

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1924206127

Doc# 1924206127 Fee \$88.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 08/30/2019 04:20 PM PG: 1 OF 28

The property identified as: PIN: 02-23-220-003-0000

Address:

Street: 315 S. Hicks

Street line 2:

City: Palatine

State: IL

ZIP Code: 60067

Lender: The Northwestern Mutual Life Insurance Company

Borrower: Palatine Industrial 1, LLC

Loan / Mortgage Amount: \$4,600,000.00

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: B98B13F8-6EA6-4124-B356-DC4ED3604AA7

Execution date: 8/29/2019

REC'D
28
N
CC
E
INT

UNOFFICIAL COPY

Illinois

Loan No. 343211

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.
720 East Wisconsin Avenue - Rm N16WC
Milwaukee, WI 53202
Attn: Leah Hilmer

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This instrument was prepared by Marcia F. Drame, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Ave., Milwaukee, WI 53202.

MORTGAGE and SECURITY AGREEMENT

THIS MORTGAGE and SECURITY AGREEMENT is made as of the 29th day of August, 2019 between PALATINE INDUSTRIAL 1, LLC, a Delaware limited liability company, whose mailing address is 9500 W. Bryn Mawr, Suite 200, Rosemont, IL 60018, Attention: Daniel McShane, herein (whether one or more in number) called "Mortgagor", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, whose mailing address is 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Mortgagee":

WITNESSETH, That Mortgagor, in consideration of the indebtedness herein mentioned, does hereby grant, convey, mortgage and warrant unto Mortgagee forever, with power of sale and right of entry and possession, the following property (herein referred to as the "Property"):

- A. The land in the City of Palatine, County of Cook, State of Illinois, described in Exhibit "A" attached hereto and incorporated herein (the "Land");
- B. All easements, appurtenances, tenements and hereditaments belonging to or benefiting the Land, including but not limited to all waters, water rights, water courses, all ways, trees, rights, liberties and privileges;
- C. All improvements to the Land, including, but not limited to, all buildings, structures and improvements now existing or hereafter erected on the Land; all fixtures and equipment of



UNOFFICIAL COPY

every description belonging to Mortgagor which are or may be placed or used upon the Land or attached to the buildings, structures or improvements, including, but not limited to, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning and ventilating equipment, water and gas fixtures, and all furniture and easily removable equipment; all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto;

- D. Mortgagor's interest in all articles of personal property of every kind and nature whatsoever, including, but not limited to all carpeting, draperies, ranges, microwave ovens, refrigerators, dishwashers, easily removable equipment and fixtures, furniture, dehumidification equipment, cranes, truck scales, rails scales, now or hereafter located upon the Land or in or on the buildings and improvements and now owned or leased or hereafter acquired or leased by Mortgagor; and
- E. All building and construction materials, fixtures, equipment and tangible personal property of every kind and nature whatsoever, delivered to and stored on the Property and intended to be incorporated into the buildings and improvements thereon.

Mortgagor agrees not to sell, transfer, assign or remove anything described in B, C, D and E above now or hereafter located on the Land without prior written consent from Mortgagee unless (i) such action does not constitute a sale or removal of any buildings or structures or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value.

Without limiting the foregoing grants, Mortgagor hereby pledges to Mortgagee, and grants to Mortgagee a security interest in, all of Mortgagor's present and hereafter acquired right, title and interest in and to the Property and any and all

- F. cash and other funds now or at any time hereafter deposited by or for Mortgagor on account of tax, special assessment, replacement or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with Mortgagee or a third party, or otherwise deposited with, or in the possession of, Mortgagee pursuant to the Loan Documents; and
- G. surveys, soils reports, environmental reports, guaranties, warranties, architect's contracts, construction contracts,

UNOFFICIAL COPY

drawings and specifications, applications, permits, surety bonds and other contracts relating to the acquisition, design, development, construction and operation of the Property; and

- H. accounts, chattel paper, deposit accounts, instruments, equipment, inventory, documents, general intangibles, letter-of-credit rights, investment property and all other personal property of Mortgagor, (including, without limitation, any and all rights in the property name "Northwest Commerce Center"); and
- I. present and future rights to condemnation awards, insurance proceeds or other proceeds at any time payable to or received by Mortgagor on account of the Property or any of the foregoing personal property.

All personal property hereinabove described is hereinafter referred to as the "Personal Property".

If any of the Property is of a nature that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement and financing statement if permitted by applicable law and Mortgagor authorizes Mortgagee to file a financing statement describing such Property and, at Mortgagee's request, agrees to join with Mortgagee in the execution of any financing statements and to execute any other instruments that may be necessary or desirable, in Mortgagee's determination, for the perfection or renewal of such security interest under the Uniform Commercial Code.

TO HAVE AND TO HOLD the same unto Mortgagee for the purpose of securing:

(a) Payment to the order of Mortgagee of the indebtedness evidenced by a promissory note of even date herewith (and any restatement, extension or renewal thereof and any amendment thereto) executed by Mortgagor for the principal sum of NINETEEN MILLION ONE HUNDRED AND TWO THOUSAND SEVEN HUNDRED TWENTY THREE DOLLARS, with final maturity no later than September 1, 2024 and with interest as therein expressed (which promissory note, as such instrument may be amended, restated, renewed and extended, is hereinafter referred to as the "Note"), it being recognized that the funds may not have been fully advanced as of the date hereof but may be advanced in the future in accordance with the terms of a written contract; and

(b) Payment of all sums that may become due Mortgagee under the provisions of, and the performance of each agreement of Mortgagor contained in, the Loan Documents.

UNOFFICIAL COPY

"Loan Documents" means this instrument, the Note, that certain Loan Application dated June 20, 2019 from Mortgagor to Mortgagee and that certain acceptance letter issued by Mortgagee dated July 15, 2019 (together, the "Commitment"), that certain Absolute Assignment of Leases and Rents of even date herewith between Mortgagor and Mortgagee (the "Absolute Assignment"), that certain Certification of Applicant of even date herewith, that certain Funding Agreement of even date herewith, that certain Limited Liability Company Supplement dated contemporaneously herewith, any other supplements and authorizations required by Mortgagee and any other agreement entered into or document executed by Mortgagor and delivered to Mortgagee in connection with the indebtedness evidenced by the Note, except for that certain Environmental Indemnity Agreement of even date herewith given by Conor Commercial Real Estate LLC, a Delaware limited liability company to Mortgagee (the "Environmental Indemnity Agreement"), as any of the foregoing may be amended from time to time.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR COVENANTS AND AGREES:

Payment of Debt. Mortgagor agrees to pay the indebtedness hereby secured (the "Indebtedness") promptly and in full compliance with the terms of the Loan Documents.

