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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Report Mortgage Fraud

844-768-1713

*89 96117 and 4008*



\*1806118058\*

Doc# 1806118058 Fee \$82.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 03/02/2018 02:07 PM PG: 1 OF 23

The property identified as: **PIN:** 19-18-315-035-0000

**Address:**

**Street:** 6226 S. Oak Park Avenue

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60638

**Lender:** The Huntington National Bank

**Borrower:** Axiom 3, LLC

**Loan / Mortgage Amount:** \$18,872,256.90

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.

*Box 400*

**Certificate number:** DD5F03D7-0F47-4FF1-8914-F7EFD89693A5

**Execution date:** 2/22/2018

*JA*

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This instrument prepared by and after  
recording should be returned to:

Thompson Coburn LLP  
55 East Monroe Street  
37th Floor  
Chicago, Illinois 60603  
Attention: Victor A. Des Laurier, Esq.

PINs: 19-18-315-035-0000

Common Address: 6226 S. Oak Park Avenue  
Chicago, Illinois 60638

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**MORTGAGE AND SECURITY AGREEMENT**

This Mortgage and Security Agreement (this "Mortgage") is executed and delivered as of February 22, 2018, by Axiom 3, LLC, an Illinois limited liability company (the "Mortgagor"), to The Huntington National Bank (as successor by merger to FirstMerit Bank, N.A.) ("Lender").

**WITNESSETH:**

**WHEREAS**, contemporaneously herewith, Lender is providing certain loans, extensions of credit and other financial accommodations (the "Financial Accommodations") to Mortgagor, Axiom Resources, L.L.C., an Illinois limited liability company ("Axiom LLC"), Steelhead Corp., an Illinois corporation ("Steelhead"), Encore Rail Systems, Inc., an Illinois corporation ("Encore"), Ramptech Inc., an Illinois corporation ("Ramptech"), Metropolitan Air Technology, LLC, an Illinois limited liability company ("Metropolitan"), Axiom Equipment Co., an Illinois corporation ("AEC"), Railway Program Services, Inc., an Illinois corporation ("RPSI"), Holden Sales & Service, LLC, an Illinois limited liability company ("Holden Sales"), Holden America IL, LLC, an Illinois limited liability company ("Holden Acquisition") (Axiom LLC, Steelhead, Encore, Ramptech, Metropolitan, AEC, RPSI, Holden Sales and Holden Acquisition are each individually an "Original Borrower" and collectively the "Original Borrowers"), Axiom Management, LLC, an Illinois limited liability company ("Axiom Management") (Mortgagor, Original Borrowers and Axiom Management are each individually a "Borrower" and collectively the "Borrowers"), pursuant to (i) that certain Loan and Security Agreement dated as of November 6, 2014, as amended by that certain First Amendment to Loan and Security Agreement dated as of March 30, 2016, that certain Second Amendment to Loan and Security Agreement dated as of October 31, 2016, that certain Third Amendment to Loan and Security Agreement dated as of June 30, 2017, and that certain Fourth Amendment to Loan and Security Agreement dated as of October 31, 2017, each by and among Lender and Original Borrowers, as further amended by that certain Fifth Amendment to Loan and Security Agreement of even date herewith, by and among Lender and Borrowers, as may be further amended, renewed or restated from time to time (collectively, the "Loan Agreement"), (ii) that certain Revolving Note of even date herewith executed and delivered by Borrowers to Lender in a maximum aggregate principal amount not to exceed Three Million and no/100 Dollars (\$3,000,000.00) (as amended or restated from time to time, the "Revolving Note"), (iii) that certain Term Note B of even date herewith executed and delivered by Borrowers to Lender in the principal amount of Thirteen Million Six Hundred Fifty-Two Thousand Two

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Hundred Fifty-Six and 90/100 Dollars (\$13,652,256.90) (as amended or restated from time to time, "Term Note B"), (iv) that certain Mortgage and Security Agreement dated as of November 6, 2014, executed and delivered by Axiom LLC to Lender and recorded with the Cook County Recorder of Deeds on November 19, 2014 as document No. 1432333025 (as amended or restated from time to time, the "6235 Mortgage"), (v) that certain Mortgage Note A dated as of November 6, 2014, executed and delivered by Axiom LLC to Lender in the principal amount of Seven Hundred Thousand and no/100 Dollars (\$700,000.00) (as amended or restated from time to time, "Mortgage Note A"), (vi) that certain Mortgage Note B of even date herewith executed and delivered by Mortgagor to Lender in the principal amount of One Million Five Hundred Twenty Thousand and no/100 Dollars (\$1,520,000.00) (as amended or restated from time to time, "Mortgage Note B"), and (vii) the other agreements, documents and instruments executed and delivered in connection with the foregoing. Capitalized terms used but not otherwise defined herein are used herein as defined in the Loan Agreement;

WHEREAS, some of the Financial Accommodations may bear interest at a variable rate; and

WHEREAS, pursuant to the Loan Agreement, Mortgagor is required to execute and deliver this Mortgage to Lender.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and understandings of the parties hereto set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor hereby covenants unto and agrees with Lender as set forth in this Mortgage.

## 1. DEFINITIONS AND TERMS/RECITALS

1.1 The recitals set forth above are hereby incorporated herein and made a part of this Mortgage.

1.2 The following words, terms or phrases shall have the meanings set forth below:

**"Assignment of Rents"**: shall mean that certain Assignment of Rents and Lessor's Interest in Leases of even date herewith executed and delivered by Mortgagor to Lender, as amended, renewed or replaced from time to time.

**"Charges"**: shall mean all national, federal, state, county, city, municipal or other governmental (including, without limitation, any instrumentality, division, agency, body or department thereof) taxes, levies, assessments, charges, water charges, sewer service charges, liens, claims or encumbrances upon or relating to the Mortgaged Property, the Liabilities or the Covenants.

**"Covenants"**: shall mean all now existing or hereafter arising covenants, duties, obligations and agreements of Borrowers or any Borrower to and with Lender, whether pursuant to this Mortgage, the other Loan Documents or otherwise.

**"Default Rate"**: shall have the meaning ascribed to such term in the Loan Agreement.

**"Documents"**: shall mean any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, promissory note, security agreement, guaranty, financing statement, assignment of insurance, loss payable clause, mortgage title insurance policy, letter of opinion, waiver letter, estoppel letter, consent letter, non-offset letter, insurance certificate, appraisal, survey and any other similar agreements, instruments or documents.

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**“Encumbrances”**: shall mean all liens, security interests, liabilities, claims, debts, exceptions, easements, restrictions, Charges and any other types of encumbrances.

**“Environmental Indemnity Agreement”**: shall mean that certain Environmental Indemnity Agreement of even date herewith executed and delivered by Borrowers and Guarantor to Lender, as amended, renewed or replaced from time to time.

