

CCHI 1904823LD DG 1 of 6

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud 844-768-1713

Barcode with Doc# 2001517086 Fee \$88.00, RHSP FEE: \$9.00 RPRF FEE: \$1.00, EDWARD M. HOODY, COOK COUNTY RECORDER OF DEEDS, DATE: 01/15/2020 01:57 PM PG: 1 OF 28

The property identified as: PIN: 19-03-201-004-0000

Address:

Street: 4064-4200 South Pulaski Road

Street line 2:

City: Chicago

State: IL

ZIP Code: 60632

Lender: Citizens Bank, National Association

Borrower: Pulaski Promenade, LLC

Loan / Mortgage Amount: \$250,000,000.00

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.

Box 400

Certificate number: D365C0AB-0049-4E4A-87C8-7FDF1536B509

Execution date: 12/20/2019

SV P S M SC E

UNOFFICIAL COPY

This instrument prepared by and
after recording return to:

Riemer & Braunstein LLP
100 Cambridge Street
Boston, Massachusetts 02114
Attention: Kevin J. Lyons, Esq.

Property Address:
4064-4200 South Pulaski Road
Chicago, Illinois 60627

PIN(s): 19-03-201-004-0000 (affects the Land and other property); 19-03-201-047-0000 (affects the Land and other property); 19-03-201-049-0000; 19-03-201-050-0000; and 19-03-201-053-0000

MORTGAGE, SECURITY AGREEMENT AND
FIXTURE FILING

by

PULASKI PROMENADE LLC,
a Delaware limited liability company,
as Mortgagor,

to and in favor of

CITIZENS BANK, NATIONAL ASSOCIATION,
as Agent, as mortgagee

**THIS DOCUMENT SERVES AS A FIXTURE FILING UNDER THE ILLINOIS UNIFORM COMMERCIAL
CODE, CHAPTER 810 ILCS 5/9-502 (b) ET SEQ.**

UNOFFICIAL COPY

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of the 20th day of December, 2019, by PULASKI PROMENADE, LLC, a Delaware limited liability company, having an address at c/o IRC Retail Centers, 814 Commerce Drive, Suite 300, Oak Brook, Illinois 60523 (hereinafter called "Mortgagor"), to CITIZENS BANK, NATIONAL ASSOCIATION, a national banking association, having an address at 1215 Superior Avenue, Cleveland, Ohio 44114, as agent (hereinafter called "Mortgagee" or "Agent") for certain Lenders (as hereinafter defined) under a certain Credit Agreement dated as of even date herewith by and among INP HOLDINGS I, LLC and INP HOLDINGS II, LLC, each a Delaware limited liability company (collectively, jointly and severally, as "Borrower"), which are Affiliates of Mortgagor, both having an address at c/o IRC Retail Centers, 814 Commerce Drive, Suite 300, Oak Brook, Illinois 60523, Agent and the other lending institutions which become parties to the Credit Agreement (Agent and the other lending institutions which become parties to the Credit Agreement are collectively hereinafter referred to as the "Lenders" and individually as the "Lender") (hereinafter, as same may be amended, restated, renewed, replaced, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement").

This Mortgage is granted pursuant to the terms, provisions and conditions of the Credit Agreement. *Capitalized terms used herein which are not otherwise specifically defined shall have the same meaning herein as in the Credit Agreement.* The term "Mortgagor" shall include, wherever the context permits, its successors and assigns. The terms "Agent", "Mortgagee" and the "Lenders" shall include, wherever the context permits, their respective successors and assigns as the holder for the time being of this Mortgage and the Note and other Obligations hereby secured.

The term "Subject Property" shall mean and include all of the following described property:

A. Real Estate. The land more particularly listed and described on Exhibit A which is annexed hereto and made a part hereof (the "Land") together with the improvements and other structures now or hereafter situated thereon (such improvements and other structures being sometimes collectively called the "Improvements"; and the Improvements, together with the Land, hereinafter, the "Real Estate");

B. Fixtures. All real estate fixtures or items which by agreement of the parties may be deemed to be such fixtures, now or hereafter owned by Mortgagor, or in which Mortgagor has or hereafter obtains an interest and now or hereafter located in or upon the Real Estate, or now or hereafter attached to, installed in, or used in connection with any of the Real Estate, including, but not limited to, any and all portable or sectional buildings, bathroom, plumbing, heating, lighting, refrigerating, ventilating and air-conditioning apparatus and equipment, garbage incinerators and receptacles, elevators and elevator machinery, boilers, furnaces, stoves, tanks, motors, sprinkler and fire detection and extinguishing systems, doorbell and alarm systems, window shades, screens, awnings, screen doors, storm and other detachable windows and doors, mantels, partitions, built-in cases, counters and other fixtures whether or not included in the foregoing enumeration, but in any

UNOFFICIAL COPY

case excluding any fixtures or items owned by tenants or which may be removed by tenants under the terms of their leases (hereinafter, the "Fixtures");

C. Additional Appurtenances. All of the right, title and interest of Mortgagor in and to all bridges, easements, rights of way, licenses, privileges, hereditaments, permits and appurtenances hereafter belonging to or enuring to the benefit of the Real Estate and all right, title and interest of Mortgagor in and to the land lying within any street or roadway adjoining any of the Real Estate and all right, title and interest of Mortgagor in and to any vacated or hereafter vacated streets or roads adjoining any of the Real Estate and any and all reversionary or remainder rights and, including but not limited to, rights and easements for access and agrees and utility connections, and other rights now or hereafter appurtenant hereto (hereinafter, the "Additional Appurtenances");

D. Awards. All of the right, title and interest of Mortgagor in and to any award or awards heretofore made or hereafter to be made by any municipal, county, state or federal authorities to the present or any subsequent owners of any of the Real Estate or the Land, or the Improvements, or the Fixtures, or the Additional Appurtenances, or the Leases, or the Personal Property, including, without limitation, any award or awards, or settlements or payments, or other compensation hereafter made resulting from (x) condemnation proceedings or the taking of the Real Estate, or the Land, or the Improvements, or the Fixtures, or the Additional Appurtenances, or the Leases, or the Personal Property, or any part thereof, under the power of eminent domain, or (y) the alteration of grade or the location or discontinuance of any street adjoining the Land or any portion thereof, or (z) any other injury to or decrease in value of the Subject Property (hereinafter, the "Awards");

E. Leases. All of the right, title and interest of Mortgagor in and to all leases or licenses now or hereafter entered into of the Real Estate, or any portion thereof, and all rents, fees, charges, issues, profits, revenues, earnings and royalties therefrom (collectively, "Rents"), and all right, title and interest of Mortgagor thereunder, including, without limitation, cash, letters of credit, or securities deposited thereunder to secure performance by the tenants, licensees or occupants of their obligations thereunder, whether such cash, letters of credit, or securities are to be held until the expiration of the terms of such leases, licenses or occupancy agreements or applied to one or more of the installments of rent, fees or charges coming due prior to the expiration of such terms including, without limitation, the right to receive and collect the Rents, fees or charges thereunder (hereinafter, the "Leases"); and