Ownership. Mortgagor represents that it owns the Property and has good and lawful right to convey the same and that the Property is free and clear from any and all encumbrances whatsoever, except as appears in the title evidence accepted by Mortgagee. Mortgagor does hereby forever warrant and shall forever defend the title and possession thereof against the claims of any and all persons whomsoever.

Maintenance of Property and Compliance with Laws. Mortgagor agrees to keep the buildings and other improvements now or hereafter erected on the Land in good condition and repair; not to commit or suffer any waste; to comply with all laws, rules and regulations affecting the Property; and to permit Mortgagee to enter at all reasonable times for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Mortgagee determines to be necessary in order to monitor Mortgagor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property.

Tenants Using Chlorinated Solvents. Mortgagor agrees not to lease any of the Property, without the prior written consent of Mortgagee, to (i) dry cleaning operations that perform dry cleaning on site with chlorinated solvents or (ii) any other tenants that use chlorinated solvents in the operation of their businesses.

Business Restriction Representation, Warranty and Covenant. Mortgagor represents, warrants and covenants, as applicable, that each of Mortgagor, all persons and entities owning (directly or indirectly) an ownership interest in Mortgagor, all guarantors of all or any portion of the Indebtedness, all persons and entities owning (directly or indirectly) an ownership interest in such guarantors and all persons and entities executing any separate

UNOFFICIAL COPY

indemnity agreement in favor of Mortgagee in connection with the Indebtedness: (i) is not, and shall not become, a person or entity whom Mortgagee is restricted from doing business with under regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated Nationals and Blocked Persons list) or under any other law, executive order, enabling legislation or regulation administered and enforced by the United States and applicable to the Indebtedness (collectively, "U.S. Economic Sanctions Laws"); (ii) is not knowingly engaged in, and shall not knowingly engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) above; (iii) is not, and shall not become, a person or entity appearing on the New York Office of General Services List of entities determined to be non-responsive bidders/offers pursuant to The New York State Iran Divestment Act of 2012; and (iv) will take no action that would violate or would cause Mortgagor to violate any U.S. Economic Sanctions Laws.

Insurance. Mortgagor agrees to keep the Property insured for the protection of Mortgagee and Mortgagee's wholly owned subsidiaries and agents in such manner, in such amounts and in such companies as Mortgagee may from time to time approve, and to keep the policies therefor, properly endorsed, on deposit with Mortgagee, or at Mortgagee's option, to keep evidence of insurance acceptable to Mortgagee evidencing all insurance coverages required hereunder on deposit with Mortgagee, which evidence shall reflect at least thirty (30) days' notice of cancellation to Mortgagee and shall list Mortgagee as the certificate holder or as a similar additional interest with Mortgagee's correct mailing address and the loan number assigned to the loan (243211); if Mortgagor requests Mortgagee to accept a different form of evidence, Mortgagee shall not unreasonably withhold its consent, provided, a copy of a standard mortgagee endorsement in favor of Mortgagee stating that the insurer shall provide at least thirty (30) days' notice of cancellation to Mortgagee accompanies such evidence. Mortgagor shall furnish Mortgagee with renewals of all applicable insurance evidence no later than the actual insurance expiration date.

If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt written notice thereof to Mortgagee. Following the occurrence of a casualty, Mortgagor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the improvements on the Property to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law. All insurance loss proceeds (less expenses of collection) shall, at Mortgagee's option, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be released to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Mortgagee elects to apply the insurance loss proceeds on the Indebtedness, no prepayment fee shall be due thereon.

UNOFFICIAL COPY

Notwithstanding the foregoing provision, Mortgagee agrees that if the insurance loss proceeds are less than the unpaid principal balance of the Note and if the casualty occurs prior to the last one (1) year of the term of the Note, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Property to its condition prior to the casualty, subject to satisfaction of the following conditions:

- (a) There is no existing Event of Default at the time of casualty.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds to Mortgagor as a result of any act, neglect, use or occupancy of the Property by Mortgagor or any tenant of the Property.
- (c) Mortgagee shall be satisfied that all insurance loss proceeds so held, together with supplemental funds to be made available by Mortgagor, shall be sufficient to complete the restoration of the Property. Any remaining insurance loss proceeds may, at the option of Mortgagee, be applied on the Indebtedness, whether or not due, or be released to Mortgagor.
- (d) If required by Mortgagee, Mortgagee shall be furnished a satisfactory report addressed to Mortgagee from an environmental engineer or other qualified professional satisfactory to Mortgagee to the effect that no adverse environmental impact to the Property resulted from the casualty.
- (e) Mortgagee shall release casualty insurance proceeds as restoration of the Property progresses provided that Mortgagee is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no Monetary Default (as hereinafter defined) under the Loan Documents and no Non-Monetary Default with respect to which Mortgagee shall have given Mortgagor notice pursuant to the "**Notice of Default**" provision herein. If a Monetary Default shall occur or Mortgagee shall give Mortgagor notice of a Non-Monetary Default, Mortgagee shall have no further obligation to release insurance loss proceeds hereunder unless such default is cured within the cure period set forth in the "**Notice of Default**" provision contained herein. If the estimated cost of restoration exceeds \$250,000.00, (i) the drawings and specifications for the restoration shall be approved by Mortgagee in writing prior to commencement of the restoration, and (ii) Mortgagee shall receive an administration fee equal to a one-half percent (0.50%) of the cost of restoration, not to exceed \$75,000.
- (f) Prior to each release of funds, Mortgagor shall obtain for the benefit of Mortgagee an endorsement to Mortgagee's title insurance policy insuring Mortgagee's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Mortgagee.

