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Illinois Anti-Predatory Lending Database Program

Doc#: 2011220168 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 04/21/2020 11:16 AM Pg: 1 of 29

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN:** 17-17-229-016-0000

Address:

Street: 1115 W Van Buren Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60606

Lender: FIFTH THIRD BANK, NATIONAL ASSOCIATION

Borrower: 1125 VB PROPCO, LLC

Loan / Mortgage Amount: \$42,000,000.00

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.

Certificate number: 5BDB3320-CB1A-4D4D-8D73-E5F800E2026C

Execution date: 3/31/2020

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This document prepared by and after recording return to:

Miller, Canfield, Paddock and Stone, P.L.C.
225 W. Washington Street, Suite 2600
Chicago, Illinois 60606
Attn: Joseph C. Huntzicker, Esq

CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS

THIS CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS (this "Security Instrument") is made as of March 31, 2020, by **1125 VB PROPCO, LLC**, an Illinois limited liability company (the "Borrower"), for the benefit of **FIFTH THIRD BANK, NATIONAL ASSOCIATION**, its successors and assigns, as Administrative Agent (in such capacity, "Agent") for the Lenders.

WITNESSETH:

Agent and the Lenders are making a loan to Borrower (the "Loan") in an amount not to exceed FORTY-TWO MILLION AND 00/100 DOLLARS (\$42,000,000.00) pursuant to that certain Construction Loan Agreement of even date herewith among Borrower, Agent and the various institutions from time to time party thereto, as Lenders ("Lenders"), the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein (said Construction Loan Agreement and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the "Loan Agreement"; any capitalized terms not defined herein shall have the meanings ascribed to such terms in the Loan Agreement). The Loan is evidenced by one or more Promissory Notes in the aggregate principal amount of \$42,000,000.00 from Borrower to Lenders (as amended, modified, replaced or restated from time to time, collectively, the "Note"). The Loan is due and payable in full on March 31, 2024 (the "Maturity Date"), except as such date may be extended to March 31, 2025 pursuant to the terms of the Loan Agreement or accelerated pursuant to the terms hereof or of any other Loan Document (as hereinafter defined). This Security Instrument encumbers certain real estate located in Cook County, Illinois, legally described on Exhibit A attached hereto, and payment of the Note is secured by this Security Instrument, financing statements and other

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security documents (this Security Instrument, the Note, the Loan Agreement, the Rate Management Agreement (as defined below), and all other documents evidencing or securing the Loan (as amended, modified, replaced or restated from time to time) are collectively hereinafter referred to as the "Loan Documents"). The term "Rate Management Agreements" means any agreement, device or arrangement providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, or equity prices, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants, and any agreement pertaining to equity derivative transactions (e.g., equity or equity index swaps, options, caps, floors, collars and forwards), including without limitation any ISDA Master Agreement between Borrower and Agent or any affiliate of Fifth Third Bancorp, and any schedules, confirmations and documents and other confirming evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising and in each case, as amended, modified or supplemented from time to time. The Loan bears interest at a variable rate of interest.

To secure: (i) the payment when and as due and payable of the principal of and interest on the Loan or so much thereof as may be advanced from time to time, and any and all late charges, and all other indebtedness, loans, advances, and each and every obligation and liability evidenced by, owing, arising under or in connection with the Loan, the Loan Agreement, the Note, and/or any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the payment of all other expenses, costs, advances and indebtedness which this Security Instrument by its terms secures; (iii) the performance and observance of the covenants and agreements contained in this Security Instrument, the Loan Agreement, the Note and each of the other Loan Documents; (iv) any and all obligations of Borrower to Agent or any affiliate of Fifth Third Bancorp, whether absolute, contingent or otherwise and howsoever and whensoever (whether now or hereafter) created, arising, evidenced or acquired (including renewals, extensions and modifications thereof and substitutions theretofore), under or in connection with (I) any and all Rate Management Agreements, and (II) any and all cancellations, buy-backs, reversals, terminations or assignments of any Rate Management Agreement ("Rate Management Obligations"), except for Rate Management Obligations that constitute "Excluded Swap Obligations" (as defined in the Loan Agreement); (v) all obligations to perform or forbear from performing acts, and agreements, instruments and documents evidencing, guarantying, securing or otherwise executed in connection with any of the foregoing, together with any amendments, modifications and restatements thereof, and all out-of-pocket expenses and reasonable attorneys' fees incurred by Agent hereunder or any other document, instrument or agreement related to any of the foregoing; and (vi) all obligations to perform or forbear from performing acts, and agreements, instruments and documents evidencing, guarantying, securing or otherwise executed in connection with any of the foregoing, together with any amendments, modifications and restatements thereof, and all expenses and attorneys' fees incurred by Agent hereunder or any other document, instrument or agreement related hereto or to any of the foregoing; and (all of such indebtedness, obligations and liabilities identified in (i), (ii), (iii), (iv), (v) and (vi) above being hereinafter referred to as the "Obligations"); the Borrower does hereby GRANT, SELL, CONVEY, MORTGAGE and ASSIGN unto the Agent, its successors and assigns, and does hereby grant to Agent, its successors and assigns a security interest in, all of Borrower's assets, wherever and howsoever located, and all products and proceeds thereof, including, without limitation, all and singular the