**“Equipment”**: shall mean all now existing or owned and hereafter arising or acquired apparatus, machinery, equipment, furniture, fixtures and other articles of personal property of any and every kind and nature whatsoever, required for use in, on, or in connection with the Premises or the management, maintenance, operation or business thereof and all replacements thereof, substitutions therefor and accessions thereto, including, without limitation, any such item now or at any time or times hereafter situated on the Premises and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, and all other related or other such services.

**“Event of Default”**: shall mean the definition ascribed to this term in Paragraph 6.1 below.

**“Leases”**: shall mean all present and future leases, agreements, tenancies, licenses and franchises of or relating to the Premises, the Mortgaged Property or the Equipment, or in any way, manner or respect required, existing, used or useable in connection with the Premises, the Mortgaged Property or the Equipment, or the management, maintenance, operation or business thereof, and all deposits of money as advance rent or for security under any or all of the Leases and all guarantees of any lessee’s performances thereunder.

**“Lender’s Lien”**: shall have the meaning ascribed to such term in Section 2.3 below.

**“Liabilities”**: shall mean any and all debts, claims, obligations, Rate Management Obligations, Bank Product Obligations, demands, monies, liabilities, covenants or indebtedness of any and every kind or nature heretofore, now or hereafter owing, arising, due or payable from the Borrowers and/or any Borrower to Lender, however evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, indirect, absolute, contingent, fixed, determinable, undeterminable, insured and uninsured, whether pursuant to the terms and provisions of the Loan Agreement, this Mortgage, the 6235 Mortgage, the Revolving Note, Term Note A, Term Note B, Mortgage Note A, Mortgage Note B and any of the other Loan Documents or otherwise. Notwithstanding the foregoing, Liabilities shall not include the obligations of the parties pursuant to the Environmental Indemnity Agreement.

**“Mortgaged Property”**: shall mean (1) the Premises; (2) the Rents; (3) the Leases; (4) the Equipment; (5) all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking of the Premises, the Equipment or the Leases, or any part thereof, whether under the power of eminent domain or otherwise, or for any damage, whether caused by such taking or otherwise thereto; (6) all present and future insurance policies in force or effect insuring the Premises, the Rents, the Leases or the Equipment; and (7) all proceeds of each and every of the foregoing.

**“Person”**: shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government, whether national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof.

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**“Premises”**: shall mean all of the real property, and all of Mortgagor’s estate, right, title and interest therein, situated, lying and being in the City of Chicago, County of Cook, State of Illinois, legally described on Exhibit “A” and commonly known as 6226 S. Oak Park Avenue, Chicago, Illinois 60638, together with all buildings, improvements, tenements, easements, hereditaments and appurtenances now or at any time or times hereafter upon, belonging or otherwise appertaining to or situated on said real estate and all heretofore or hereafter acquired roads, alleys, streets and other public ways abutting said real estate.

**“Rate Management Agreement”**: shall mean any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices.

**“Rate Management Obligation”**: shall mean, with respect to any Person, any liability of such Person under any Rate Management Agreement.

**“Rents”**: shall mean all present and future rents, issues, deposits, income, profits and proceeds of, from or relating to the Premises, the Leases or the Equipment.

## 2. LOANS, CONVEYANCE AND INTEREST RATES

2.1 To secure the full and timely payment and performance by Borrowers of the Liabilities and the Covenants, Mortgagor hereby does warrant, grant, give, bargain, confirm, assign, pledge, set over, transfer, sell, convey, remise, release and otherwise mortgage to Lender, its successors and assigns, the Mortgaged Property, whether real, personal or mixed. Notwithstanding anything contained herein to the contrary, the Liabilities secured hereunder shall in no event exceed Thirty Seven Million Six Hundred Fifty-Two Thousand Two Hundred Sixty and no/100 Dollars (\$37,652,260.00).

2.2 This Mortgage shall operate as and constitute a Security Agreement with respect to that portion of the Mortgaged Property constituting property or interests in property, whether real or personal, tangible or intangible, which are subject to the Uniform Commercial Code with respect to the priority and perfection of security interests or any similar law, statute, code or other governing body of law. Therefore, to secure the full and timely payment and performance by Borrowers of the Liabilities and the Covenants, including, without limitation, the Liabilities evidenced by this Mortgage and the other Loan Documents, Mortgagor hereby grants to Lender a security interest and lien in and to the Mortgaged Property.

2.3 Upon request by Lender, at Mortgagor’s sole cost and expense, Mortgagor will promptly make, execute and deliver or will cause to be made, executed and delivered to or for the benefit of Lender, in form and substance acceptable to Lender, all Documents necessary or appropriate to evidence, document or conclude the transactions described in or contemplated by this Mortgage and the other Loan Documents, or required to perfect or continue perfected the first position priority mortgage lien and security interest granted herein or in the other Loan Documents by Mortgagor to Lender upon the Mortgaged Property (collectively the “Lender’s Lien”).

2.4 Interest on the Liabilities shall be computed for the actual number of days elapsed on the basis of a three hundred sixty (360) day year.

2.5 Notwithstanding the foregoing, the Mortgaged Property shall not be deemed to secure any Rate Management Obligations of any Borrower owing to any Lender if Mortgagor is not an “Eligible Contract Participant” as defined in §1(a)(18) of the Commodity Exchange Act and the applicable rules issued by the Commodity Futures Trading Commission and/or the Securities and Exchange Commission (collectively, and as

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now or hereafter in effect, "the ECP Rules") to the extent that the providing of such security in the Mortgaged Property would violate the ECP Rules or any other applicable law or regulation.

### 3. REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Mortgagor represents, warrants and covenants unto Lender as follows:

(A) Mortgagor will fully and timely pay or cause to be paid, when due or declared due, the Liabilities, and will fully and timely perform, discharge, observe and comply with, or cause to be fully and timely performed, discharged, observed and complied with, each and every of the Covenants.

(B) Mortgagor now and at all times hereafter shall perform all of the transactions described in or contemplated by this Mortgage and the other Loan Documents.

(C) The execution, delivery and performance by Mortgagor of and under this Mortgage and the other Loan Documents (i) does not and will not constitute a violation of any applicable law, and (ii) does not and will not conflict with or result in a default or breach of or under any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, note, judgment, order, award, decree or other restriction to which Mortgagor now is or hereafter shall become a party or by which any of them or any of the Mortgaged Property is or hereafter shall become bound.

(D) Mortgagor shall timely file all federal, state and other governmental tax and similar returns which Mortgagor is required by law to file with respect to the Mortgaged Property and the operation and business thereof. All taxes and other sums which are shown to be payable under such returns have been and shall be fully and timely paid and Mortgagor shall maintain adequate reserves in an amount to pay fully all such liabilities which hereafter may accrue.

(E) All of the Leases are and shall remain genuine, in all respects what they purport to be, free of set-offs, counterclaims or disputes and are valid and enforceable in accordance with their terms. All parties to the Leases have and shall have the capacity to contract thereunder. Except for security deposits provided for under the Leases as indicated by Mortgagor to Lender in writing, no advance payments have been or shall be made thereunder.