UNOFFICIAL COPY

- (g) Mortgagor shall pay all costs and expenses incurred by Mortgagee, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Mortgagee.
- (h) All reciprocal easement and operating agreements benefiting the Property, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.
- (i) Mortgagee shall be satisfied that Projected Debt Service Coverage of at least 1.10 will be produced from the leasing of space to tenants under Approved Leases (as hereinafter defined) or, if the Property is still under construction or completed but not yet leased under Approved Leases, based on Mortgagee's projection of Projected Debt Service Coverage upon Stabilization (as hereinafter defined).
- (j) All leases in effect at the time of the casualty with tenants who have entered into a non-disturbance and attornment agreement or similar agreement with Mortgagee shall remain in full force and Mortgagee shall be satisfied that restoration can be completed within a timeframe such that each tenant thereunder shall be obligated, or each such tenant shall have elected, to continue the lease term at full rental (subject only to abatement, if any, during any period in which the Property or a portion thereof shall not be used and occupied by such tenant as a result of the casualty).

"Approved Leases" means leases to (i) existing tenants with a remaining term of at least five (5) years or (ii) approved new tenants with leases satisfactory to Mortgagee for terms of at least five (5) years, to commence not later than thirty (30) days following completion of restoration.

"Projected Debt Service Coverage" means a number calculated by dividing Projected Operating Income Available for Debt Service for the first fiscal year following restoration of the Property by the debt service during the same fiscal year under all indebtedness secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) debt service due under all such indebtedness during the first fiscal year following completion of the restoration of the Property or (y) debt service that would be due and payable during such fiscal year if all such indebtedness were amortized over thirty (30) years (whether or not amortization is actually required) and if interest on such indebtedness were due as it accrues at the face rate shown on the notes therefor (whether or not interest payments based on such face rates are required).

UNOFFICIAL COPY

"Projected Operating Income Available for Debt Service" means projected gross annual rent from the Approved Leases for the first full fiscal year following completion of the restoration of the Property less:

- (A) The operating expenses of the Property for the last fiscal year preceding the casualty and
- (B) the following:
 - (i) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 93% of the gross leasable area in the Property;
 - (ii) the amount, if any, by which the actual management fee is less than 3.0% of gross revenue during such fiscal period;
 - (iii) the amount, if any, by which the actual real estate taxes are less than \$1.63 per square foot per annum; and
 - (iv) the amount, if any, by which total operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$0.55 per square foot per annum.

"Stabilization" means the date following Project Final Completion (as hereinafter defined when the Property shall have achieved 92% occupancy.

All projections referenced above shall be calculated in a manner satisfactory to Mortgagee.

Notwithstanding the foregoing, Mortgagee agrees that, if the insurance loss proceeds are \$250,000.00 or less, the entire insurance loss proceeds (less reasonable costs of collection) shall be released to Mortgagor to be applied to restoration of the Property to its condition prior to the casualty, subject to the satisfaction of the following conditions:

- (w) The casualty does not materially adversely affect building access and systems and/or the operation of the Property.
- (x) There shall be no existing Event of Default at the time of the casualty, and no Event of Default shall occur from the date of the casualty to the date of Mortgagee's receipt of the insurance loss proceeds.

UNOFFICIAL COPY

- (y) The casualty insurer shall not have denied liability for payment of insurance loss proceeds as a result of any act, neglect, use or occupancy of the Property by Mortgagor or any tenant of the Property.
- (z) There shall be no existing Monetary Default or Non-Monetary Default (as each such term is defined in the provision hereof entitled "Notice of Default") at the time of Mortgagee's release of the insurance loss proceeds.

Condemnation. Mortgagor hereby assigns to Mortgagee (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property, and (ii) the proceeds from any sale or transfer in lieu thereof (collectively, "Condemnation Proceeds") in connection with condemnation proceedings or the exercise of any power of eminent domain or the threat thereof (hereinafter, a "Taking"); if the Condemnation Proceeds are less than the unpaid principal balance of the Note and such damage or Taking occurs prior to the last one (1) year of the term of the Note, such Condemnation Proceeds (less expenses of collection) shall be applied to restoration of the Property to its condition, or the functional equivalent of its condition prior to the Taking, subject to the conditions set forth above in the section entitled "**Insurance**" and subject to the further condition that restoration or replacement of the improvements on the Land to their functional and economic utility prior to the Taking be possible. Any portion of such award and proceeds not applied to restoration shall, at Mortgagee's option, be applied on the Indebtedness, whether due or not, or be released to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents.

Notwithstanding the foregoing, Mortgagee agrees that, if the Condemnation Proceeds are \$250,000.00 or less, the entire Condemnation Proceeds (less reasonable costs of collection) shall be released to Mortgagor to be applied to restoration of the Property to its condition prior to the Taking, subject to the satisfaction of the following conditions:

- (x) There shall be no existing Event of Default at the time of the Taking, and no Event of Default shall occur from the date of the Taking to the date of Mortgagee's receipt of the Condemnation Proceeds.
- (y) There shall be no existing Monetary Default or Non-Monetary Default (as each such term is defined in the provision hereof entitled "**Notice of Default**") at the time of Mortgagee's release of Condemnation Proceeds.
- (z) Mortgagee determines that restoration or replacement of the Improvements to their functional and economic utility prior to such Taking is possible.

Notwithstanding the foregoing, any portion of such award and proceeds not applied to restoration shall, at Mortgagee's option, be applied on the Indebtedness, whether due or not, or be released to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents.

UNOFFICIAL COPY

Taxes and Special Assessments. Mortgagor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Note or the Indebtedness, or upon the interest of Mortgagee in the Property, this instrument, the Note or the Indebtedness, and to procure and deliver to Mortgagee within thirty (30) days after Mortgagee shall have given a written request to Mortgagor, the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Mortgagor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Mortgagee.

Personal Property. With respect to the Personal Property, Mortgagor hereby represents, warrants and covenants as follows:

(a) Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever. Mortgagor shall notify Mortgagee of, and shall indemnify and defend Mortgagee and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.

(b) Except as otherwise provided above, Mortgagor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior consent of Mortgagee.

