

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Doc#: 1820757065 Fee: \$112.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 07/26/2018 11:26 AM Pg: 1 of 33

Certificate of Exemption

CT



18012074 LFE
CB
10/1

Report Mortgage Fraud
844-768-1713

The property identified as: **PIN:** 13-11-419-015-0000

Address:

Street: 4940-42 Kimball Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60625

Lender: Byline Bank

Borrower: Coltea Properties, LLC

Loan / Mortgage Amount: \$350,000.00

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

Certificate number: 09299419-CEBE-43ED-B0C4-812A40CF05CB

Execution date: 7/24/2018

UNOFFICIAL COPY

Loan No. 210026616

This document prepared by:

Garfield & Merel, Ltd
180 N. Stetson, Suite 1300
Chicago, Illinois 60601
Attn: Stephen M. Alderman

After recording return to:

Byline Bank
Post-Closing Department
180 N. LaSalle St, Suite 400
Chicago, IL 60601

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

THIS JUNIOR MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS (this "Mortgage") is made as of July 24, 2018, by **Coltea Properties, LLC**, an Illinois limited liability company ("the "Mortgagor"), for the benefit of **Byline Bank**, its successors and assigns (the "Mortgagee").

WITNESSETH:

Mortgagee is making a loan (the "Loan") to Mortgagor in an amount not to exceed \$350,000.00 pursuant to that certain Loan Agreement of even date herewith by and between Mortgagor and Mortgagee, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein (said Loan Agreement and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the "Loan Agreement"; any terms not defined herein shall have the meanings ascribed to such terms in the Loan Agreement). The Loan is evidenced by that certain Promissory Note dated as of even date herewith in the principal amount of \$350,000.00 from Mortgagor to Mortgagee (the "Note"). This Mortgage encumbers certain real estate located in Cook County, Illinois, legally described on **Exhibit A** attached hereto, and commonly known as (i) 3741-43 N. Albany, Chicago IL and (ii) 4940-42 N. Kimball, Chicago, IL; and payment of the Note is secured by this Mortgage, financing statements and other security documents (this Mortgage, the Note, the Loan Agreement and all other documents evidencing or securing the Loan (as amended, modified, replaced or restated from time to time) are collectively hereinafter referred to as the "Loan Documents"). This Mortgage secures a Note with an adjustable rate of interest.

UNOFFICIAL COPY

Mortgagee has approved this Mortgage and by the acceptance of it agrees and acknowledges that the grant of this Mortgage shall not be deemed to be or constitute a breach or violation of any agreement between Mortgagor and Mortgagee, including, without limitation, the provisions of Section 7.7 of the Loan Agreement between Mortgagor and Mortgagee dated August 4, 2017.

To secure (i) the payment when and as due and payable of the principal of and interest on the Loan or so much thereof as may be advanced from time to time, and any and all late charges, loan expenses, and all other indebtedness evidenced by or owing under the Note and any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing, (ii) the payment of all other indebtedness which this Mortgage by its terms secures, (iii) the performance and observance of the covenants and agreements contained in this Mortgage, the Loan Agreement, the Note and each of the other Loan Documents, if any, in connection with the Loan and (iv) the payment of any and all Indebtedness (all of such indebtedness, obligations and liabilities identified in (i), (ii) (iii) and (iv) above being hereinafter referred to as the "Debt"), the Mortgagor does hereby GRANT, SELL, CONVEY, MORTGAGE and ASSIGN unto the Mortgagee, its successors and assigns, and does hereby grant to Mortgagee, its successors and assigns a security interest in, all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII, and VIII below, all of same being collectively referred to herein as the "Mortgaged Property":

GRANTING CLAUSE I:

THE LAND located in Cook County, Illinois, which is legally described on Exhibit A attached hereto and made a part hereof (the "Land");

GRANTING CLAUSE II:

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of the Mortgagor now or hereafter acquired in and to any of the foregoing, including without limitation those certain improvements to be constructed on the Land in accordance with the Loan Agreement (the "Improvements");

GRANTING CLAUSE III:

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by the Mortgagor, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future share of stock respecting water and water rights

UNOFFICIAL COPY

pertaining to the Land or the Improvements or other evidence of ownership thereof, and the reversions and remainders thereof (the "Appurtenant Rights");

GRANTING CLAUSE IV:

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Mortgagor and forming a part of, or used or obtained for use in connection with, the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (collectively, the "Fixtures"); it being agreed that all of said property owned by the Mortgagor and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Mortgage.

GRANTING CLAUSE V:

TOGETHER WITH the following (the "Personal Property"):

All personal property of every nature whatsoever now or hereafter owned by Mortgagor and used in connection with the Land or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Mortgagor in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Mortgagor or on its behalf, including without limitation, any and all Goods, Investment Property, Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit Accounts, Commercial Tort Claims and General Intangibles, each as defined in the Uniform Commercial Code of the State of Illinois (the "Code") located on the Land or in the Improvements which are now or in the future owned by the Mortgagor and used or obtained for use in connection with the Land or the improvements or any present or future operation, occupancy, maintenance or leasing thereof, or any construction on or at the Land or the Improvements;

All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Land or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Land or improvements

UNOFFICIAL COPY

thereon or proceeds of any sale, option or contract to sell the Land or improvements thereon or any portion thereof;

Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing;

All of the books and records pertaining to the foregoing;

GRANTING CLAUSE VI:

TOGETHER WITH all right, title and interest which the Mortgagor hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property or any portion thereof, whether written or oral (herein collectively referred to as the "Leases"), and all rents, issues, incomes and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), and all right, title and interest which the Mortgagor now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Mortgagor any statutory rights; this assignment is intended to be and is an absolute present assignment from Mortgagor to Mortgagee, it being intended hereby to establish a complete and present transfer of all Leases and Rents with the right, but without the obligation, to collect all Rents; except as hereinafter set forth, Mortgagor shall have a license to collect the Rents accruing under the Leases as they become due ("License"), but not in advance, and to enforce the Leases, which License shall automatically terminate upon the occurrence of an Event of Default.

