant thereto or hereto, and all other indebtedness hereby secured as described in the foregoing granting clauses of this Mortgage, including, but not limited to, all charges, fees and all other sums to be paid by Mortgagor as provided in the Loan Documents, and that it will duly and punctually perform, observe and comply with all of the terms, provisions and conditions herein and in the other Loan Documents provided to be performed and observed by Mortgagor. All amounts payable under this Mortgage shall be paid by Mortgagor without offset or other reduction. The Note secured hereby, which is hereby incorporated into this Mortgage by reference with the same effect as if set forth in full herein, is in the principal amount of \$150,000, and bears interest as set forth in the Note. All of the unpaid principal of and accrued and unpaid interest on the Note shall be due and payable in full upon the sale of the Property or MAY 1, 2019, whichever is earlier.

Section 2.2. Escrow Deposits. In order to provide moneys for the payment of the Impositions on the Property required to be paid by Mortgagor pursuant to Section 2.6 hereof and the premiums on the insurance required to be carried by Mortgagor pursuant to Section 2.4 hereof, Mortgagor shall pay to Mortgagee with each monthly payment on the Note such amount as Mortgagee shall estimate will be required to accumulate, by the date 30 days prior to the due date of the next annual installment of such Impositions and insurance premiums, through substantially equal monthly payments by Mortgagor to Mortgagee, amounts sufficient to pay such next annual Impositions and insurance premiums. All such payments shall be held by Mortgagee in escrow, and Mortgagee shall not be obligated to pay interest thereon. Amounts held in such escrow shall be made available by Mortgagee to Mortgagor for the payment of the Impositions and insurance premiums on the Property when due, or may be applied thereto by Mortgagee if it in its sole discretion so elects. Notwithstanding anything to the contrary set forth above, Mortgagee acknowledges that it has waived the requirement for the escrow deposits provided for in this Section prior to the occurrence of an Event of Default. Accordingly, Mortgagee shall not initially require Mortgagor to make the escrow deposits provided for in this Section, but upon the occurrence of an Event of Default, Mortgagee may thereafter in its sole discretion elect to require that Mortgagor commence making such escrow deposits by giving Mortgagor not less than 5 days' written notice of such election.

Section 2.3. Maintenance, Repair, Alterations. Mortgagor shall --

- (a) Keep the Property in good condition and repair;
- (b) Not remove, demolish or substantially alter any of the improvements which are a part of the Property;
- (c) Complete promptly and in a good and workmanlike manner the construction of any improvements (and any renovations thereto) which may be constructed on or at the Property;
- (d) Promptly repair and restore any portion of the Property which may become damaged or be destroyed so as to be of at least equal value and of substantially the same character as prior to such damage or destruction;
- (e) Pay when due all claims for labor performed and materials furnished to and for the Property;

UNOFFICIAL COPY

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

(g) Not commit or permit any waste or deterioration of the Property or any portion thereof;

(h) Keep and maintain the Property and abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair and free of nuisance;

(i) Not commit, suffer or permit any act to be done in or upon the Property in violation of any law, ordinance or regulation;

(j) Not initiate or acquiesce in any zoning change or reclassification of the Property; and

(k) Keep the Property free and clear of all liens and encumbrances of every sort except Permitted Encumbrances.

Section 2.4. Required Insurance.

(a) Mortgagor shall at all times provide, maintain and keep in force, or cause to be provided, maintained and kept in force, the following policies of insurance:

(i) Insurance against loss or damage to the Property by fire and other risks, written on an "all risk" special perils, 100% full replacement cost basis.

(ii) Commercial general liability insurance on an occurrence basis, against claims for personal injury, including without limitation bodily injury, death or property damage occurring on, in or about the Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than \$1,000,000 for one person and \$3,000,000 per occurrence for personal injury or death and \$500,000 per occurrence for damage to property.

(iii) During the course of any construction or repair at the Property, all risk builders risk course of construction insurance against all risks of physical loss, on a completed value basis, including collapse and transit coverage, with a deductible not to exceed \$10,000, in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished, and containing the "permission to occupy" endorsement, and insuring all general contractors and subcontractors of any tier.

(iv) Such other insurance, and in such amounts, as may from time to time be required by Mortgagee against the same or other hazards.

(b) All policies of insurance required by this Mortgage shall be issued by companies, and in amounts in each company, and in a form, satisfactory to Mortgagee and, without limitation on the generality of the foregoing, shall comply with the following provisions:

(i) All policies of insurance shall be issued by insurance companies having an AM Best's Rating Guide Policy Rating of not less than A and Financial Rating of not less than VIII.

UNOFFICIAL COPY

(ii) All policies of insurance shall be maintained for and name Mortgagor and Mortgagee as insureds, as their respective interests may appear, and the policies required by paragraphs (a)(i) and (iii) of this Section shall have attached thereto a standard mortgagee's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee.

(iii) All policies of insurance shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor or Mortgagee which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim or deductions against Mortgagor, and shall provide that the amount payable for any loss shall not be reduced by reason of co-insurance.

(iv) All policies of insurance shall contain a provision that they will not be cancelled or amended, including any reduction in the scope or limits of coverage, without at least 30 days' prior written notice to Mortgagee.