(c) Mortgagor is a limited liability company organized under the laws of the State of Delaware. Until the Indebtedness is paid in full, Mortgagor (i) shall not change its legal name without providing Mortgagee with thirty (30) days prior written notice; and (ii) shall not change its state of organization; and (iii) shall preserve its existence and shall not, in one transaction or a series of transactions, merge into or consolidate with any other entity.

(d) At the request of Mortgagee, Mortgagor shall join Mortgagee in executing one or more financing statements and continuations and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Mortgagee, and Mortgagor shall pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable. Mortgagor shall also, at Mortgagor's expense, take any and all other action requested by Mortgagee to perfect Mortgagee's security interest under the Uniform Commercial Code with respect to the Personal Property, including, without limitation, exercising Mortgagor's best efforts to obtain any consents, agreements or acknowledgments required of third parties to perfect Mortgagee's security interest in Personal Property consisting of deposit accounts, letter-of-credit rights, investment property, and electronic chattel paper.

UNOFFICIAL COPY

Other Liens. Mortgagor agrees to keep the Property and any Personal Property free from all other liens either prior or subsequent to the lien created by this instrument. The (i) creation of any other lien on any portion of the Property or on any Personal Property, whether or not prior to the lien created hereby, (ii) assignment or pledge by Mortgagor of its revocable license to collect, use and enjoy rents and profits from the Property, or (iii) granting or permitting of a security interest in or other encumbrance on the direct or indirect ownership interests in Mortgagor, shall constitute a default under the terms of this instrument; except that upon written notice to Mortgagee, Mortgagor may proceed to contest in good faith and by appropriate proceedings any mechanics liens, tax liens or judgment liens with respect to the Property or any Personal Property described herein, provided Mortgagor has caused Mortgagee's ALTA loan policy be endorsed to insure against same, a statutory lien bond has been posted to cover such lien or funds sufficient to satisfy the contested amount have been deposited in an escrow account satisfactory to Mortgagee.

Indemnification, Duty to Defend and Costs, Fees and Expenses. In addition to any other indemnities contained in the Loan Documents, Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against any and all losses, liabilities, claims, demands, damages, costs and expenses (including, but not limited to, costs of title evidence and endorsements to Mortgagee's title insurance policy with respect to the Property and reasonable attorney fees and other costs of defense) which may be imposed upon, incurred by or asserted against Mortgagee, whether or not any legal proceeding is commenced with regard thereto, in connection with: (i) the enforcement of any of Mortgagee's rights or powers under the Loan Documents; (ii) the interpretation of any of the terms and conditions of the Loan Documents, (iii) the protection of Mortgagee's interest in the Property; or (iv) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or on any sidewalk, curb, parking area, space or street located adjacent thereto. If any claim or demand is made or asserted against Mortgagee by reason of any event as to which Mortgagor is obligated to indemnify or defend Mortgagee then, upon demand by Mortgagee, Mortgagor, at Mortgagor's sole cost and expense, shall defend such claim, action or proceeding in Mortgagee's name, if necessary, by such attorneys as Mortgagee shall approve. Notwithstanding the foregoing, Mortgagee may, in Mortgagee's sole discretion, engage its own attorneys to defend it or assist in its defense and Mortgagor shall pay the reasonable fees and disbursements of such attorneys.

Failure of Mortgagor to Act. If Mortgagor fails to make any payment or do any act as herein provided, Mortgagee may, without obligation to do so, without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof: (i) make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Mortgagee; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Mortgagee appears to be prior or

UNOFFICIAL COPY

superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended and all losses, liabilities, claims, damages, costs and expenses required to be reimbursed by Mortgagor to Mortgagee hereunder shall be payable by Mortgagor immediately upon demand with interest from date of expenditure or demand, as the case may be, at the Default Rate (as defined in the Note). All sums so expended or demanded by Mortgagee and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument. In no event shall the maximum amount secured hereby exceed two hundred percent (200%) of the principal amount of the Note.

In furtherance and not in limitation of the preceding paragraph, unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this instrument, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that is made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this instrument. If Mortgagee purchases insurance for the Property, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The costs of the insurance may be more than the cost of the insurance Mortgagor may be able to obtain on its own.

Event of Default. Any default by Mortgagor in making any required payment of the Indebtedness or any default in any provision, covenant, agreement, warranty or certification contained in any of the Loan Documents shall, except as provided in the three immediately succeeding paragraphs, constitute an "Event of Default".

Notice of Default. A default in any provision, covenant, agreement or warranty contained in the Note or in any other Loan Document occurring prior to Breakeven shall not constitute an Event of Default unless Mortgagee shall have given a written notice of such default to Mortgagor and Mortgagor shall not have cured such default within ten (10) days after the date on which Mortgagee shall have given such notice of default to Mortgagor, and Mortgagor shall not have (i) diligently undertaken and continued to pursue the curing of such default not to exceed forty-five (45) days after Mortgagee shall have given notice to Mortgagor of said default and (ii) deposited an amount sufficient to cure such default in an escrow account satisfactory to Mortgagee, for disbursement to Mortgagor upon the cure of such default; it being understood that during the continuation of such default, Mortgagee shall not be obligated to make any additional advances of principal of the Note. Upon the failure of Mortgagor to cure any such default within the cure period set forth in clause (i) above, Mortgagee, in addition to all other rights and remedies provided it, may enter upon and take possession of the Property for the purpose of completing the construction of the improvements being financed by the Indebtedness.

UNOFFICIAL COPY

A default in any payment required in the Note or any other Loan Document occurring on or after Breakeven, whether or not payable to Mortgagee, (a "Monetary Default") shall not constitute an Event of Default unless Mortgagee shall have given a written notice of such Monetary Default to Mortgagor and Mortgagor shall not have cured such Monetary Default by payment of all amounts in default within five (5) business days after the date on which Mortgagee shall have given such notice to Mortgagor.

