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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1800906147

Doc# 1800906147 Fee \$96.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 01/09/2018 01:04 PM PG: 1 OF 30

The property identified as: **PIN:** 20-15-420-007-0000

Address:

Street: 6223 S St. Lawrence Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60637

Lender: Asset Advocates, L.L.C.

Borrower: Optimum International LLC

Loan / Mortgage Amount: \$162,410.00

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.

Certificate number: ED134D1E-722B-42C0-ABDB-7A248DCBA557

Execution date: 1/5/2018

17563106-CHI 2074

30

JA

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Prepared by/Return to:

Asset Advocates, L.L.C
41 Vreeland Avenue, Suite 22
Totowa, NJ 07512

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

by

Optimum International LLC, Wyoming limited liability company

as Mortgagor

and

ASSET ADVOCATES, L.L.C., A NEW JERSEY LIMITED LIABILITY COMPANY

as Mortgagee

This document serves as a Fixture Filing under the Illinois Uniform Commercial Code.

Prepared by/Return to:

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Asset Advocates, L.L.C
 41 Vreeland Avenue, Suite 22
 Totowa, NJ 07512

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

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING is made as of December 29, 2017, by **Optimum International LLC** ("**Mortgagor**"), whose address is 77 W Washington Street #705, Chicago, IL, 60602, to **ASSET ADVOCATES, L.L.C.**, a New Jersey limited liability company ("**Mortgagee**"), whose address is 41 Vreeland Avenue, Suite 22, Totowa, NJ 07512, Attention: Mr. Hector J. Alvarez

Recitals

Mortgagor has requested that Mortgagee make the Loan (as hereinafter defined) to Mortgagor. As a condition precedent to making the Loan, Mortgagee has required that Mortgagor execute and deliver this Mortgage, Assignment of Rents, Security Agreement and Fixture Filing to Mortgagee.

Grants and Agreements

Now, therefore, in order to induce Mortgagee to make the Loan to Mortgagor, Mortgagor agrees as follows:

**Article I
Definitions**

As used in this Mortgage, the terms defined in the Preamble hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

"**Accessories**" means all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land.

"**Accounts**" means all accounts of Mortgagor within the meaning of the Uniform Commercial Code of the State, derived from or arising out of the use, occupancy or enjoyment of the Property or for services rendered therein or thereon.

"**Additions**" means any and all alterations, additions, accessions and improvements to property, substitutions therefor, and renewals and replacements thereof.

"**Casualty**" means any act or occurrence of any kind or nature that results in damage, loss or destruction to the Property.

"**Claim**" means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including fees, costs and expenses of attorneys, consultants, contractors and experts.

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“**Condemnation**” means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

“**Condemnation Awards**” means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

“**Contract of Sale**” means any contract for the sale of all or any part of the Property or any interest therein, whether now in existence or hereafter executed.

“**Default**” means an event or circumstance which, with the giving of Notice or lapse of time, or both, would constitute an Event of Default under the provisions of this Mortgage.

“**Design and Construction Documents**” means, collectively: (a) all contracts for services to be rendered, work to be performed or materials to be supplied in the development of the Land or the construction or repair of Improvements, including all agreements with architects, engineers or contractors for such services, work or materials; (b) all plans, drawings and specifications for the development of the Land or the construction or repair of Improvements; (c) all permits, licenses, variances and other rights or approvals issued by or obtained from any Governmental Authority or other Person in connection with the development of the Land or the construction or repair of Improvements; and (d) all amendments of or supplements to any of the foregoing.

“**Dispute**” means any controversy, claim or dispute between or among the parties to this Mortgage, including any such controversy, claim or dispute arising out of or relating to (a) this Mortgage; (b) any other Loan Document; (c) any related agreements or instruments, or (d) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort).

“**Encumbrance**” means any Lien, easement, right of way, roadway (public or private), condition, covenant or restriction (including any covenant, condition or restriction imposed in connection with any condominium development or cooperative housing development), Lease or other matter of any nature that would affect title to the Property.

“**Environmental Agreement**” means the Environmental Compliance and Indemnity Agreement of even date herewith by and between Mortgagor and Mortgagee pertaining to the Property, as the same may from time to time be extended, amended, restated or otherwise modified. The Environmental Agreement is one of the Loan Documents, but this Mortgage does not secure the obligations of Mortgagor under the Environmental Agreement.

“**Event of Default**” means an event or circumstance specified in **Article VI** and the continuance of such event or circumstance beyond the applicable grace and/or cure periods therefor, if any, set forth in **Article VI**.

“**Expenses**” means all fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) by Mortgagee in making, funding, administering or modifying the Loan, in negotiating or entering into any “workout” of the Loan, or in exercising or enforcing any rights, powers and remedies provided in this Mortgage or any of the

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other Loan Documents, including attorneys' fees, court costs, receiver's fees, management fees and costs incurred in the repair, maintenance and operation of, or taking possession of, or selling, the Property.

"Future Advances" means any loan of money from Mortgagee to Mortgagor made within twenty (20) years from the date hereof. The total amount of such loan or loans may increase or decrease from time to time, but the total unpaid aggregate balance secured by this Mortgage at any one time shall not exceed \$324,820.00, plus interest thereon, and any disbursements made for the payment of the Property Assessments (whether taxes, levies or otherwise), insurance, or other liens on the Property, with interest on such disbursements. The Mortgagee has no obligation whatsoever, to make a Future Advance.

"Governmental Authority" means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity.

"Guarantor" means, individually or collectively, Steeve Raymond and his, her or their respective heirs, personal representatives, successors and assigns.

"Guaranty" means the Guaranty of even date herewith executed by Guarantor for the benefit of Mortgagee, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Improvements" means all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, together with any on-site improvements and off-site improvements in any way used or to be used in connection with the use, enjoyment, occupancy or operation of the Land.

"Insurance Proceeds" means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to the Property, in each case whether now or hereafter existing or arising.

"Land" means the real property described in Exhibit A attached hereto and made a part hereof.

"Laws" means all federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

"Leases" means all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property or any part thereof, together with all options therefor, amendments thereto and renewals, modifications and guaranties thereof, including any cash or security deposited under the Leases to secure performance by the tenants of their obligations under the Leases, whether such cash or security is to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due thereunder.

"Lien" means any mortgage, pledge, security interest, assignment, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

"Loan" means the loan from Mortgagee to Mortgagor, the repayment obligations in connection with which are evidenced by the Note.

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“Loan Documents” means this Mortgage, the Note, the Guaranty, the Environmental Agreement, and any and all other documents which Mortgagor, Guarantor or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Mortgage” means this Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, as the same may from time to time be extended, renewed, amended, restated, supplemented or otherwise modified.

“Mortgagor’s Deposit Account” means an account established with Mortgagee for Mortgagor pursuant to the terms of **Section 4.2(h)**.

“Net Proceeds,” when used with respect to any Condemnation Awards or Insurance Proceeds, means the gross proceeds from any Condemnation or Casualty remaining after payment of all expenses, including attorneys’ fees incurred in the collection of such gross proceeds.

“Note” means that certain Note of even date herewith in the original principal amount of One Hundred Sixty Two Thousand Four Hundred Te and 00/100 Dollars (\$162,410.00), made by Mortgagor to the order of Mortgagee, as the same may from time to time be extended, renewed, amended, restated, supplemented or otherwise modified.

“Notice” means a notice, request, consent, demand or other communication given in accordance with the provisions of **Section 8.8** of this Mortgage.

“Obligations” means all present and future debts, Future Advances, obligations and liabilities of Mortgagor to Mortgagee arising pursuant to, and/or on account of, the provisions of this Mortgage, the Note or any of the other Loan Documents, including the obligations: (a) to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (b) to pay all Expenses, indemnification payments, fees and other amounts due at any time under this Mortgage or any of the other Loan Documents, together with interest thereon as herein or therein provided; (c) to perform, observe and comply with all of the other terms, covenants and conditions, expressed or implied, which Mortgagor is required to perform, observe or comply with pursuant to this Mortgage or any of the other Loan Documents; and (d) to pay and perform all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties’ agreement that the advance or obligation be secured by this Mortgage; excluding, however, the debts, obligations and liabilities of Mortgagor under the Environmental Agreement. This Mortgage does not secure the Environmental Agreement, the Guaranty or any other Loan Document that is expressly stated to be unsecured.