GRANTING CLAUSE VII:

TOGETHER WITH any and all Awards and Proceeds, as each are hereinafter respectively defined in the Loan Agreement, or proceeds of any sale, option or contract to sell the Mortgaged Property or any portion thereof (provided that no right, consent or authority to sell the Mortgaged Property or any portion thereof shall be inferred or deemed to exist by reason hereof); and the Mortgagor hereby authorizes, directs and empowers the Mortgagee, or its option, on the Mortgagor's behalf, or on behalf of the successors or assigns of the Mortgagor, to adjust, compromise, claim, collect and receive such proceeds; to give acquittances therefor; and, after deducting expenses of collection, including reasonable attorneys' fees, costs and disbursements, to apply the Net Proceeds, as hereinafter defined, to the extent not utilized for the Restoration of the Mortgaged Property as provided in the Loan Agreement hereof, to payment of the Debt, notwithstanding the fact that the same may not then be due and payable or that the Debt is otherwise adequately secured; and the Mortgagor agrees to execute and deliver from time to time such further instruments as may be requested by the Mortgagee to confirm such assignment to the Mortgagee of any such proceeds;

GRANTING CLAUSE VIII:

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which the Mortgagor now has or hereafter may acquire of, in and to the Mortgaged Property, or any part thereof, and any and all other property of every kind and nature

UNOFFICIAL COPY

from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Mortgagor or by anyone on behalf of the Mortgagor to the Mortgagee;

TO HAVE AND TO HOLD the Mortgaged Property, unto the Mortgagee, and its successors and assigns, grant and mortgage; subject, however, to those encumbrances which the Mortgagee has approved in the Loan Agreement or otherwise approved in writing (the "Permitted Encumbrances");

UPON CONDITION that, subject to the terms hereof and until the occurrence of an Event of Default hereunder, the Mortgagor shall be permitted to possess and use the Mortgaged Property;

SUBJECT to the covenants and conditions hereinafter set forth.

PROVIDED, NEVERTHELESS, that if (i) the Mortgagor shall pay and perform in full when due the Debt and shall duly and timely perform and observe all of the covenants and conditions herein and in the other Loan Documents required to be performed and observed by the Mortgagor, and (ii) the Mortgagee shall have no further obligation to make any further disbursements of the Loan to or for the benefit of Mortgagor under the provisions of the Loan Agreement, then the Mortgagee shall execute and deliver to the Mortgagor such instruments as may be reasonably requested by the Mortgagor which are sufficient to release this Mortgage.

This Mortgage is a junior mortgage the lien of which is junior to the lien created by that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents by Mortgagor in favor of Mortgagee dated August 4, 2017 and recorded with the Cook County Recorder of Deeds on August 8, 2017 as Document No. 1722047059 (the "First Mortgage"). All representations and warranties, covenants and agreements of Mortgagor contained herein which refer to a first lien, no other liens, or words of similar import shall be deemed to refer to a lien junior to the lien of the First Mortgage.

THE MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Representations of Mortgagor. Mortgagor hereby represents and warrants to the Mortgagee as follows:

(a) The Mortgagor has good and marketable title to an indefeasible fee simple estate in the Mortgaged Property, subject to no liens, charges or encumbrances, other than the Permitted Encumbrances; that it has good, right and lawful authority to mortgage the Mortgaged Property in the manner and form herein provided; that this Mortgage is and shall remain a valid and enforceable lien on the Mortgaged Property subject only to the Permitted Encumbrances; that Mortgagor and its successors and assigns shall defend the same and the priority of this lien forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the Land.

(b) The Mortgagor has and shall maintain title to the collateral for the Loan, including any additions or replacements thereto, free of all security interests, liens and encumbrances, other than the security interest hereunder.

UNOFFICIAL COPY

(c) No person who owns twenty percent (20.00%) or more of the equity interests in the Mortgagor, or otherwise controls the Mortgagor or any of its subsidiaries, is listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Orders, and the proceeds of the Loan will not violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

2. Mortgagor’s Covenants.

(a) Payment of Debt. The Mortgagor shall, prior to the expiration of any grace period, (i) pay the Debt when due, and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by the Mortgagor as provided in the Note, the Loan Agreement, this Mortgage and the other Loan Documents.

(b) Repair/Maintenance. The Proceeds of any insurance policies collected or claimed as a result of any loss or damage to any portion of the Mortgaged Property resulting from fire, vandalism, malicious mischief or any other casualty or physical harm shall be paid directly to Mortgagee. Mortgagee is hereby authorized and empowered, at its option, to make or file proofs of loss or damage and to adjust or compromise any loss, and to collect and receive the insurance Proceeds from any such policies. Mortgagee may permit the insurance Proceeds to be applied to the restoration or repair of the Mortgaged Property or apply the insurance Proceeds to prepay the Loan, in its sole discretion. If the Mortgagee makes the insurance Proceeds available to Mortgagor or if the proceeds are not enough to fully repay the Loan, the Mortgagor shall (i) promptly repair, restore, replace or rebuild any portion of the Mortgaged Property which may be damaged or destroyed whether or not insurance Proceeds (as hereinafter defined) are available or sufficient for that purpose; (ii) keep the Mortgaged Property in good condition and remain free from waste; (iii) pay all operating costs and expenses of the Mortgaged Property when due; (iv) comply with all legal requirements applicable to all or any portion of the Mortgaged Property, or the use and occupancy, thereof (subject to the right of the Mortgagor to contest the enforceability or applicability of any such legal requirements in good faith, diligently and at its expense by appropriate proceedings which shall not subject the Mortgagor or the Mortgagee to any risk of civil or criminal liability and which shall operate during the pendency thereof to prevent the imposition or foreclosure of any lien upon, or any interference with the availability, use or occupancy of, the Mortgaged Property or any part thereof), and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to all or any portion of the Mortgaged Property or the use and occupancy thereof; (v) refrain from any action, and correct any condition known to the Mortgagor, which would materially increase the risk of fire or other hazard to the Mortgaged Property or any portion thereof; and (vi) cause the Mortgaged Property to be managed in a competent and professional manner.

(c) Alteration of Mortgaged Property. Without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed, the

UNOFFICIAL COPY

Mortgagor shall not cause, suffer or permit (i) any material alteration of the Mortgaged Property, except as required by any applicable legal requirement or as otherwise contemplated by the Loan Agreement or the Leases; (ii) any change in the zoning classification or intended use or occupancy of the Mortgaged Property, including without limitation any change which would increase any fire or other hazard, except as provided in the Leases or any proposed Lease; (iii) any change in the identity of the Mortgagor or the person or entity responsible for managing the Mortgaged Property; or (iv) any modification of the licenses, permits, privileges, franchises, covenants, conditions or declarations of use applicable to the Mortgaged Property, except as required to operate the Mortgaged Property in the manner required hereunder.