F. Personal Property. All tangible and intangible personal property now owned or at any time hereafter acquired by Mortgagor of every nature and description, and used in any way in connection with the Real Estate, the Fixtures, the Additional Appurtenances or any other portion of the Subject Property, including, without limitation express or implied upon the generality of the foregoing, all Equipment, Goods, Inventory, Fixtures, Accounts, Instruments, Documents and General Intangibles (as each such capitalized term is defined in the Uniform Commercial Code in effect in the State of Illinois (the "UCC")) and further including, without any such limitation, the following whether or not included in the foregoing, but in any case only to the extent owned or at any time hereafter acquired by Mortgagor: materials; supplies; furnishings; chattel paper; money; bank accounts; security deposits; utility deposits; any insurance or tax reserves deposited with

UNOFFICIAL COPY

Agent; any cash collateral deposited with Agent; claims to rebates, refunds or abatements of real estate taxes or any other taxes; contract rights; plans and specifications; licenses, permits, approvals and other rights; the rights of Mortgagor under contracts with respect to the Real Estate, or any other portion of the Subject Property; condominium related documents with respect to the Real Estate or any other portion of the Subject Property; signs, brochures, advertising, the name by which the Subject Property is known and any variation of the words thereof, and good will; copyrights, service marks, and all goodwill associated therewith; and trademarks; all proceeds paid for any damage or loss to all or any portion of the Real Estate, the Fixtures, the Additional Appurtenances, any other Personal Property or any other portion of the Subject Property ("Insurance Proceeds"); all Awards; all Leases; all books and records; and all proceeds, products, additions, accessions, substitutions and replacements to any one or more of the foregoing (hereinafter collectively, the "Personal Property").

The term "Obligations" shall mean and include:

A. The payment of the principal sum, interest at variable rates, charges and indebtedness evidenced by the Notes including any extensions, renewals, replacements, increases, modifications and amendments thereof in the original aggregate amount of up to TWO HUNDRED FIFTY MILLION AND NO/100 DOLLARS (\$250,000,000.00), given by Borrowers to the respective Lenders, which indebtedness will include any future advances made from time to time from and after the date hereof;

B. The payment, performance, discharge and satisfaction of each covenant, warranty, representation, undertaking and condition to be paid, performed, satisfied and complied with by Mortgagor, Borrower and each Subsidiary Guarantor under and pursuant to the Credit Agreement, this Mortgage or the other Loan Documents;

C. Any Related Swap Obligations;

D. The payment of all costs, expenses, reasonable attorneys' fees, and liabilities incurred by Agent and the Lenders and required to be paid by the Loan Parties under the Credit Agreement, this Mortgage or the other Loan Documents; and

E. The payment, performance, discharge and satisfaction of all other liabilities and obligations of Mortgagor, Borrower and each Subsidiary Guarantor to Agent or any Lender under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to in this Mortgage, the Credit Agreement or any other Loan Document or executed in connection with the transactions contemplated by this Mortgage, the Credit Agreement or any other Loan Document, in each case whether now existing or hereafter arising, direct or indirect, absolute or contingent.

UNOFFICIAL COPY

GRANTING CLAUSE:

NOW, THEREFORE, IN CONSIDERATION OF TEN AND NO/100 DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency whereof are hereby acknowledged by Mortgagor, MORTGAGOR HEREBY IRREVOCABLY GRANTS, BARGAINS, SELLS, CONVEYS, MORTGAGES, WARRANTS, TRANSFERS, ASSIGNS, REMISES, RELEASES, ALIENS, CONFIRMS AND SETS-OVER, unto Mortgagee, and for the ratable benefit of the Lenders and grants a security interest in all of Mortgagor's right, title and interest in all of the Subject Property, WITH MORTGAGE COVENANTS, AND WITH THE RIGHT OF ENTRY AND POSSESSION, IN ORDER TO SECURE THE OBLIGATIONS.

TO HAVE AND TO HOLD said Subject Property, together with all and singular the lands, tenements, privileges, water rights, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all of the estate, right, title, claim and demands whatsoever of Mortgagor, either in law or in equity, of, in and to the Subject Property, in fee simple forever, as security for the faithful performance of the Obligations under the Notes secured hereby and as security for the faithful performance of each and all of the covenants, agreements, terms and conditions of this Mortgage, FOR THE PURPOSE OF SECURING THE OBLIGATIONS.

PROVIDED HOWEVER, that notwithstanding anything contained herein to the contrary, until the occurrence of a Default uncured beyond all applicable grace periods, the Mortgagor shall have the right to remain in quiet and peaceful possession of the Subject Property, and to collect, receive, retain and disburse all funds, revenues and profits derived from the Subject Property.

PROVIDED ALWAYS, that this instrument is upon the express condition that, if Mortgagor performs the Obligations in accordance with the provisions of this Mortgage and the Loan Documents, at the times and in the manner specified, without deduction, fraud or delay, and if Mortgagor performs and complies with all the agreements, conditions, covenants, provisions and stipulations contained herein and in the other Loan Documents, then this Mortgage and the estate hereby granted shall cease and become void and Agent shall provide and deliver to Mortgagor a discharge of this Mortgage in proper form for recording.

Mortgagor hereby grants to Agent, on behalf of the Lenders, a continuing security interest in all of the Subject Property in which a security interest may be granted under the Uniform Commercial Code as such is in effect in the UCC including, without limitation, the Fixtures, and the Personal Property, together with all proceeds and products, whether now or at any time hereafter acquired and whether or not used in any way in connection with the development, construction, marketing or operation of the Real Estate, or in connection with the Project, to secure all Obligations. This Mortgage is intended to take effect as (i) a mortgage under the laws of the State of Illinois and (ii) a security agreement and financing statement pursuant to the UCC and is to be filed with the clerk's office of each county in which any portion of the Land is located (individually, a "County", and, collectively, the "Counties") as a financing statement pursuant to the UCC as set forth in more detail on Exhibit B attached hereto, and (iii) a notice of assignment of rents and profits under Illinois law. In the event of any conflict between the terms and provisions of this paragraph,

UNOFFICIAL COPY

to the extent such provisions constitute a fixture filing, and the remainder of this Mortgage, the terms and provisions of this paragraph, to the extent such provisions constitute a fixture filing, shall govern.