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properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII, and VIII below, all of same being collectively referred to herein as the "Mortgaged Property";

GRANTING CLAUSE I:

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

GRANTING CLAUSE II:

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

GRANTING CLAUSE III:

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

GRANTING CLAUSE IV:

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Borrower and forming a part of, or used or obtained for use in connection with, the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring and all extensions, renewals or replacements thereof or substitutions therefor or additions

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thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner, but excluding all property belonging to tenants under Leases (collectively, the "Fixtures"); it being agreed that all of said property owned by the Borrower and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby as security for purposes of this Security Instrument.

GRANTING CLAUSE V:

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

All personal property of every nature whatsoever now or hereafter owned by Borrower or used in connection with the Land or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Borrower in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Borrower or on its behalf, including without limitation, any and all Goods, Investment Property, Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit Accounts, Commercial Tort Claims and General Intangibles, each as defined in the Uniform Commercial Code of the State of Illinois (as amended from time to time, the "Code"), but excluding any property owned by tenants under Leases;

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

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

All of the books and records pertaining to the foregoing;

GRANTING CLAUSE VI:

TOGETHER WITH all right, title and interest which the Borrower hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property or any portion thereof, whether written or oral (herein collectively referred to as the "Leases"), and all rents, issues, incomes and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), and all right, title and interest which the Borrower now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Borrower any statutory rights;

GRANTING CLAUSE VII:

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

GRANTING CLAUSE VIII:

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which the Borrower now has or hereafter may acquire of, in and to the Mortgaged Property, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Borrower or by anyone on behalf of the Borrower to the Agent;

TO HAVE AND TO HOLD the Mortgaged Property, unto the Agent, and its successors and assigns, **IN FEE SIMPLE** forever; subject, however, to those encumbrances which the Agent has approved in the Loan Agreement or otherwise approved in writing or are otherwise permitted in the Loan Agreement (collectively, the "Permitted Encumbrances");

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

SUBJECT to the covenants and conditions hereinafter set forth.

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

THE BORROWER FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. **Borrower's Covenants.**

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

(b) Repair/Maintenance. The Borrower shall (i) maintain, repair, restore, replace or rebuild any portion of the Mortgaged Property which may be damaged or destroyed in accordance with the requirements of the Loan Agreement; (ii) keep the Mortgaged Property in good condition and repair, free from active, physical waste (excluding casualty); (iii) pay all operating costs and expenses of the Mortgaged Property when due; (iv) comply in all material respects with all Applicable Laws (as defined in the Loan Agreement), and observe and comply in all material respects with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to all or any portion of the Mortgaged Property or the use and occupancy thereof; and (v) refrain from taking any action, and correct any condition known to the Borrower, which would materially increase the risk of fire or other hazard to the Mortgaged Property or any portion thereof; and (vi) cause the Mortgaged Property to be managed in a competent and professional manner.

(c) Alteration of Mortgaged Property. Without the prior written consent of the Agent, the Borrower shall not cause, suffer or permit (i) any material alteration of the Mortgaged Property, except for the construction of the Project and the Tenant Improvements, as required by any applicable legal requirement or as otherwise contemplated or permitted by the Loan Agreement or any Approved Lease; (ii) any change in the zoning classification or intended use or occupancy of the Mortgaged Property, including without limitation any change which would increase any fire or other hazard; (iii) any change in the identity of the Borrower or the person or entity responsible for managing the Mortgaged Property; or (iv) any modification of the licenses, permits, privileges, franchises, covenants, conditions or declarations of use applicable to the Mortgaged Property, except as required to operate the Mortgaged Property in the manner required hereunder.

(d) Disposition of Assets. Borrower shall not sell, lease, transfer or otherwise dispose of, or grant any person an option to acquire, or sell and leaseback, all or any substantial portion of its assets, whether now owned or hereafter acquired, except for bona fide sales of inventory in the ordinary course of business and dispositions of property which is obsolete and not used or useful in its business or pursuant to a transaction in which the Loan is, concurrently with the consummation thereof, paid in full.