“Permitted Encumbrances” means: (a) any matters set forth in any policy of title insurance issued to Mortgagee and insuring Mortgagee’s interest in the Property which are acceptable to Mortgagee as of the date hereof; (b) the Liens and interests of this Mortgage; and (c) any other Encumbrance that Mortgagee shall expressly approve in its sole and absolute discretion, as evidenced by a “marked-up” commitment for title insurance initialed on behalf of Mortgagee.

“Person” means an individual, a corporation, a partnership, a joint venture, a limited liability company, a trust, an unincorporated association, any Governmental Authority or any other entity.

“Personalty” means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Mortgagor now has or hereafter

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acquires the primary ownership interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the Accessories; (b) the Accounts; (c) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Mortgage, and Mortgagee shall have no responsibility for the performance of Mortgagor's obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real Property or the operation thereof; (e) all insurance policies held by Mortgagor with respect to the Property or Mortgagor's operation thereof; and (f) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Mortgagor with Mortgagee related to the Property, including any such deposit account from which Mortgagor may from time to time authorize Mortgagee to debit and/or credit payments due with respect to the Loan; together with all Additions to and Proceeds of all of the foregoing.

"Proceeds" when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code of the State.

"Property" means the Real Property and the Personalty and all other rights, interests and benefits of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the Real Property and/or the Personalty and all other property and rights used or useful in connection therewith, including all Leases, all Rents, all Condemnation Awards, all Proceeds, and all of Mortgagor's right, title and interest in and to all Design and Construction Contracts, all Contracts of Sale and all Refinancing Commitments.

"Property Assessments" means all Taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium and owner's association assessments and charges, maintenance charges and other governmental or municipal or public or private dues, charges and levies and any Liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Property or any part thereof, or upon any Leases or any Rents, whether levied directly or indirectly or as excise taxes, as income taxes, or otherwise.

"Real Property" means the Land and Improvements, together with: (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, appurtenances, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by Mortgagor and belonging or appertaining to the Land or Improvements; (b) all Claims whatsoever of Mortgagor with respect to the Land or Improvements, either in law or in equity, in possession or in expectancy; (c) all estate, right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements; and (d) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing.

"Refinancing Commitment" means any commitment from or other agreement with any Person providing for the financing of the Property, some or all of the proceeds of which are intended to be used

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for the repayment of all or a portion of the Loan.

“**Rents**” means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Real Property.

“**State**” means the state in which the Land is located.

“**Taxes**” means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on Mortgagor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

“**Transfer**” means any direct or indirect sale, assignment, conveyance or transfer, including any Contract of Sale and any other contract or agreement to sell, assign, convey or transfer, whether made voluntarily or by operation of Law or otherwise, and whether made with or without consideration.

Article II

Granting Clauses; Condition of Grant

Section 2.1 Conveyances and Security Interests. In order to secure the prompt payment and performance of the Obligations, Mortgagor: (a) grants, bargains, sells, aliens, remises, releases, assigns, mortgages, hypothecates, deposits, pledges, sets over, confirms, warrants and conveys the Real Property unto Mortgagee, all estate, right, title and interest of Mortgagor in and to the Real Property, whether now owned or held or hereafter acquired by Mortgagor, to have and hold the Real Property unto Mortgagee, its successors and assigns forever; and to hold the Real Property unto Mortgagee in fee simple forever; provided that Mortgagor may retain possession of the Real Property until the occurrence of an Event of Default; (b) grants to Mortgagee a security interest in the Personality; (c) assigns to Mortgagee, and grants to Mortgagee a security interest in, all Condemnation Awards and all Insurance Proceeds (subject to the terms and conditions of any existing Leases); and (d) assigns to Mortgagee, and grants to Mortgagee a security interest in, all of Mortgagor’s right, title and interest in, but not any of Mortgagor’s obligations or liabilities under, all Design and Construction Documents, all Contracts of Sale and all Refinancing Commitments. All Persons who may have or acquire an interest in all or any part of the Property will be deemed to have notice of, and will be bound by, the terms of the Obligations and each other agreement or instrument made or entered into in connection with each of the Obligations. Such terms include any provisions in the Note which provide that the interest rate on one or more of the Obligations may vary from time to time. The definition of “Obligations” includes Future Advances.

Section 2.2 Absolute Assignment of Leases and Rents. In consideration of the making of the Loan by Mortgagee to Mortgagor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor absolutely and unconditionally assigns the Leases and Rents to Mortgagee. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Mortgagor to Mortgagee of all of Mortgagor’s right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Event of Default shall exist, however, and so long as Mortgagor is not in default in the performance of any obligation, covenant or agreement contained in the Leases, Mortgagor shall have a license (which license shall terminate automatically and without notice upon the occurrence of an Event of Default or a default by Mortgagor under the Leases) to collect, but not prior to accrual, all Rents. Mortgagor agrees to collect and hold all Rents in trust for Mortgagee and to

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use the Rents for the payment of the cost of operating and maintaining the Property and for the payment of the other Obligations before using the Rents for any other purpose.

Section 2.3 Security Agreement, Fixture Filing and Financing Statement. This Mortgage creates a security interest in the Personalty, and, to the extent the Personalty is not real property, this Mortgage constitutes a security agreement from Mortgagor to Mortgagee under the Uniform Commercial Code of the State. In addition to all of its other rights under this Mortgage and otherwise, Mortgagee shall have all of the rights of a secured party under the Uniform Commercial Code of the State, as in effect from time to time, or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable Law. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including such fixtures) is situated. This Mortgage shall also be effective as a financing statement with respect to any other Property as to which a security interest may be perfected by the filing of a financing statement and may be filed as such in any appropriate filing or recording office. The respective mailing addresses of Mortgagor and Mortgagee are set forth in the opening paragraph of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or any other financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section. Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable Law, reasonably required by Mortgagee to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage. The foregoing authorization includes Mortgagor's irrevocable authorization for Mortgagee at any time and from time to time to file any initial financing statements and amendments thereto that indicate the Personalty: (a) as "all assets" of Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Personalty falls within the scope of the Uniform Commercial Code of the State or the jurisdiction where the initial financing statement or amendment is filed; or (b) as being of an equal or lesser scope or with greater detail.

Section 2.4 Release of Mortgage and Termination of Assignments and Financing Statements. If and when Mortgagor has paid and performed all of the Obligations, Mortgagee will provide a release of the Property from the lien of this Mortgage and termination statements for filed financing statements, if any, to Mortgagor. Mortgagor shall be responsible for the recordation of such release and the payment of any recording and filing costs. Upon the recording of such release and the filing of such termination statements, the absolute assignments set forth in **Section 2.2** shall automatically terminate and become null and void.

Article III **Representations and Warranties**

Mortgagor makes the following representations and warranties to Mortgagee:

Section 3.1 Title to Real Property. Mortgagor: (a) owns fee simple title to the Real Property; (b) owns all of the beneficial and equitable interest in and to the Real Property; and (c) is lawfully seized and possessed of the Real Property. Mortgagor has the right and authority to mortgage and convey the Real Property and does hereby mortgage and convey the Real Property to Mortgagee. The Real Property is subject to no Encumbrances other than the Permitted Encumbrances.

Section 3.2 Title to Other Property. Mortgagor has good title to the Personalty located at the Property which is owned by Mortgagor, and the Personalty is not subject to any Encumbrance other than

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the Permitted Encumbrances. None of the Leases, Rents, Design and Construction Documents, Contracts of Sale or Refinancing Commitments are subject to any Encumbrance other than the Permitted Encumbrances.

Section 3.3 Property Assessments. The Real Property is assessed for purposes of Property Assessments as a separate and distinct parcel from any other property, such that the Real Property shall never become subject to the Lien of any Property Assessments levied or assessed against any property other than the Real Property.