Mortgagor covenants, warrants, represents and agrees with Agent, its successors and assigns, that:

1. Title. As of the date hereof, Mortgagor has good and indefeasible title to the Subject Property, subject to liens, encumbrances and other matters disclosed in the Title Policy for the Subject Property, liens for taxes not yet due or delinquent and such other title and survey matters as Agent has approved (collectively, the "Permitted Exceptions"), and has full power and lawful authority to grant and convey the same in the manner aforesaid; and that the Subject Property is free and clear of all encumbrances and exceptions, except for the Permitted Exceptions. Mortgagor shall make any further assurances of title that Agent may in good faith reasonably require including, without limitation, such further instruments as may be requested by Agent to confirm the assignment to Agent of all Awards to the extent required by the Credit Agreement.
2. Performance of Obligations. Mortgagor shall pay, or cause Borrower to pay, the Note and interest thereon as the same shall become due and payable, and pay and perform and observe all of the obligations and conditions set forth in each of the Note, this Mortgage, the Assignment of Leases and Rents, the Credit Agreement, and each of the other Loan Documents or other agreements, if any, executed by Mortgagor in connection with the Loan.
3. Protection and Maintenance. Mortgagor shall protect and maintain, or cause to be maintained, in good order, repair and tenantable condition at all times, the Improvements now standing or hereafter erected on the Subject Property and any additions and improvements thereto, and the utility services, the parking areas and access roads and all Personal Property now or hereafter situated therein, used in connection with the operation of the Subject Property, and all Fixtures, Equipment and articles of Personal Property now or hereafter acquired and used in connection with the operation of the Subject Property. Mortgagor shall promptly replace any of the aforesaid which may become lost, destroyed or unsuitable for use with other property of similar character, if and as required by the Credit Agreement.
4. Insurance Coverages. Mortgagor shall insure (or cause to be insured) the Subject Property and the operation thereof with such coverages and in such amounts as are required by the provisions of the Credit Agreement and shall at all times keep such insurance in full force and effect and pay all premiums therefor, in advance. Mortgagor hereby irrevocably appoints Agent its true and lawful attorney-in-fact, with full power of substitution, to assign any such policy in the event of the foreclosure of this Mortgage or other transfer of title to the Subject Property in extinguishment, in whole or in part of the Obligations secured hereby.
5. Insurance Proceeds. Subject to the provisions of the Credit Agreement relating to the application of Insurance Proceeds, the proceeds of any hazard insurance shall be applied to or toward the indebtedness secured hereby in such order as Agent may determine. Notwithstanding anything

UNOFFICIAL COPY

in this Section 5 to the contrary, however, if the insurer denies liability to Mortgagor, Mortgagor shall not be relieved of any obligation under Section 3 of this Mortgage.

6. Eminent Domain. Subject to the provisions of the Credit Agreement relating to the application of condemnation award, the awards of damages on account of any condemnation for public use of, or injury to, the Subject Property shall be paid to Agent; such awards shall, at the option of Agent to the extent permitted by the Credit Agreement, be applied to or toward the indebtedness secured hereby in such order as Agent may determine, or in the case of a partial taking, at Agent's discretion to the extent permitted by the Credit Agreement, may be so applied or released to Mortgagor upon such conditions as Agent may prescribe to be applied to restoration of that part of the Subject Property which remains, but not more than such portion of such Awards as may be required to restore or repair such damage or injury shall be so released; and any balance remaining shall, to the extent permitted by the Credit Agreement, be applied by Agent to or toward the indebtedness secured hereby in such order as Agent may determine.

7. No Waste; Compliance With Law. Mortgagor shall not commit or suffer any physical waste of the Subject Property, or any portion thereof, or any material violation of any law, rule, regulation, ordinance, license or permit or the requirements of any licensing authority affecting the Subject Property or any business conducted thereon and shall not, except as permitted by the Credit Agreement, commit or suffer any demolition, removal or material alteration of any of the Subject Property (except for the replacement of Fixture and Personal Property in the ordinary course of business, so long as items of comparable value and quality are installed free and clear of liens in favor of any other party) without the express prior written consent of Agent in each instance which consent shall not be unreasonably withheld or delayed, and shall not materially violate nor suffer the material violation of the covenants and agreements, if any, of record against the Subject Property, and in all respects Mortgagor shall do all things reasonably necessary to comply in all material respects with, and keep in full force and effect all licenses, permits and other governmental authorizations for the operation of the Subject Property for its intended purposes, including, without limitation express or implied, the licenses, permits and authorizations referenced in the Credit Agreement.

8. Environmental and Related Matters; Indemnification. The Mortgagor shall at all times comply with all of the terms, conditions and provisions imposed on Mortgagor under the Environmental Indemnity.

9. Payment of Taxes and Prevention of Liens. Mortgagor shall pay or cause to be paid, before delinquent or before any penalty for nonpayment attaches thereto, all taxes, assessments and charges of every nature and to whomever assessed that may now or hereafter be levied or assessed upon the Subject Property or any part thereof, or upon the rents, issues, income or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments or charges be levied directly or indirectly or as excise taxes or as income taxes. Mortgagor may apply for tax abatements and prosecute diligently and in good faith claims for refund so long as: (i) no additional taxes, interest thereon or penalties are incurred thereby, (ii) a sufficient tax reserve fund as determined by Agent in good faith has been deposited with Agent, and (iii) no proceedings are instituted to divest

UNOFFICIAL COPY

Mortgagor of title to all or any portion of the Subject Property. Mortgagor shall pay all sums which, if unpaid, may result in the imposition of a lien on the Subject Property before such lien may attach or which may result in conferring upon a tenant of any part or all of the Subject Property a right to recover such sums as prepaid rent.

10. Due On Sale; No Other Encumbrances; No Transfer of Ownership Interests; Failure to Comply with Permitted Title Exceptions. Except as otherwise specifically provided for in the Credit Agreement, or in this Mortgage, it shall be a Default under the Credit Agreement, a breach of the conditions of this Mortgage and an event permitting Agent or any Lender to accelerate all indebtedness secured hereby, if, without Agent's prior written consent in each instance, which consent may be granted, withheld or conditionally granted in Agent's sole discretion: (a) there is any sale, conveyance, transfer or encumbrance of, or lien imposed upon, all or any portion of the Subject Property; or (b) there is a failure to comply with the provisions of, or there is a default under, any of the Permitted Title Exceptions unless cured within any applicable grace period provided for in the applicable Permitted Title Exception.