Any other default under the Note or under any other Loan Document occurring on or after Breakeven (a "Non-Monetary Default") shall not constitute an Event of Default unless Mortgagee shall have given written notice of such Non-Monetary Default to Mortgagor and Mortgagor shall not have cured such Non-Monetary Default within thirty (30) days after the date on which Mortgagee shall have given such notice of default to Mortgagor (or, if the Non-Monetary Default is not curable within such 30-day period, Mortgagor shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default and deposited an amount sufficient to cure such Non-Monetary Default in an escrow account satisfactory to Mortgagee).

In no event shall the notice and cure period provisions recited above constitute a grace period for the purposes of commencing interest at the Default Rate (as defined in the Note).

"Breakeven" means the date following Project Final Completion when, for each of three (3) consecutive months, Debt Service Coverage shall have equaled or exceeded 1.00 as demonstrated by evidence satisfactory to Mortgagee.

"Project Final Completion" means (i) the satisfactory lien free completion of all improvements in accordance with the drawings and specifications approved by Mortgagee (including punchlist items and tenant finishes, as evidenced by affidavits of completion by the general contractor, final lien waivers by all parties working on, or supplying materials for, the improvements (or, with respect to any retention or amounts being disputed in good faith by the general contractor, affirmative title insurance coverage over any mechanics liens), an AIA G704 certificate of substantial completion from the project architect with respect to the base building/core and shell, as may be required by Mortgagee, and a final endorsement to Mortgagee's policy of title insurance, and (ii) the receipt by Mortgagee of a temporary or permanent certificate of occupancy for the base building/core and shell (or equivalent, as issued by the Village of Palatine for the base building/core and shell) and any certificate(s) of occupancy necessary for occupancy of all of the improvements which are occupied at that time, an estoppel certificate from each tenant who is the initial occupant of each tenant space leased at that time, an as-built survey, a final set of drawings showing actual material changes made during construction, and the consent of each surety which shall have issued a performance and payment bond for the benefit of Mortgagee with respect to the

UNOFFICIAL COPY

improvements. Note that Project Final Completion does not include completion of tenant improvements for unleased space and that Project Final Completion can occur before Stabilization.

"Debt Service Coverage" means a number calculated by dividing Net Operating Income Available for Debt Service for a fiscal period by the debt service during the same fiscal period under all indebtedness (including the Indebtedness) secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the actual debt service due under all indebtedness secured by any portion of the Property based upon an amortization schedule which is the shorter of the actual amortization schedule or thirty (30) years (whether or not amortization is actually required) and, if an accrual loan, as if interest and principal on such indebtedness were due monthly.

"Net Operating Income Available for Debt Service" means net income (prior to giving effect to any capital gains or losses and any extraordinary items) from the Property, determined in accordance with generally accepted accounting principles, for a fiscal period, plus (to the extent deducted in determining net income from the Property):

- A) interest on indebtedness secured by any portion of the Property for such fiscal period;
- B) depreciation, if any, of fixed assets at or constituting the Property for such fiscal period;
- C) amortization, if any, of tenant finish expenditures at the Property; and
- D) amortization of costs incurred in connection with any indebtedness secured by any portion of the Property and leasing commissions which have been prepaid;

less:

- E) an amount (positive or negative) to offset any rent averaging adjustment resulting from adherence to FASB-13;
- F) the amortization of free rent and any other tenant concessions and promotional items not deducted in the calculation of net income above;
- G) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 93% of the gross leasable area in the Property;
- H) the amount, if any, by which the actual management fee is less than 3.0% of gross revenue during such fiscal period;

UNOFFICIAL COPY

- I) the amount, if any, by which the actual real estate taxes are less than \$1.63 per square foot per annum; and
- J) the amount, if any, by which total operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$0.55 per square foot per annum.

All adjustments to net income referenced above shall be calculated in a manner satisfactory to Mortgagee.

Appointment of Receiver. Upon commencement of any proceeding to enforce any right under this instrument, including foreclosure thereof, Mortgagee (without limitation or restriction by any present or future law, without regard to the solvency or insolvency at that time of any party liable for the payment of the Indebtedness, without regard to the then value of the Property, whether or not there exists a threat of imminent harm, waste or loss to the Property and or whether the same shall then be occupied by the owner of the equity of redemption as a homestead) shall have the absolute right to the appointment of a receiver of the Property and of the revenues, rents, profits and other income therefrom, and said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses of such receivership and of operation, maintenance and repair of said Property, to apply the balance to the payment of any of the Indebtedness then due.

Foreclosure. Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Mortgagee, become immediately due and payable for all purposes without any notice or demand, except as required by law, (ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Mortgagee may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Mortgagee may, to the extent permitted by applicable law, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may complete construction of the buildings and improvements and manage, rent or lease the Property or any portion thereof upon such terms as Mortgagee may deem expedient, and collect, receive and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Mortgagee is hereby further authorized and empowered, to the extent permitted by applicable law, as agent or attorney in fact, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Mortgagee may think best), and all the right, title and interest of Mortgagor therein, by advertisement or in any manner provided by applicable law, (MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE, TO THE EXTENT PERMITTED BY APPLICABLE LAW),

UNOFFICIAL COPY

and to issue, execute and deliver a deed of conveyance, all as then may be provided by applicable law; and Mortgagee, to the extent permitted by applicable law, shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and attorneys' fees as herein provided, apply such proceeds to the Indebtedness, including all sums advanced or expended by Mortgagee or the legal holder of the Indebtedness, with interest from date of advance or expenditure at the Default Rate (as defined in the Note), rendering the excess, if any, as provided by law; such sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against Mortgagor, the heirs, successors and assigns of Mortgagor, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through or under Mortgagor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

Waiver of Redemption Mortgagor releases and waives all rights to retain possession of the Property after any default in payment or breach of any of the obligations, covenants, undertakings or agreements herein or in the note and after the expiration of any applicable cure period; Mortgagor hereby releases and waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its own behalf and, if Mortgagor is a trust, on behalf of the Beneficiary of Mortgagor, and each and every person, except decree and judgment creditors of the Mortgagor, including any and all persons acquiring any interest in or title to the Property or any beneficial interest in Mortgagor. Mortgagor shall not, and will not, apply for or avail itself of any appraisal, valuation, stay, extension or exemption law, or so-called "Moratorium Laws" now existing or hereinafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the Property, and any estates comprising the Property, marshalled upon any foreclosure of the lien hereon and agree that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. If Mortgagor is a trust, no provision of this paragraph or of this Mortgage shall prevent the Beneficiary of Mortgagor from bidding at any foreclosure sale of the Property.