(e) Compliance with Laws. The Borrower shall comply in all material respects with all Applicable Laws (as defined in the Loan Agreement). Borrower shall obtain and maintain any and all licenses, permits, franchises, governmental authorizations, patents, trademarks, copyrights or other rights necessary for the ownership of its properties and the conduct of its business and as may be required from time to time by applicable law.

(f) Insurance. The Borrower shall obtain and maintain or cause to be obtained and

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maintained, in full force and effect at all times insurance with respect to Borrower and the Mortgaged Property as required pursuant to the Loan Agreement.

2. Liens, Contest and Defense of Title.

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

(b) Notwithstanding paragraph (a) of this Section 2, the Borrower may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Mortgaged Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Security Instrument; and (ii) within fifteen (15) days after the Borrower has been notified of the filing of any such Mechanic's Liens, the Borrower shall have notified the Agent in writing of the Borrower's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens, and shall have obtained a title insurance endorsement (or a bond or other insurance satisfactory to Agent in its sole discretion) over such Mechanic's Liens in form and substance reasonably satisfactory to the Agent, insuring the Agent against loss or damage by reason of such Mechanic's Liens; provided that in lieu of such title insurance endorsement the Borrower may deposit and keep on deposit with the Agent (or such depository as may be designated by the Agent) a sum of money sufficient, in the reasonable judgment of the Agent, to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and may be used by the Agent in its sole discretion to protect the priority of this Security Instrument if Agent reasonably believes that forfeiture or impairment of the lien of this Security Instrument is reasonably likely to occur or if an Event of Default has occurred and is continuing. In case the Borrower shall fail to maintain such title insurance (or bond or other insurance) or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest; then the Agent may, at its option, apply any money and liquidate any securities then on deposit with the Agent (or other depository designated by the Agent) in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon according to any written bill, notice or statement, without inquiring into the amount, validity or enforceability thereof. If the amount of money so deposited shall (in Agent's reasonable judgment) be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then the Borrower shall forthwith, within ten (10) Business Days after demand, deposit with the Agent (or other depository designated by the Agent) the sum which shall (in Agent's reasonable judgment, when added to the funds then on deposit with Agent) be necessary to make such payment in full (or such other security as shall be reasonably satisfactory to Agent). If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited shall be applied in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided no Event of Default shall then exist)

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when the Agent has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with the Agent (or other depository) under this Section 2(b) shall be paid to the Borrower, provided that no Event of Default shall then exist.

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

3. Security Agreement.

(a) Grant of Security Interest. Borrower hereby grants to Agent a security interest in the Personal Property to secure the Obligations. This Security Instrument constitutes a security agreement with respect to all Personal Property in which Agent is granted a security interest hereunder, and Agent shall have all of the rights and remedies of a secured party under the Code, as well as all other rights and remedies available at law or in equity.

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

(c) Place of Business. Borrower maintains its chief executive office as set forth as the address of Borrower in Section 20 below, and Borrower will notify Agent in writing of any change in its place of business within five (5) days of such change.

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

(e) Representations and Warranties. The Borrower represents and warrants that: (i) the Borrower is the owner of the Mortgaged Property; (ii) the Borrower's chief executive office

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is located in the State of Illinois; (iii) the Borrower's state of formation is the State of Illinois; (iv) the Borrower's exact legal name is as set forth on Page 1 of this Security Instrument; (v) the Borrower's organizational identification number is 08219257, (vi) Borrower is the owner of the Personal Property subject to no liens, charges or encumbrances other than the lien hereof and the liens created by other Loan Documents and the Permitted Encumbrances, (vii) the Personal Property will not be removed from the Mortgaged Property except in accordance with the Loan Documents, and (viii) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto.