Section 3.4 Independence of the Real Property. No buildings or other improvements on property not covered by this Mortgage rely on the Real Property or any interest therein to fulfill any requirement of any Governmental Authority for the existence of such property, building or improvements; and none of the Real Property relies, or will rely, on any property not covered by this Mortgage or any interest therein to fulfill any requirement of any Governmental Authority. The Real Property has been properly subdivided from all other property in accordance with the requirements of any applicable Governmental Authorities.

Section 3.5 Existing Improvements. To Mortgagor's actual knowledge, the existing Improvements, if any, were constructed, and are being used and maintained, in accordance with all applicable Laws, including zoning Laws.

Section 3.6 Leases and Tenants. The Leases are valid and are in full force and effect, and Mortgagor is not in default under any of the terms thereof. Mortgagor has not accepted any Rents in advance of the time the same became due under the Leases and has not forgiven, compromised or discounted any of the Rents. Mortgagor has title to and the right to assign the Leases and Rents to Mortgagee, and no other assignment of the Leases or Rents has been granted.

Article IV

Affirmative Covenants and Agreements

Section 4.1 Obligations. Mortgagor agrees to promptly pay and perform all of the Obligations, time being of the essence in each case.

Section 4.2 Property Assessments; Documentary Taxes, Insurance and Condemnation.

(a) Mortgagor: (i) will promptly pay in full and discharge all Property Assessments; and (ii) will furnish to Mortgagee, upon demand, the receipted bills for such Property Assessments prior to the day upon which the same shall become delinquent. Property Assessments shall be considered delinquent as of the first day any interest or penalty commences to accrue thereon. Mortgagor will promptly pay all stamp, documentary, recordation, transfer and intangible taxes and all other taxes that may from time to time be required to be paid with respect to the Loan, the Note, this Mortgage or any of the other Loan Documents. If at any time the State of Illinois shall determine that the intangible tax paid in connection with this Mortgage is insufficient or that the documentary stamps affixed hereto are insufficient, and that additional intangible tax should be paid or that additional stamps should be affixed, then Mortgagor shall pay for the same, together with any interest or penalties imposed in connection with such determination, and Mortgagor hereby agrees to indemnify and hold Mortgagee harmless therefrom. If any such sums shall be advanced by Mortgagee, they shall bear interest, shall be paid and shall be secured as a Future Advance and as set forth in Section 7.17 hereof.

(b) Mortgagor shall at all times provide, maintain and keep in force such insurance in such amounts and against such risks on or pertaining to the Property as Mortgagee shall from time to time

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reasonably request, and in any event including:

- (i) during construction (if any), all-risks package of builder's risk insurance, including owner's, contractor's, and employer's liability insurance, workmen's compensation insurance, and physical damage insurance;
 - (ii) insurance against loss by fire, risks covered by the so-called extended coverage endorsement, and other risks as Mortgagee may reasonably require, in amounts equal to not less than one hundred percent (100%) of the full replacement value of the Property;
 - (iii) public liability insurance against bodily injury and property damage with such limits as Mortgagee may require;
 - (iv) steam boiler, machinery, and other insurance of the types and in amounts as Mortgagee may require, but in any event not less than customarily carried by persons owning or operating like properties; and
 - (v) if the Property are located in an area that has been identified by the United States Department of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 or other applicable law or regulation, flood insurance in an amount at least equal to the replacement cost of any improvements on the Property or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968 or such other applicable law or regulation, whichever is less.
- (c) All insurance policies required hereby ("*Policies*") shall:
- (i) contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the Policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against Mortgagor;
 - (ii) provide that the amount payable for any loss shall not be reduced by reason of co-insurance;
 - (iii) be issued by companies and in amounts in each company reasonably satisfactory to Mortgagee;
 - (iv) name Mortgagor and Mortgagee as insureds, as their respective interests may appear, and have attached thereto a mortgagee's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee.

(d) Mortgagor shall furnish Mortgagee with certificates of insurance in form and substance satisfactory to Mortgagee. Not less than five (5) days prior to the date the premium is due for each Policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of the premium. Not less than thirty (30) days prior to the expiration of any certificate of insurance

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required to be delivered hereunder, Mortgagor shall furnish Mortgagee with a replacement certificate and/or other evidence satisfactory to Mortgagee of the extension and continuance in force of the insurance coverage. Each Policy shall contain a provision that such policy will not be cancelled, amended or reduced in amount or scope without at least thirty (30) days' prior written notice to Mortgagee.

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

(f) Mortgagor shall give prompt Notice to Mortgagee of any Casualty or any Condemnation or threatened Condemnation. Mortgagee is authorized, at its sole and absolute option, to commence, appear in and prosecute in its own or in Mortgagor's name, any action or proceeding relating to any Condemnation or Casualty, and to make proof of loss for and to settle or compromise any Claim in connection therewith. In such case, Mortgagee shall have the right to receive all Condemnation Awards and Insurance Proceeds, and may deduct therefrom all of its Expenses. However, so long as no Event of Default has occurred and Mortgagor is diligently pursuing its rights and remedies with respect to a Claim, Mortgagee will obtain Mortgagor's written consent (which consent shall not be unreasonably withheld or delayed) before making proof of loss for or settling or compromising such Claim. Mortgagor agrees to diligently assert its rights and remedies with respect to each Claim and to promptly pursue the settlement and compromise of each Claim subject to Mortgagee's approval, which approval shall not be unreasonably withheld or delayed. If, prior to the receipt by Mortgagee of any Condemnation Award or Insurance Proceeds, the Property shall have been sold pursuant to the provisions of the Mortgage, Mortgagee shall have the right to receive such funds: (i) to the extent of any deficiency found to be due upon such sale with interest thereon (whether or not a deficiency judgment on the Mortgage shall have been sought or recovered or denied); and (ii) to the extent necessary to reimburse Mortgagee for its Expenses. If any Condemnation Awards or Insurance Proceeds are paid to Mortgagor, Mortgagor shall receive the same in trust for Mortgagee. Within ten (10) days after Mortgagor's receipt of any Condemnation Awards or Insurance Proceeds, Mortgagor shall deliver such awards or proceeds to Mortgagee in the form in which they were received, together with any endorsements or documents that may be necessary to effectively negotiate or transfer the same to Mortgagee. Mortgagor agrees to execute and deliver from time to time, upon the request of Mortgagee, such further instruments or documents as may be requested by Mortgagee to confirm the grant and assignment to Mortgagee of any Condemnation Awards or Insurance Proceeds.

(g) Net Proceeds must be utilized either for payment of the Obligations or for the restoration of the Property. Net Proceeds may be utilized for the restoration of the Property only if no Default shall exist and only if in the reasonable judgment of Mortgagee: (i) there has been no material adverse change in the financial viability of the Improvements; (ii) the Net Proceeds, together with other funds deposited with Mortgagee for that purpose, are sufficient to pay the cost of the restoration pursuant to a budget and plans and specifications approved by Mortgagee, and (iii) the restoration can be completed prior to the final maturity of the Loan and prior to the date required by any permanent loan commitment or any purchase and sale agreement or by any Lease. Otherwise, Net Proceeds shall be utilized for payment of the Obligations.

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(h) If Net Proceeds are to be utilized for the restoration of the Property, the Net Proceeds, together with any other funds deposited with Mortgagee for that purpose, must be deposited in Mortgagor's Deposit Account, which shall be an interest-bearing account, with all accrued interest to become part of Mortgagor's deposit. Mortgagor agrees that it shall include all interest and earnings on any such deposit as its income (and, if Mortgagor is a partnership or other pass-through entity, the income of its partners, members or beneficiaries, as the case may be), and shall be the owner of all funds on deposit in Mortgagor's Deposit Account for federal and applicable state and local tax purposes. Mortgagee shall have the exclusive right to manage and control all funds in Mortgagor's Deposit Account, but Mortgagee shall have no fiduciary duty with respect to such funds. Mortgagee will advance the deposited funds from time to time to Mortgagor for the payment of costs of restoration of the Property upon presentation of evidence acceptable to Mortgagee that such restoration has been completed satisfactorily and lien-free. Any account fees and charges may be deducted from the balance, if any in Mortgagor's Deposit Account. Mortgagor grants to Mortgagee a security interest in Mortgagor's Deposit Account and all funds hereafter deposited to such deposit account, and any proceeds thereof, as security for the Obligations. Such security interest shall be governed by the Uniform Commercial Code of the State, and Mortgagee shall have available to it all of the rights and remedies available to a secured party thereunder. Mortgagor's Deposit Account may be established and held in such name or names as Mortgagee shall deem appropriate, including in the name of Mortgagee. Mortgagor hereby constitutes and appoints Mortgagee and any officer or agent of Mortgagee its true and lawful attorneys-in-fact with full power of substitution to open the Mortgagor's Deposit Account and to do any and every act that Mortgagor might do on its own behalf to fulfill the terms of this Section. To the extent permitted by Law, Mortgagor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. It is understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked.