Prohibition on Transfer. The present ownership and management of the Property is a material consideration to Mortgagee in making the loan secured by this instrument, and Mortgagor shall not (i) convey title to all or any part of the Property, (ii) enter into any contract to convey (land contract/installment sales contract/contract for deed) title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey") or (iii) cause or permit a Change in the Proportionate Ownership (as hereinafter defined) of Mortgagor. Any such conveyance, entering into a Contract to Convey or Change in the Proportionate Ownership of Mortgagor shall constitute a default under the terms of this instrument.

UNOFFICIAL COPY

"Change in the Proportionate Ownership" means in the case of a corporation, a change in, or the existence of a lien on, the direct or indirect ownership of the stock of Mortgagor; in the case of a trust, a change in the trustee, or a change in, or the existence of a lien on, the direct or indirect ownership of the beneficial interests of Mortgagor; in the case of a limited liability company, a change in, or the existence of a lien on, the direct or indirect ownership of the limited liability company interests of Mortgagor; or, in the case of a partnership, a change in, or the existence of a lien on, the direct or indirect ownership of the partnership interests of Mortgagor.

The continuing ownership and influence of James A. McShane and/or Mary G. McShane in the Conor Member (as hereinafter defined) of the Mortgagor is an important factor to Mortgagee. Accordingly, notwithstanding the above, Mortgagee's consent shall not be required for a Change in the Proportionate Ownership of Mortgagor that consists solely of a transfer of direct or indirect ownership interests in Conor Member to or among the McShane Family provided (A) either of the following is true immediately after such transfer and continues to be true at all times thereafter: (i) James A. McShane, Mary G. McShane and/or a Permitted Trust continue(s) to own, in the aggregate, directly or indirectly, free and clear of any security interest, at least a fifty percent (50%) interest in the Conor Member or, following the death or legal incompetency of James A. McShane and/or Mary G. McShane, the McShane Family continue(s) to own, directly or indirectly, free and clear of any security interest, more than a fifty percent (50%) interest in Mortgagor; or (ii) the transferee is a Permitted Trust (as hereinafter defined); and (B) each transferee permitted herein and all persons and entities owning (directly or indirectly) an interest in such transferee are not (and have never been): (i) subject to any bankruptcy, reorganization, or insolvency proceedings or any criminal charges or proceedings, or (ii) a litigant, plaintiff, or defendant in any suit brought against or by Mortgagee.

"Conor Member" means Conor Palatine Partner, LLC, a Delaware limited liability company, as member of Mortgagor.

"McShane Family" means James A. McShane and Mary G. McShane, their descendants and their spouses, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of fifty percent (50%)) by said parties.

"Permitted Trust" means a trust in which either (A) James A. McShane, Mary G. McShane and/or a member(s) of the McShane Family are either (i) the sole trustee(s) or (ii) hold(s) more than a fifty percent (50%) beneficial interest; or (B) following the death or legal incompetency of James A. McShane and/or Mary G. McShane, the McShane Family holds more than a fifty percent (50%) beneficial interest.

Financial Statements. Mortgagor agrees to furnish to Mortgagee:

UNOFFICIAL COPY

(A) the following financial statements for Mortgagor within ninety (90) days after the close of each fiscal year of the Mortgagor (the "Mortgagor Financial Statements Due Date"):

- (i) an audited statement of operations for such fiscal year with a detailed line item break-down of all sources of income and expenses, including capital expenses broken down between, leasing commissions, tenant improvements, capital maintenance, common area renovation, and expansion; and if the audited statement is not detailed, an unaudited statement with sufficient detail will also be required; and
- (ii) a current rent roll identifying location, leased area, lease begin and end dates, current contract rent, rent increases and increase dates, percentage rent, expense reimbursements, and any other recovery items; and
- (iii) an operating budget for the current fiscal year.

(B) the following financial statements that Mortgagee may, in Mortgagee's sole discretion, require from time to time within thirty (30) days after receipt of a written request from Mortgagor (the "Requested Financial Statements Due Date"):

- (i) an audited balance sheet for Mortgagor as of the last day of Mortgagor's most recently closed fiscal year; and
- (ii) an unaudited balance sheet for Conor Commercial Real Estate LLC, a Delaware limited liability company (hereinafter, "Principal") as of the last day of each such Principal's most recently closed fiscal year; and
- (iii) an audited statement of cash flows for Mortgagor as of the last day of Mortgagor's most recently closed fiscal year; and
- (iv) an unaudited statement of cash flows for Principal as of the last day of Principal's most recently closed fiscal year.

Furthermore, Mortgagor shall furnish to Mortgagee within twenty (20) days after receipt of a written request from Mortgagee such reasonable financial and management information in the possession of, or accessible to, Mortgagor which Mortgagee determines to be useful in Mortgagee's monitoring of the value and condition of the Property, Mortgagor, or Principal.

The Mortgagor Financial Statements Due Date and the Requested Financial Statements Due Date are each sometimes hereinafter referred to as a "Financial Statements Due Date".

UNOFFICIAL COPY

Notwithstanding the foregoing, in no event shall a Financial Statements Due Date for a particular financial statement be prior to the 90th day following the close of the fiscal year covered by such financial statement.

If audited, the financial statements identified in sections (A)(i), (A)(ii), (B)(i), (B)(ii), (B)(iii), and (B)(iv) above, shall each be prepared in accordance with generally accepted accounting principles by a "Big Four" or other acceptable accounting firm (Warady and Davis LLC is hereby approved). All unaudited statements shall contain a certification by the managing member of Principal stating that they have been prepared in accordance with generally accepted accounting principles and that they are true and correct. The expense of preparing all of the financial statements required in (A) and (B) above, shall be borne by Mortgagor (or as to the Principal's financial statements, by Principal).

Mortgagor acknowledges that Mortgagee requires the financial statements and information required herein to record accurately the value of the Property for financial and regulatory reporting.