4. Restrictions on Transfer.

(a) The Borrower, without the prior written consent of the Agent, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any merger or consolidation, change in capital structure (i.e., the creation of additional classes of equity or changing the attributes of any class of equity), or any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

(i) The Mortgaged Property or any part thereof or interest therein, excepting only sales or other dispositions of collateral ("Obsolete Collateral") no longer useful in connection with the operation of the Mortgaged Property, except as expressly permitted in the Loan Agreement or the other Loan Documents;

(ii) All or any part of the managing member or manager interest, as the case may be, in Borrower or Joint Venture, unless the substitute managing member or manager has been approved in writing by Agent, such approval not to be unreasonably withheld, delayed or conditioned, provided, however, that this subsection 4(a)(ii) shall not apply to the direct or indirect membership, profit or other equity interests in VBI Manager (as hereinafter defined);

(iii) Any right to receive income or proceeds from the Borrower;

(iv) If there occurs any change in Control (by way of transfers of stock, partnership or member interests or otherwise) in Borrower, Joint Venture or any partner, member, manager or shareholder, as applicable, which directly or indirectly Controls the day to day operations and management of the Borrower or Joint Venture and/or owns a Controlling interest in the Borrower or Joint Venture (other than as provided in subsection 4(a)(i) above); or if Joint Venture ceases to own all of the membership interests, profit interests and other equity interests of Borrower; or if Joint Venture ceases to Control Borrower and its day-to-day operations and management; or if there is a transfer of more than twenty percent (20%) of the membership interests, profit interests or other equity interests of Joint Venture without the prior written consent of Agent;

(v) If 1125 VBI Manager, LLC, a Delaware limited liability company ("VBI Manager"), ceases to be the manager of Joint Venture and no longer continues to Control Joint Venture and its day-to-day operations and management (other than as provided in subsection 4(a)(ii) above) without the prior written consent of Agent;

(vi) For so long as VBI Manager is the manager of Joint Venture, if none of

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Stéphane D. Rambaud and/or Dimitrios Nassis (or any of their respective trusts, any Person who is an Affiliate of the applicable individual and Controlled by such individual, or another Person approved in writing by Agent) Control VBI Manager and its day-to-day operations and management; or

(vii) The granting or occurrence of any lien, pledge, mortgage, security interest or other encumbrance against any of the membership interests, profit interests or other equity interests of Joint Venture or Borrower without the prior written consent of Agent;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise: provided, however, that the foregoing provisions of this section shall not apply to the following, all of which shall be expressly permitted by this Security Instrument, (A) to liens securing the Obligations, (B) to the lien of current Taxes not in default, (C) to any transfers of the Mortgaged Property, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership, joint venture or other ownership interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, (D) to Leases permitted by the terms of the Loan Documents, if any, or (E) the Permitted Encumbrances.

Notwithstanding anything that may be contained in the foregoing to the contrary, the following (each, a "Permitted Transfer") shall be permitted without Agent's prior written consent (and shall not be a Prohibited Transfer):

(1) Any transfers of membership interests or other equity interests by a member of VBI Investor to any revocable trust of such member made for estate planning purposes or to any Person who is an Affiliate of such member and Controlled by such Member; provided that, after any such transfer of membership or ownership interests described in this sentence, (a) VBI Manager (or another Person approved in writing by Agent) shall Control VBI Investor and its day-to-day operations and management, (b) for so long as VBI Manager is the manager of VBI Investor, one or more of Stéphane D. Rambaud or Dimitrios Nassis (or any of their respective trusts, any Person who is an Affiliate of the applicable individual and Controlled by such individual, or another Person approved in writing by Agent) shall Control VBI Manager and its day-to-day operations and management, (c) any transferee that will hold 20% of any class of equity in VBI Investor following the consummation of such transaction is not a "Prohibited Person" under applicable laws and regulations, (d) Agent and Lenders have successfully completed all required legal and regulatory checks and procedures and (e) Borrower shall pay to Agent and Lenders any and all actual out-of-pocket fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Agent or any Lender, or otherwise payable by Agent or any Lender, in connection with any proposed or actual assignment, conveyance or transfer under this Section.

(2) When no Event of Default exists transfers of up to 20% of the membership interests in Joint Venture in the aggregate shall constitute Permitted Transfers, subject to the satisfaction of the following conditions: (a) Borrower shall provide written notice of such transfer, and copies of all applicable documents and agreements at least ten (10) Business Days

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in advance, (b) Agent shall have received all information reasonably required by it and the Lenders to confirm that any transferee that will hold 20% of the direct or indirect ownership interest in Joint Venture following the consummation of such transaction is not a "Prohibited Person" under applicable laws and regulations, (c) Agent and Lenders have successfully completed all required legal and regulatory checks and procedures, (d) following such transfer, the Manager permitted under the Loan Agreement shall continue to be the manager of Joint Venture and continue to Control Joint Venture and its day to day operations, (e) solely for the period prior to redemption of the Preferred Member's rights and interests in Joint Venture in accordance with the Joint Venture's Operating Agreement, following such transfer Preferred Member shall continue to hold eighty percent (80%) of the total preferred equity interests of Joint Venture, and (f) Borrower shall pay to Agent and Lenders any and all actual out-of-pocket fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Agent or any Lender, or otherwise payable by Agent or any Lender, in connection with any proposed or actual assignment, conveyance or transfer under this Section.