Section 4.3 Permitted Contests. Mortgagor shall not be required to pay any of the Property Assessments, or to comply with any Law, so long as Mortgagor shall in good faith, and at its cost and expense, contests the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that: (a) such proceedings operate to prevent the collection of, or other realization upon, such Property Assessments or enforcement of the Law so contested; (b) there will be no sale, forfeiture or loss of the Property during the contest; (c) Mortgagee is not subjected to any Claim as a result of such contest; and (d) Mortgagor provides assurances satisfactory to Mortgagee (including the establishment of an appropriate reserve account with Mortgagee) of its ability to pay such Property Assessments or comply with such Law in the event Mortgagor is unsuccessful in its contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and Mortgagor shall indemnify and save Mortgagee harmless against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Mortgagor shall comply with such Law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

Section 4.4 Compliance with Laws. Mortgagor will comply with and not violate, and cause to be complied with and not violated, all present and future Laws applicable to the Property and its use and operation. Mortgagor shall comply with all Laws and all orders, writs, injunctions, decrees and demands of any court or any Governmental Authority affecting Mortgagor or the Property. Mortgagor shall use all proceeds of the Loan for business purposes which are not in contravention of any Law or any Loan Document.

Section 4.5 Maintenance and Repair of the Property. Subject to the terms and conditions of any existing Leases, Mortgagor, at Mortgagor's sole expense, will: (a) keep and maintain Improvements and Accessories in good condition, working order and repair; and (b) make all necessary or appropriate

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repairs and Additions to Improvements and Accessories, so that each part of the Improvements and all of the Accessories shall at all times be in good condition and fit and proper for the respective purposes for which they were originally intended, erected, or installed.

Section 4.6 Additions to Security. All right, title and interest of Mortgagor in and to all Improvements and Additions hereafter constructed or placed on the Property and in and to any Accessories hereafter acquired shall, without any further Mortgage, conveyance, assignment or other act by Mortgagor, become subject to the Lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clauses hereof. Mortgagor agrees, however, to execute and deliver to Mortgagee such further documents as may be required by the terms of the other Loan Documents.

Section 4.7 Subrogation. To the extent permitted by Law, Mortgagee shall be subrogated, notwithstanding its release of record, to any Lien now or hereafter existing on the Property to the extent that such Lien is paid or discharged by Mortgagee whether or not from the proceeds of the Loan. This Section shall not be deemed or construed, however, to obligate Mortgagee to pay or discharge any Lien.

Section 4.8 Leases.

(a) Mortgagor shall not enter into any Lease with respect to all or any portion of the Property without the prior written consent of Mortgagee.

(b) Mortgagee shall not be obligated to perform or discharge any obligation of Mortgagor under any Lease. The assignment of Leases provided for in this Mortgage in no manner places on Mortgagee any responsibility for: (i) the control, care, management or repair of the Property; (ii) the carrying out of any of the terms and conditions of the Leases; (iii) any waste committed on the Property, or (iv) any dangerous or defective condition on the Property (whether known or unknown).

(c) No approval of any Lease by Mortgagee shall be for any purpose other than to protect Mortgagee's security and to preserve Mortgagee's rights under the Loan Documents, and no such approval shall result in a waiver of a Default or Event of Default.

(d) In addition to all other obligations under this Mortgage, Mortgagor agrees to provide Mortgagee (within 10 business days of Mortgagee's request) (i) a full, complete and updated Certificate of Leases and Rent Roll in form and substance acceptable to Mortgagee, (ii) a copy of all Leases and (iii) such evidence as Mortgagee deems reasonably necessary to show each respective tenant's payment of his/her/their obligations under such Lease.

Section 4.9 Bankruptcy. In the event the Mortgagor should seek protection under the U.S. Bankruptcy Code, or should Mortgagor be adjudicated a debtor thereunder, Mortgagor hereby consents to relief from the automatic stay pursuant to 11 USC 362(d) to allow Mortgagee to proceed to, and obtain, a final judgment of foreclosure of this Mortgage, to complete a foreclosure sale pursuant thereto, to cause the issuance of a certificate of title pursuant thereto, and to otherwise take all such actions as Mortgagee may elect in its sole discretion in pursuance of the other rights and remedies available to Mortgagee in the case of a default under this Mortgage. Mortgagor hereby waives any protection under 11 U.S.C. 362(a).

Section 4.10 Indemnification. Mortgagor agrees to indemnify Mortgagee and to hold Mortgagee harmless from and against, and to defend Mortgagee by counsel approved by Mortgagee against, any and all Claims directly or indirectly arising out of or resulting from any transaction, act, omission, event or

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circumstance in any way connected with the Property or the Loan, including any Claim arising out of or resulting from: (a) any construction activity at the Property, including any defective workmanship or materials; (b) any failure by Mortgagor to comply with the requirements of any Laws or to comply with any agreement that applies or pertains to the Property, including any agreement with a broker or "finder" in connection with the Loan or other financing of the Property; (c) any failure by Mortgagor to observe and perform any of the obligations imposed upon the landlord under the Leases; (d) any other Default or Event of Default hereunder or under any of the other Loan Documents; or (e) any assertion or allegation that Mortgagee is liable for any act or omission of Mortgagor or any other Person in connection with the ownership, financing, leasing, operation or sale of the Property; provided, however, that Mortgagor shall not be obligated to indemnify Mortgagee with respect to any Claim arising solely from the gross negligence or willful misconduct of Mortgagee. The agreements and indemnifications contained in this Section shall apply to Claims arising both before and after the repayment of the Loan and shall survive the repayment of the Loan, any foreclosure or deed, assignment or conveyance in lieu thereof and any other action by Mortgagee to enforce the rights and remedies of Mortgagee hereunder or under the other Loan Documents.

Section 4.11 Estoppel Certificates. Within ten (10) days after any request by Mortgagee or a proposed assignee or purchaser of the Loan or any interest therein, Mortgagor shall certify in writing to Mortgagee, or to such proposed assignee or purchaser, the then unpaid balance of the Loan and whether Mortgagor claims any right of defense or setoff to the payment or performance of any of the Obligations, and if Mortgagor claims any such right of defense or setoff, Mortgagor shall give a detailed written description of such claimed right.

Section 4.12 Taxes; Tax Receipts. Mortgagor shall pay and discharge all Taxes prior to the date on which penalties are attached thereto unless and to the extent only that such Taxes are contested in accordance with the terms of the Mortgage. If Mortgagor fails, following demand, to provide Mortgagee the tax receipts required under the Mortgage, without limiting any other remedies available to Mortgagee, Mortgagee may, at Mortgagor's sole expense, obtain and enter into a tax services contract with respect to the Property with a tax reporting agency satisfactory to Mortgagee.

Section 4.13 Mortgagee's Rights to Pay and Perform. If, after any required notice, Mortgagor fails to promptly pay or perform any of the Obligations within any applicable grace or cure periods, Mortgagee, without Notice to or demand upon Mortgagor, and without waiving or releasing any Obligation or Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor. Mortgagee may enter upon the Property for that purpose and take all action thereon as Mortgagee considers necessary or appropriate.