11. Agent's and Lenders' Rights If Mortgagor shall fail or refuse: (a) to maintain and keep, or cause to be maintained and kept, in good repair the Subject Property or any part thereof as required by this Mortgage or the Credit Agreement, or (b) to maintain and pay, or cause to be maintained and paid, the premiums for insurance which may be required by this Mortgage or the Credit Agreement, or (c) to pay and discharge, or cause to be paid and discharged, all taxes of whatsoever nature, assessments and charges of every nature and to whomsoever assessed, as required by this Mortgage or the Credit Agreement, or (d) to pay, or cause to be paid, the sums required to be paid by this Mortgage or the Credit Agreement, or (e) to satisfy, or cause to be satisfied, any other terms or conditions of this Mortgage, or any instrument secured hereby, Agent may, at its election in each instance, but without any obligation whatsoever to do so, upon thirty (30) days prior written notice (except in the case of (i) an emergency where there is danger to person or property, or (ii) required insurance coverage would lapse, or (iii) a Default exists, in each of which events no notice shall be required), cause such repairs or replacements to be made, obtain such insurance or pay said taxes, assessments, charges, and sums, incur and pay amounts in protecting its rights hereunder and the security hereby granted, pay any balance due under any conditional agreement of sale (or lease) of any property included as a part of the Subject Property, and pay any amounts as Agent deems reasonably necessary or appropriate to satisfy any term or condition of this Mortgage which Mortgagor shall have failed to satisfy, or to remedy any breach of such term or condition, and any amounts or expenses so paid or incurred, together with interest thereon from the date of payment by Agent or the Lenders at the Default Rate as provided in the Note or Credit Agreement shall be due and payable by Mortgagor to Agent and the Lenders in accordance with the Credit Agreement and until paid shall be secured hereby equally and ratably, and the same may be collected as part of said principal debt in any suit hereon or upon the Note. No payment by Agent or the Lenders shall relieve Mortgagor from any default hereunder or impair any right or remedy of Agent consequent thereon.

UNOFFICIAL COPY

12. Intentionally Omitted.

13. Certain Expenses. If any action or proceeding is commenced, including, without limitation, an action to foreclose this Mortgage or to collect the debt hereby secured following the occurrence and during the continuance of a Default, to which action or proceeding Agent or any Lender is made a party by reason of the execution of this Mortgage, or by reason of any obligation which it secures, or by reason of entry or any other action under this Mortgage, or if in Agent's reasonable judgment it becomes necessary in connection with legal proceedings or otherwise to defend or uphold the mortgage hereby granted or the lien hereby created or any act taken to defend or uphold the mortgage hereby granted or the lien hereby created or any act taken under this Mortgage, all reasonable out-of-pocket expenses reasonably paid or incurred by Agent or any Lender for the expense of any litigation or otherwise, in connection with any rights created by this Mortgage or any other Loan Document shall (to the extent permitted under and subject to the limitations of the Credit Agreement) shall be paid by Mortgagor, or may at the option of Agent, if not so paid within thirty (30) days after providing Mortgagor evidence of such reasonable out-of-pocket expenses, be added to the debt secured hereby and shall be secured hereby equally and ratably and shall bear interest until paid at the Default Rate set forth in the Note or the Credit Agreement.

14. Regarding Leases and other Property Documents. Except as otherwise provided in the Credit Agreement, Mortgagor shall not enter into any Material Leases or condominium related documentation with respect to the Subject Property and shall not materially modify or amend any such Material Leases or condominium related documentation without Agent's and the Required Lenders' prior written consent in each instance, as provided in the Credit Agreement, which consent shall not be unreasonably withheld, conditioned or delayed. As to all new Leases, or if applicable any condominium documents, at the Subject Property, Agent, at its option from time to time during the continuance of a Default, may require that all security deposits and similar funds or security provided by a lessee, licensee or occupant be deposited with Agent, or with an escrow agent satisfactory to Agent, subject to the rights of the lessee, licensee or occupant, but otherwise subject to a security interest in favor of Agent.

15. Declaration of Subordination. At the option of Agent, which may be exercised at any time or from time to time, by written notice to Mortgagor and to any applicable tenant or licensee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or condemnation proceeds), to any and all Leases or licenses of all or any part of the Subject Property upon the execution by Agent and recording or filing thereof, at any time hereafter in the appropriate registry of titles of the County or Counties wherein the applicable portion of the Subject Property is situated of a unilateral declaration to that effect.

16. Intentionally Omitted.

17. Security Agreement; UCC Filing. (i) This Mortgage shall be deemed a "Security Agreement" as defined in the UCC, and creates a security interest in favor of Agent, for the benefit of the Lenders, which security interest Mortgagor hereby grants to Agent, in all property in which a security interest may be created under the UCC, including, without limitation, (a) all sums at any time on deposit for the benefit of Mortgagor or held by Agent (whether deposited by or on behalf of

UNOFFICIAL COPY

Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (b) with respect to the Personal Property included in the granting clauses of this Mortgage, which Personal Property may not be deemed to be affixed to the Subject Property or may not constitute a "fixture" (as defined in the UCC), and all replacements of, substitutions for, additions to and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to Agent, for the benefit of the Lenders, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Agent, for the benefit of the Lenders, all to secure payment of the Obligations.

(ii) Mortgagor warrants that, as of the date hereof, (a) Mortgagor's (that is, "Debtor's") name, identity or organizational structure and principal place of business are as set forth in Exhibit B attached hereto and by this reference made a part hereof; (b) Mortgagor (that is, "Debtor") has been using or operating under said name, identity or organizational structure without change for the time period set forth in Exhibit B attached hereto and by this reference made a part hereof; and (c) the location of all collateral constituting fixtures is upon the Land. Mortgagor covenants and agrees that Mortgagor will furnish Agent with notice of any change in name, identity, organizational structure, or principal place of business within thirty (30) days of the effective date of any such change, and Mortgagor will promptly execute, following Agent's written request therefor, any financing statements or other instruments deemed reasonably necessary by Agent to prevent any filed financing statement from becoming misleading or losing its perfected status. The information contained in this Section 17 and Exhibit B attached hereto is provided in order that this Mortgage shall comply with the requirements of the Illinois UCC for instruments to be filed as financing statements.

(iii) Mortgagor, upon Agent's written request, shall promptly cause this Mortgage and any required financing statements to be recorded and re-recorded, registered and re-registered, filed and re-filed at such times and places as may be required by law or reasonably deemed necessary by Agent to create, preserve or protect the priority hereof and of any lien created hereby upon the Subject Property or any part thereof; and Mortgagor shall from time to time, promptly following Agent's written request therefor, do and cause to be done all such things as may be required by Agent, or required by law, including all things which may from time to time be necessary under the UCC fully to create, preserve and protect the priority hereof and of any lien created hereby upon said property. Mortgagor hereby irrevocably appoints Agent or any agent designated by Agent, the true and lawful attorney-in-fact of Mortgagor, with full power of substitution, to execute, acknowledge and deliver any such things on behalf of Mortgagor which Mortgagor fails or refuses to do, which appointment shall be made as of the date hereof but effective only during the continuance of a Default).

18. Right to Deal with Successor. Agent may, without notice to any person, deal with any successor in interest of Mortgagor herein regarding this Mortgage and the debt hereby secured in all

UNOFFICIAL COPY

respects as it might deal with Mortgagor herein, without in any way affecting the liability hereunder or upon the debt hereby secured of any predecessor in interest of the person so dealt with; and no sale of the premises hereby encumbered, nor any forbearance on the part of Agent, nor any extension by Agent of the time for payment of the debt hereby secured, shall operate to release, discharge, modify, change or affect the original liability of any predecessor in interest of the equity owner at the time of such sale, forbearance or extension.