(3) The following with respect to Preferred Member: (a) the addition or removal of beneficiaries from Preferred Member; (b) the resignation or removal of the trustee of Preferred Member and the replacement or substitution of such trustee; and (c) the redemption of the Preferred Member's rights and interests in Joint Venture in accordance with the Joint Venture's Operating Agreement.

(b) In determining whether or not to make the Loan, the Agent evaluated the background and experience of the Borrower and its manager in owning and operating property such as the Mortgaged Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Mortgaged Property which is the Lenders' security for the Note. The Borrower and its manager and members are well experienced in borrowing money and owning and operating property such as the Mortgaged Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. The Borrower recognizes that the Lenders are entitled to keep their loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Borrower. The Borrower further recognizes that any secondary junior financing placed upon the Mortgaged Property (i) may divert funds which would otherwise be used to pay the Note; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force the Agent to take measures and incur expenses to protect its security; (iii) would detract from the value of the Mortgaged Property should the Agent come into possession thereof with the intention of selling same; and (iv) would impair the Agent's right to accept a deed in lieu of foreclosure, as a foreclosure by the Agent would be necessary to clear the title to the Mortgaged Property. In accordance with the foregoing and for the purposes of (a) protecting the Agent's security, both of repayment and of value of the Mortgaged Property; (b) giving the Agent the full benefit of its bargain and contract with the Borrower; (c) allowing the Agent to raise the interest rate and collect assumption fees; and (d) keeping the Mortgaged Property free of subordinate financing liens, the Borrower agrees that if this section is deemed a restraint on alienation, that it is a reasonable one.

5. Events of Default. Any one or more of the following events shall constitute an "Event

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of Default” under this Security Instrument:

(a) If a Prohibited Transfer shall occur; or

(b) Borrower fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower contained in this Security Instrument and not specifically referred to elsewhere in this Section 5; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Mortgaged Property, and the priority, validity and enforceability of the liens created by this Security Instrument or any of the other Loan Documents and the value of the Mortgaged Property are not impaired, threatened or jeopardized, then Borrower shall have a period (“Cure Period”) of thirty (30) days after Borrower obtains actual knowledge of such failure or receives written notice of such failure from Agent to cure the same and an Event of Default shall not be deemed to exist during the Cure Period (provided, however, such period shall be limited to ten (10) days if such failure can be cured by the payment of money), provided further that if Borrower commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for sixty (60) additional days, but in no event shall the Cure Period be longer than ninety (90) days in the aggregate; or

(c) If any Event of Default occurs under the Loan Agreement or any other Loan Document including without limitation, under Section 11.1(aa) of the Loan Agreement.

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

(a) **Acceleration.** Agent may declare the outstanding principal balance of the Note and all unpaid indebtedness of Borrower hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind (and upon the occurrence of any Event of Default described in Section 11.1(e) of the Loan Agreement, such indebtedness shall automatically become due and payable without any action by Agent).

(b) **Uniform Commercial Code.** Agent shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of the Code for reasonable notification shall be met by mailing written notice to Borrower at its address set forth in Section 20 hereof at least fifteen (15) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Personal Property, may be sold as a single parcel if the Agent elects. The Borrower hereby agrees that if the Agent demands or attempts to take possession of the Personal Property or any portion thereof in exercise of its rights and remedies

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hereunder, the Borrower will promptly turn over and deliver possession thereof to the Agent, and the Borrower authorizes, to the extent the Borrower may now or hereafter lawfully grant such authority, the Agent, its employees and agents, and potential bidders or purchasers to enter upon the Mortgaged Property or any other office, building or property where the Personal Property or any portion thereof may at the time be located (or believed to be located) and the Agent may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The out-of-pocket expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute additional Obligations and shall be payable within five (5) Business Days after demand with interest at the Default Rate from the date demanded until paid to Agent.

(c) Foreclosure. Agent may proceed to protect and enforce the rights of Agent hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Security Instrument. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Obligations in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., as from time to time amended (the "Foreclosure Laws") and all other expenditures and expenses which may be paid or incurred by or on behalf of Agent for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Agent may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other out-of-pocket expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Security Instrument, including the reasonable fees of any attorney employed by Agent in any litigation or proceedings affecting this Security Instrument, the Note, any of the other Loan Documents or the Mortgaged Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be additional Obligations and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate from the date demanded until paid to Agent.