3. Liens, Contest and Defense of Title.

(a) The Mortgagor shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Mortgaged Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder (except for Permitted Encumbrances), whether such lien, charge or encumbrance is on a party, inferior or superior to the lien of this Mortgage, including liens for labor or materials with respect to the Mortgaged Property ("Mechanic's Liens").

(b) Notwithstanding paragraph (a) of this Section, the Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Mortgaged Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Mortgage; and (ii) within ten (10) days after the Mortgagor has been notified of the filing of any such Mechanic's Liens, the Mortgagor shall have notified the Mortgagee in writing of the Mortgagor's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens, and shall have obtained a title insurance endorsement over such Mechanic's Liens in form and substance reasonably satisfactory to the Mortgagee, insuring the Mortgagee against loss or damage by reason of such Mechanic's Liens; provided that in lieu of such title insurance endorsement the Mortgagor may deposit and keep on deposit with the Mortgagee (or such depository as may be designated by the Mortgagee) a sum of money sufficient, in the judgment of the Mortgagee, to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and may be used by the Mortgagee in its sole discretion to protect the priority of this Mortgage. In case the Mortgagor shall fail to maintain such title insurance or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest; then the Mortgagee may, at its option, apply any money and liquidate any securities then on deposit with the Mortgagee (or other depository designated by the Mortgagee) in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon according to any written bill, notice or statement, without inquiring into the amount, validity or enforceability thereof. If the amount of money so deposited shall (in Mortgagee's reasonable judgment) be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then

UNOFFICIAL COPY

the Mortgagor shall forthwith, upon demand, deposit with the Mortgagee (or other depository designated by the Mortgagee) the sum which shall (in Mortgagee's reasonable judgment, when added to the funds then on deposit with Mortgagee) be necessary to make such payment in full (or such other security as shall be reasonably satisfactory to Mortgagee). If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited shall be applied in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided no Event of Default shall then exist) when the Mortgagee has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with the Mortgagee (or other depository) under this Section 3(b) shall be paid to the Mortgagor, provided that no Event of Default shall then exist.

(c) If the lien and security interest of the Mortgagee in or to the Mortgaged Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, the Mortgagor shall immediately notify the Mortgagee and shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, or any part thereof, and shall file and prosecute such proceedings and take all actions necessary to preserve and protect such title, lien and security interest in and to the Mortgaged Property.

4. Payment and Contest of Taxes.

(a) The Mortgagor shall pay or cause to be paid when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Mortgaged Property, or any part thereof, or any interest therein, or any income or revenue therefrom, or any obligation or instrument secured hereby, and all installments thereof (collectively, the "Taxes"), on or before the date such Taxes are due, except to the extent Mortgagee makes payments with Mortgagor's deposits under Section 23 hereof; and the Mortgagor shall discharge any claim or lien relating to Taxes upon the Mortgaged Property. The Mortgagor shall provide the Mortgagee with copies of paid receipts for Taxes, if requested by the Mortgagee, within ten (10) days after being requested to do so by the Mortgagee.

(b) Notwithstanding paragraph (a) of this Section, the Mortgagor may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any such Taxes, provided that: (i) no Event of Default has occurred; (ii) such proceeding shall stay the collection of the applicable Taxes from Mortgagor and from the Mortgaged Property or Mortgagor shall have paid all of the applicable Taxes under protest, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder, (iv) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost so long as the contest is being pursued, and (v) Mortgagor shall have deposited with Mortgagee adequate reserves for the payment of the applicable Taxes, together with all interest and penalties thereon, unless Mortgagor has paid all of the applicable Taxes under protest, or Mortgagor shall have furnished such other security as may be accepted by Mortgagee, in its sole and absolute discretion, to insure the payment of any contested Taxes, together with all interest

UNOFFICIAL COPY

and penalties thereon. If the Mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds as hereinabove provided, the Mortgagee may, at its option, liquidate any securities and apply the monies then on deposit with the Mortgagee (or other depository), in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon according to any written bill, notice or statement, without inquiry as to the amount, validity or enforceability thereof. If the amount of money and any such security so deposited shall (in the Mortgagee's reasonable judgment) at any time be insufficient for the payment in full of such Taxes, together with all penalties and interest which are or might become due thereon, the Mortgagor shall forthwith, upon demand, either deposit with the Mortgagee (or other depository designated by the Mortgagee) a sum (or such other security as shall be reasonably satisfactory to the Mortgagee) which when added to the funds then on deposit, shall (in the Mortgagee's reasonable judgment) be sufficient to make such payment in full, or, if the Mortgagee (or other depository) has applied funds so deposited on account of such Taxes, restore such deposit to the amounts required under Section 23 hereof. After final disposition of such contest and upon the Mortgagor's written request and delivery to the Mortgagee of an official bill for such Taxes, the Mortgagee (or other depository) shall liquidate any securities and apply the monies, if any, then on deposit under this Section 4 to the payment of such Taxes or that part thereof then unpaid and the balance, if any, in excess of the amount required to be on deposit with the Mortgagee (or other depository) under Section 23 hereof shall be refunded to the Mortgagor after such final disposition, provided that no Event of Default shall then exist.

5. Change in Tax Laws.

(a) If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Mortgagee, the Mortgagor or the Mortgaged Property, any tax is imposed or becomes due in respect of the Note or this Mortgage (excluding income, excise or franchise taxes imposed upon the Mortgagee, except as provided in Section 5(c) below), or any liens on the Mortgaged Property created thereby, then the Mortgagor shall pay such tax in the manner required by such law.

(b) If any law, statute, rule, regulation, order or court decree effects a deduction from the value of the Mortgaged Property for the purpose of taxation by creating any lien thereon, or imposing upon the Mortgagee any liability for the payment of all or any part of the Taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or deeds of trusts or debts secured by mortgages or deeds of trust or the interest of the Mortgagee in the Mortgaged Property, or the manner of collection of Taxes so as to adversely affect this Mortgage, the Debt, or the Mortgagee, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such Taxes, or reimburse the Mortgagee therefor on demand, unless the Mortgagee determines, in the Mortgagee's sole judgment, that such payment or reimbursement by the Mortgagor is unlawful or that the payment might, in the Mortgagee's judgment, constitute usury or render the Debt wholly or partially usurious; in which event the Mortgagee may elect to declare the Debt to be due and payable within the lesser of (i) thirty (30) days after written notice, or (ii) such shorter period as may be required to ensure compliance by Mortgagee with applicable law, and no prepayment penalty shall be payable in connection therewith.