(c) Unless Mortgagor provides evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing evidence that Mortgagor has obtained insurance as required hereby. If Mortgagee purchases insurance for the collateral, Mortgagor will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Mortgagor's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

Section 2.5. Delivery of Policies; Payment of Premiums. Mortgagor shall furnish Mortgagee with the original of all required policies of insurance or certificates satisfactory to Mortgagee. At least 30 days prior to the expiration of each such policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this Mortgage.

Section 2.6. Taxes and Other Impositions.

(a) Mortgagor shall pay or cause to be paid, at least 10 days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property, or become due and payable, and which create, may create or appear to create a lien upon the Property, or any part thereof (all of which taxes, assessments and other governmental charges and non-governmental charges of the above-described or like nature are hereinafter referred to as "**Impositions**").

UNOFFICIAL COPY

(b) Mortgagor shall furnish to Mortgagee within 30 days after the date upon which any Imposition is due and payable by Mortgagor, official receipts of the appropriate taxing authority, or other proof satisfactory to Mortgagee, evidencing the payment thereof.

Section 2.7. Utilities. Mortgagor shall pay or cause to be paid when due all utility charges which are incurred by Mortgagor or others for the benefit of or service to the Property or which may become a charge or lien against the Property for gas, electricity, water or sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting the Property or any portion thereof, whether or not such assessments or charges are liens thereon.

Section 2.8. Actions by Mortgagee to Preserve Property. Should Mortgagor fail to make any payment or to do any act as and in the manner provided herein or in any of the other Loan Documents, Mortgagee in its own discretion, without obligation so to do and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith, without limiting its general powers, Mortgagee shall have and is hereby given the right, but not the obligation, (a) to enter upon and take possession of the Property; (b) to make additions, alterations, repairs and improvements to the Property which it may consider necessary and proper to keep the Property in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the Property, the security hereof or the rights or powers of Mortgagee; (d) to pay any Impositions asserted against the Property and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition; (e) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Mortgagee may affect or appears to affect the Property or the security of this Mortgage or which may be prior or superior hereto; and (f) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to counsel or other necessary or desirable consultants, contractors, agents and other employees. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney in fact, at Mortgagee's election, to do and cause to be done all or any of the foregoing in the event Mortgagee shall be entitled to take any or all of the action provided for in this Section. Mortgagor shall immediately, upon demand therefor by Mortgagee, pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys and reasonable attorneys fees and expenses, all of which shall constitute so much additional indebtedness secured by this Mortgage immediately due and payable, with interest thereon from the date of such demand until paid at the Default Rate (as such term is defined in the Note).

Section 2.9. Damage and Destruction.

(a) Mortgagor shall give Mortgagee prompt notice of any damage to or destruction of any portion or all of the Property, and the provisions contained in the following paragraphs of this Section shall apply in the event of any such damage or destruction.

(b) In the case of loss covered by policies of insurance, Mortgagee is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of Mortgagor, or (ii) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; and in any case Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be

UNOFFICIAL COPY

so much additional indebtedness secured by this Mortgage, and shall be reimbursed to Mortgagee upon demand.

(c) In the event of any insured damage to or destruction of the Property or any part thereof the proceeds of insurance payable as a result of such loss shall be applied upon the indebtedness secured by this Mortgage or applied to the repair and restoration of the Property, as Mortgagee in its sole discretion shall elect.

(d) In the event that Mortgagee shall elect that proceeds of insurance are to be applied to the repair and restoration of the Property, Mortgagor hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration, upon Mortgagee's being furnished with satisfactory evidence of the estimated cost of such repair and restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may require and approve, and if the estimated cost of the work exceeds 10% of the original principal amount of the indebtedness secured hereby, with all plans and specifications for such repair or restoration as Mortgagee may require and approve. No payment made prior to the final completion of the work shall exceed 90% of the value of the work performed from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens.

Section 2.10. Eminent Domain.

(a) Should the Property or any part thereof or interest therein be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Mortgagor receive any notice or other information regarding any such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee, and the provisions contained in the following paragraphs of this Section shall apply.

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

(c) In the event that any portion of the Property are taken or damaged as aforesaid, all such proceeds shall be applied upon the indebtedness secured by this Mortgage or applied to the repair and restoration of the Property, as Mortgagee in its sole discretion shall elect.

(d) In the event that Mortgagee shall elect that such proceeds are to be applied to the repair and restoration of the Property, Mortgagor hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration on the terms provided for in Section 2.9(d) hereof with respect to insurance proceeds.

Section 2.11. Inspection of Property. Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Property for

UNOFFICIAL COPY

the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage or any of the other Loan Documents. Mortgagee agrees that, except in an emergency, Mortgagee shall provide Mortgagor with not less than 24 hours' prior written notice of any entry under this Section 2.11.

Section 2.12. Inspection of Books and Records.

(a) Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the Property and shall make such books and records and all supporting vouchers and data available for examination by Mortgagee and its agents at any time and from time to time on request at the offices of Mortgagee, or at such other location as may be mutually agreed upon.

(b) Mortgagor shall also furnish to Mortgagee such other information and data with respect to the Property as may be requested by Mortgagee.

Section 2.13. Title, Liens and Conveyances.