Section 4.14 Reimbursement; Interest. If Mortgagee shall incur any Expenses or pay any Claims by reason of Mortgagor's failure to promptly pay or perform any of the Obligations within any applicable grace or cure periods, Mortgagee's payment of such Expenses and Claims shall constitute advances to Mortgagor which shall be paid by Mortgagor to Mortgagee on demand, together with interest thereon from the date incurred until paid in full at the rate of interest then applicable to the Loan under the terms of the Note. Each advance shall be secured by the Mortgage and the other Loan Documents as fully as if made to Mortgagor, regardless of the disposition thereof by the party or parties to whom such advance is made. Notwithstanding the foregoing, however, in any action or proceeding to foreclose the Mortgage or to recover or collect the Obligations, the provisions of Law governing the recovery of costs, disbursements and allowances shall prevail unaffected by this Section.

Section 4.15 Notification by Mortgagor. Mortgagor will promptly give Notice to Mortgagee whenever Mortgagor has knowledge of the occurrence of any Default or Event of Default hereunder or under any of the other Loan Documents. Mortgagor will also promptly give Notice to Mortgagee of any

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claim of a default by Mortgagor, or any claim by Mortgagor of a default by any other party, under any property management contract or any Lease.

Section 4.16 Appraisals/Property Condition Assessment Report. Mortgagee may obtain, in connection with the closing of the Loan, and at any time thereafter: (a) following the occurrence of an Event of Default; or (b) Mortgagee has a good faith belief that the market conditions of the Property have been materially and adversely affected; or (c) when required by any regulatory body having jurisdiction over Mortgagee (and which requirement is not due to the Mortgagee's insolvency): (i) an appraisal of all or any part of the Property, prepared in accordance with written instructions from Mortgagee, from a third-party appraiser satisfactory to, and engaged directly by, Mortgagee; and (ii) a property condition assessment report for all or any part of the Property, prepared in accordance with written instructions from Mortgagee, from a third-party consultant satisfactory to, and engaged directly by Mortgagee. The reasonable cost of each such appraisal and each such property condition assessment report obtained by Mortgagee in accordance with the foregoing shall be borne by Mortgagor and shall be paid by Mortgagor on demand.

Article V

Negative Covenants and Agreements

Section 5.1 Encumbrances. Subject to the terms and conditions of any existing Leases, Mortgagor will not permit any of the Property to become subject to any Encumbrance other than the Permitted Encumbrances. Within thirty (30) days after the filing of any mechanic's lien or other Lien or Encumbrance against the Property, Mortgagor will promptly discharge the same by payment or filing a bond or otherwise as permitted by Law. So long as Mortgagee's security has been protected by the filing of a bond or otherwise in a manner satisfactory to Mortgagee in its sole and absolute discretion, Mortgagor shall have the right to contest in good faith any Claim, Lien or Encumbrance, provided that Mortgagor does so diligently and without prejudice to Mortgagee or delay in completing construction of the Improvements. Mortgagor shall give Mortgagee Notice of any default under any Lien and Notice of any foreclosure or threat of foreclosure with respect to any of the Property.

Section 5.2 Transfer of the Property. Mortgagor will not Transfer, or contract to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for certain Transfers of the Accessories expressly permitted in this Mortgage. The Transfer of any equity interest in Mortgagor shall be deemed to be a prohibited Transfer of the Property.

Section 5.3 Removal, Demolition or Alteration of Accessories and Improvement. Except to the extent permitted by the following sentence, no Improvements or Accessories shall be removed, demolished or materially altered by Mortgagor without the prior written consent of Mortgagee. Mortgagor may remove and dispose of, free from the Lien of this Mortgage, such Accessories as from time to time become worn out or obsolete, provided that, either: (a) at the time of, or prior to, such removal, any such Accessories are replaced with other Accessories which are free from Liens other than Permitted Encumbrances and have a value at least equal to that of the replaced Accessories (and by such removal and replacement Mortgagor shall be deemed to have subjected such Accessories to the Lien of this Mortgage); or (b) so long as a prepayment may be made without the imposition of any premium pursuant to the Note, such Accessories are sold at fair market value for cash and the net cash proceeds received from such disposition are paid over promptly to Mortgagee to be applied to the prepayment of the principal of the Loan.

Section 5.4 Additional Improvements. Mortgagor will not construct any Improvements other than those presently on the Land without the prior written consent of Mortgagee. Mortgagor will complete and pay for, within a reasonable time, any Improvements which Mortgagor is permitted to construct on the

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Land. Mortgagor will construct and erect any permitted Improvements: (a) strictly in accordance with all applicable Laws and any private restrictive covenants; (b) entirely on lots or parcels of the Land; (c) so as not to encroach upon any easement or right of way or upon the land of others; and (d) wholly within any building restriction and setback lines applicable to the Land.

Section 5.5 Restrictive Covenants, Zoning, etc. Without the prior written consent of Mortgagee, Mortgagor will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Property. Mortgagor: (a) will promptly perform and observe, and cause to be performed and observed, all of the terms and conditions of all agreements affecting the Property; and (b) will do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

Article VI **Events of Default**

The occurrence or happening, from time to time, of any one or more of the following shall constitute an Event of Default under this Mortgage:

Section 6.1 Payment Obligations. Mortgagor fails to pay any of the Obligations when due, whether on the scheduled due date or upon acceleration, maturity or otherwise.

Section 6.2 Default Under Other Loan Documents. An Event of Default (as defined therein) occurs under the Note or the Mortgage or any other Loan Document, or Mortgagor or Guarantor fails to promptly pay, perform, observe or comply with any term, obligation or agreement contained in any of the Loan Documents (within any applicable grace or cure period).

Section 6.3 Other Obligations. Mortgagor fails to promptly perform or comply with any of the Obligations set forth in this Mortgage (other than those expressly described in other Sections of this **Article VI**), and such failure continues uncured for a period of thirty (30) days after Notice from Mortgagee to Mortgagor, unless: (a) such failure, by its nature, is not capable of being cured within such period; and (b) within such period, Mortgagor commences to cure such failure and thereafter diligently prosecutes the cure thereof; and (c) Mortgagor causes such failure to be cured no later than ninety (90) days after the date of such Notice from Mortgagee.

Section 6.4 Accuracy of Information; Representations and Warranties. Any information contained in any financial statement, schedule, report or any other document delivered by Mortgagor, any Guarantor or any other Person to Mortgagee in connection with the Loan proves at any time not to be in all material respects true and accurate, or Mortgagor, any Guarantor or any other Person shall have failed to state any material fact or any fact necessary to make such information not misleading, or any representation or warranty contained in this Mortgage or in any other Loan Document or other document, certificate or opinion delivered to Mortgagee in connection with the Loan, proves at any time to be incorrect or misleading in any material respect either on the date when made or on the date when reaffirmed pursuant to the terms of this Mortgage.

Section 6.5 Deposits. Mortgagor fails to deposit funds with Mortgagee, in the amount requested by Mortgagee, pursuant to the provisions of **Section 4.2(h)**, within ten (10) days from the effective date of a Notice from Mortgagee requesting such deposit, or Mortgagor fails to deliver to Mortgagee any Condemnation Awards or Insurance Proceeds within ten (10) days after Mortgagor's receipt thereof.

Section 6.6 Insurance Obligations. Mortgagor fails to promptly perform or comply with any of the

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covenants contained in the Loan Documents with respect to maintaining insurance.

Section 6.7 Damage to Improvements. The Improvements are substantially damaged or destroyed by fire or other casualty and Mortgagee determines that the Improvements cannot be restored in accordance with the terms and provisions of this Mortgage.

Section 6.8 Lapse of Permits or Approvals. Any permit, license, certificate or approval that Mortgagor is required to obtain with respect to any construction activities at the Property or the operation, leasing or maintenance of the Improvements or the Property lapses or ceases to be in full force and effect.

Section 6.9 Mechanic's Lien. A lien for the performance of work or the supply of materials filed against the Property, or any stop notice served on Mortgagor, any contractor of Mortgagor, or Mortgagee, remains unsatisfied or unbonded for a period of thirty (30) days after the date of filing or service.

Section 6.10 Bankruptcy. Mortgagor or any Guarantor files a bankruptcy petition or makes a general assignment for the benefit of creditors, or a bankruptcy petition is filed against Mortgagor or any Guarantor and such involuntary bankruptcy petition continues undismissed for a period of thirty (30) days after the filing thereof.