UNOFFICIAL COPY

(c) Nothing contained herein shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such income, franchise or excise tax which may be levied against the income of the Mortgagee as a complete or partial substitute for Taxes required to be paid by the Mortgagor hereunder.

6. Insurance Coverage. For so long as this Mortgage is in effect, Mortgagor shall continuously maintain or cause to be maintained insurance in accordance with the provisions of the Loan Agreement.

7. The Mortgagee's Performance of the Mortgagor's Obligations.

(a) Upon the occurrence of an Event of Default hereunder, the Mortgagee may, but without any obligation to do so, upon simultaneous notice to the Mortgagor, make any payment or perform any act which the Mortgagor is required to make or perform hereunder or under any other Loan Document (whether or not the Mortgagor is personally liable therefor) in any form and lawful manner deemed expedient to the Mortgagee, including without limitation, the right to enter into possession of the Mortgaged Property, or any portion thereof, and to take any action (including without limitation the release of any information regarding the Mortgaged Property, the Mortgagor and the obligations secured hereby) which the Mortgagee deems necessary or desirable in connection therewith, all at the sole cost and expense of the Mortgagor. The Mortgagee, in addition to any rights or powers granted or conferred hereunder but without any obligation to do so, may complete construction of, rent, operate, and manage the Mortgaged Property, or any part thereof, including payment of management fees and other operating costs and expenses, of every kind and nature in connection therewith, so that the Mortgaged Property shall be operational and usable for their intended purposes. All monies paid, and all reasonable expenses paid or incurred in connection therewith, including but not limited to reasonable costs of surveys, evidence of title, court costs and attorneys' fees and expenses and other monies advanced by the Mortgagee to protect the Mortgaged Property and the lien hereof, to complete construction of, rent, operate and manage the Mortgaged Property or to pay any such operating costs and expenses thereof or to keep the Mortgaged Property operational and usable for their intended purposes shall be so much additional Debt, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate.

(b) The Mortgagee, in making any payment, may do so according to any written bill, notice, statement or estimate, without inquiry into the amount, validity or enforceability thereof.

(c) Nothing contained herein shall be construed to require the Mortgagee to advance or expend monies for any purpose mentioned herein, or for any other purposes.

8. Security Agreement.

(a) Grant of Security Interest. Mortgagor hereby grants to Mortgagee a security interest in the Personal Property to secure the Debt. This Mortgage constitutes a security agreement with respect to all Personal Property in which Mortgagee is granted a security

UNOFFICIAL COPY

interest hereunder, and Mortgagee shall have all of the rights and remedies of a secured party under the Code, as well as all other rights and remedies available at law or in equity.

(b) **Perfection.** Mortgagor hereby consents to any instrument that may be requested by Mortgagee to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Mortgage or the interest of Mortgagee in the Mortgaged Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Mortgagor shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, actual attorneys' fees and costs (of both in house and outside counsel), incurred by Mortgagee in connection with the preparation and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imports, assessments, and charges arising out of or in connection with the delivery of such instruments. Mortgagor hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as the attorney-in-fact of Mortgagor, to file with the appropriate filing office any such instruments. In addition, Mortgagor hereby authorizes Mortgagee to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Mortgagor.

(c) **Place of Business.** Mortgagor maintains its chief executive office as set forth as the address of Mortgagor in Section 27 below, and Mortgagor will notify Mortgagee in writing of any change in its place of business within five (5) days of such change.

(d) **Fixture Filing.** This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code and will be recorded as a "fixture filing" in accordance with the Code.

(e) **Representations and Warranties.** The Mortgagor represents and warrants that: (i) the Mortgagor is the record owner of the Mortgaged Property; (ii) Mortgagor is the owner of the Personal Property subject to no liens, charges or encumbrances other than the lien hereof, (iii) the Personal Property will not be removed from the Mortgaged Property without the consent of the Mortgagee, and (iv) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto.

9. **Restrictions on Transfer.** For the purpose of protecting the Mortgagee's security, and keeping the Mortgaged Property free from subordinate financing liens, the Mortgagor agrees that it, the members of Mortgagor, and the members, partners or stockholders of any entity controlling, directly or indirectly, Mortgagor, will not:

(a) sell assign, transfer, hypothecate, grant a security interest in or convey title to (i) the Mortgaged Property or any part thereof, or (ii) any membership interest of a Manager or partnership interest of a General Partner in Mortgagor;

UNOFFICIAL COPY

(b) obtain any financing, all or a part of which, will be secured by (i) the Mortgaged Property, or (ii) any membership interest in Mortgagor or limited or general partnership interest in Mortgagor; or

(c) convert the Mortgagor from one type of legal entity into another type of legal entity,

without, in each instance, the Mortgagee's prior written consent. Any violation of this Section 9 shall be deemed a "Prohibited Transfer."

10. Events of Default. Any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(a) If the Mortgagor shall fail to make any payment of principal or interest under the Note or to make any other payment under the Loan Documents within five (5) days of the date when due and after ten (10) days written notice by Mortgagee (provided no such written notice shall be need to be provided more than once every twelve (12) months; or

(b) After ten (10) days following written notice by Mortgagee, if a Prohibited Transfer shall occur and not be cured; or

(c) After ten (10) days following written notice by Mortgagee, Mortgagor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor contained in this Mortgage and not specifically referred to elsewhere in this Section 10; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Mortgaged Property, and the priority, validity and enforceability of the liens created by this Mortgage or any of the other Loan Documents and the value of the Mortgaged Property are not impaired, threatened or jeopardized, then Mortgagor shall have a period ("Cure Period") of thirty (30) days after Mortgagor obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period (provided, however, such period shall be limited to ten (10) days if such failure can be cured by the payment of money), provided further that if Mortgagor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate ; or

(d) Subject to any applicable notice or cure provisions, if any Event of Default occurs under any other Loan Document.

11. Remedies. Upon the occurrence of an Event of Default (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument), and in addition to such other rights as may be available under any other Loan Document or under applicable law, but subject at all times to any mandatory legal requirements:

UNOFFICIAL COPY

(a) **Acceleration.** Mortgagee may declare the outstanding principal balance of the Note and all unpaid indebtedness of Mortgagor hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind; provided, however, if the Event of Default is under Section 8(e) of the Loan Agreement, all unpaid indebtedness of Mortgagor hereby secured shall be immediately due and payable without any action by Mortgagee.