In addition to all other remedies available to Mortgagee hereunder, at law and in equity, if any financial statement, additional information or proof of payment of property taxes and assessments is not furnished to Mortgagee as required in this section entitled "**Financial Statements**" and in the section entitled "**Taxes and Special Assessments**", within thirty (30) days after Mortgagee shall have given written notice to Mortgagor that it has not been received as required,

(x) interest on the unpaid principal balance of the indebtedness shall as of the applicable Financial Statements Due Date or the date such additional information or proof of payment of property taxes and assessments was due, accrue and become payable at a rate equal to the sum of the Interest Rate (as defined in the Note) plus one percent (1%) per annum (the "Increased Rate"); and

(y) Mortgagee may elect to obtain an independent appraisal and audit of the Property at Mortgagor's expense, and Mortgagor agrees that it will, upon request, promptly make Mortgagor's books and records regarding the Property available to Mortgagee and the person(s) performing the appraisal and audit (which obligation Mortgagor agrees can be specifically enforced by Mortgagee).

The amount of the payments due under the Note during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to reflect the Increased Rate with no change in the amortization of the unpaid principal balance. Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the date (the "Receipt Date") on which all of the financial statements, additional information and proof of payment of property taxes and assessments (as requested by Mortgagee) shall be furnished to or made available to Mortgagee as required. Commencing on the Receipt Date, interest on the unpaid principal balance of the Note shall again accrue at the Interest

UNOFFICIAL COPY

Rate with no change in amortization, and the payments due during the remainder of the term of the Note shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Interest Rate. Notwithstanding the foregoing, Mortgagee shall have the right to conduct an independent audit at its own expense at any time.

Usury Law Compliance. The indebtedness constitutes a loan secured by a mortgage on real estate under Chapter 815, Act 205, Section 4(1)(1) of Illinois Compiled Statutes, 1993, as the same may subsequently be amended.

Property Management. The management company for the Property shall be satisfactory to Mortgagee. Any change in the management company without the prior written consent of Mortgagee shall constitute a default under this instrument.

Construction Mortgage. This is a Construction Mortgage or a refinancing of a Construction Mortgage, as that term is defined in Section 9-313(1)(c) of Chapter 810, Act 5, Illinois Compiled Statutes 1993.

Deposits by Mortgagor. To assure the timely payment of real estate taxes and special assessments (including personal property taxes, if appropriate), Mortgagor agrees to deposit, prior to the initial advance of principal of the Note, (i) an amount equal to the real estate taxes and special assessments which have accrued, but remain unpaid for the period prior to the initial advance of principal of the Note and which have not been included in the Project Budget (as defined in the aforementioned Funding Agreement), and (ii) thereafter following the occurrence of an Event of Default, Mortgagee shall thenceforth have the option to require that Mortgagor remit monthly payments in amounts satisfactory to Mortgagee. Such amounts shall be held by Mortgagee. If at any time the funds so held by Mortgagee shall be insufficient to pay any of said expenses, Mortgagor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Mortgagee to be applied to the payment of such real estate taxes and special assessments and, at the option of Mortgagee after default, the Indebtedness. Mortgagee may deduct from any amounts so held, any fees, costs or expenses incurred in connection with holding such amounts and/or paying amounts to taxing authorities or other parties, including, without limitation any fees, costs or expenses associated with paying amounts via e-check or electronically.

Notices. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Mortgagor by certified mail or reputable courier service shall be addressed to Mortgagor at 9500 W. Bryn Mawr, Suite 200, Rosemont, IL 60018 such other address in the United States of America as Mortgagor shall designate in a notice to Mortgagee given in the manner described herein. Any notice sent to Mortgagee by certified mail or reputable courier service shall be addressed to The

UNOFFICIAL COPY

Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Mortgagee shall designate in a notice given in the manner described herein. Any notice given to Mortgagee shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

Modification of Terms. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of any obligation contained herein and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of the Note, without notice or consent: (i) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Mortgagee may have; (iv) accept additional security of any kind; (v) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Property.

Exercise of Options. Whenever, by the terms of this instrument, of the Note or any of the other Loan Documents, Mortgagee is given any option, such option may be exercised when the right accrues or at any time thereafter, and no acceptance by Mortgagee of payment of Indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

Nature and Succession of Agreements. Each of the provisions, covenants and agreements contained herein shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, and assigns of the parties hereto, respectively, and the term "Mortgagee" shall include the owner and holder of the Note.

Legal Enforceability. No provision of this instrument, the Note or any other Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall govern and Mortgagor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

Limitation of Liability. Notwithstanding any provision contained herein to the contrary, the personal liability of Mortgagor shall be limited as provided in the Note.

UNOFFICIAL COPY

Miscellaneous. Time is of the essence in each of the Loan Documents. The remedies of Mortgagee as provided herein or in any other Loan Document or at law or in equity shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall occur; and neither the failure to exercise any such right or remedy nor any acceptance by Mortgagee of payment of Indebtedness in default shall in any event be construed as a waiver or release of any right or remedy. Neither this instrument nor any other Loan Document may be modified or terminated orally but only by agreement or discharge in writing and signed by Mortgagor and Mortgagee. If any of the provisions of any Loan Document or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of such Loan Document and each of the other Loan Documents, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of each of the Loan Documents shall be valid and enforceable to the fullest extent permitted by law.

Waiver of Jury Trial. Mortgagor hereby waives any right to trial by jury with respect to any action or proceeding (a) brought by Mortgagor, Mortgagee or any other person relating to (i) the obligations secured hereby and/or any understandings or prior dealings between the parties hereto or (ii) the Loan Documents or the Environmental Indemnity Agreement, or (b) to which Mortgagee is a party.

Captions. The captions contained herein are for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect this instrument.

Governing Law. This instrument, the interpretation hereof and the rights, obligations, duties and liabilities hereunder shall be governed and controlled by the laws of the state in which the Property is located.