(F) There is no litigation, action, claim or proceeding pending or threatened which might, in any way, manner or respect, adversely affect the Mortgaged Property, the operation of the business thereof, Lender's Lien, the collectibility or the ability of Mortgagor to repay or cause to be repaid the Liabilities or the financial condition of Mortgagor or the operation or business thereof.

(G) Mortgagor possesses and holds and shall maintain adequate properties, interests in properties, leases, licenses, franchises, rights and other permits, certificates, consents and approvals to conduct and operate the business of the Mortgaged Property. None of the foregoing contain or shall contain any term or condition that is burdensome to said business or different than those customarily possessed or held by other Persons conducting or operating a similar business.

(H) The location, existence and use of the Premises and the Equipment are and shall remain in compliance with all applicable laws, rules, ordinances and regulations, including, without limitation, building and zoning laws, and all covenants and restrictions of record.

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(I) Mortgagor is in peaceful possession of and will forever warrant and defend the Mortgaged Property from and against any and all claims and Encumbrances thereon or thereto.

(J) The Mortgaged Property is not being used, and shall not be used, for any purpose in violation of any applicable environmental, hazardous waste and substances, health or safety laws, rules or regulations, including, but not limited to, the Resource Conservation and Recovery Act, as amended ("RCRA"), the Toxic Substances Control Act, as amended ("TSCA"), the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Clean Air Act, as amended ("CAA"), and the Clean Water Act, as amended ("CWA"), regulations thereunder and corresponding state statutes and regulations. Mortgagor has all required permits, certificates, consents and approvals required under any applicable environmental, health or safety laws, rules or regulations. Mortgagor is and shall remain in compliance with all applicable environmental, health and safety laws, rules or regulations in connection with the use of the Mortgaged Property.

(K) All hazardous waste accumulations at the Mortgaged Property shall be in tanks or containers, as defined in 40 C.F.R. 260.10, and shall be in compliance with applicable United States Environmental Protection Agency and State of Illinois small quantity generator limitations under RCRA, regulations thereunder and corresponding Illinois statutes and regulations.

(L) There are no underground or above ground storage tanks on the Premises.

(M) No burial, disposal or landfilling of hazardous waste or hazardous substances, regulated substances or other pollutants (as such are defined in RCRA, TSCA, CERCLA, CAA or CWA) will be carried on at the Mortgaged Property. No surface impoundment, lagoon, or other earthen device for the purposes of treatment, storage or disposal of hazardous wastes and hazardous substances shall be used on the Premises by any Person.

(N) Neither Mortgagor nor any tenant of the Premises shall use, release or cause to be used or released asbestos as defined by 29 C.F.R. 1910.1001(a). Any repairs, maintenance or modifications to the Mortgaged Property which may result in release of asbestos shall be performed by or under the supervision of personnel appropriately accredited by the State of Illinois or the United States Environmental Protection Agency.

(O) Mortgagor shall immediately provide Lender a copy of any administrative, civil or criminal complaint received by Mortgagor alleging (i) violations of environmental, health and safety statutes, ordinances or regulations, or (ii) bodily injury or property damage arising from Mortgagor's operations or Mortgagor's ownership of the Mortgaged Property.

(P) There are no past due assessments in connection with the Mortgaged Property nor any assessment liens arising from the non-payment of any such assessments.

### 3.2 Mortgagor further represents, warrants and covenants unto Lender as follows:

(A) Mortgagor is lawfully seized, possessed and the owner of and has good and indefeasible, marketable fee-simple title to the Mortgaged Property, free and clear of all Encumbrances, except for Lender's Lien and those Encumbrances described on Exhibit "B" to this Mortgage (collectively the "Permitted Encumbrances").

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(B) Mortgagor will (i) not materially change the use or character of or abandon the Mortgaged Property, except as approved by Lender in writing, (ii) keep the Mortgaged Property in good condition and repair, and (iii) not commit or suffer waste and will make all necessary repairs, replacements and renewals, including, but not limited to, the replacement of any items of the Equipment to the Mortgaged Property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. Mortgagor shall not remove any trade fixture or demolish any building or improvement located in or on the Premises without Lender's prior written consent. Mortgagor shall (A) pay for and promptly complete any building or improvement at any time in the process of erection upon the Premises, (B) refrain from impairing or diminishing the value of the Mortgaged Property, and (C) make no material alterations to the Mortgaged Property. Subject to the provisions of subparagraphs 4.3 and 4.5(A) of this Mortgage, if Lender elects to make all or a portion of any insurance, eminent domain or condemnation proceeds available to Mortgagor, Mortgagor shall promptly repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or destroyed. Mortgagor shall comply with all laws and municipal ordinances governing the Mortgaged Property and the use thereof. At all times during the term of this Mortgage and the other Loan Documents, Mortgagor shall permit Lender, and its agents, access to inspect the Mortgaged Property.

(C) Mortgagor shall fully and timely pay and discharge or cause to be paid and discharged, as and when due and payable, all Charges that may be at any time levied, assessed or imposed upon or against the Mortgaged Property, or any part thereof. Mortgagor shall, immediately upon Lender's request, deliver to Lender receipts evidencing payment thereof or partial payment thereof, if payable in installments, at least thirty (30) days before delinquency; provided, however, that Mortgagor shall have the right to contest in good faith, by an appropriate proceeding properly initiated and diligently conducted, the validity, amount or imposition of any Charges, and upon such good faith contest, to delay or refuse payment thereof, if (i) Mortgagor establishes with Lender, adequate reserves to cover such contested Charges, and (ii) either such contest will not affect the priority or value of Lender's Lien on the Mortgaged Property or Mortgagor otherwise takes steps acceptable to Lender in its sole discretion to protect the priority and value of Lender's Lien on the Mortgaged Property. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage, Mortgagor will pay for the same, together with any interest or penalties imposed in connection therewith.

(D) Except for Lender's Lien and the Permitted Encumbrances, Mortgagor shall keep the Mortgaged Property free and clear of all Encumbrances of any and every kind and nature including, without limitation, mechanics' liens and other similar liens or claims for liens. Mortgagor shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become, or be secured by, an Encumbrance and, immediately upon request by Lender, shall deliver to Lender evidence satisfactory to Lender of the payment and discharge thereof. If, in accordance with the terms of this Mortgage, Lender makes payment of any such Encumbrance, Lender shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrance may be released of record.

(E) Mortgagor shall not, at any time or times hereafter, pledge, hypothecate, encumber, sell, permit or otherwise transfer all or any portion of the Mortgaged Property or Mortgagor's interest therein.