Section 6.11 Appointment of Receiver, Trustee, Liquidator. Mortgagor or any Guarantor applies for or consents in writing to the appointment of a receiver, trustee or liquidator of Mortgagor, any Guarantor, the Property, or all or substantially all of the other assets of Mortgagor or any Guarantor, or an order, judgment or decree is entered by any court of competent jurisdiction on the application of a creditor appointing a receiver, trustee or liquidator of Mortgagor, any Guarantor, the Property, or all or substantially all of the other assets of Mortgagor or any Guarantor.

Section 6.12 Inability to Pay Debts/Insolvency. Mortgagor or any Guarantor becomes unable or admits in writing its inability or fails generally to pay its debts as they become due.

Section 6.13 Judgment. A final nonappealable judgment for the payment of money is entered against Mortgagor or any Guarantor, and Mortgagor or such Guarantor fails to discharge the same, or fails to cause it to be discharged or bonded off to Mortgagee's satisfaction, within thirty (30) days from the date of the entry of such judgment.

Section 6.14 Dissolution; Change in Business Status. Unless the written consent of Mortgagee is previously obtained, all or substantially all of the business assets of Mortgagor or any Guarantor are sold, Mortgagor or any Guarantor is dissolved, or there occurs any change in the form of business entity through which Mortgagor or any Guarantor presently conducts its business or any merger or consolidation involving Mortgagor or any Guarantor.

Section 6.15 Default Under Other Indebtedness. Mortgagor or any Guarantor fails to pay any indebtedness (other than the Loan) owed by Mortgagor or such Guarantor to Mortgagee when and as due and payable (whether by acceleration or otherwise).

Section 6.16 Death; Disability. Any Guarantor dies or becomes incapacitated, unless, in the event of death, on or before the earlier of: (i) the expiration of the period for filing claims in the estate of such party; or (ii) sixty (60) days after such death, or, in the event of incapacity, within ninety (90) days after such incapacity a substitute Guarantor acceptable to Mortgagee, in its sole and absolute discretion, agrees to assume and perform the obligations of such Guarantor in connection with the Loan and the Property.

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Section 6.17 Material Adverse Change. In the reasonable opinion of Mortgagee, the prospect of payment or performance of all or any part of the Obligations has been impaired because of a material adverse change in the financial condition, results of operations, business or properties of Mortgagor, any Guarantor or any other Person liable for the payment or performance of any of the Obligations.

Section 6.18 Transfers. Mortgagor Transfers, or contracts to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for Transfers of the Accessories expressly permitted under this Mortgage). The Transfer of any equity interest in Mortgagor shall be deemed to be a prohibited Transfer of the Property constituting an Event of Default.

Section 6.19 Event of Default Under Other Loan Documents. An Event of Default (as defined therein) occurs under the Note, or Mortgagor or Guarantor fails to promptly pay, perform, observe or comply with any obligation or agreement contained in any of the other Loan Documents (within any applicable grace or cure period).

Section 6.20 Change in Zoning or Public Restriction. Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Loan Documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed.

Section 6.21 Default Under Leases. Mortgagor fails duly to perform its obligations under any Lease and such failure is not cured within the grace period, if any, provided in the Lease.

Section 6.22 Default Under Other Loan Documents. A default occurs under any other mortgage or security agreement covering the Property, including any Permitted Encumbrances.

Section 6.23 Execution; Attachment. Any execution or attachment is levied against any of the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

Article VII **Rights and Remedies**

Upon the happening of any Event of Default, Mortgagee shall have the right, in addition to any other rights or remedies available to Mortgagee under any of the Loan Documents, applicable Law, or equity to exercise any one or more of the following rights, powers or remedies:

Section 7.1 Acceleration. Mortgagee may accelerate all Obligations under the Loan Documents whereupon such Obligations shall become immediately due and payable, without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of protest, notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby expressly waived by Mortgagor).

Section 7.2 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(a) Mortgagee may demand that Mortgagor surrender the actual possession of the Property and upon such demand, Mortgagor shall forthwith surrender same to Mortgagee and, to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Property and may exclude Mortgagor and its agents and employees wholly therefrom.

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(b) If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or order conferring on Mortgagee the right to immediate possession or requiring the Mortgagor to deliver immediate possession to Mortgagee, to the entry of which judgment or decree the Mortgagor hereby specifically consents.

(c) Mortgagee may from time to time: (i) continue and complete construction of, hold, store, use, operate, manage and control the Property and conduct the business thereof; (ii) make all reasonably necessary maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional Personalty; (iii) insure or keep the Property insured; (iv) exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same; and (v) enter into agreements with others (including, without limitation, new Leases or amendments, extensions, or cancellations to existing Leases) all as Mortgagee from time to time may determine in its sole discretion. Mortgagor hereby constitutes and irrevocably appoints Mortgagee its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution, and empowers said attorney or attorneys in the name of Mortgagor, but at the option of said attorney-in-fact, to do any and all acts and execute any and all agreements that Mortgagee may deem necessary or proper to implement and perform any and all of the foregoing.

(d) The Mortgagee may, with or without taking possession of the Property as hereinabove provided, collect and receive all the Rents therefrom, including those past due as well as those accruing thereafter, and shall apply the monies so received first, to the payment of all costs and expenses (including, without limitation, costs of arbitration, reasonable attorneys' fees and expenses) incurred by Mortgagee and its agents in connection with the collection of same, whether or not in possession of the Property, and second, in such order as Mortgagee may elect, to the payment of the Obligations.

Section 7.3 Proceedings To Recover Sums Due.

(a) If any installment or part of any Obligation shall fail to be paid when due, Mortgagee shall be entitled to sue for and to recover judgment against the Mortgagor for the amount so due and unpaid together with all costs and expenses (including, without limitation, costs of arbitration, reasonable attorneys' fees and expenses) incurred by Mortgagee in connection with such proceeding, together with interest thereon at the default rate under the Note from the date incurred by Mortgagee. Any such judgment against the Mortgagor shall bear interest at the maximum rate permitted by Law. All such costs and expenses shall be secured by this Mortgage and shall be due and payable by Mortgagor immediately.

(b) If Mortgagor shall fail to pay upon the Mortgagee's demand, after acceleration as provided herein, all of the unpaid Obligations, together with all accrued interest thereon, Mortgagee shall be entitled to sue for and to recover judgment against the Mortgagor for the entire amount so due and unpaid together with all costs and expenses (including, without limitation, costs of arbitration, reasonable attorneys' fees and expenses) incurred by Mortgagee in connection with such proceeding, together with interest thereon at the default rate under the Note from the date incurred by Mortgagee. Any such judgment against the Mortgagor shall bear interest at the maximum rate permitted by Law. All such costs and expenses shall be secured by this Mortgage and shall be payable by Mortgagor immediately. Mortgagee's right under this subsection may be exercised by Mortgagee either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, including appellate proceedings.

(c) No recovery of any judgment as provided above and no attachment or levy of any execution upon any of the Property or any other property shall in any way affect the lien of this Mortgage upon the Property or any part thereof, or any lien, rights, powers, or remedies of Mortgagee hereunder,

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but such lien, rights, powers and remedies shall continue unimpaired as before.

Section 7.4 Foreclosure.

(a) Mortgagee may institute proceedings for the partial or complete foreclosure of this Mortgage and Mortgagee may, pursuant to any final judgment of foreclosure, sell the Property as an entirety or in separate lots, units, or parcels.

(b) Upon sale of the Property at any foreclosure, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or a portion of the Indebtedness. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, the costs of any structural reports, hazardous waste reports or any remediation costs related thereto; (iv) anticipated discounts upon resale of the Property as a distressed or foreclosed property; and (v) such other factors or matters that Mortgagee deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that (A) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (B) this Section does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (C) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagee and Mortgagor; and (D) Mortgagee's credit bid may be higher or lower than any appraised value of the Property.

(c) It is the intention of Mortgagee and Mortgagor that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 *et seq.*, and with respect to such Act, Mortgagor agrees and covenants that:

(d) Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee 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. If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession), or a receiver appointed pursuant to the provisions of this Mortgage, any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Mortgage, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.