(d) Appointment of Receiver. Agent shall, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Borrower or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Foreclosure Laws of all or any part of the Mortgaged Property and the rents, issues and profits thereof, with such power as the court

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making such appointment shall confer, and Borrower hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Borrower or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

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

(i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Borrower;

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Security Instrument without Agent's prior written consent;

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

(v) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may

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seem judicious to Agent, to insure and reinsure the Mortgaged Property and all risks incidental to Agent's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom;

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

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

Nothing herein contained shall be construed as constituting Agent a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate, conserve and improve the same and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Agent hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The out-of-pocket expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Borrower promises to pay within five (5) Business Days after demand together with interest thereon at the Default Rate from the date demanded until paid to Agent. Agent shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any rents actually received by Agent. Without taking possession of the Mortgaged Property, Agent may, in the event the Mortgaged Property become vacant or are abandoned, take such steps as it deems appropriate or as required by any Applicable Laws to register, maintain, repair, protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Obligations payable within five (5) Business Days after demand with interest thereon at the Default Rate from the date incurred until paid.

(f) Indemnity. The Borrower hereby agrees to indemnify, defend, protect and hold harmless the Agent and its employees, officers and agents from and against any and all liabilities, claims and obligations (but excluding, in all cases, lost revenues, diminution in value and, except to the extent payable to or asserted by, a third party, consequential and punitive damages) which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, or lease of any of the Mortgaged Property, or any part thereof, or as a result of the Agent seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property; provided, however, that the foregoing indemnity shall not extend to such liabilities, claims or obligations as result from the gross negligence or intentional misconduct of the Agent, its employees, officers or agents.

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7. Compliance with Foreclosure Laws.

(a) In the event that any provision in this Security Instrument shall be inconsistent with any provision of the Foreclosure Laws, the provisions of the Foreclosure Laws shall take precedence over the inconsistent provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Foreclosure Laws.

(b) If any provision of this Security Instrument shall grant to Agent any rights or remedies upon the occurrence and during the continuance of an Event of Default which are more limited than the rights that would otherwise be vested in Agent under the Foreclosure Laws in the absence of said provision, Agent shall be vested with the rights granted in the Foreclosure Laws to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Agent to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Foreclosure Laws, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Sections 6(c) or 9 of this Security Instrument, shall be added to the Obligations and shall be immediately due and payable by Borrower within five (5) Business Days after demand, with interest thereon at the Default Rate from the date demanded until paid or shall be included in the judgment of foreclosure.

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

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9. **Costs and Expenses of Foreclosure.** In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Agent for appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, title insurance policies, and similar data and assurances with respect to title as Agent may deem to be reasonably necessary either to prosecute any such foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, and reasonable attorneys' fees, all of which expenditures shall become additional Obligations which Borrower agrees to pay and all of such expenditures shall be immediately due and payable within five (5) Business Days after demand with interest thereon from the date of demand until paid to Agent at the Default Rate.

10. **Protective Advances.**

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

(i) all advances by Agent in accordance with the terms of this Security Instrument to: (A) register, preserve or maintain, repair, restore or rebuild the Improvements upon the Mortgaged Property; (B) preserve the lien of this Security Instrument or the priority thereof; or (C) enforce this Security Instrument, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Foreclosure Laws;

(ii) payments by Agent of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of Taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof if not paid or contested by Borrower in accordance with the Loan Documents; (C) other obligations authorized by this Security Instrument; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Mortgaged Property, as referred to in Section 5/15-1505 of the Foreclosure Laws;

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

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

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

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

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

(viii) expenses incurred and expenditures made by Agent for any one or more of the following: (A) 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 mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Foreclosure Laws; (B) repair or Restoration of damage or destruction in excess of available Insurance Proceeds or Awards; (C) payments required or deemed by Agent to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which Borrower is a member in any way affecting the Mortgaged Property; or (E) pursuant to any Lease or other agreement for occupancy of the Mortgaged Property.

(b) All Protective Advances shall be additional Obligations, and shall become due and payable within five (5) Business Days after demand and with interest thereon from the date demanded until paid at the Default Rate.

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

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

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

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

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

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

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possession; and

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

11. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property or of any sale of property pursuant to Section 6(c) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 6(c) and Section 9 hereof; second, to all items, other than principal and interest evidenced by the Note, which under the terms hereof constitute Obligations with interest thereon as herein provided; third, to all unpaid interest on the Note; fourth, to all unpaid principal on the Note; fifth, to whomsoever shall be lawfully entitled to the same.

12. Rights Cumulative.

(a) Each right, power and remedy herein conferred upon the Agent is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by the Agent.