(F) All present and future items of fixtures, equipment, furnishings or other tangible personal property, whether or not constituting a part of the Mortgaged Property, related, necessary to or used or useable in connection with any present or future building or improvement on the Premises, or the operation or business thereof, are and will be owned free and clear of all Encumbrances, except for Lender's Lien and the Permitted Encumbrances, and Mortgagor will not acquire any such property subject to any Encumbrance, except for Lender's Lien and the Permitted Encumbrances.



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3.3 If Mortgagor fails to (A) keep the Mortgaged Property in good operating condition and repair or to replace or maintain the same as herein agreed, (B) pay the premiums for the insurance which is required to be maintained hereunder, or (C) pay and discharge all Encumbrances as herein agreed, or upon an Event of Default, Lender, in its sole discretion, may cause such repairs or replacements to be made, obtain such insurance or pay and discharge such Encumbrances. Any amounts paid by Lender in taking such action together with interest thereon at the Default Rate shall be due and payable by Mortgagor to Lender upon demand, and, until paid, shall constitute a part of the Liabilities secured by this Mortgage and the other Loan Documents. Notwithstanding the foregoing, such advances by Lender shall not be deemed to relieve Mortgagor from any Event of Default hereunder or impair any of Lender's rights or remedies. The exercise of the right to take such action shall be optional with Lender and not obligatory upon Lender, and in no event whatsoever, shall Lender be liable to Mortgagor for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, Lender may rely upon any bills delivered to it by Mortgagor or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

3.4 Mortgagor hereby represents and warrants that all of the Leases set forth on Exhibit "C" attached hereto have been fully executed by the parties thereto and are fully enforceable in accordance with the terms thereof.

3.5 Mortgagor covenants unto Lender that it will deliver to Lender such information, financial or otherwise, as Lender requests from time to time, which information shall be in form and substance acceptable to Lender.

## 4. TAXES, INSURANCE AND CONDEMNATION

4.1 Mortgagor represents, warrants and covenants unto Lender as follows:

(A) Mortgagor, at all times, shall keep and maintain, or cause to be kept and maintained, the Mortgaged Property fully insured, without co-insurance, against loss or damage by, or abatement of rental income resulting from, fire and such other hazards, casualties and contingencies as Lender from time to time may require with insurance companies, and in form, amounts and for such periods as are satisfactory to Lender, but, in any event, for not less than the full replacement cost of the Mortgaged Property. All such policies and renewals thereof shall contain, in form and substance acceptable to Lender, standard mortgagee loss payable clauses naming Lender as a loss payee and additional insured, together with a standard waiver of subrogation endorsement and shall be delivered to Lender, with premiums therefor paid in full by Mortgagor. All policies shall provide that the insurer may not cancel same without thirty (30) days prior written notice to Lender, unless such cancellation is for non-payment of premiums, in which case, the insurer shall give Lender ten (10) days prior written notice. Mortgagor will provide immediate written notice to Lender of any loss or damage to the Mortgaged Property caused by any casualty. In case of insurance policies about to expire, Mortgagor will, upon Lender's request, deliver to and deposit with Lender renewal policies not less than thirty (30) days prior to the respective dates of expiration and receipts for the payment of the premiums on all policies and renewals thereof. In the event of a deed in lieu of foreclosure or other foreclosure of title to the Mortgaged Property, all right, title and interest of Mortgagor in and to any policies then in force shall pass to the purchaser, grantee or assignee.

4.2 Mortgagor hereby authorizes Lender:

- (A) to settle and compromise all claims under all insurance policies;
- (B) to demand and receive all monies becoming due or payable under all insurance policies;

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(C) to execute, in the name of Mortgagor or the name of Lender, any proofs of loss, notices or other instruments in connection with all claims under all policies; and

(D) to assign all policies to any holder of the Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure or other transfer of title to the Mortgaged Property.

4.3 In the event of payment under any of the policies, Mortgagor acknowledges and agrees that the proceeds of any of the insurance policies shall be paid by the insurer to Lender and Lender may, in its sole discretion, in whole or in part after deducting all costs of collection, including attorneys' fees, do any one or more of the following:

(A) make available to Mortgagor all or a portion of such proceeds necessary to replace, reconstruct, repair or restore the Mortgaged Property or any portion thereof;

(B) apply all or a portion of such proceeds as payment on account of the Liabilities, whether or not then due and payable without affecting the amount or time of subsequent payments required to be made by Mortgagor to Lender whether pursuant to the other Loan Documents or otherwise;

(C) apply such proceeds, in whole or in part, to satisfy, perform or discharge any of the Covenants;

(D) require that Mortgagor continue paying or cause to be paid the Liabilities as and when due and payable notwithstanding any loss of use of all or any part of the Mortgaged Property; and/or

(E) if, prior to the receipt by Lender of proceeds of such policies, the Mortgaged Property shall have been transferred pursuant to a deed in lieu of foreclosure or otherwise sold or transferred by foreclosure of this Mortgage, receive proceeds of such policies to the extent of any deficiency with interest thereon at the Default Rate, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and the attorneys' fees, costs, expenses and disbursements incurred by Lender in connection with the collection of the proceeds of such policies.

4.4 Mortgagor further represents, warrants and covenants unto Lender as follows:

(A) Upon request by Lender, Mortgagor shall make monthly deposits to Lender in an amount equal to one-twelfth (1/12th) of one hundred fifteen percent (115%) of that portion of the total annual Charges arising with respect to the Mortgaged Property for the most recent ascertainable tax year. Provided that no Event of Default then exists, and no event which with notice, lapse of time or both would become an Event of Default, Lender shall pay when and to whom due and payable under applicable law, all of the aforesaid Charges from the monies deposited pursuant to this Paragraph 4.4(A). Notwithstanding the foregoing, Lender does not assume any of Mortgagor's obligations under said laws to make such payments and nothing contained in this Mortgage or the other Loan Documents shall require Lender to perform any such obligations of Mortgagor. Upon the occurrence of an Event of Default under this Mortgage, Lender shall not be obligated to make such payments, but, at its sole election and in its discretion, may make any or all such payments or apply such deposits to the Liabilities.

(B) If the monies deposited pursuant to Section 4.4(A) above are insufficient to pay the Charges for which they are provided, thirty (30) days before such Charges shall become due and payable, Mortgagor shall deposit with Lender such additional monies as are necessary to pay, in full, such Charges.

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(C) Upon request by Lender, Mortgagor shall establish with Lender an insurance escrow for deposit of funds for the payment of insurance premiums for all insurance policies required to be obtained and maintained by Mortgagor, whether pursuant to this Mortgage, the other Loan Documents or otherwise. Such insurance escrow shall be in such amount as is satisfactory to satisfy the required premiums under such policies as reasonably estimated by Lender, and shall be subject to such other terms and conditions as Lender, in its sole and absolute discretion, may determine.

4.5 Mortgagor further represents, warrants and covenants unto Lender as follows:

(A) All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Mortgagor in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority, including, without limitation, any award for taking of title, possession, right of access to a public way or for any change of grade of streets affecting the Mortgaged Property, hereby are assigned to Lender as additional security for the full and timely payment and performance by Borrowers of the Liabilities and the Covenants, and for such purpose, Mortgagor hereby grants to Lender a security interest therein.