(e) Wherever provision is made in this Mortgage or the Loan Documents for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under

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policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale.

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

(g) Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. The Loan is a business loan which comes within the purview of Section 205/4, paragraph (1)(l) of Chapter 815 of the Illinois Compiled Statutes, as amended.

(h) Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.

(i) In case of a foreclosure sale of all or any part of the Property, the proceeds of sale shall be applied in accordance with **Section 7.14** hereof, and the Mortgagee shall be entitled to seek a deficiency judgment against the Mortgagor to enforce payment of any and all Obligations then remaining due and unpaid, together with interest thereon, and to recover a judgment against the Mortgagor therefor, which judgment shall bear interest at the maximum rate permitted by Law.

(j) The Mortgagee is authorized to foreclose this Mortgage subject to the rights of any tenants of the Property, or Mortgagee may elect which tenants Mortgagee desires to name as parties defendant in such foreclosure and failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by the Mortgagor to be, a defense to any proceedings instituted by the Mortgagee to collect the unpaid obligations or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

Section 7.5 Receiver. Mortgagee may apply to any court of competent jurisdiction to have a receiver appointed to enter upon and take possession of the Property, collect the Rents therefrom, and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the laws of the State. The right of the appointment of such receiver shall be a matter of strict right without regard to the value or the occupancy of the Property or the solvency or insolvency of Mortgagor. The expenses, including receiver's fees, attorneys' fees, costs and agent's commission incurred pursuant to the powers herein contained, together with interest thereon at the default rate under the Note, shall be secured hereby and shall be due and payable by Mortgagor immediately without notice or demand. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash or deposits at the time held by, payable, or deliverable under the terms of this Mortgage to the Mortgagee, and the Mortgagee shall have the right to offset the unpaid Obligations against any such cash or deposits in such order as Mortgagee may elect.

Section 7.6 Remedies as to Personalty. Mortgagee may exercise any or all of its rights and remedies under the Uniform Commercial Code-Secured Transactions as adopted by the State as in effect

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from time to time; (or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable law) or other applicable law as well as all other rights and remedies possessed by Mortgagee, all of which shall be cumulative. Mortgagee is hereby authorized and empowered to enter the Property or other place where the Personalty may be located without legal process, and to take possession of the Personalty without notice or demand, which hereby are waived to the maximum extent permitted by the laws of the State. Upon demand by Mortgagee, Mortgagor shall make the Personalty available to Mortgagee at a place reasonably convenient to Mortgagee. Mortgagee may sell at one or more public or private sales and for such price as Mortgagee may deem commercially reasonable, any and all of the Personalty secured by this Mortgage, and any other security or property held by Mortgagee and Mortgagee may be the purchaser of any or all of the Personalty.

Section 7.7 Other. Mortgagee may institute and maintain any suits and proceedings as the Mortgagee may deem advisable: (i) to prevent any impairment of the Property by any acts which may be unlawful or in violation of this Mortgage; (ii) to preserve or protect its interest in the Property; and (iii) to restrain the enforcement of or compliance with any Laws that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such Laws might impair the security hereunder or be prejudicial to the Mortgagee's interest.

Section 7.8 Remedies Cumulative and Concurrent. No right, power or remedy of Mortgagee as provided in the Note, this Mortgage, the Guaranty, or the other Loan Documents is intended to be exclusive of any other right, power, or remedy of Mortgagee, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to Mortgagee now or hereafter existing at law or in equity and may be pursued separately, successively or together against Mortgagor, any Guarantor, or any endorser, co-maker, surety or guarantor of the Obligations, or the Property or any part thereof, or any one or more of them, at the sole discretion of Mortgagee. The failure of Mortgagee to exercise any such right, power or remedy shall in no event be construed as a waiver or release thereof.

Section 7.9 Waiver, Delay or Omission. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of Mortgagee to exercise any right, power or remedy shall be construed to waive any such Event of Default or to constitute acquiescence therein.

Section 7.10 Credit of Mortgagee. To the maximum extent permitted by the laws of the State, upon any sale made under or by virtue of this Article, Mortgagee may bid for and acquire the Property, or any part thereof, and in lieu of paying cash therefor may apply to the purchase price, any portion of or all of the unpaid Obligations in such order as Mortgagee may elect.

Section 7.11 Sale. Any sale or sales made under or by virtue of this Article shall operate to divest all the estate, right, title, interest, claim and demand whatsoever at law or in equity, of the Mortgagor and all Persons, except tenants pursuant to Leases and extension of any Leases existing as of the date hereof or any future Leases approved by Mortgagee, claiming by, through or under Mortgagor in and to the properties and rights so sold, whether sold to Mortgagee or to others.

Section 7.12 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of the Property by any Governmental Authority, or other judicial proceedings affecting the Mortgagor, any Guarantor, any endorser, co-maker, surety, or guarantor of the Obligations, or any of their respective properties, the Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire unpaid Obligations at the date of the institution of such proceedings, and for any additional amounts which may become due and

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payable after such date.

Section 7.13 Waiver of Redemption, Notice, Marshalling, Etc. Mortgagor hereby waives and releases, for itself and anyone claiming through, by, or under it, to the maximum extent permitted by the laws of the State:

(a) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, 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,

(b) unless specifically required herein, all notices of default, or Mortgagee's actual exercise of any option or remedy under the Loan Documents, or otherwise, and

(c) any right to have the Property marshalled.

Section 7.14 Application of Proceeds. The proceeds of any sale of all or any portion of the Property shall be applied by Mortgagee first, to the payment of receiver's fees and expenses, if any, and to the payment of all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Mortgagee, together with interest thereon at the default rate under the Note from the date so incurred, in connection with any entry, action or proceeding under this Article and, second, in such order as Mortgagee may elect, to the payment of the Obligations. Mortgagor shall be and remain liable to Mortgagee for any difference between the net proceeds of sale and the amount of the Obligations until all of the Obligations have been paid in full.

Section 7.15 Discontinuance of Proceedings. If Mortgagee shall have proceeded to enforce any right under any Loan Document and such proceedings shall have been discontinued or abandoned for any reason, then except as may be provided in any written agreement between Mortgagor and Mortgagee providing for the discontinuance or abandonment of such proceedings, Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been instituted.

Section 7.16 Mortgagee's Actions. Mortgagee may, at any time without notice to any Person and without consideration, do or refrain from doing any or all of the following actions, and neither the Mortgagor, any Guarantor, any endorser, co-maker, surety or guarantor of the Obligations, nor any other Person (hereinafter in this Section collectively referred to as the "**Obligor**") now or hereafter liable for the payment and performance of the Obligations shall be relieved from the payment and performance thereof, unless specifically released in writing by Mortgagee: (a) renew, extend or modify the terms of the Note, this Mortgage, the Guaranty and the other Loan Documents, or any of them; (b) forbear or extend the time for the payment or performance of any or all of the Obligations; (c) apply payments by any Obligor to the reduction of the unpaid Obligations in such manner, in such amounts, and at such times and in such order and priority as Mortgagee may see fit; (d) release any Obligor; (e) substitute or release in whole or in part the Property or any other collateral or any portion thereof now or hereafter held as security for the Obligations without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Mortgage upon the Property which is not released or substituted, or the validity and priority of any security interest of the Mortgagee in such other collateral which is not released or substituted; (f) subordinate the lien of this Mortgage or the lien of any other security interest in any other collateral now or hereafter held as security for the Obligations; (g) join in the execution of a plat or replat of the Land (provided, however, notwithstanding the foregoing, Mortgagee will join in such plat or replat of the Land so long as such plat or replat is acceptable to Mortgagee); (h) join in and consent to the filing of a declaration of condominium or declaration of restrictive covenants regarding all or any part of the

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Land; (i) consent to the granting of any easement on the Land; and (j) generally deal with any obligor or any other party as Mortgagee may see fit.