(a) Mortgagor represents and warrants that it holds good and marketable title to the Property, subject only to Permitted Encumbrances.

(b) Except for Permitted Encumbrances, Mortgagor shall not create, suffer or permit to be created or filed against the Property, or any part thereof or interest therein, any mortgage lien or other lien, charge or encumbrance, either superior or inferior to the lien of this Mortgage. In the event that Mortgagor shall suffer or permit any superior or junior lien, charge or encumbrance to be attached to the Property and shall fail to discharge same as described above, Mortgagee, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to Mortgagor.

(c) The Property is not property in agricultural use and is not used for agricultural purposes, and is not the homestead of Mortgagor.

(d) In the event that Mortgagor shall sell, transfer, convey or assign the title to all or any portion of the Property, whether by operation of law, voluntarily or otherwise, or Mortgagor shall contract to do any of the foregoing, Mortgagee, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to Mortgagor.

(e) Any waiver by Mortgagee of the provisions of this Section shall not be deemed to be a waiver of the right of Mortgagee to insist upon strict compliance with the provisions of this Section in the future.

Section 2.14. Environmental Matters.

(a) Mortgagor hereby represents and warrants to Mortgagee that, with the exception of Permitted Materials, (i) neither Mortgagor nor any of its affiliates or subsidiaries, nor, to the best of Mortgagor's knowledge, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Property or any part thereof; (ii) none of the property described above has ever been used by

UNOFFICIAL COPY

Mortgagor or any of its affiliates or subsidiaries, or to the best of Mortgagor's knowledge, by any other person or entity, as a treatment, storage or disposal site, whether permanent or temporary, for any Hazardous Material; (iii) there are no above ground or underground storage tanks located on the Property; and (iv) neither Mortgagor nor the Property are subject to any private or governmental lien or judicial or administrative notice or action pending, or to the best of Mortgagor's knowledge, threatened, relating to Hazardous Materials or the environmental condition of the Property.

(b) Mortgagor shall not allow any Hazardous Materials other than Permitted Materials to be stored, located, discharged, possessed, managed, processed or otherwise handled on the Property, and shall comply with all Environmental Laws affecting the Property.

(c) Without limitation on any other provision hereof, Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever, including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law, paid, incurred or suffered by or asserted against Mortgagee as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of, Mortgagor: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release of any Hazardous Material from the Property or any part thereof, or (ii) any liens against the Property permitted or imposed by any Environmental Law, or any actual or asserted liability or obligations of Mortgagor or any of its affiliates or subsidiaries under any Environmental Law, or (iii) any actual or asserted liability or obligations of Mortgagee or any of its affiliates or subsidiaries under any Environmental Law relating to the Property.

(d) The representations, warranties, covenants, indemnities and obligations provided for in this Section 2.14 shall be continuing and shall survive the payment, performance, satisfaction, discharge, cancellation, termination, release and foreclosure of this Mortgage; provided, however, that such representations, warranties, covenants, indemnities and obligations shall not apply with respect to Hazardous Materials which are first placed on the Property on or after the date on which Mortgagee or any other party obtains title to and possession of the Property as a result of an exercise by Mortgagee of its remedies under this Mortgage or any of the other Loan Documents or as a result of a conveyance of title to the Property by Mortgagor to Mortgagee or such other party in lieu of such exercise of remedies.

ARTICLE III

LEASES

Section 3.1. Assignment. Mortgagor does hereby sell, assign and transfer unto Mortgagee all of the leases, rents and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any agreement for the use or occupancy of the Property, it being the intention of this Mortgage to establish an absolute transfer and assignment of all such leases and agreements and all of the rents and profits from the Property unto Mortgagee, and Mortgagor does hereby appoint irrevocably Mortgagee its true and lawful attorney in its name and stead, which appointment is coupled with an interest, to collect all of said rents and profits; provided, Mortgagor shall have the right to collect and retain such rents and profits unless and until an Event of Default has occurred under this Mortgage.

UNOFFICIAL COPY

Section 3.2 Leases. Mortgagor agrees (i) that it will not enter into any lease of the Property or any portion thereof without the prior written consent of Mortgagee; (ii) that it will at all times duly perform and observe all of the terms, provisions, conditions and agreements on its part to be performed and observed under any and all leases of the Property or any portion thereof, and shall not suffer or permit any Default or Event of Default on the part of the lessor to exist thereunder; (iii) that it will not agree or consent to, or suffer or permit, any termination, surrender, modification, amendment or assignment of, or any sublease under, or waive any rights under, any lease of the Property, or any portion thereof; and (iv) except for security deposits not to exceed one month's rent for any one lessee, that it will not collect any rent for more than one month in advance of the date same is due. Unless otherwise approved by Mortgagee, all leases of space in the Property shall be prepared on a lease form approved by Mortgagee. Nothing herein contained shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty or liability of the lessor under any lease of the Property, and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any and all liability, loss or damage which Mortgagee may or might incur under any leases of the Property or by reason of the assignment of rents; and any and all such liability, loss or damage incurred by Mortgagee, together with the costs and expenses, including reasonable attorneys fees and expenses, incurred by Mortgagee in the defense of any claims or demands therefor, whether successful or not, shall be so much additional indebtedness secured by this Mortgage, and Mortgagor shall reimburse Mortgagee therefor on demand.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.1. Representations and Warranties. Mortgagor hereby represents and warrants to Mortgagee as follows:

(a) Mortgagor is qualified to do business in the State of Illinois, has all necessary power and authority to carry on its present business, and has full right, power and authority to enter into the Note and Mortgage, to make the borrowings provided for therein and herein, to execute and deliver the Note and the other Loan Documents to which it is a party, and to perform and consummate the transactions contemplated hereby and thereby.