(B) Lender is hereby authorized, directed and empowered to collect and receive the proceeds of any such awards and to give proper receipts therefor whether in Mortgagor's name, in Lender's name or in both names, and may, in Lender's sole and absolute discretion, after deducting all costs of collection, including, but not limited to, attorneys' fees, do any one or more of the following:

(1) apply such proceeds, in whole or in part, to the Liabilities, whether or not then matured and without affecting the amount or time of subsequent payments required to be made by Mortgagor to Lender under this Mortgage or the other Loan Documents;

(2) apply such proceeds, in whole or in part, to satisfy, perform or discharge any of the Covenants;

(3) make available to Mortgagor all or a portion of such proceeds to replace, repair or restore any or all of the Mortgaged Property to a condition satisfactory to Lender; and

(4) require that Mortgagor continue to pay or cause to be paid the Liabilities, as and when due and payable notwithstanding any loss of use of all or any part of the Mortgaged Property.

(C) Mortgagor, promptly after request by Lender, shall make, execute and deliver or cause to be made, executed and delivered to or for the benefit of Lender any and all assignments and other instruments sufficient to assign, and cause the payment directly to Lender of, all such awards, free and clear of all Encumbrances, except for Lender's Lien and the Permitted Encumbrances. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, Mortgagor shall continue to pay or cause to be paid all of the Liabilities as and when due and payable. If, prior to the receipt by Lender of such award or payment, the Mortgaged Property shall have been transferred by a deed in lieu of foreclosure or otherwise sold or transferred by foreclosure of this Mortgage, Lender shall have the right to receive such award or payment to the extent of any deficiency with interest thereon at the Default Rate, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and the attorneys' fees, costs, expenses and disbursements incurred by Lender in connection with the collection of such award or payment.

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4.6 Mortgagor hereby acknowledges that the following notice by Lender is required by and given in full compliance with the Illinois Collateral Protection Act, 815 ILCS 180/15:

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

## 5. LEASES AND RENTS

5.1 Provided an Event of Default does not exist under this Mortgage or the other Loan Documents, Mortgagor shall have the right to collect all of the Rents arising from the Leases, or renewals thereof, and shall hold the same, in trust, to be applied, except as otherwise provided by applicable law, first to the payment of all Charges upon the Mortgaged Property, second to the cost of the maintenance of insurance policies upon the Mortgaged Property required hereby, and third to the maintenance and repairs required hereby, before using any part of the Rents for any other purposes.

5.2 At all times, Lender, or any of Lender's agents, shall have the right to verify the validity, amount or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of Mortgagor, Lender, a nominee of Lender or in any or all of said names.

5.3 Unless Lender agrees otherwise in writing, Mortgagor shall: (A) promptly upon Mortgagor's receipt or learning thereof, inform Lender, in writing, of any assertion of any claims, offsets or counterclaims by any of the obligors of the Leases; (B) not permit or agree to any extension, compromise or settlement or make any change or modification of any kind or nature of or with respect to the Leases or the terms thereof; and (C) promptly upon Mortgagor's receipt or learning thereof, furnish to and inform Lender of all adverse information relating to or affecting the financial condition of any obligor of the Leases.

5.4 Upon demand therefor by Lender, Mortgagor shall deliver to Lender, in form and substance acceptable to Lender, a detailed certified rent roll of all the Leases and such other matters and information relating thereto as Lender may request.

5.5 Mortgagor acknowledges and agrees that:

(A) Mortgagor shall, contemporaneously herewith, deliver to Lender true, accurate and complete copies of the Leases, including, but not limited to, the Leases set forth on Exhibit "C" attached hereto, in form and substance acceptable to Lender, with appropriate endorsement or other specific evidence of assignment thereto to Lender, which endorsement or assignment shall be in form and substance acceptable to Lender.

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(B) Lender may, at its election, without notice thereof to Mortgagor, notify any or all of the obligors of the Leases that the Leases have been assigned to Lender and, upon an Event of Default, Lender, whether in its name, in the name of Mortgagor or in both names, may direct said obligors thereafter to make all payments due from them under the Leases directly to Lender.

(C) Mortgagor shall irrevocably direct all obligors of the Leases to make, upon an Event of Default, all payments under the Leases directly to Lender.

(D) Upon an Event of Default, Lender shall have the right without notice thereof to Mortgagor to enforce the terms of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise, in the name of Mortgagor, Lender or in both names.

(E) Upon an Event of Default, Lender may (1) demand payment of the Rents and performance of the Leases; (2) enforce payment of the Rents and performance of the Leases by legal proceedings or otherwise; (3) exercise any or all of Mortgagor's rights, interests and remedies in and under the Leases and to collect the Rents; (4) settle, adjust, compromise, extend or renew the Leases or the Rents; (5) settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (6) take possession, in any manner, of the Rents; (7) prepare, file and sign Mortgagor's name on any Proof of Claim in bankruptcy, or similar document in a similar proceeding, against any obligor of the Leases; (8) endorse the name of Mortgagor upon any payments or proceeds of the Rents and deposit the same to the account of Lender; and (9) do all acts and things necessary, in Lender's discretion, to carry out any or all of the foregoing.

(F) All of the foregoing payments and proceeds received by Lender shall be utilized by Lender, at its election and in its discretion, for any one or more of the following purposes: (1) to be held by Lender as additional collateral for the payment of the Liabilities; (2) to be applied against the Liabilities, in such manner as Lender may determine in its sole and absolute discretion; (3) to be applied against the Covenants, or the operation or business thereof as Lender, at its election, shall determine; or (4) to be remitted to Mortgagor.

## 6. EVENT OF DEFAULT

6.1 The occurrence of any one or more of the following shall constitute an "Event of Default" under this Mortgage:

(A) The Liabilities are not fully and timely paid when due and payable or declared due and payable;

(B) Mortgagor fails or neglects to perform, keep or observe or cause to be performed, kept or observed, any of the Covenants and such failure is not cured within any applicable cure period;

(C) any representation, warranty, statement, report or certificate made or delivered by a Borrower, or any of its officers, employees, or agents, to Lender is not true and correct in all material respects, whether made in this Mortgage, the other Loan Documents or otherwise;

(D) a breach, default or event of default occurs, whether by the lessor or the lessee, under any Lease with respect to the Premises which the Lender deems material in its sole discretion;

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(E) any sale, conveyance or transfer of any right, title or interest in any of the Mortgaged Property or any portion thereof, or any other violation of any provisions of this Mortgage with respect to any transfers of the Mortgaged Property; or

(F) the occurrence of an "Event of Default" (as defined in the Loan Agreement).