19. Acceleration of Debt; Foreclosure of Mortgage. If there is a Default under the Note or the Credit Agreement or if an event occurs which pursuant to the Note or the Credit Agreement entitles Agent to accelerate the Loan, then, at the option of Agent, to the extent permitted by applicable Law, the entire indebtedness hereby secured shall become immediately due and payable without further notice. Upon an acceleration of this amount secured by this Mortgage, Agent, on behalf of the Lenders, at its option may:

(i) Institute a foreclosure action, pursuant to judicial proceedings, in accordance with the law of the State of Illinois or take any other action as may be allowed, at law or in equity, for the enforcement of the Loan Documents and realization on the Subject Property or any other security afforded by the Loan Documents. In the case of a judicial proceeding, Agent may proceed to final judgment and execution for the amount of the Obligations owed as of the date of the judgment, together with all costs of suit, reasonable attorneys' fees (including those incurred pursuant to proceedings under 11 U.S.C.) and interest on the judgment at the maximum rate permitted by applicable Law from the date of the judgment until paid.

(ii) Have a receiver appointed to enter into possession of the Subject Property, lease the Subject Property, collect the revenues from any leases and apply them as the appropriate court may direct. Agent shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of Mortgagor. Mortgagor shall be deemed to have consented to the appointment of the receiver. The collections or receipt of any of the revenues by Agent or any receiver shall not affect or cure a Default.

20. Additional Rights of Agent.

20.1 Enter and Perform. Mortgagor authorizes Agent, in addition to all other rights granted by law or by this Mortgage, or by any of the other Loan Documents, whenever and as long as any Default hereunder or under the Credit Agreement shall exist and remain uncured beyond the applicable grace period, if any, and without notice beyond the notice, if any, required to be given by the terms of the Note or the Credit Agreement, or during the continuance of a Default under the Credit Agreement, to the extent permitted by applicable Law, to enter and take possession of all or any part of the Subject Property and to use, lease, operate, manage and control the same and conduct the business thereof, and perform lessor's obligations under any lease or Mortgagor's obligations under any other agreement affecting all

UNOFFICIAL COPY

or any part of the Subject Property, and collect the rents, profits and all receipts of every nature therefrom as Agent shall deem best.

- 20.2 Appointment of Receiver. To the maximum extent permitted by Applicable Law, during the continuance of a Default, Agent may, at Agent's sole option, make application to a court of competent jurisdiction for appointment of a receiver pursuant applicable Law for all or any part of the Subject Property, without notice to Mortgagor, and, to the maximum extent permitted by applicable Law, Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Agent, but nothing herein is construed to deprive Agent of any other right, remedy or privilege Agent may now have under the law to have a receiver appointed; provided that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Agent to receive payment of all of the rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Mortgage. To the maximum extent permitted by applicable Law, such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Obligations; without regard to the value of the Subject Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Agent hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by applicable Law, including the power to take possession, control and care of the Subject Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Obligations, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Subject Property during the whole of any such period. To the extent permitted by applicable Law, such receiver may extend or modify any then existing leases and make new leases of the Subject Property or any part thereof, 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, 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 and all persons whose interests in the Subject Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

UNOFFICIAL COPY

- 20.3 Foreclosure Sale. In the event of any foreclosure sale of the Subject Property, the same may be sold in one or more parcels. Agent or any Lender may be the purchaser at any foreclosure sale of the Subject Property or any part thereof.
- 20.4 Repairs and Improvements. Upon every such entry made in accordance with this Section 20, Agent may from time to time at the expense of Mortgagor make all such repairs, replacements, alterations, additions and improvements to the Subject Property as Agent may deem proper, but in no event shall Agent be obligated to do so, and may, but shall not be obligated to, exercise all rights and powers of Mortgagor, either in the name of Mortgagor, or otherwise as Agent shall determine. Without limitation express or implied upon the generality of the foregoing, Agent shall have the right to do all things necessary or desirable in order to keep in full force and effect all applicable licenses, permits and authorizations and any amendments thereto.
- 20.5 Pay Costs and Expenses. Upon such entry made in accordance with this Section 20, Agent may, at its option, but without any obligation to do so, do any one or more of the following: pay and incur all expenses necessary or deemed by it appropriate for the holding and operating of the Subject Property, the conduct of any business thereon, the maintenance, repair, replacement, alteration, addition and improvement of the Subject Property, including without limitation payments of taxes, assessments, insurance, wages of employees connected with the Subject Property or any business conducted thereon, charges and reasonable compensation for services of Agent, its attorneys and accountants and all other persons engaged or employed in connection with the Subject Property or of any business conducted thereon and, in addition, Agent, at its option, may, but shall not be obligated to, make payments or incur liability with respect to obligations arising prior to the date it takes possession.
- 20.6 Add to Secured Indebtedness. To the extent permitted under the Credit Agreement, all obligations of Mortgagor so paid or incurred by Agent shall be reimbursed or paid for by Mortgagor upon Agent providing Mortgagor evidence of such amounts paid and prior to the repayment thereof shall be added to the debt secured hereby and, if not paid within thirty (30) days of demand, shall bear interest at the Default Rate provided for in the Note or the Credit Agreement, and shall be secured hereby equally and ratably. Agent may also reimburse itself therefor from the income or receipts of the Subject Property or any business conducted thereon, or from the sale of all or any portion of the Subject Property. Agent may also apply toward any of the Obligations any tax or insurance reserve account, deposit or any sum credited or due from Agent to Mortgagor without first enforcing any other rights of Agent against Mortgagor or against any endorser or guarantor of any of the Obligations or against the Subject Property.
- 20.7 Collection of Revenues. In connection with the exercise by Agent of the rights and remedies provided for in this Section 20:

UNOFFICIAL COPY

- 20.7.1 Agent may notify any tenant, lessee or licensee of the Subject Property, either in the name of Agent or Mortgagor, to make payment of revenues directly to Agent or Agent's agents, may advise any person of Agent's interest in and to the revenues and may collect directly from such tenants, lessees and licensees all amounts due on account of such revenues;
- 20.7.2 At Agent's request, Mortgagor will provide written notification to any or all tenants, lessees and licensees of the Subject Property concerning Agent's interest in the revenues and will request that such tenants, lessees and licensees forward payment thereof directly to Agent;
- 20.7.3 Mortgagor shall hold any proceeds and collections of any of the revenues in trust for Agent and shall not commingle such proceeds or collections with any other funds of Mortgagor; and
- 20.7.4 Mortgagor shall deliver all such proceeds to Agent promptly upon the receipt thereof by Mortgagor in the identical form received, but duly endorsed or assigned on behalf of Mortgagor to Agent.

The exercise of any of the foregoing rights or remedies and the application of the rents pursuant to this Section 20.7 shall not cure or waive any Default (or notice of default) under this Mortgage or invalidate any act done pursuant to such notice.