(b) Each of the Loan Documents has been duly authorized, executed and delivered by such of Mortgagor and Guarantor as are parties thereto, and each of the Loan Documents constitutes a valid and legally binding obligation enforceable against such of Mortgagor and Guarantor as are parties thereto. The execution and delivery of the Loan Documents and compliance with the provisions thereof under the circumstances contemplated therein do not and will not conflict with or constitute a breach or violation of or default under the articles of organization or operating agreement of Mortgagor or any agreement or other instrument to which either Mortgagor or Guarantor is a party, or by which either of them is bound, or to which any of their properties are subject, or any existing law, administrative regulation, court order or consent decree to which either of them is subject.

(c) There is no litigation or administrative proceeding pending or threatened against Mortgagor or Guarantor. There is no Uniform Commercial Code financing statement on file that names Mortgagor as debtor and covers any of the collateral for the Loan, and there is no judgment or tax lien outstanding against Mortgagor.

UNOFFICIAL COPY

(d) All financial statements heretofore delivered to Mortgagee by Mortgagor are true and correct in all material respects.

(e) Mortgagor has good and marketable title to the Property, subject only to Permitted Encumbrances.

(f) True, correct and complete copies of all leases of the Property have been furnished to Mortgagee. Each of such leases is in full force and effect and, except as disclosed to Mortgagee, has not been modified or amended. No rental has been paid under any of such leases for more than one month in advance.

Section 4.2. Continuing Representations and Warranties. The foregoing representations and warranties of Mortgagor shall be continuing and shall survive the execution and delivery of this Mortgage, the other Loan Documents and the disbursement of the Loan. In addition, such representations and warranties relating to Hazardous Material shall survive the payment and performance of the obligations of Mortgagor under the Note and the Mortgage.

Section 4.3. Prohibited Transfers; Use of Proceeds. From and after the date hereof and so long as the Note is outstanding, Mortgagor covenants and agrees with Mortgagee as follows:

(a) Intentionally Omitted,

(b) It is a condition of this Mortgage and the Loan that no Prohibited Transfer shall occur at any time, and Mortgagor covenants and agrees that no Prohibited Transfer will occur at any time. Each of the following shall constitute a "**Prohibited Transfer**":

(i) Any ownership interest in Mortgagor shall be transferred or assigned, or any security interest or other lien or encumbrance shall be created on any ownership interest in Mortgagor or on the proceeds of or distribution rights with respect to any such ownership interest; or

(ii) Any ownership interest in any entity that directly or indirectly owns an ownership interest in Mortgagor shall be transferred or assigned, or any security interest or other lien or encumbrance shall be created on any ownership interest in any such entity or on the proceeds of or distribution rights with respect to any ownership interest in any such entity.

(c) No portion of the proceeds of the Loan shall be used by Mortgagor or any of its affiliates, either directly or indirectly, for the purpose of purchasing or carrying any margin stock, within the meaning of Regulation U of the Regulations of the Board of Governors of the Federal Reserve System.

Section 4.4. Tenant Notices. At the time of the first disbursement of the proceeds of the Loan and as a condition thereto, Mortgagor shall deliver to Mortgagee signed notices to tenants of the Property in the form attached to this Mortgage as Exhibit B (the "**Tenant Notices**"). If any Event of Default shall occur under this Mortgage or any of the other Loan Documents, then without limitation on any other rights or remedies which Mortgagee may have under this Mortgage, any of the other Loan Documents or applicable law, Mortgagee shall have the right, and Mortgagor hereby irrevocably authorizes Mortgagee, (i) to complete the Tenant

UNOFFICIAL COPY

Notices and to deliver such Tenant Notices to any or all of the then tenants of the Property, and (ii) to deposit all amounts received by Mortgagee in the name of Mortgagor pursuant to the Tenant Notices into a bank account maintained by Mortgagee as security for the Loan. Mortgagee shall apply all amounts from time to time deposited in any such bank account to the payment of the principal of and interest on the Note and other amounts due under the Loan Documents. Mortgagor agrees that it will not take any action to interfere with the exercise by Mortgagee of its rights under this paragraph after the occurrence and during the continuance of any such Event of Default, including, without limitation, any action to induce any tenant of the Property to act otherwise than in accordance with a Tenant Notice delivered to such tenant. Mortgagor acknowledges that the provisions of this paragraph do not constitute an assignment of rents under Illinois law, and that the rights granted to Mortgagee under this paragraph are intended to be, and shall be, enforceable by Mortgagee upon the occurrence and during the continuance of any such Event of Default, whether or not Mortgagee has obtained possession of the Property or the appointment of a receiver for the Property.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.1. Events of Default. Any one or more of the following shall constitute an Event of Default under this Mortgage:

(a) Mortgagor shall fail to make payment when due of any installment of principal of or interest on the Note, or shall fail to make payment when due of any other amount required to be paid by Mortgagor to Mortgagee under this Mortgage or under any of the other Loan Documents, or shall fail to make payment when due of any other indebtedness secured by this Mortgage; or

(b) A Default by Mortgagor shall occur under any provision of this Mortgage or of any of the other Loan Documents, relating to the payment by Mortgagor of any amount payable to a party other than Mortgagee and such payment is not made prior to the expiration of any cure period granted by the party to which it is due; or

(c) Either Mortgagor or Guarantor shall file a voluntary petition in bankruptcy; or

(d) A court of competent jurisdiction shall enter an order of relief pursuant to, or an order, judgment or decree approving, a petition filed against either Mortgagor or Guarantor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of 10 days, whether or not consecutive, from the first date of entry thereof; or any trustee, receiver or liquidator of either Mortgagor or Guarantor or of all or any part of the Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed and such appointment shall remain unvacated and unstayed for an aggregate of 10 days, whether or not consecutive; or

(e) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Property, or any judgment involving monetary damages shall be entered against Mortgagor which shall become a lien on the Property or any

UNOFFICIAL COPY

portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within 10 days after its entry or levy; or

(f) If any representation or warranty of Mortgagor or Guarantor contained in this Mortgage, in any of the other Loan Documents, or in any statement, certificate or other document delivered in connection with the Loan, shall be untrue or incorrect in any material respect; or

(g) If any Event of Default by Mortgagor shall occur under any lease of the Property, or if any such lease shall be entered into in violation of the provisions of Section 3.1 of this Mortgage; or

(h) Default shall occur in the performance, observance or compliance with any term, covenant, condition, agreement or provision contained in this Mortgage other than as described in paragraphs (a) through (g) above; or

(i) If any Event of Default shall occur under any of the other Loan Documents; or

(j) If any Event of Default shall occur under any other mortgage or trust deed on the Property; or

(k) Default shall occur in the payment of any moneys due and payable to Mortgagee by Mortgagor or Guarantor, other than in connection with the Loan, or Default shall occur in the performance or observance of any obligation or condition on the part of Mortgagor or Guarantor under any written contract, agreement or other instrument heretofore or hereafter entered into with Mortgagee other than in connection with the Loan.

Section 5.2. Acceleration Upon Event of Default; Additional Remedies. Upon or at any time after the occurrence of any Event of Default under this Mortgage, Mortgagee may declare the Note and all indebtedness secured by this Mortgage to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter Mortgagee may (and is hereby authorized and empowered to) --

(a) Either in person or by agent, with or without bringing any action or proceeding, if applicable law permits, enter upon and take possession of the Property, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same to the payment of taxes, insurance premiums and other charges against the Property or in reduction of the indebtedness secured by this Mortgage; and the entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of Event of Default and, notwithstanding the continuance in possession of the Property or the collection, receipt and application of rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in this Mortgage or any of the other Loan Documents or by law upon occurrence of any Event of Default; or

UNOFFICIAL COPY

(b) Foreclose this Mortgage by action, pursuant to the statutes of the State of Illinois in such case made and provided, power being expressly granted to sell the Property at public auction and convey the same to the purchaser in fee simple in one parcel or separate lots and parcels and, out of the proceeds arising from such sale, to pay the indebtedness secured hereby with interest, with all such sums of money as Mortgagee shall have expended or advanced pursuant to the Loan Documents or pursuant to statute, with interest thereon as provided in the Loan Documents, and the maximum attorneys' fees permitted by law, which costs, charges and fees Mortgagor agrees to pay, with the balance, if any, to be paid to the persons entitled thereto by law; or

(c) Commence an action to appoint a receiver, or specifically enforce any of the covenants hereof; or (d) Sell the Property, or any part thereof, or cause the same to be sold, and convey the same to the purchaser thereof, pursuant to the statute in such case made and provided, and out of the proceeds of such sale retain all of the indebtedness secured by this Mortgage including, without limitation, principal, accrued interest, costs and charges of such sale, the attorneys fees provided by such statute, or in the event of a suit to foreclose by court action, a reasonable attorneys fee, rendering the surplus moneys, if any, to Mortgagor; provided, that in the event of public sale, such property may, at the option of Mortgagee, be sold in one parcel or in several parcels as Mortgagee, in its sole discretion, may elect; or

(e) Exercise any or all of the remedies available to a secured party under the Code and any notice of sale, disposition, or other intended action by Mortgagee, sent to Mortgagor at the address specified in Section 6.13 hereof, at least five days prior to such action, shall constitute reasonable notice to Mortgagor; or

(f) Exercise any of the rights and remedies provided for in this Mortgage, in any of the other Loan Documents or by applicable law

Section 5.3. Foreclosure; Expense of Litigation. When the indebtedness secured by this Mortgage, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, any of the other Loan Documents or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage, immediately due and payable, with interest thereon from the date due until paid at the Default Rate. In the event of any foreclosure sale of the Property, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Property or any part thereof.

UNOFFICIAL COPY

Section 5.4. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Property or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in Section 5.3 hereof; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as therein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any remainder to Mortgagor, its successors or assigns, as their rights may appear.