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

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

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omission of the Agent in the exercise of any right, power or remedy accruing hereunder or under any of the other Loan Documents or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to the Agent by this Security Instrument is not required to be given.

13. Successors and Assigns; Assignment.

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

(b) All of the covenants of this Security Instrument shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Mortgaged Property or any portion thereof becomes vested in a person or persons other than the Borrower, the Agent may, without notice to the Borrower, deal with such successor or successors in interest of the Borrower with reference to this Security Instrument and the Obligations in the same manner as with the Borrower without in any way releasing or discharging the Borrower from its obligations hereunder. The Borrower will give immediate written notice to the Agent of any conveyance, transfer or change of ownership of the Mortgaged Property, but nothing in this Section shall vary or negate the provisions of Section 4 hereof.

(c) The rights and obligations of Borrower under this Security Instrument may not be assigned and any purported assignment by Borrower shall be null and void. Agent shall have the right to sell, assign or transfer portions of its right, title and/or interest in and to this Security Instrument and the other Loan Documents (including the sale of participation interests therein), to the extent permitted in the Loan Agreement, and Borrower agrees to reasonably cooperate in all respects with Agent in connection therewith, including, without limitation, the execution of all documents and instruments reasonably requested by Agent or such transferee provided that such documents and instruments do not materially adversely affect any of Borrower's or Guarantor's duties or obligations under this Security Instrument and the other Loan Documents.

14. Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter; Corrective Documents.

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

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(b) From time to time, the Borrower will furnish, within ten (10) Business Days after request from the Agent, a written and duly acknowledged statement of the amount due under the Note, this Security Instrument and the other Loan Documents and whether any alleged offsets or defenses exist against the Obligations.

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

15. **Subrogation.** If any part of the Obligations is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then by advancing the monies to make such payment, the Agent shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

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

17. **Business Loan.**

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

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

18. **Assignment of Leases and Other Agreements Affecting the Mortgaged Property.** In order to further secure payment of the Obligations and the observance, performance and discharge of the Borrower's obligations under the Loan Documents, the Borrower hereby assigns to the Agent all of the Borrower's right, title, interest and estate in, to and under all of the Leases or other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property now or hereafter made affecting the Mortgaged Property or any portion thereof), as more particularly described in that certain Assignment of Leases and Rents dated as of even date herewith from Borrower to and for the benefit of Agent. Unless and until an Event of Default occurs and is

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continuing, the Borrower shall be entitled to collect the Rents and Profits (except as otherwise provided in this Security Instrument) as and when they become due and payable. Neither these assignments nor Agent's enforcement of the provisions of these assignments (including the receipt of the Rents) will operate to subordinate the lien of this Security Instrument to any of the rights of any tenant or other party to any other agreement affecting the use, enjoyment or occupancy of the Mortgaged Property of all or any part of the Mortgaged Property, or to subject Agent to any liability to any such tenant for the performance of any obligations of Borrower under any such Lease or other agreement affecting the Mortgaged Property unless and until Agent agrees to such subordination or assumes such liability by an appropriate written instrument.

19. **Environmental Matters.** Concurrently herewith, Borrower and Guarantors shall execute and deliver an Environmental Indemnity Agreement in form satisfactory to Agent (the "Environmental Indemnity Agreement"). The performance of the covenants, undertakings and obligations of the indemnitors under the Environmental Indemnity Agreement shall be secured by this Security Instrument.

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

To Agent:	Fifth Third Bank, National Association 222 South Riverside Plaza, 31st Floor Chicago, Illinois 60606 Attn: Robert Macyanski
With copy to:	Miller, Canfield, Paddock & Stone, P.L.C. 225 West Washington Street, Suite 2600 Chicago, Illinois 60606-0089 Attn: Joseph C. Huntzicker, Esq.
To Borrower:	1125 VB PROPCO, LLC 1040 West Huron Street, Suite 300 Chicago, Illinois 60642 Attention: Stéphane D. Rambaud Dimitri Nassis
With copy to:	Taft Stettinius & Hollister LLP 111 East Wacker, Suite 2800 Chicago, Illinois 60601 Attention: Kenneth Klassman, Esq.

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21. Releases.

(a) Upon payment in full of all sums due under the Note and this Security Instrument and the other of the Loan Documents, the Agent shall, upon the request of, and at the cost of, the Borrower, execute a proper release of this Security Instrument.

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

22. Indemnification by the Borrower. The Borrower shall protect and indemnify the Agent in accordance with Section 14.12 of the Loan Agreement. Such obligations under this paragraph shall survive the termination, satisfaction or release of this Security Instrument.