- 20.8 State Specific Provisions. See Exhibit C attached hereto and incorporated herein by reference.
- 20.9 Remedies Cumulative, Concurrent and Nonexclusive. If the Obligations are now or hereafter further secured by chattel mortgages, deeds of trust, security agreements, pledges, contracts of guaranty, assignments of leases, or other security, Agent may, at its option exhaust its remedies under any one or more of said instruments and this Mortgage, either concurrently or independently, and in such order as Agent may determine. Agent shall have all rights, remedies and recourses granted in the Loan Documents and available to it at law or equity (including, without limitation, those granted by the UCC), and same (a) shall be cumulative, concurrent, and nonexclusive, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated for the Obligations secured hereunder, or any part thereof or against any one or more of them, or against the Subject Property or any personal property, at the sole discretion of Agent, and (c) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise of or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse.

21. Attorney-In-Fact. Mortgagor hereby irrevocably constitutes and appoints Agent, or any agent designated by Agent for so long as this Mortgage remains undischarged of record, as attorney-in-fact of Mortgagor to execute, acknowledge, seal and deliver all instruments, agreements, deeds,

UNOFFICIAL COPY

certificates and other documents of every nature and description in order to carry out or implement the exercise of Agent's rights hereunder and under the other Loan Documents, which appointment shall be made as of the date hereof but effective only during the continuance of a Default.

22. Intentionally Omitted.

23. Waiver of Marshalling and Certain Rights. To the extent that Mortgagor may lawfully do so, Mortgagor hereby expressly waives any right pertaining to the marshalling of assets or marshalling of liens, the equity of redemption, any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions, or other like matter which might defeat, reduce or affect the right of Agent to sell the Subject Property for the collection of the Obligations, or the right of Agent to the payment of the Obligations out of the proceeds of sale of the Subject Property, or the proceeds of the revenues and Leases, in preference to every other person and claimant.

24. Contest of Laws. Subject always to the additional terms and conditions set forth in the Credit Agreement, Mortgagor shall have the right to contest by appropriate legal proceedings, but without cost or expense to Agent or any Lender (or with any cost or expense to Agent or any Lender being reimbursed by Mortgagor), the validity of any applicable Law affecting the Subject Property subject to the provisions of the Credit Agreement and the Indemnity Agreement dealing with the right to contest, but only if compliance may be so contested without: (a) the imposition of any charge, lien or liability against the Subject Property, (b) the loss or suspension of any license, right or permit with respect to the Subject Property, and (c) causing any Default to exist under the Credit Agreement or any other Loan Document. Subject to the foregoing, Mortgagor may postpone compliance therewith until the final determination of any such proceedings, provided it shall be prosecuted with due diligence and dispatch, and if any lien or charge is incurred, Mortgagor may, nevertheless, make the contest and delay compliance, provided Agent is furnished with security satisfactory to Agent in its sole and absolute discretion against any loss or injury by reason of such noncompliance or delay and provided further that the same is and may be done without causing any Default to exist under the Credit Agreement or any of the other Loan Documents.

25. Setoff. The terms and provisions of Article 12 of the Credit Agreement are hereby incorporated herein by reference.

26. Notices. Any demand, notice or request by either party to the other shall be given in the manner provided therefor in the Credit Agreement.

27. Agent/Lender Not Obligated; Cumulative Rights. Nothing in this instrument shall be construed as obligating Agent or any Lender to take any action or incur any liability with respect to the Subject Property or any business conducted thereon, and all options given to Agent are for its benefit and shall and may be exercised in such order and in such combination as Agent in its sole discretion may from time to time decide.

28. Severability. In case any one or more of the provisions of this Mortgage, the Note, the Assignment of Leases and Rents, the Credit Agreement, any of the other Loan Documents, or any other agreement now or hereafter executed in connection with any one or more of the foregoing are

UNOFFICIAL COPY

held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. Each of the provisions of every such agreement, document or instrument shall be enforceable by Agent to the fullest extent now or hereafter not prohibited by applicable Law.

29. No Waiver. No consent or waiver, express or implied, by Agent to or of any Default by Mortgagor shall be construed as a consent or waiver to or of any other Default at the same time or upon any future occasion.

30. Waivers By Mortgagor. Mortgagor, to the fullest extent permitted by applicable Law, hereby: (a) agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay or extension, or any redemption after foreclosure sale, and waives and releases all rights of redemption after foreclosure sale, valuation, appraisal, stay of execution, notice of election to mature or declare due the debt secured hereby; and (b) waives all rights to a marshalling of the assets of Mortgagor, including the Subject Property, or to a sale in inverse order of alienation in the event of a sale hereunder of the Subject Property, and agrees not to assert any right under any statute or rule of law pertaining to the marshalling of assets, sale in inverse order of alienation, or other matters whatever to defeat, reduce or affect the right of Agent under the terms of this Mortgage or the Note to a sale of the Subject Property for the collection of the indebtedness evidenced by the Note without any prior or different resort for collection, or the right of Agent to the payment of such indebtedness out of the proceeds of sale of the Subject Property in preference to every other claimant whatever.

31. Business Loan; Not Personal Residence. Mortgagor represents and warrants to Agent and the Lenders (i) that the proceeds of the Note secured by this Mortgage will be used for business or commercial purposes, none of the proceeds of the Note secured hereby shall be used for personal, family or household purposes, and that no individual liable for the Loan resides or intends to reside in any portion of the Subject Property, and (ii) that the Loan evidenced by the Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 *et seq.*

32. Certification. The undersigned hereby certifies that Mortgagor is a duly organized, validly existing limited liability company organized and in good standing under the laws of the State of Delaware, and that the execution and delivery hereof and of all of the other instruments executed in connection herewith by Mortgagor has been duly authorized by all requisite limited liability company actions of Mortgagor.

33. Governing Law; Consent to Jurisdiction; Mutual Waiver of Jury Trial.

33.1 GOVERNING LAW. THE PROVISIONS OF THIS MORTGAGE REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED, THE IN REM RIGHTS AND REMEDIES OF THE PARTIES, INCLUDING FORECLOSURE OF THE MORTGAGE, AND PROCEDURAL MATTERS RELATING TO SUCH ENFORCEMENT, SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. ALL

UNOFFICIAL COPY

OTHER PROVISIONS OF THIS MORTGAGE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