Section 5.5. Appointment of Receiver. Upon or at any time (x) after the occurrence of an Event of Default, (y) with the commencement of an action to foreclose this Mortgage under Illinois' Code of Civil Procedure, Chapter 735, Article XV, or (z) during any period of redemption, by application to the district court where the Property is located, Mortgagee, by an action separate from any foreclosure under Illinois' Code of Civil Procedure, Chapter 735, Article XV, (it being understood and agreed that a foreclosure action is not a prerequisite to any action for a receiver hereunder), will be entitled to appointment of a receiver for the Property. Mortgagee's right to appointment of a receiver will be without regard to waste, adequacy of the security or solvency of Mortgagor. The court will determine the amount of any note to be posted by the receiver. The receiver, who will be an experienced property manager, will (until the indebtedness secured hereby is paid in full and, in the case of a foreclosure sale, during the entire redemption period) collect all rents and other income from the Property, manage the Property so as to prevent waste, execute leases within or beyond the period of the receivership if approved by the court, and apply the rents and income from the Property in the following order:

- (a) payment of all reasonable fees of the receiver, if any, approved by the court;
- (b) repayment of tenant security deposits as required by 765 Ill. Comp. Stat. 710/1.
- (c) payment of real estate taxes and special assessments on the Property, or of any periodic escrow payments therefor required by the terms of this Mortgage or any prior encumbrance;
- (d) payment of insurance premiums, or of any periodic escrow payments therefor required by the terms of this Mortgage or any prior encumbrance;
- (e) payment of expenses for normal maintenance of the Property;
- (f) if received prior to a foreclosure sale of the Property pursuant to this Mortgage:
 - (i) prior to commencement of foreclosure, against the indebtedness secured hereby, in such order as Mortgagee may elect; and
 - (ii) after commencement of foreclosure, credited to the amount required to be paid to effect a reinstatement prior to foreclosure sale;

UNOFFICIAL COPY

provided no such payment made after the acceleration of all or any of the indebtedness secured hereby shall affect such acceleration; and

(h) if received during or with respect to the period of redemption after a foreclosure sale of the Property pursuant to this Mortgage;

(i) if the purchaser at the foreclosure sale is not Mortgagee, first to Mortgagee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured hereby, second to the purchaser as a credit to the redemption price, but if the Property is not redeemed, then to the purchaser of the Property; and

(ii) if the purchaser at the foreclosure sale is Mortgagee, to Mortgagee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured hereby and the balance to be retained by Mortgagee as a credit to the redemption price, but if the Property is not redeemed, then to Mortgagee, whether or not any such deficiency exists.

The rights and powers of Mortgagee and receivers under the Mortgage and the application of rents and other income from the Property under this Section shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale. The receiver shall file periodic accountings as the court determines are necessary and a final accounting at the time of his discharge. Mortgagee shall have the right, at any time and without limitation to advance money to the receiver to pay any part or all of the expenses which the receiver should otherwise pay, if cash were available from the Property, and all sums so advanced, with interest at the Default Rate, shall be a part of the sum required to be paid to redeem from any foreclosure sale.

Upon the happening of any of the events set forth above, or during any period of redemption after a foreclosure sale, and prior to the appointment of a receiver as hereinabove provided, Mortgagee shall have the right to collect the rents, issues, profits and other income of every kind from the Property and apply the same in the manner hereinbefore provided for the application thereof by a receiver. The rights set forth in this Section 5.5 shall be binding upon the occupiers of the Property from the date of filing by Mortgagee of a foreclosure complaint. Enforcement hereof shall not cause Mortgagee to be deemed a mortgagee in possession, unless it elects in writing to be so deemed. For the purpose aforesaid, Mortgagee may enter and take possession of the Property, manage and operate the same and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Property. Mortgagee may also take possession of, and for these purposes use, any and all of the personal property included in the Property.

The costs and expenses (including any receiver's fees and attorneys' fees) incurred by Mortgagee pursuant to the powers herein contained shall be immediately reimbursed by Mortgagor to Mortgagee on demand, shall be secured hereby and shall bear interest from the date incurred at the Default Rate. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto, other than to account for any rents and other income from the Property actually received by Mortgagee.

Section 5.6. Insurance After Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in repairing and restoring the Property, shall be used to pay the amount due in

UNOFFICIAL COPY

accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

Section 5.7. Remedies Not Exclusive; No Waiver of Remedies.

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

(b) In the event Mortgagee at any time holds additional security for any of the indebtedness secured by this Mortgage, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently with exercising remedies under this Mortgage or after a sale is made hereunder.

Section 5.8. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession.

Section 5.9. Waiver of Certain Rights. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but rather waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption under any applicable law, including, without limitation, redemption from sale or from or under any order, judgment or decree of foreclosure, pursuant to rights herein granted, on behalf of Mortgagor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the Property are located. Mortgagor has waived and does hereby waive any right of setoff against any person in possession of any portion of the Property. Mortgagor shall not permit any of the Leases to become subordinate to any lien other than the liens hereof.