(b) **Uniform Commercial Code.** Mortgagee shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address set forth in Section 27 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Personal Property, may be sold as a single parcel if the Mortgagee elects. The Mortgagor hereby agrees that if the Mortgagee demands or attempts to take possession of the Personal Property or any portion thereof in exercise of its rights and remedies hereunder, the Mortgagor will promptly turn over and deliver possession thereof to the Mortgagee, and the Mortgagor authorizes, to the extent the Mortgagor may now or hereafter lawfully grant such authority, the Mortgagee, its employees and agents, and potential bidders or purchasers to enter upon the Mortgaged Property or any other office, building or property where the Personal Property or any portion thereof may at the time be located (or believed to be located) and the Mortgagee may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional Debt and shall be payable upon demand with interest at the Default Rate.

(c) **Foreclosure.** Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Debt in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., as from time to time amended (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and

UNOFFICIAL COPY

expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and Rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Mortgaged Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Debt and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid.

(d) Appointment of Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Property and the Rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, Rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) Taking Possession, Collecting Rents, Etc. Upon demand by Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the Rents, issues,

UNOFFICIAL COPY

deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Mortgagor to cancel the same, subject to any then existing subordination and non-disturbance agreement;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage without Mortgagee's prior written consent, subject to any then existing subordination and non-disturbance agreement;

(iv) extend or modify any then existing Leases and make new Leases of all or any part of the Mortgaged Property, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Debt, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Property and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all Rents, issues, deposits, profits, and avails therefrom;

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of Taxes, Premiums and other charges applicable to the Mortgaged Property, or in reduction of the Debt in such order and manner as Mortgagee shall select, in its sole discretion; and

(vii) receive and collect the Rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Mortgagor agrees to consent to a receiver if it is believed necessary or desirable by the Mortgagee to enforce its rights under this subsection. The collection of Rents, issues, profits or revenues of the Mortgaged Property by the Mortgagee shall in no way waive the right of the Mortgagee to foreclose this Mortgage in the event of any said Event of Default.

UNOFFICIAL COPY

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any Personal Property therein, to manage, operate, conserve and improve the same, and to collect the Rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Mortgagor promises to pay upon demand together with interest thereon at the Default Rate. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any Rents actually received by Mortgagee. Without taking possession of the Mortgaged Property, Mortgagee may, in the event the Mortgaged Property become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Debt payable upon demand with interest thereon at the Default Rate.

(f) Indemnity. The Mortgagor hereby agrees to indemnify, defend, protect and hold harmless the Mortgagee and its employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, or lease of any of the Mortgaged Property, or any part thereof, or as a result of the Mortgagee seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property; provided, however, that the foregoing indemnity shall not extend to such liabilities, claims or obligations as result from the gross negligence or intentional misconduct of the Mortgagee, its employees, officers or agents.

12. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the inconsistent 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.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Sections 11(c) or 14 of this Mortgage, shall be added to the Debt and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid or shall be included in the judgment of foreclosure.

UNOFFICIAL COPY

13. Waiver of Right to Redeem - Waiver of Appraisal, Valuation, Etc. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such Moratorium Laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine in its sole discretion. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Debt, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Act, or residential real estate, as defined in Section 5/15-1219 of the Act. To the fullest extent permitted by law, Mortgagor, on behalf of Mortgagor, and each and every person acquiring any interest in or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to Section 5/15-1601(b) of the Act, and (ii) any and all rights of reinstatement.

14. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, and reasonable attorneys' fees, all of which expenditures shall become so much additional Debt which Mortgagor agrees to pay and all of such expenditures shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

15. Protective Advances.

(a) Advances, disbursements and expenditures made by Mortgagee for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Mortgage, constitute "Protective Advances":

(i) all advances by Mortgagee in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild the improvements

UNOFFICIAL COPY

upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(ii) payments by Mortgagee of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of Taxes and assessments, general and special and all other Taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Mortgaged Property, as referred to in Section 5/15-1505 of the Act;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under any prior liens;

(iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(vi) advances of any amount required to make up a deficiency in deposits for installments of Taxes and assessments and insurance Premiums as may be authorized by this Mortgage;

(vii) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act; and

(viii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) Premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (B) repair or Restoration of damage or destruction in excess of available insurance Proceeds or condemnation awards; (C) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or

UNOFFICIAL COPY

restrictions for the benefit of or affecting the Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Property; (E) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

(b) All Protective Advances shall be so much additional Debt, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

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

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

(i) determination of the amount of Debt at any time;

(ii) indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose,

(iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(iv) application of income in the hands of any receiver or mortgagee in possession; and

(v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Act.

16. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property or of any sale of property pursuant to Section 11(c) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 11(c) and Section 14 hereof; second, to all items, other than principal and interest evidenced by the Note, which under the terms hereof constitute Debt with interest thereon as herein provided; third, to all unpaid interest on the Note; fourth, to all unpaid principal on the Note; fifth, to whomsoever shall be lawfully entitled to the same.

17. Rights Cumulative.

(a) Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, now

UNOFFICIAL COPY

or hereafter provided by law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by the Mortgagee.

(b) By accepting payment of any sums secured by this Mortgage after the due date thereof, by accepting performance of any of the Mortgagor's obligations hereunder after such performance is due, or by making any payment or performing any act on behalf of the Mortgagor which the Mortgagor was obligated but failed to perform or pay, the Mortgagee shall not waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of the Mortgagor's obligations under this Mortgage, the Note, and all other Loan Documents. No waiver or modification of any of the terms of this Mortgage shall be binding on the Mortgagee unless set forth in writing signed by the Mortgagee and any such waiver by the Mortgagee of any Event of Default by the Mortgagor under this Mortgage shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If the Mortgagee holds any additional security for any of the obligations secured hereby, it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Mortgaged Property or any portion thereof.

(c) No act or omission by the Mortgagee shall release, discharge, modify, change or otherwise affect the liability of Mortgagor under the Note, this Mortgage, or any of the other Loan Documents, or any other obligation of the Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Mortgage or any of the other Loan Documents except as expressly provided in an instrument or instruments executed by the Mortgagee. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or under any of the other Loan Documents or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to the Mortgagee by this Mortgage is not required to be given.