- 33.2 WAIVER OF JURY TRIAL. MORTGAGOR, AGENT AND THE LENDERS HEREBY WAIVE THEIR RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS MORTGAGE, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THEREUNDER OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS. MORTGAGOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, PUNITIVE OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. MORTGAGOR (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY LENDER OR THE AGENT HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH LENDER OR THE AGENT WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS AND (B) ACKNOWLEDGES THAT THE AGENT AND THE LENDERS HAVE BEEN INDUCED TO ENTER INTO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS TO WHICH THEY ARE PARTIES BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 33.2. MORTGAGOR ACKNOWLEDGES THAT IT HAS HAD AN OPPORTUNITY TO REVIEW THIS SECTION 33 WITH LEGAL COUNSEL AND THAT IT AGREES TO THE FOREGOING AS ITS FREE, KNOWING AND VOLUNTARY ACT.
- 33.3 Consent to Jurisdiction. Mortgagor hereby consents to nonexclusive personal jurisdiction in any state or Federal court located within the State of Illinois sitting in Chicago, and the State of Illinois.
34. Headings. Headings and captions in this Mortgage are for convenience and reference only and the words and phrases contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of any of the provisions hereof.
35. Time of Essence. Time shall be of the essence of each and every provision of the Credit Agreement, the Note, this Mortgage and each of the other Loan Documents.
36. Adjustable Note Loan Provision. The Note which this Mortgage secures is an adjustable note on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Note.
37. Cross-Collateralization. Mortgagor acknowledges that the Obligations are secured by this Mortgage together with those certain other deeds of trust and/or mortgages given by certain other Subsidiary Guarantors (as applicable) for the benefit of Agent (whether one or more, collectively,

UNOFFICIAL COPY

the "Other Security Instruments") encumbering the real and personal property more particularly described in the Other Security Instruments (such real and personal property, collectively, the "Other Properties"), all as more specifically set forth in the Credit Agreement. During the continuance of a Default, Agent shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Mortgage and any or all of the Other Security Instruments whether by court action, power of sale (if permitted under applicable Law) or otherwise, under any applicable provision of applicable Law, for all of the Obligations and the lien and the security interest created by the Other Security Instruments shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Obligations then due and payable but still outstanding. Mortgagor acknowledges and agrees that the Subject Property and the Other Properties are located in one or more States and/or counties, and therefore Agent shall be permitted to enforce payment of the Obligations and the performance of any term, covenant or condition of the Credit Agreement, the Notes, this Mortgage, the Loan Documents or the Other Security Instruments and exercise any and all rights and remedies under the Credit Agreement, the Notes, this Mortgage, the other Loan Documents or the Other Security Instruments, or as provided by applicable Law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Agent, in its sole discretion, in any one or more of the States or counties in which the Subject Property or any of the Other Properties are located. Neither the acceptance of this Mortgage, the other Loan Documents or the Other Security Instruments nor the enforcement thereof in any one State or county, whether by court action, foreclosure, power of sale (if permitted under Applicable Law) or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale (if permitted under Applicable Law) or otherwise, of the Credit Agreement, the Notes, this Mortgage, the other Loan Documents, or any Other Security Instruments through one or more additional proceedings in that State or county or in any other State or county. Any and all sums received by Agent or any Lender under the Credit Agreement, the Notes, this Mortgage and the other Loan Documents shall be applied to the Obligations in such order and priority as Agent shall determine in its sole discretion, without regard to any portion of the Loan or Loans allocated to the Subject Property or the appraised value of the Subject Property or any of the other Properties.

38. Separate Tax Parcel. Mortgagor shall (a) diligently pursue the issuance of separate tax parcel identification number(s) for the Subject Property so the Subject Property does not share a parcel identification number with any other property (which is not part of the Subject Property), and (b) provide evidence thereof to Agent as soon as it becomes available.

[Remainder of Page Intentionally Left Blank]

UNOFFICIAL COPY

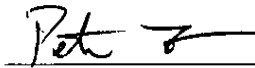
IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed and delivered as a sealed instrument as of the date first written above.

MORTGAGOR:

PULASKI PROMENADE, LLC,
a Delaware limited liability company

By: IRC Pulaski Promenade, L.L.C., a Delaware limited liability company, its manager

By: IRC Retail Centers LLC, a Delaware limited liability company, its manager

By: 
Name: Peter A. Foran
Title: Authorized Signatory

Property of Cook County Clerk's Office

[notary acknowledgement follows]

UNOFFICIAL COPY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Illinois)

County of DuPage)

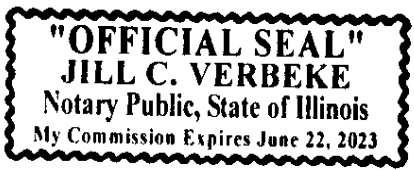
On December 18 2019, before me, Jill C. Verbeke, a Notary Public, personally appeared Peter A. Foran, as Authorized Signatory for IRC Retail Centers LLC, a Delaware limited liability company, as Manager of IRC Pulaski Promenade, L.L.C., a Delaware limited liability company, as Manager of Pulaski Promenade, LLC, a Delaware limited liability company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of IL that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jill C. Verbeke

(Seal)



UNOFFICIAL COPY

EXHIBIT A ANNEXED TO AND MADE A PART OF THE MORTGAGE

LEGAL DESCRIPTION

PARCEL 1:

LOTS 1, 2 AND 3 IN PULASKI PROMENADE SUBDIVISION, BEING A SUBDIVISION OF THAT PART OF THE NORTHEAST QUARTER OF SECTION 3, LYING SOUTH OF THE ILLINOIS AND MICHIGAN CANAL RESERVE, IN TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 14, 2019 AS DOCUMENT 1916516052, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 DATED SEPTEMBER 10, 2019 AND RECORDED SEPTEMBER 12, 2019 AS DOCUMENT NUMBER 1925534066 CREATED BY THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL RIGHTS MADE BY PULASKI PROMENADE, LLC FOR THE PURPOSE OF ACCESS, INGRESS AND EGRESS.

Address: 4064-4200 South Pulaski Road, Chicago, Illinois 10632

PIN(s): 19-03-201-004-0000 (affects the Land and other property)
 19-03-201-047-0000 (affects the Land and other property)
 19-03-201-049-0000
 19-03-201-050-0000
 19-03-201-053-0000

UNOFFICIAL COPY

EXHIBIT "B" ANNEXED TO AND MADE A PART OF THE MORTGAGE

Schedule 1

(Description of "Debtor" and "Secured Party")

A. Debtor:

1. Name and Identity or Organizational Structure: Pulaski Promenade, LLC, a Delaware limited liability company.
2. Principal place of business and chief executive office of Debtor is located at c/o IRC Retail Centers, 814 Commerce Drive, Suite 300, Oak Brook, Illinois 60523.
3. Debtor has been using or operating under said name and identity or organizational structure without change since June 1, 2012.

B. Secured Party: CITIZENS BANK NATIONAL ASSOCIATION.

C. Collateral: Goods which are or are to become fixtures.

Schedule 2

(Notice Mailing Addresses of "Debtor" and "Secured Party")

A. The mailing address of Debtor is:

c/o IRC Retail Centers
 814 Commerce Drive, Suite 300
 Oak Brook, Illinois 60523
 Attention: Peter Foran

B. The mailing address of Secured Party is:

1215 Superior Avenue
 Cleveland, Ohio 44114
 Attention: Mr. Donald Woods

UNOFFICIAL COPY

EXHIBIT C

STATE SPECIFIC PROVISIONS

In the event of any conflict or inconsistency between the provisions of this Exhibit C and any other provisions of this Mortgage or any other Loan Document, the provisions of this Exhibit C shall control.