UNOFFICIAL COPY

Section 5.10. Mortgagee's Use of Deposits. With respect to any deposits made with or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage, when any Event of Default shall exist under this Mortgage, the Note or any of the other Loan Documents, Mortgagee may, at its option, without being required to do so, apply any moneys or securities which constitute such deposits on any of the obligations under this Mortgage, the Note or the other Loan Documents, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor.

Section 5.11. Performance At Mortgagor's Expense. Whenever it is provided that Mortgagor is to pay attorneys' fees incurred by Mortgagee in connection with this Mortgage, such attorneys' fees shall include, without limitation, fees incurred in investigation, drafting, collection and/or negotiation procedures in connection with this Mortgage, the Note, and any of the other Loan Documents, in connection with any appearances reasonably necessary to protect Mortgagee's interest in any probate, bankruptcy and/or receivership proceedings involving Mortgagor, fees incurred in preparation for the commencement or defense of any proceedings or threatened suits or proceedings, fees incurred prior to trial, at trial and through all appeals, whether or not Mortgagee prevails in such proceedings, disbursements made by attorneys in conducting such matters, and court costs.

Section 5.12. Litigation Provisions.

(a) MORTGAGOR CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN CHICAGO, ILLINOIS IN WHICH ANY LEGAL PROCEEDING MAY BE COMMENCED OR PENDING RELATING IN ANY MANNER TO THIS MORTGAGE, THE LOAN OR ANY OF THE OTHER LOAN DOCUMENTS.

(b) MORTGAGOR AGREES THAT PROCESS IN ANY LEGAL PROCEEDING RELATING TO THIS MORTGAGE, THE LOAN OR ANY OF THE OTHER LOAN DOCUMENTS MAY BE SERVED ON MORTGAGOR AT ANY LOCATION.

(c) MORTGAGOR AGREES THAT ANY LEGAL PROCEEDING RELATING TO THIS MORTGAGE, THE LOAN OR ANY OF THE OTHER LOAN DOCUMENTS MAY BE BROUGHT AGAINST MORTGAGOR IN ANY STATE OR FEDERAL COURT LOCATED IN CHICAGO, ILLINOIS. MORTGAGOR WAIVES ANY OBJECTION TO VENUE IN ANY SUCH COURT AND WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE FROM ANY SUCH COURT.

(d) MORTGAGOR AGREES THAT IT WILL NOT COMMENCE ANY LEGAL PROCEEDING AGAINST THE BENEFICIARY RELATING IN ANY MANNER TO THIS MORTGAGE, THE LOAN OR ANY OF THE OTHER LOAN DOCUMENTS IN ANY COURT OTHER THAN A STATE OR FEDERAL COURT LOCATED IN CHICAGO, ILLINOIS, OR IF A LEGAL PROCEEDING IS COMMENCED BY MORTGAGEE AGAINST MORTGAGOR IN A COURT IN ANOTHER LOCATION, BY WAY OF A COUNTERCLAIM IN SUCH LEGAL PROCEEDING.

UNOFFICIAL COPY

(e) **MORTGAGOR HEREBY WAIVES TRIAL BY JURY IN ANY LEGAL PROCEEDING RELATING TO THIS MORTGAGE, THE LOAN OR ANY OF THE OTHER LOAN DOCUMENTS.**

ARTICLE VI

MISCELLANEOUS

Section 6.1. Recitals. The recitals hereto are hereby incorporated into and made a part of this Mortgage.

Section 6.2. Time of Essence. Time is of the essence of this Mortgage and of each and every provision hereof.

Section 6.3. Intentionally Deleted.

Section 6.4. Lien for Service Charges and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures, in addition to any loan proceeds disbursed from time to time, the payment of any and all origination fees, loan commissions, service charges, liquidated damages, expense and advances due to or incurred by Mortgagee in connection with the loan to be secured hereby, all in accordance with this Mortgage and the other Loan Documents.

Section 6.5. Subrogation. To the extent that proceeds of the indebtedness secured by this Mortgage are used to pay any outstanding lien, charge or prior encumbrance against the Property, Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, and shall have the benefit of the priority thereof, irrespective of whether said liens, charges or encumbrances are released.

Section 6.6. Fees, Costs and Expenses; Indemnification. Mortgagor shall pay all costs, expenses and fees incurred by Mortgagee arising out of or incurred in connection with any of the transactions contemplated hereby and, without limiting the generality of the foregoing, shall pay all taxes, filing and recording expenses, the fees and expenses of counsel to Mortgagee in connection with the preparation of the Loan Documents and other matters related to the Loan, including, without limitation, the preparation of documents and other matters related to any modification of the Loan, the cost of appraisals and environmental site assessments, and reasonable attorneys fees and court costs incurred by Mortgagee or any other Mortgagee participating in the Loan in connection with the enforcement of this Mortgage, the other Loan Documents and other documents contemplated hereby or arising out of claims or actions brought or filed by or against Mortgagee arising out of the transactions contemplated by this Mortgage. If Mortgagor shall fail to pay any of the foregoing, Mortgagee may pay the same, and amounts so expended shall constitute an additional amount due under this Mortgage and secured hereby, but such payment by Mortgagee shall not cure any Default or Event of Default hereunder. Mortgagor hereby indemnifies and agrees to save Mortgagee and its directors, officers, employees and agents harmless from and against any and all costs, expenses, judgments, awards and liabilities incurred by them in connection with the transactions contemplated hereby, whether or not arising from a claim by a third party.