6.2 Upon the occurrence of an Event of Default, without further notice to or demand of Mortgagor, all of the Liabilities shall become immediately due and payable, and Lender, in its discretion and at its election, may do any one or more of the following:

(A) Without notice to Mortgagor, accelerate the maturity of the Liabilities and/or foreclose upon Lender's Lien and exercise any rights or remedies granted to Lender under this Mortgage, the other Loan Documents, or provided by law, in equity or otherwise. Upon an Event of Default, the Liabilities shall bear interest at the Default Rate.

(B) Subject to applicable law, forcibly or otherwise, enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods or chattels occupying or upon the Mortgaged Property, receive all Rents, and issue receipts therefore, manage, control and operate the Mortgaged Property as fully as Mortgagor might do if in possession thereof, including, but not limited to, the making of all repairs and replacements deemed necessary by Lender and the leasing of the Mortgaged Property, or any part thereof, from time to time, and after deducting all attorneys' fees, costs, fees and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to the Liabilities, as Lender shall determine in its sole discretion. At the option of Lender, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice in accordance with Section 7.1 of this Mortgage. Mortgagor agrees to surrender possession of the Mortgaged Property to Lender immediately upon the occurrence of an Event of Default. If Mortgagor shall remain in physical possession of the Mortgaged Property, or any part thereof, after an Event of Default, such possession shall be as a tenant at sufferance of Lender, and Mortgagor agrees to pay to Lender, or to any receiver appointed as provided below, after an Event of Default, a monthly rental for the Mortgaged Property, or the part thereof so occupied by Mortgagor to be applied as provided above in the first sentence of this Subparagraph, and to be paid in advance on the first day of each calendar month, and, upon failure to do so, Mortgagor may be dispossessed by the usual summary proceedings. In the event Mortgagor shall so remain in possession of all, or any part of, the Mortgaged Property, said monthly rental shall be in amounts established by Lender in its discretion. This covenant shall be effective irrespective of (1) whether any foreclosure proceeding shall have been instituted, and (2) any application for, or appointment of, a receiver.

(C) File one or more suits at law or in equity for the foreclosure of all or any portion of this Mortgage or to collect the Liabilities. In the event of the commencement of any such suit by Lender, Lender shall have the right, either before or after sale, without notice and without requiring bond, as notice and bond are hereby expressly waived by Mortgagor, and without regard to the solvency or insolvency of Mortgagor at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Mortgaged Property. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of the Liabilities. In case of a sale pursuant to foreclosure, the Premises may, but need not, be sold as one parcel.

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(D) If Lender commences any suit to foreclose this Mortgage, Lender shall have the right to apply to the court in which such proceedings are pending for entry of an order placing Lender in possession of the Mortgaged Property. If an order is entered placing Lender in possession of the Mortgaged Property, Lender may thereupon enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods or chattels occupying or upon the Mortgaged Property, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property, including, but not limited to, the making of all repairs and replacements deemed necessary by Lender and the leasing of the Mortgaged Property or any part thereof, from time to time, and, after deducting all attorneys' fees, costs, fees and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to the Liabilities. At the option of Lender, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice of entry of the order placing Lender in possession in accordance with Section 7.1 of this Mortgage. If Mortgagor shall remain in physical possession of the Mortgaged Property after entry of an order placing Lender in possession, Mortgagor's possession shall be as a tenant at sufferance of Lender, and Mortgagor agrees to pay to Lender, or to any other Person authorized by Lender, after entry of such order, a monthly rental for the Mortgaged Property, or the part thereof so occupied by Mortgagor to be applied as provided above in the first sentence of Paragraph 6.2(A) and to be paid in advance on the first day of each calendar month, and, upon failure to do so, Mortgagor may be dispossessed by the usual summary proceedings. If Mortgagor shall so remain in possession of all or of any part of the Mortgaged Property, said monthly rental shall be in amounts established by Lender in its discretion.

6.3 Upon the occurrence of an Event of Default under this Mortgage, there will be added to and included as part of the Liabilities, and allowed in any decree for sale of the Mortgaged Property or in any judgment rendered in connection with this Mortgage or the other Loan Documents the following: (A) all of the costs, fees and the expenses of taking possession of the Mortgaged Property and of the holding, using, leasing, maintaining, repairing and selling of the Mortgaged Property, including, but not limited to, the costs, fees, charges, expenses and attorneys' fees specified in Paragraph 6.4 below; (B) receivers' fees; (C) any and all expenditures which may be paid or incurred by or on behalf of Lender for appraisers' fees, documentary and expert evidence, stenographers' charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, Torrens certificates and other similar data and assurances with respect to the title to the Mortgaged Property; (D) all prepayment or similar premiums, if any and (E) all other costs, fees and expenses which Lender deems necessary to prosecute or enforce any right or remedy it has under this Mortgage, the other Loan Documents, at law, in equity or otherwise, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Mortgaged Property. All such costs, charges, expenses, prepayment or like premiums, fees and other expenditures shall be a part of the Liabilities, secured by this Mortgage and the other Loan Documents, payable on demand and shall bear interest at the Default Rate from the date of Lender's payment thereof until repaid to Lender.

6.4 If foreclosure proceedings are instituted upon this Mortgage, or if Lender shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding relating to or in connection with the Liabilities or the Covenants, or if Lender shall incur or pay any expenses, costs, charges, fees or attorneys' fees by reason of the employment of counsel for advice with respect to the Liabilities or the Covenants and whether in court proceedings or otherwise, such expenses, costs, charges and all of Lender's attorneys' fees shall be part of the Liabilities, secured by this Mortgage and the other Loan Documents, payable on demand and shall bear interest at the Default Rate from the date of Lender's payment thereof until paid.

6.5 The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraph 6.3 and 6.4 above, second, to the balance of the Liabilities and third, the surplus, if any, to Mortgagor.

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6.6 If Lender commences judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of itself, its successors and permitted assigns, and each and every Person which Mortgagor may legally bind which acquires any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage: (A) does hereby expressly waive any and all rights of appraisal, valuation, stay, extension and, to the extent permitted by law, redemption from sale under any order or decree of foreclosure of this Mortgage; and (B) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is hereby authorized immediately to execute and deliver to any purchaser at any sale a deed conveying the Mortgaged Property, showing the amount paid therefor, or if purchased by the Person in whose favor the order or decree is entered, the amount of his bid therefor.

6.7 Lender shall have the right to sue for any sums, whether interest, principal or other sums required to be paid by or for the account of Mortgagor under the terms of this Mortgage or the other Loan Documents, as the same become due, or for any other of the Liabilities which shall become due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

6.8 No right or remedy of Lender hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law, in equity or otherwise, but is cumulative and in addition thereto and Lender may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law, in equity or otherwise, without first exhausting or affecting or impairing the security or any right or remedy afforded by this Mortgage. No delay in exercising, or omission to exercise, any right or remedy will impair any such right or remedy or will be construed to be a waiver of any default by Mortgagor hereunder, or acquiescence therein, nor will it affect any subsequent default hereunder by Mortgagor of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by Lender. No terms or conditions contained in this Mortgage may be waived, altered or changed except as evidenced in writing signed by Mortgagor and Lender.