18. Successors and Assigns; Assignment.

(a) This Mortgage and each and every provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of the Mortgagee and its successors and assigns.

UNOFFICIAL COPY

(b) All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Mortgaged Property or any portion thereof becomes vested in a person or persons other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Debt in the same manner as with the Mortgagor without in any way releasing or discharging the Mortgagor from its obligations hereunder. The Mortgagee will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Mortgaged Property, but nothing in this Section shall vary or negate the provisions of Section 9 hereof.

(c) The rights and obligations of Mortgagor under this Mortgage may not be assigned and any purported assignment by Mortgagor shall be null and void. Mortgagee shall have the right to sell, assign or transfer portions of its right, title and/or interest in and to this Mortgage and the other Loan Documents (including the sale of participation interests therein), without the consent or approval of, and at no cost to, Mortgagor, and Mortgagor agrees to cooperate in all respects with Mortgagee in connection therewith, including, without limitation, the execution of all documents and instruments reasonably requested by Mortgagee or such transferee provided that such documents and instruments do not materially adversely affect any of Mortgagor's duties or obligations under this Mortgage and the other Loan Documents.

19. Execution of Separate Security Agreements, Financing Statements, Etc.; Corrective Documents.

(a) The Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as the Mortgagee shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired. Without limitation of the foregoing, the Mortgagor will assign to the Mortgagee, upon request, as further security for the Debt, its interest in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments reasonably satisfactory to the Mortgagee, but no such assignment shall be construed as a consent by the Mortgagee to any agreement, contract, license or permit or to impose upon the Mortgagee any obligations with respect thereto.

(b) The Mortgagor and the Mortgagee shall, at the request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by the Mortgagee or the Mortgagor, as the case may be, to correct such defect, error or omission.

20. Subrogation. If any part of the Debt is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgagee

UNOFFICIAL COPY

Property or any part thereof, then by advancing the monies to make such payment, the Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

21. Governing Law. The validity, enforcement and interpretation of this Mortgage shall for all purposes be governed by and construed in accordance with the laws of the State of Illinois, without reference to the conflicts of law principles of that State, and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws.

22. Business Loan.

(a) The Mortgagor declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and that the loan is exempt from interest limitations pursuant to the provisions of 815 ILCS 205/4 and is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et seq.

(b) All rights, remedies and powers provided by this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Mortgage are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable under the provisions of any applicable law.

23. Escrow Deposits. To the extent not required to be paid by the First Mortgage, the Mortgagor shall pay to the Mortgagee on the first business day of each calendar month thereafter, an amount equal to one-twelfth (1/12th) of what is necessary to pay, on an annualized basis, (1) all Taxes, and (2) all premiums for the insurance policies required pursuant to the Loan Agreement ("Premiums") and to enable the Mortgagee to pay same before the Taxes would become delinquent and the Premiums are due, and, on demand, from time to time shall pay to the Mortgagee additional sums necessary to pay the Premiums and Taxes. If Mortgagor pays such amounts to Mortgagee, Mortgagee shall remit such amounts for payment of Taxes and Premiums, subject to the provisions hereof. No amounts so paid shall be deemed to be trust funds, but may be commingled with the general funds of the Mortgagee, and no interest shall be payable thereon. In the event that the Mortgagor does not pay such sums for Premiums and Taxes, then the Mortgagee may, but shall not be obligated to, pay such Premiums and Taxes and any money so paid by the Mortgagee shall constitute additional Debt hereunder and shall be payable by Mortgagor to Mortgagee on demand with interest thereon from the date of disbursement by Mortgagee at Default Rate until repaid to Mortgagee. If an Event of Default occurs, the Mortgagee shall have the right, at its election, to apply any amounts so held under this Section 23 against all or any part of the Debt, or in payment of the Premiums or Taxes for which the amounts were deposited. The Mortgagor will furnish to the Mortgagee bills for Taxes and Premiums not less than thirty (30) days before Taxes become delinquent and such Premiums become due.

Notwithstanding the above, Mortgagor shall make payments as described above for Taxes but not for Premiums until notified otherwise by Mortgagee.

UNOFFICIAL COPY

24. Assignment of Leases and Other Agreements Affecting the Mortgaged Property.

(a) In order to further secure payment of the Debt and the observance, performance and discharge of the Mortgagor's obligations under the Loan Documents, the Mortgagor hereby assigns to the Mortgagee all of the Mortgagor's right, title, interest and estate in, to and under all of the Leases and in and to all of the Rents and Profits (defined as all rents, income, issues and profits arising from any Leases, or other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property now or hereafter made affecting the Mortgaged Property or any portion thereof), as more particularly described in that certain Assignment of Leases and Rents dated as of even herewith from Mortgagor to and for the benefit of Mortgagee. Unless and until an Event of Default occurs, the Mortgagor shall be entitled to collect the Rents and Profits (except as otherwise provided in this Mortgage) as and when they become due and payable. Neither these assignments nor Mortgagee's enforcement of the provisions of these assignments (including the receipt of the Rents) will operate to subordinate the lien of this Mortgage to any of the rights of any tenant of all or any part of the Mortgaged Property, or to subject Mortgagee to any liability to any such tenant for the performance of any obligations of Mortgagor under any such Lease unless and until Mortgagee agrees to such subordination or assumes such liability by an appropriate written instrument.

(b) Compliance with Laws. The Mortgagor shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Mortgaged Property or any part thereof.

(c) Leases and Rents. In exercising its License Mortgagor shall hold all Rents in trust and shall apply the same first to the payment of the reasonable expenses of owning, maintaining, repairing, operating and renting the Property, and then to payment of the obligations secured hereby.

(d) New Leases and Lease Terminations and Modifications. Mortgagor shall not enter into, cancel, surrender or terminate (except as a result of a material default by lessees under any Leases or any subtenants or occupants of the Property ("Lessees") thereunder and failure of such Lessee to cure the default within the applicable time periods set forth in the Lease), amend or modify any Lease, or make any subsequent assignment or pledge of a Lease, or consent to the subordination of the interest of any Lessee in any Lease, or consent (if consent therefor is required under such Lease) to any assignment by any Lessee or any subletting, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed, other than residential leases for a term of not more than two (2) years on terms usual and customary in the market where the Property is located. Any attempt to do any of the foregoing without the prior written consent of Mortgagee (if such consent is required) shall be null and void. Failure of Mortgagee to respond to any request for consent with respect to the foregoing within ten (10) days of such request shall be deemed consent.