1. Other Amounts Secured; Maximum Indebtedness. Mortgagor acknowledges and agrees that this Mortgage secures the entire principal amount of the Notes and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Mortgagee in connection with the Loan, all in accordance with the loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed Five Hundred Million and No/100 Dollars (\$500,000,000.00). It is agreed that any future advances made by Mortgagee for the benefit of Mortgagor from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Mortgagee, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the indebtedness secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Subject Property given priority by law.

2. Compliance with the Illinois Mortgage Foreclosure Law.

(i) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *et. seq.* (as amended from time to time the "IMF Law"), the provision of the IMF Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF Law.

(ii) Mortgagor and Agent, on behalf of the Lenders, shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Law which is specifically referred to herein may be repealed, Agent, for the benefit of the Lenders, shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(iii) If any provision of this Mortgage shall grant to Agent any rights or remedies during the continuance of a Default of Mortgagor or otherwise which are more limited than the rights that

Exhibit C-1

UNOFFICIAL COPY

would otherwise be vested in Agent under the IMF Law in the absence of said provision, Agent shall be vested with the rights granted in the IMF Law to the full extent permitted by law.

(iv) All advances, disbursements and expenditures made or incurred by Agent or any Lender before and during a foreclosure, and before and after judgment of 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, in addition to those otherwise authorized by this Mortgage, the other Loan Documents or by the IMF Law (collectively, "Protective Advances"), shall have the benefit of all applicable provisions of the IMF Law, including, without limitation, those provisions of the IMF Law herein below referred to:

(a) all advances by Agent or any Lender in accordance with the terms of this Mortgage or the other Loan Documents to: (1) preserve, maintain, repair, restore or rebuild the improvements upon the Subject Property; (2) preserve the lien of this Mortgage or the priority thereof; or (3) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the IMF Law;

(b) payments by Agent or any Lender of (1) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien or encumbrance); (2) real estate 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 Subject Property or any part thereof; (3) other obligations authorized by this Mortgage; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the IMF Law;

(c) advances by Agent or any Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien);

(d) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d) and 15-1510 of the IMF Law, (2) in connection with any action, suit or proceeding brought by or against Agent for the enforcement of this Mortgage or arising from the interest of Agent and the Lenders hereunder; or (3) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Subject Property;

(e) Agent's and the Lenders' fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection 15-1508(b)(1) of the IMF Law;

(f) expenses deductible from proceeds of sales referred to in Subsections 15-1512(a) and (b) of the IMF Law; and

Exhibit C-2

UNOFFICIAL COPY

(g) expenses incurred and expenditures made by Agent or any Lender for any one or more of the following: (1) premiums for casualty and liability insurance paid by Agent whether or not Agent 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 Subject Property imposed by Subsection 15-1704(c)(1) of the IMF Law; (2) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (3) payments deemed by Agent to be required for the benefit of the Subject Property or required to be made by the owner of the Subject Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Subject Property; and (4) shared or common expense assessments payable to any association or corporation in which the owner of the Subject Property is a member in any way affecting the Subject Property.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after a Default.

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 15-1302 of the IMF Law.

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 IMF Law, apply to and be included in:

(A) any determination of the amount of indebtedness secured by this Mortgage at any time;

(B) the indebtedness found due and owing to Agent and the Lenders 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;

(C) if the right of redemption has not been waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections 15-1603(d)(2) and (e) of the IMF Law;

(D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the IMF Law;

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

(F) computation of any deficiency judgment pursuant to Subsections 15-1508(b)(2),

Exhibit C-3

UNOFFICIAL COPY

15-1508(e) and Section 15-1511 of the IMF Law.

(v) In addition to any provision of this Mortgage authorizing Agent to take or be placed in possession of the Subject Property, or for the appointment of a receiver, Agent shall have the right, in accordance with Sections 15-1701 and 15-1702 of the IMF Law, during the continuance of a Default, to be placed in possession of the Subject Property or at its request to have a receiver appointed, and such receiver, or Agent, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMF Law.

3. Business Loan. Mortgagor represents and warrants to Agent and the Lenders (i) that the proceeds of the Loan that is guaranteed by the Guaranty will be used for the purposes specified in 815 ILCS 205/4(1)(I) (or any substitute, amended or replacement statute), and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(I), and (ii) that the Loan is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 *et seq.*

4. Collateral Protection Act. Unless Mortgagor provides Agent with evidence of the insurance required by this Mortgage or any other Loan Document, Agent may purchase insurance at Mortgagor's expense to protect Agent's and the Lenders' interest in the Subject Property or any other collateral for the Obligations. This insurance may, but need not, protect Mortgagor's interests. The coverage Agent purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Subject Property or any other collateral for the indebtedness secured hereby. Mortgagor may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Mortgagor has obtained insurance as required under this Mortgage or the Credit Agreement. If Agent purchases insurance for the Subject Property or any other collateral for the Obligations, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Agent may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 *et seq.*, Mortgagor hereby acknowledges Agent's right pursuant to this Section 4 to obtain collateral protection insurance.

5. Conflict of Laws. Agent on behalf of Lenders shall be entitled to all rights and remedies that a mortgagee or beneficiary would have under Illinois law or in equity during the continuance of a Default in addition to all rights and remedies it may have hereunder. Where any provision of this Mortgage is inconsistent with any provision of Illinois law regulating the creation, perfection or enforcement of a lien or security interest in real or personal property, the provisions of such Illinois law, as amended from time to time, shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with Illinois law. Should applicable Illinois law confer any rights or impose any duties inconsistent with or in addition to any of the provisions of this Mortgage,

UNOFFICIAL COPY

the affected provisions of this Mortgage shall be considered amended to conform to such Applicable Law, but all other provisions hereof shall remain in full force and effect without modification.

6. NO ORAL AGREEMENTS. THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

7. Insurance Policies. Wherever provision is made in this Mortgage or the Loan Documents for insurance policies to bear lender clauses or other loss payable clauses or endorsements in favor of Agent, or to confer authority upon Agent to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and power of Agent shall continue in Agent as judgment creditor or mortgagee until confirmation of sale.

8. Foreclosure Proceedings. Supplementing other provisions hereof, mortgage foreclosures and other In Rem proceedings against Mortgagor may be brought in the County in which the Land is located or any federal court of competent jurisdiction in Illinois.

9. Waiver of Right of Redemption. Mortgagor acknowledges and represents and warrants that the Mortgaged Property does not include "agricultural real estate" or "residential real estate" as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b), Mortgagor waives any and all rights of redemption from sale under any order of foreclosure of this Mortgage, or other rights of redemption which may run to Mortgagor or any other Owner of Redemption, as that term is defined in 735 ILCS 5/15-1212. Mortgagor waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by law.