Section 7.17 Mortgagee Actions. Following an Event of Default in the performance of any of Mortgagor's covenants or agreements contained in this Mortgage or any other Loan Document or the violation of any term thereof, Mortgagee shall have the right (but in no event the obligation) at its option to cure the Event of Default or take any other action Mortgagee deems necessary or desirable to protect its security (including without limitation the payment of any taxes, assessments, insurance premiums, charges, liens or encumbrances required of Mortgagor under this Mortgage), without hereby waiving any rights remedies otherwise available to Mortgagee. If Mortgagee shall elect to advance at any time any sum(s) for the protection of its security or for any other reason permitted or provided by any of the terms of this Mortgage or of any other Loan Document, then such sum(s) shall be deemed Loan funds, shall be secured by this Mortgage and shall bear interest until paid at the "**Default Rate**" provided in the Note commencing on the date they are advanced by Mortgagee. If advanced by Mortgagee before the (natural or accelerated) maturity date of the Note, such sum(s) shall be due and payable by Mortgagor on such maturity date or ten (10) days after Mortgagor first learns of the advance, whichever is earlier, but if advanced after the (natural or accelerated) maturity date, such sum(s) shall be due and payable immediately. Mortgagee's lien on the Premises for such advances shall be superior to any right to title to, interest in, or claim upon all or any portion of the Premises junior to the lien of this Mortgage. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion, Mortgagor shall not file for record any notice limiting the maximum principal amount that may be secured by this Mortgage to any amount less than the limit set forth in the future advance clause.

Section 7.18 Other Remedies. Mortgagee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Mortgagor provided under the Loan Documents or by applicable Laws.

Article VIII **Miscellaneous**

Section 8.1 Rights, Powers and Remedies Cumulative. Each right, power and remedy of Mortgagee as provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by Mortgagee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Mortgagee of any or all such other rights, powers or remedies.

Section 8.2 No Waiver by Mortgagee. No course of dealing or conduct by or among Mortgagee and Mortgagor shall be effective to amend, modify or change any provisions of this Mortgage or the other Loan Documents. No failure or delay by Mortgagee to insist upon the strict performance of any term, covenant or agreement of this Mortgage or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Mortgagee from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, Mortgagee shall not be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations. Neither Mortgagor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of: (a) the failure of Mortgagee to comply with any request of Mortgagor or of any other Person to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, or (b) any agreement or stipulation

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between any subsequent owner or owners of the Property and Mortgagee, or (c) Mortgagee's extending the time of payment or modifying the terms of this Mortgage or any of the other Loan Documents without first having obtained the consent of Mortgagor or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Mortgagee may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Mortgage or any of the other Loan Documents without in any way impairing or affecting the Lien of this Mortgage or the priority of this Mortgage over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Mortgage. Mortgagee may resort to the security or collateral described in this Mortgage or any of the other Loan Documents in such order and manner as Mortgagee may elect in its sole discretion.

Section 8.3 Waivers and Agreements Regarding Remedies. To the full extent Mortgagor may do so, Mortgagor hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, exemption from civil process, extension of time for payment and notice of election to accelerate the Obligations;

(b) waives all rights to a marshalling of the assets of Mortgagor, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Property without any prior or different resort for collection, or the right of Mortgagee to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties.

Section 8.4 Successors and Assigns. All of the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the Land and shall apply to and bind the successors and assigns of Mortgagor (including any permitted subsequent owner of the Property), and inure to the benefit of Mortgagee, its successors and assigns.

Section 8.5 No Warranty by Mortgagee. By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Mortgagor or to be given to Mortgagee pursuant to this Mortgage or any of the other Loan Documents, Mortgagee shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and

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such acceptance or approval shall not constitute any warranty or representation with respect thereto by Mortgagee.

Section 8.6 Amendments. This Mortgage may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 8.7 Severability. In the event any one or more of the provisions of this Mortgage or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of the Loan Documents operates or would prospectively operate to invalidate this Mortgage or any of the other Loan Documents, then and in either of those events, at the option of Mortgagee, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 8.8 Notices. All Notices required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service or by certified United States mail, postage prepaid, addressed to the party to whom directed at the applicable address specified in the Preamble to this Mortgage (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any Notice shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a Notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Mortgage or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

Section 8.9 Joint and Several Liability. If Mortgagor consists of two (2) or more Persons, the term "Mortgagor" shall also refer to all Persons signing this Mortgage as Mortgagor, and to each of them, and all of them are jointly and severally bound, obligated and liable hereunder. Mortgagee may release, compromise, modify or settle with any of Mortgagor, in whole or in part, without impairing, lessening or affecting the obligations and liabilities of the others of Mortgagor hereunder or under the Note. Any of the acts mentioned aforesaid may be done without the approval or consent of, or notice to, any of Mortgagor.

Section 8.10 Rules of Construction. The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Mortgage in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants." The words "include" and "including" shall be interpreted as if followed by the words "without limitation." The headings of this Mortgage are for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references: (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders; (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well; (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise; (d) to the Land, Improvements, Personalty, Real Property or Property shall mean all or any portion of each of the foregoing owned by Mortgagor, respectively; and (e) to Articles or Sections are to the respective Articles or Sections contained in this Mortgage unless expressly indicated otherwise. Any term used or defined in the Uniform Commercial

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Code of the State, as in effect from time to time, which is not defined in this Mortgage shall have the meaning ascribed to that term in the Uniform Commercial Code of the State. If a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term shall have the meaning specified in Article 9.

Section 8.11 Governing Law. This Mortgage shall be construed, governed and enforced in accordance with the Laws in effect from time to time in the State.

Section 8.12 Time of Essence. It is specifically agreed that time is of the essence as to all matters provided for in this Mortgage.

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

Section 8.14 Forum. Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in the State specified in the governing law section of this Mortgage and to the jurisdiction of any state court or any United States federal court sitting in the state in which any of the Property is located, over any Dispute. Mortgagor hereby irrevocably waives, to the fullest extent permitted by Law, any objection that Mortgagor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law and to the fullest extent permitted by Law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the state specified in the governing law section of this Mortgage may be made by certified or registered mail, return receipt requested, directed to Mortgagor at its address for notice set forth in this Mortgage, or at a subsequent address of which Mortgagee received actual notice from Mortgagor in accordance with the notice section of this Mortgage, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Mortgagee to serve process in any manner permitted by Law or limit the right of Mortgagee to bring proceedings against Mortgagor in any other court or jurisdiction.

Section 8.15 WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE WAIVE TRIAL BY JURY IN RESPECT OF ANY DISPUTE AND ANY ACTION ON DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY MORTGAGOR AND MORTGAGEE, AND MORTGAGOR AND MORTGAGEE HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. MORTGAGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 8.16 Entire Agreement. The Loan Documents constitute the entire understanding and

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agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment by Mortgagee to make the Loan are merged into the Loan Documents. Except as incorporated in writing into the Loan Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed *under seal* as of the day and year first written above.

"MORTGAGOR":

Optimum International LLC,
a Wyoming limited liability company

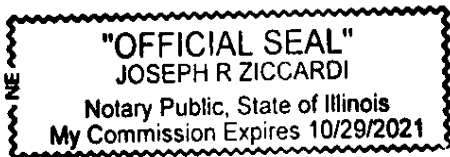
By: [Signature]
Name: Steve Raymond
Title: Member

[Space Below This Line for Acknowledgment]

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, hereby certify that STEVE RAYMOND, the above named MEMBER of OPTIMUM INTERNATIONAL LLC, a WYOMING LIMITED LIABILITY COMPANY, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such MEMBER, appeared before me this day in person and acknowledged that he/she signed and delivered the above instrument as his/her own free and voluntary act and as the free and voluntary act of the COMPANY.

Given under my hand and notarial seal this 29th day of DECEMBER, 2016.



[Signature]
Notary Public

My Commission Expires:

10/29/21

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Exhibit A

Legal Description

THE SOUTH 25 FEET OF THE NORTH 35 FEET OF LOT 24 IN BLOCK 8 IN
RESUBDIVISION OF

WASHINGTON PARK CLUB ADDITION TO CHICAGO, A SUBDIVISION OF THE SOUTH
1/2 OF THE

SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD
PRINCIPAL

MERIDIAN, IN COOK COUNTY, ILLINOIS.

APN: 20-15-420-007-0000