Section 6.7. Recording; Fixture Financing Statement. Mortgagor shall cause this Mortgage and all other documents securing the indebtedness secured by this Mortgage at all

UNOFFICIAL COPY

times to be properly filed and/or recorded at Mortgagor's own expense and in such manner and in such places as may be required by law in order to fully preserve and protect the rights of Mortgagee. This Mortgage is intended to be effective, from the date of recording of this Mortgage in the Office of the Recorder of Deeds of the county in which the Property are located, as a financing statement filed as a fixture financing statement pursuant to Section 9-502(c) of the Code.

Section 6.8. Further Assurances. Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable in the judgment of Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired.

Section 6.9. No Defenses. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

Section 6.10. Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured by this Mortgage, or if such lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the indebtedness secured by this Mortgage shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the indebtedness secured by this Mortgage, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Mortgage.

Section 6.11. Illegality of Terms. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (i) to require Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (ii) to require Mortgagor to make any payment or do any act contrary to law. If any provision contained in this Mortgage shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and Mortgagee shall be given a reasonable time to correct any such error.

Section 6.12. Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Property, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Property, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from the covenants and/or undertakings hereunder, specifically including Section 2.13(d) hereof, and without Mortgagee waiving its rights to accelerate the Note as set forth in Section 2.13(d).

Section 6.13. Notices. All notices and other communications provided for in this Mortgage ("**Notices**") shall be in writing. The "**Notice Addresses**" of the parties for purposes of this Mortgage are as follows:

Mortgagor:

UNOFFICIAL COPY

Marcin Filip

E-mail: MARCIN@DEERLESSCAP.COM

Mortgagee's Loan Servicer: Michael Cordaro

E-mail: michael.cordaro@gmail.com

or such other address as a party may designate by notice duly given in accordance with this Section to the other parties. A Notice to a party shall be effective when delivered to such party's Notice Address by any means, including, without limitation, personal delivery by the party giving the Notice, delivery by United States regular, certified or registered mail, or delivery by a commercial courier or delivery service. If the Notice Address of a party includes a facsimile number or electronic mail address, Notice given by facsimile or electronic mail shall be effective when delivered at such facsimile number or email address. If delivery of a Notice is refused, it shall be deemed to have been delivered at the time of such refusal of delivery. The party giving a Notice shall have the burden of establishing the fact and date of delivery or refusal of delivery of a Notice.

Section 6.14. Binding Effect. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns, including, without limitation, each and every from time to time record owner of the Property or any other person having an interest therein, and shall inure to the benefit of Mortgagee and its successors and assigns. Wherever herein Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such holder of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated Mortgagee.

Section 6.15. Covenants to Run with the Land. All the covenants hereof shall run with the land.

Section 6.16. Entire Agreement; No Reliance. This Mortgage sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Mortgage, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this Mortgage other than as are herein set forth. Mortgagor acknowledges that it is executing this Mortgage without relying on any statements, representations or warranties, either oral or written, that are not expressly set forth herein.

Section 6.17. Governing Law; Severability; Modification. This Mortgage shall be governed by the laws of the State of Illinois. In the event that any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not affect other provisions hereof which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable. This Mortgage and each provision hereof may be modified, amended, changed, altered, waived, terminated or discharged only by a written

UNOFFICIAL COPY

instrument signed by the party sought to be bound by such modification, amendment, change, alteration, waiver, termination or discharge.

Section 6.18. Meanings. Wherever in this Mortgage the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

Section 6.19. Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 6.20. Approval or Consent of Mortgagee. Wherever in this Mortgage provision is made for the approval or consent of Mortgagee, or that any matter is to be to Mortgagee's satisfaction, or that any matter is to be as estimated or determined by Mortgagee, or the like, unless specifically stated to the contrary, such approval, consent, satisfaction, estimate, determination or the like shall be made, given or determined by Mortgagee in its sole and absolute discretion.

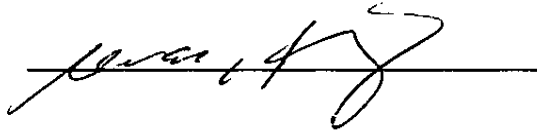
Section 6.21. Construction and Interpretation. Mortgagor and Mortgagee, and their respective legal counsel, have participated in the drafting of this Mortgage, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Mortgage.

[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed as of the date first above written.

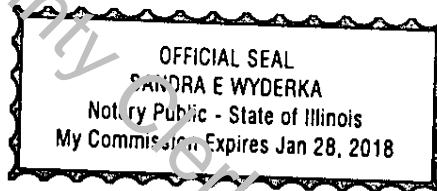
MARCIN FILIP



STATE OF IL)
COUNTY OF COOK) SS

I, Sandra E. Wyderka, certify that Marcin Filip, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

Sandra E. Wyderka
Printed Name: Sandra E. Wyderka
Notary Public



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

4412 Blanchan Ave., Brookfield, IL 60513

THE NORTH HALF OF LOT 47 AND ALL OF LOT 48 IN BLOCK 19 IN WEST GROSSDALE IN THE WEST HALF OF THE WEST HALF OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office