*[Remainder of page intentionally left blank.
Signatures commence on following page.]*

UNOFFICIAL COPY

EXHIBIT "A"

(Description of Property)

Real property in the City of Palatine, County of Cook, State of Illinois, described as follows:

PARCEL 1:

THE WEST 343.21 FEET OF THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTHWESTERLY OF THE CHICAGO AND NORTHWESTERN RAILROAD COMPANY'S RIGHT-OF-WAY AND NORTH OF THE SOUTH 891.04 FEET OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23 AFORESAID:

PARCEL 2:

THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING SOUTHWESTERLY OF THE CHICAGO AND NORTHWESTERN RAILROAD COMPANY'S RIGHT-OF-WAY;

EXCEPTING FROM THE ABOVE DESCRIBED PROPERTY THE FOLLOWING:

THE EAST 293.17 FEET OF THE WEST 636.38 FEET LYING NORTH OF THE SOUTH 523.86 FEET THEREOF;

AND EXCEPTING

THE WEST 343.21 FEET LYING NORTH OF THE SOUTH 891.04 FEET THEREOF;

AND EXCEPTING

THE EAST 20 FEET OF THE WEST 343.21 FEET OF THE SOUTH 136.50 FEET OF THAT PART LYING NORTH OF THE SOUTH LINE 523.86 FEET THEREOF;

AND EXCEPTING

THAT PART DESCRIBED AS: COMMENCING AT THE SOUTHEAST CORNER OF SAID PROPERTY; THENCE WEST ALONG THE SOUTH LINE THEREOF 20.0 FEET; THENCE NORTH ALONG A LINE 20.0 FEET WEST OF AND PARALLEL WITH THE EAST LINE THEREOF 317.54 FEET; THENCE NORTHWESTERLY 214.87 FEET ALONG THE ARC OF A CIRCLE OF 292.94 FEET RADIUS, CONVEX TO THE NORTHEAST AND TANGENT TO THE LAST DESCRIBED LINE TO A POINT ON THE SOUTHWESTERLY LINE OF THE RIGHT-OF-WAY OF THE

UNOFFICIAL COPY

CHICAGO AND NORTHWESTERN RAILROAD COMPANY; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE 110.74 FEET TO A POINT ON THE EAST LINE OF SAID PROPERTY; THENCE SOUTH ALONG SAID EAST LINE TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

AND EXCEPTING

THAT PART TAKEN BY THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF ILLINOIS IN CASE NO. 87 L 51315.

PARCEL 1 AND PARCEL 2 BEING ALSO DESCRIBED TOGETHER AS:

THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23; THENCE SOUTH 89 DEGREES 22 MINUTES 52 SECONDS EAST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, A DISTANCE OF 45.16 FEET TO THE EAST RIGHT-OF-WAY OF HICKS ROAD PER DOCUMENT NUMBER 9151619, AND CASE NUMBER 87L51315, FOR THE POINT OF BEGINNING; THENCE NORTHERLY, AND NORTHEASTERLY ALONG SAID EAST RIGHT-OF-WAY THE FOLLOWING FIVE (5) COURSES: 1) THENCE NORTH 00 DEGREES 12 MINUTES 53 SECONDS EAST, A DISTANCE OF 309.93 FEET TO A POINT OF CURVATURE; 2) THENCE NORTHEASTERLY ALONG A CURVE CONCAVE SOUTHEASTERLY WITH A 424.39 FOOT RADIUS, AND A 222.60 FOOT CHORD BEARING NORTH 15 DEGREES 24 MINUTES 17 SECONDS EAST, FOR AN ARC LENGTH OF 225.24 FEET TO A POINT OF TANGENCY; 3) THENCE NORTH 30 DEGREES 34 MINUTES 51 SECONDS EAST, A DISTANCE OF 305.13 FEET; 4) THENCE NORTH 36 DEGREES 22 MINUTES 17 SECONDS EAST, A DISTANCE OF 100.57 FEET; 5) THENCE NORTH 30 DEGREES 41 MINUTES 07 SECONDS EAST, A DISTANCE OF 48.58 FEET TO THE EAST LINE OF THE WEST 343.21 FEET OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23; THENCE SOUTH 00 DEGREES 07 MINUTES 12 SECONDS WEST ALONG SAID EAST LINE, A DISTANCE OF 252.81 FEET TO THE NORTH LINE OF THE SOUTH 136.50 FEET OF THAT PART OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23 LYING NORTH OF THE SOUTH 523.86 FEET THEREOF; THENCE NORTH 89 DEGREES 22 MINUTES 52 SECONDS WEST ALONG SAID NORTH LINE, A DISTANCE OF 20.00 FEET TO THE WEST LINE OF THE EAST 20 FEET OF SAID WEST 343.21 FEET; THENCE SOUTH 00 DEGREES 07 MINUTES 12 SECONDS WEST ALONG SAID WEST LINE, A DISTANCE OF 136.51 FEET TO THE NORTH LINE OF SAID SOUTH 523.86 FEET; THENCE SOUTH 89 DEGREES 22 MINUTES 52 SECONDS EAST ALONG SAID NORTH LINE, A DISTANCE OF 313.18 FEET TO THE EAST LINE OF THE WEST 636.38 FEET OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23; THENCE NORTH 00 DEGREES 07 MINUTES 12 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 336.82 FEET TO THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY'S SOUTHWESTERLY RIGHT-OF-WAY; THENCE SOUTH 59 DEGREES 24 MINUTES 40 SECONDS EAST ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 692.79 FEET TO A POINT ON A CURVE; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY WITH A 262.94 FOOT RADIUS, AND A 211.90 FOOT CHORD BEARING SOUTH 21 DEGREES 05 MINUTES 07 SECONDS EAST, FOR AN ARC LENGTH OF 218.10 FEET TO A LINE 20.0 FEET WEST OF AND PARALLEL WITH THE

UNOFFICIAL COPY

EAST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23; THENCE SOUTH 00 DEGREES 07 MINUTES 16 SECONDS WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 317.71 FEET TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23; THENCE NORTH 89 DEGREES 22 MINUTES 52 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 1,265.03 FEET TO THE POINT OF BEGINNING, CONTAINING 18.284 ACRES, MORE OR LESS.

Common Address: 315 S. Hicks, Palatine, IL

PIN: 02-23-220-003-0000; 02-23-220-004-0000; and 02-23-220-006-0000

Property of Cook County Clerk's Office