6.9 If any rate of interest described in this Mortgage or the other Loan Documents is greater than the rate of interest permitted to be charged or collected by applicable law, as the case may be, such rate of interest shall automatically be reduced to the maximum rate of interest permitted to be charged or collected by applicable law.

6.10 Any failure of Lender to insist upon the strict performance by Mortgagor or any other party of any of the terms and provisions of this Mortgage or the other Loan Documents shall not be deemed to be a waiver of any of the terms and provisions thereof, and Lender, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Mortgagor or any other party of any and all of the terms and provisions thereof to be performed by such party. Neither Mortgagor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Liabilities, shall be relieved of such obligation by reason of (A) the sale, conveyance or other transfer of the Mortgaged Property, (B) the failure of Lender 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 the other Loan Documents, (C) the release, regardless of consideration, of the whole or any part of the collateral or security held for the Liabilities or the Covenants, or (D) any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Lender extending or modifying the time of payment of the Liabilities or the Covenants, without first having obtained the consent of Mortgagor or such other Person, and, in such case, Mortgagor and all such other Persons, shall continue to be liable on account of the Liabilities and to make such payments according to the terms of any such agreement, extension or modification unless expressly released and



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discharged in writing by Lender. Lender, without notice, may release, regardless of consideration, any part of the security held for the Liabilities without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Lender may resort for the payment of the Liabilities to any other security therefor held by Lender in such order and manner as Lender may elect.

## 7. MISCELLANEOUS

7.1 Any and all notices, demands, requests, consents, designations, waivers and other communications required or desired hereunder shall be in writing and shall be deemed effective upon delivery in accordance with the notice provisions set forth in the Loan Agreement.

7.2 All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.

7.3 This Mortgage and all the provisions hereof, will be binding upon and inure to the benefit of the successors of Mortgagor, and the successors, parents, divisions, affiliates and assigns of Lender. This Mortgage may not be assigned by Mortgagor, but may be assigned by Lender without notice to Mortgagor.

7.4 This Mortgage shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such a manner as to be valid and enforceable under applicable law, but if any provision of this Mortgage is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed herefrom and such invalidity or unenforceability shall not affect any other provision of this Mortgage, the balance of which shall remain in and have its intended full force and effect. Provided, however, if such provision may be modified so as to be valid and enforceable as a matter of law, such provision shall be deemed to be modified so as to be valid and enforceable to the maximum extent permitted by law.

7.5 This Mortgage is given to secure, among other things, the Liabilities. This Mortgage shall secure not only presently existing indebtedness under the other Loan Documents, but also future advances of up to 30 years, whether such advances are obligatory, to be made at the option of Lender or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The lien of this Mortgage shall be valid as to all indebtedness secured hereby, including future advances, from the time of its filing for record in the County Recorder's Office where this Mortgage is recorded. The total amount of the indebtedness secured hereby, including, but not limited to, any disbursements which Lender may make under this Mortgage or the other Loan Documents, at any one time outstanding shall not exceed the principal amount of Thirty-Seven Million Six Hundred Fifty-Two Thousand Two Hundred Sixty and no/100 Dollars (\$37,652,260.00), plus interest thereon, and any disbursements made for payment of taxes, special assessments, or insurance on the Mortgaged Property, and any other costs, fees, expenses or other indebtedness owed by Mortgagor to Lender pursuant to this Mortgage or the other Loan Documents. This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

7.6 Mortgagor shall reimburse Lender for all costs, fees and expenses incurred by Lender, or for which Lender becomes obligated, whether before or after the occurrence of an Event of Default, in connection with the negotiation, preparation, administration, enforcement and conclusion of this Mortgage and the other Loan Documents, including, but not limited to, reasonable attorneys' and paralegals' fees, costs and expenses, other professional fees, search fees, costs and expenses, filing and recording fees, all taxes payable in connection with this Mortgage or the other Loan Documents, and any costs and fees incurred in connection with

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any proceeding to protect, collect, sell, liquidate or otherwise dispose of any of Lender's collateral. Mortgagor shall further reimburse Lender for audit fees at Lender's standard rates for each person employed to perform such audit or analysis plus all out-of-pocket costs or expenses incurred by Lender in the performance of such audit or analysis. All such costs, fees and expenses referenced in this Section shall be part of the Liabilities payable by Mortgagor to Lender upon demand with interest at the Default Rate until actually paid. Without limiting the generality of the foregoing, such costs and expenses shall include the reasonable fees, expenses and charges of attorneys, paralegals, accountants, investment bankers, appraisers, valuation and other specialists, experts, expert witnesses, auctioneers, court reporters, telegram, management consultants, telex and telefax charges, overnight delivery services, messenger services and expenses for travel, lodging and meals.

7.7 The terms and provisions of the other Loan Documents are incorporated herein by this reference thereto.

7.8 All references herein to the Borrowers shall mean Mortgagor, Axiom LLC, Steelhead, Encore, Ramptech, Metropolitan, AEC, RPSI, Holden Sales, Holden Acquisition and Axiom Management, both individually and collectively, and jointly and severally, and all representations, warranties, duties, covenants, agreements and obligations of each Borrower shall be the individual and collective representations, warranties, duties, covenants, agreements and obligations of each of Mortgagor, Axiom LLC Steelhead, Encore, Ramptech, Metropolitan, AEC, RPSI, Holden Sales, Holden Acquisition and Axiom Management and the breach or default thereof shall give rise to joint and several liability to Mortgagor, Axiom LLC Steelhead, Encore, Ramptech, Metropolitan, AEC, RPSI, Holden Sales, Holden Acquisition and Axiom Management.

7.9 MORTGAGOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO MORTGAGOR AS SET FORTH HEREIN IN THE MANNER PROVIDED BY APPLICABLE STATUTE, LAW, RULE OF COURT OR OTHERWISE.

7.10 MORTGAGOR AND LENDER IRREVOCABLY AGREE, AND HEREBY CONSENT AND SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, AND THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, WITH REGARD TO ANY LITIGATION, ACTIONS OR PROCEEDINGS ARISING FROM OR RELATING TO OR IN CONNECTION WITH THE LIABILITIES, THE COVENANTS, THIS MORTGAGE OR THE OTHER AGREEMENTS. MORTGAGOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION, ACTIONS OR PROCEEDINGS FILED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

7.11 MORTGAGOR AND LENDER EACH HEREBY ABSOLUTELY AND UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER OR RELATED TO THIS MORTGAGE, THE LIABILITIES, THE COVENANTS OR THE OTHER AGREEMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED AND DELIVERED IN CONNECTION THEREWITH OR RELATED THERETO.