(e) Performance under Leases. The Mortgagor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and the Mortgagor shall not do or suffer to be done

UNOFFICIAL COPY

anything to impair the security thereof. The Mortgagor shall not (i) release the liability of any Lessee under any Lease or any guaranty thereof other than as may be commercially reasonable under the circumstances, (ii) consent to any Lessee's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any Lessee's claim of a total or partial eviction, (iv) consent to a termination or cancellation of any Lease, except as specifically provided above, or (v) enter into any oral Leases with respect to all or any portion of the Property.

(f) Collection of Rents. The Mortgagor shall not collect any of the Rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits.

(g) Further Assignment. The Mortgagor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all Rents, except as specifically permitted by the Loan Documents.

(h) Lease Guaranty. The Mortgagor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law.

(i) Waive Rental Payments. The Mortgagor shall not waive or excuse the obligation to pay rent under any Lease.

(j) Defending Actions. The Mortgagor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any Lessee or guarantor thereunder, and shall pay all costs and expenses of the Mortgagee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which the Mortgagee may appear.

(k) Enforcement. The Mortgagor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the Lessees and guarantors thereunder.

(l) Notice. Mortgagor shall immediately notify the Mortgagee of any material breach by a Lessee or guarantor under any Lease, except that late payments by residential tenants shall not require any notice to Mortgagee until forty five (45) days after such rent payments were first due.

(m) Subordination. The Mortgagor shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent.

(n) Bankruptcy of Lessee. If any Lessee is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, the Mortgagor covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written

UNOFFICIAL COPY

consent of the Mortgagee, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to the Mortgagor and the Mortgagee. If an Event of Default exists at the time of the issuance of any such payment, the Mortgagor hereby assigns any such payment to the Mortgagee for application to the amounts payable under the Loan and further covenants and agrees that upon the request of the Mortgagee, it will duly endorse to the order of the Mortgagee any such check. If no Event of Default exists at the time of the issuance of any such payment or at the time that said payment is presented to Mortgagee for endorsement, Mortgagee will duly endorse to Mortgagor any such check.

25. Inspection of Mortgaged Property and Records. The Mortgagee and its representatives and agents shall have the right to inspect the Mortgaged Property and all books, records and documents relating thereto at all reasonable times, after giving reasonable notice to the Mortgagor, and access thereto, subject to the rights of tenants pursuant to Leases. The Mortgagee shall use reasonable efforts to avoid disturbing business operations on the Mortgaged Property during such inspections. The Mortgagor or the Mortgagee thereof shall keep and maintain full and correct books and records showing in detail the income and expenses of the Mortgaged Property and permit the Mortgagee or its agents to examine such books and records and all supporting vouchers and data at any time and from time to time on request at its offices at the address hereinafter identified or at such other location as may be mutually agreed upon.

26. Environmental Matters. Concurrently herewith, Mortgagor and Guarantor (as defined in the Loan Agreement) shall execute and deliver an Environmental Indemnity Agreement in form satisfactory to Mortgagee (the "Environmental Indemnity Agreement"). The performance of the covenants, undertakings and obligations of the indemnitors under the Environmental Indemnity Agreement shall be secured by this Mortgage.

27. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth below in this Section or as such party may from time to time designate by written notice to the other parties. Either party by notice to the other in the manner provided herein may designate additional or different addresses for subsequent notices or communications:

To Mortgagee:	Byline Bank 180 N. LaSalle Street, Third Floor Chicago, Illinois 60601 Attn: Joanne Campanile
---------------	--

With copy to:	Garfield & Merel, Ltd 180 N Stetson, Suite 1300 Chicago, Illinois 60601 Attn: Stephen M. Alderman
---------------	--

UNOFFICIAL COPY

To Mortgagor: Coltea Properties, LLC
 Attn: Lucian Coltea
 428 E. First Street
 Hinsdale, IL 60521

With a copy to: I. Susan Harkness, Esq.
 230 Coolidge Ave.
 Barrington, IL 60010

28. Releases.

(a) Upon payment in full of all sums due under the Note and this Mortgage and the other of the Loan Documents, the Mortgagee shall execute a proper release of this Mortgage in recordable form.

(b) The Mortgagee may, regardless of consideration, cause the release of any part of the Mortgaged Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of the Mortgaged Property not so released.

29. Indemnification by the Mortgagor. The Mortgagor shall protect and indemnify the Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against the Mortgagee or the members, partners, stockholders, directors, officers, agents or employees of the Mortgagee by reason of (a) ownership of the Mortgaged Property or any interest therein, or receipt of any Rents or other sum therefrom, (b) any accident to, injury to or death of persons or loss of or damage to Mortgaged Property occurring on or about the Mortgaged Property or the adjoining sidewalks, curbs, vaults or vault space, if any, streets or ways, (c) any failure on the part of the Mortgagor to perform or comply with any requirement of law, (d) payment of sums for the protection of the lien and security interest of the Mortgagee in and to the Mortgaged Property, (e) performance of any labor or services or the furnishing of any materials or other Mortgaged Property in respect of the Mortgaged Property or any part thereof for construction or maintenance or otherwise, or (f) any action brought against the Mortgagee attacking the validity, priority or enforceability of this Mortgage, the Note, any other Loan Document, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Mortgagor or any other persons directly or indirectly liable for the payment of the Debt. Any amounts payable to the Mortgagee under this paragraph shall bear interest at the Default Rate and shall be secured by this Mortgage. In the event any action, suit or proceeding is brought against the Mortgagee or the members, partners, stockholders, directors, officers, agents or employees of the Mortgagee by reason of any such occurrence, the Mortgagor, upon the request of the Mortgagee and at Mortgagor's sole expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Mortgagor and approved by the Mortgagee. Such obligations under this paragraph shall survive the termination, satisfaction or release of this Mortgage.

UNOFFICIAL COPY

30. OFAC Covenant. Mortgagor shall ensure, and cause each of its subsidiaries to ensure, that (i) no person who owns twenty percent (20.00%) or more of the equity interests in the Mortgagor, or otherwise controls the Mortgagor or any of its subsidiaries is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the OFAC, the Department of the Treasury or included in any Executive Orders, (ii) the proceeds of the Loan do not violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (iii) it shall comply, and cause each of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

31. Miscellaneous.

- (a) Time is of the Essence. Time is of the essence of this Mortgage.
- (b) Captions and Pronouns. The captions and headings of the various Sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.
- (c) Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall this Mortgage secure an amount in excess of 200% of the principal amount of the Note secured hereby, provided that the Mortgagee shall be under no obligation to advance funds in excess of the principal amount of the Note.
- (d) The Mortgagor Not a Joint Venturer or Partner. The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with the Mortgagor. Without limitation of the foregoing, the Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Debt, or otherwise.
- (e) Replacement of the Note. Upon notice to the Mortgagor of the loss, theft, destruction or mutilation of the Note, and upon Mortgagee's indemnification of Mortgagor therefor, the Mortgagor will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any of the Loan Documents to the Note shall be deemed to refer to such replacement note.
- (f) Waiver of Consequential Damages. The Mortgagor covenants and agrees that in no event shall the Mortgagee be liable for consequential damages, whatever the nature of a failure by the Mortgagee to perform its obligation(s), if any, under the Loan Documents, and the Mortgagor hereby expressly waives all claims that it now or may hereafter have against the Mortgagee for such consequential damages.
- (g) After Acquired Mortgaged Property. The lien hereof will automatically attach, without further act, to all after-acquired Mortgaged Property attached to and/or used in connection with or in the operation of the Mortgaged Property or any part thereof.

UNOFFICIAL COPY

(h) **Severability.** If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then the Mortgagee may, at its option declare the Debt immediately due and payable.

(i) **Interpretation of Agreement.** Should any provision of this Mortgage require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Mortgage, including, without limitation, all Exhibits attached to this Mortgage.

(j) **Joint and Several Obligations; Counterparts.** If this Mortgage is executed by more than one Mortgagor, (i) the obligations and liabilities of Mortgagor under this Mortgage shall be joint and several and shall be binding upon and enforceable against each Mortgagor and their respective successors and assigns, and (ii) this Mortgage may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Mortgage.

(k) **Effect of Extensions and Amendments.** If the payment of the Debt, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release.

(l) **Mortgagee-in-Possession.** Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee-in-possession in the absence of the actual taking of possession of the Mortgaged Property by the Mortgagee pursuant to this Mortgage.

(m) **No Merger.** The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Mortgaged Property, and if the Mortgagee acquires any additional or other interest in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(n) **Complete Agreement.** This Mortgage, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Mortgagor and the Mortgagee.

UNOFFICIAL COPY

32. Miscellaneous Definitions.

(a) **Indebtedness.** The term "Indebtedness" shall also include any and all principal and interest together with all other indebtedness and costs and expenses for which the Mortgagor is responsible under the Related Documents (as defined below). Specifically, without limitation, the indebtedness and obligations of the Mortgagor shall also include all assessments, losses, fees and costs of any kind or nature incurred by Mortgagee which arise, directly or indirectly, as a result of Mortgagor's prepayment of the principal amount of the Note, in whole or in part, whether voluntary or involuntary, or in connection with any Financial Contract.

(b) **Financial Contract.** As used herein "Financial Contract" shall mean (1) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap, bond option, interest rate option, foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, and other similar agreement (including any option to enter into any of the foregoing; (2) any combination of the foregoing; or (3) a master agreement for any of the foregoing together with all amendments and supplements.

(c) **Related Documents.** As used herein "Related Documents" shall mean the Loan Documents and all other documents evidencing or securing the Indebtedness, whether now or hereafter executed and delivered to Mortgagee.

33. JURISDICTION AND VENUE. MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF MORTGAGEE INITIATES SUCH ACTION, ANY COURT IN WHICH MORTGAGEE SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. MORTGAGOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY MORTGAGEE IN ANY OF SUCH COURTS. MORTGAGOR WAIVES ANY CLAIM THAT COOK COUNTY, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY MORTGAGEE OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY MORTGAGEE OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

34. Waiver of Jury Trial. MORTGAGOR AND MORTGAGEE HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG

UNOFFICIAL COPY

MORTGAGOR AND MORTGAGEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN MORTGAGOR AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

35. Additional Waivers. MORTGAGOR EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY MORTGAGEE ON THIS MORTGAGE, ANY AND EVERY RIGHT IT MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING OR (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH SUIT, ACTION OR PROCEEDING MUST BE CONSOLIDATED WITH THE PROCEEDING BROUGHT BY MORTGAGEE.

36. Compliance with Loan Agreement. Mortgagor will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

37. Provisions of Loan Agreement The proceeds of the Note are to be disbursed by the Mortgagee in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Mortgagor covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Mortgagor for the enforceability of this Mortgage and the Note, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured by this Mortgage; provided, however, that the total Debt shall not in any event exceed two hundred percent of the stated principal amount of the Note.

[SIGNATURE PAGE FOLLOWS]

UNOFFICIAL COPY

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

Coltea Properties, LLC, an Illinois limited liability company

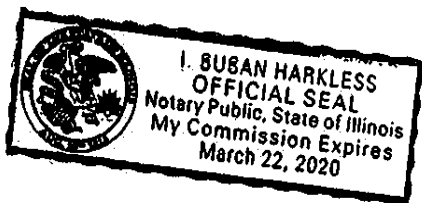
By: *Lucian Coltea*
Lucian Coltea
Its: Manager

STATE OF Ill)
COUNTY OF Cook) SS.

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Lucian Coltea who is personally known to me to be the Manager of Coltea Properties, LLC and the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27 day of July, 2018.

I. BUBAN HARKLESS
Notary Public



My Commission Expires:

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF LAND

PARCEL 1:

LOT 4 (EXCEPT THE NORTH 9 FEET THEREOF) AND ALL OF LOT 5 AND LOT 6 (EXCEPT THE SOUTH 25 FEET THEREOF) IN BLOCK 74 IN NORTHWEST LAND ASSOCIATION SUBDIVISION OF THE WEST 1/2 OF BLOCKS 22 AND 27 AND ALL OF BLOCK 23, 24 AND 26 IN JACKSON'S SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, WITH BLOCKS 1 AND 8 AND BLOCK 2 (EXCEPT THE EAST 1 ACRE THEREOF) IN CLARK'S SUBDIVISION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 14, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 13-11-419-015-0000

4940-42 Kimball Avenue, Chicago, IL

PARCEL 2:

LOTS 7 AND 8 IN BLOCK 2 IN THE SUBDIVISION OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 13-24-118-006-0000

3741-43 N. Albany Avenue, Chicago, IL