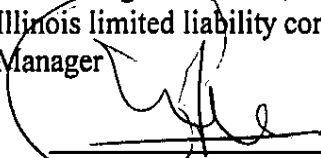
[signature page follows]

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IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered as of the day and year first above written.

**AXIUM 3, LLC,**  
an Illinois limited liability company

By: ~~Axium Management, LLC,~~  
an Illinois limited liability company  
its Manager

By:   
Name: Gregory Winsor  
Title: Manager

Property of Cook County Clerk's Office

*[Signature page to Mortgage and Security Agreement]*

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STATE OF ILLINOIS            )  
  ) S.S.  
COUNTY OF Cook            )

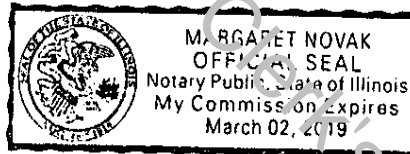
I, Margaret Novak, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Gregory Winsor, who is personally known to me to be the manager of Axium Management, LLC, an Illinois limited liability company, the sole Manager of Axium 3, LLC, an Illinois limited liability company, subscribed to the foregoing Mortgage and Security Agreement, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of February, 2018.

Margaret Novak  
Notary Public

My commission expires:

3/2/19



[Notary page to Mortgage and Security Agreement]

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## EXHIBIT "A" TO MORTGAGE AND SECURITY AGREEMENT

### LEGAL DESCRIPTION

THE SOUTH 230.0 FEET, AS MEASURED ALONG THE EAST AND WEST LINE OF THE FOLLOWING DESCRIBED PROPERTY: THAT PART OF PARCEL 'A' LYING NORTH OF A LINE WHICH IS 150.0 FEET NORTH OF THE NORTHERLY RIGHT OF WAY LINE OF WEST 63RD STREET (AS MEASURED ON EAST LINE OF SAID PARCEL 'A') AND LYING EAST OF A LINE DESCRIBED AS: BEGINNING AT A POINT IN THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID POINT BEING 323.78 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 18: RUNNING THENCE SOUTH TO A POINT IN THE CENTER LINE OF WEST 63RD STREET, SAID POINT BEING 323.5 FEET WEST OF INTERSECTION OF THE CENTER LINE OF WEST 63RD STREET AND EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 18, SAID DESCRIBED LINE BEING THE EXTENSION SOUTHERLY OF THE EAST LINE OF THE 20 FOOT RAILROAD RIGHT OF WAY LYING NORTHERLY OF WEST 62ND STREET (ACCORDING TO THE PLAT OF SURVEY OF PARCEL 'A' MADE BY ANTON F. KOZAK, MAY 28, 1958 DESCRIBED AS: PARCEL 'A' LOTS 1 TO 37, BOTH INCLUSIVE, IN BLOCK 49, AND LOTS 1 TO 22 IN BLOCK 50 ALL IN FREDERICK H. BARTLETT'S CHICAGO HIGHLANDS IN THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, THE VACATED ALLEYS AND ADJOINING AFORESAID LOTS, ALL OF VACATED SOUTH NEW ENGLAND AVENUE, ALL OF VACATED WEST 62ND PLACE, THAT PART OF THE WEST 62ND STREET THAT HAS BEEN VACATED AND THAT PART OF SOUTH OAK PARK AVENUE THAT HAS BEEN VACATED), ALL IN COOK COUNTY, ILLINOIS.

PIN: 19-18-315-035-0000

COMMON ADDRESS: 6226 SOUTH OAK PARK AVENUE  
CHICAGO, ILLINOIS 60638

**UNOFFICIAL COPY**  
EXHIBIT "B" TO MORTGAGE AND SECURITY AGREEMENT  
PERMITTED ENCUMBRANCES

1. EASEMENT FOR GAS AND WATER OVER THE EAST 10 FEET OF THE LAND, AS DISCLOSED BY PLAT OF SURVEY MADE BY RAULIN B. WIGHT, DATED JUNE 22, 1960.
2. COVENANTS AND RESTRICTIONS CONTAINED IN DEED FROM EXCHANGE NATIONAL BANK, AS TRUSTEE UNDER TRUST NO. 8621 TO NAPCO BUILDING CORP, DATED AUGUST 10, 1960 AND RECORDED SEPTEMBER 1, 1960 AS DOCUMENT 17953211 RELATING TO USE, LANDSCAPING, PARKING AREA, LOADING AREA, RAILROAD TRACKS AND DRAINAGE OR TO THE LAND AND TO LOCATION OF MATERIALS AND CONSTRUCTION OF BUILDINGS TO BE ERECTED ON THE LAND.

NOTE: SAID INSTRUMENT CONTAINS NO PROVISION FOR A FORFEITURE OF OR REVERSION OF TITLE IN CASE OF BREACH OF CONDITION.

3. EASEMENT FOR PUBLIC UTILITIES CONTAINED IN GRANT BY BARTLETT TRAILER CORP TO THE COMMONWEALTH EDISON COMPANY RECORDED AUGUST 23, 1963 AS DOCUMENT 18893275.
4. EASEMENT CREATED BY THE GRANT MADE BY PULLMAN TRUST AND SAVINGS BANK, AS TRUSTEE UNDER TRUST NO. 4361 TO THE COMMONWEALTH EDISON COMPANY, A CORPORATION OF ILLINOIS DATED JUNE 7, 1955 AND RECORDED NOVEMBER 8, 1956 AS DOCUMENT 17059800 AND GRANT MADE BY CHICAGO TITLE AND TRUST COMPANY, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST NO. 34933 TO THE COMMONWEALTH EDISON COMPANY, A CORPORATION OF ILLINOIS DATED JUNE 10, 1955 AND RECORDED NOVEMBER 13, 1957 AS DOCUMENT 17063837 FOR THE RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, OPERATE, USE, MAINTAIN, REPAIR, RELOCATE, REPLACE, RENEW AND REMOVE PUBLIC UTILITY FACILITIES FOR THE TRANSMISSION OF ELECTRIC ENERGY, IN, UNDER, OVER, ACROSS AND ALONG THE VACATED STREETS AND ALLEYS DESCRIBED IN THE LAND (EXCEPT VACATED WEST 62ND PLACE), TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO AND FROM SAID PREMISES FOR SUCH PURPOSES AND THE COVENANTS AND AGREEMENTS THEREIN CONTAINED.

(AFFECTS THE VACATED STREETS AND ALLEYS IN THE LAND, EXCEPT VACATED WEST 62ND PLACE).

**UNOFFICIAL COPY**  
EXHIBIT "C" TO MORTGAGE AND SECURITY AGREEMENT  
LEASES

Any leases between Mortgagor and one or more other Borrower.

That certain Lease Agreement dated as of February 22, 2018, by and between Mortgagor and E. Sam Jones Distributor, Inc., a Georgia corporation.

Property of Cook County Clerk's Office

**COOK COUNTY  
RECORDER OF DEEDS**

**COOK COUNTY  
RECORDER OF DEEDS**