23. Miscellaneous.

(a) Time is of the Essence. Time is of the essence of this Security Instrument.

(b) Captions and Pronouns. The captions and headings of the various Sections of this Security Instrument are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

(c) Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Obligations secured hereby exceed an amount equal to \$84,000,000; provided, however, in no event shall the Agent be obligated to advance loan proceeds in excess of the face amount of the Note.

(d) Agent Not a Joint Venturer or Partner of Borrower. The Borrower and the Agent acknowledge and agree that in no event shall the Agent be deemed to be a partner or joint venturer with the Borrower. Without limitation of the foregoing, the Agent shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Security Instrument or pursuant to any other instrument or document evidencing or securing any of the Obligations, or otherwise.

(e) Replacement of the Note. Upon notice to the Borrower of the loss, theft, destruction or mutilation of the Note, so long as the applicable Lender or Lenders execute and deliver to Borrower a lost note affidavit and indemnity in favor of Borrower, Borrower will execute and deliver, in lieu thereof, at no cost or expense to Borrower, a replacement note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any of the Loan Documents to the Note shall be deemed to refer to such replacement note.

(f) Waiver of Consequential Damages. The Borrower covenants and agrees that in no event shall the Agent be liable for consequential damages, whatever the nature of a failure by

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the Agent to perform its obligation(s), if any, under the Loan Documents, and the Borrower hereby expressly waives all claims that it now or may hereafter have against the Agent for such consequential damages.

(g) After Acquired Mortgaged Property. The lien hereof will automatically attach, without further act, to all after-acquired Mortgaged Property attached to and/or used in connection with or in the operation of the Mortgaged Property or any part thereof.

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

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

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

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

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

(m) No Merger. The parties hereto intend that the Security Instrument and the lien hereof shall not merge in fee simple title to the Mortgaged Property, and if the Agent acquires any additional or other interest in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by the Agent as evidenced by an express statement to that

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effect in an appropriate document duly recorded, this Security Instrument and the lien hereof shall not merge in the fee simple title and this Security Instrument may be foreclosed as if owned by a stranger to the fee simple title.

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

(o) Further Assurances. Borrower shall execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further assurances and other agreements or instruments, and take or cause to be taken all such other actions, as shall be reasonably necessary from time to time to give full effect to the Loan Documents and the transactions contemplated hereby and thereby.

24. JURISDICTION AND VENUE. BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS SECURITY INSTRUMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF AGENT INITIATES SUCH ACTION, ANY COURT IN WHICH AGENT SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY AGENT IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS SECURITY INSTRUMENT. AGENT, BY ITS ACCEPTANCE HEREOF, AND BORROWER EACH WAIVES ANY CLAIM THAT COOK COUNTY, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY AGENT AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY AGENT OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY AGENT OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

25. Waiver of Jury Trial. BORROWER AND AGENT, BY ITS ACCEPTANCE HEREOF, HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND

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UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND AGENT ARISING OUT OF OR IN ANY WAY RELATED TO THIS SECURITY INSTRUMENT. ANY OTHER LOAN DOCUMENT. OR ANY RELATIONSHIP BETWEEN BORROWER AND AGENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDERS TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

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

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

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

29. **Construction Loan.** The Note evidences a debt created by one or more disbursements made (or to be made) by Agent to Borrower to finance the cost of the construction of certain Improvements upon the Land in accordance with the provisions of the Loan Agreement, and this Security Instrument is a construction mortgage as such term is defined in Section 9-334(h) of the Code.

30. **Limitations on Liability.** Recourse for the obligations under this Security Instrument shall be limited as set forth in Section 11.4 of the Loan Agreement.

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SIGNATURE PAGE FOLLOWS]

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EXHIBIT "A"

LEGAL DESCRIPTION

Real property situated in the City of Chicago, County of Cook, State of Illinois, and more particularly described as follows:

Lots 5, 6, 7, 8, 9 and Lot 10 (except the West 4 feet of said Lot 10), both inclusive, except part thereof taken for Congress Street Expressway, in C. J. Hull's Subdivision of Block 27 in Canal Trustees Subdivision of the West 1/2 of the Northeast 1/4 of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Property Addresses and Tax Parcel Identification Numbers:

1115 W. Van Buren St., Chicago, IL 60607 | 17-17-229-016-0000
1117 W. Van Buren St., Chicago, IL 60607 | 17-17-229-015-0000
1125 W. Van Buren St., Chicago, IL 60607 | 17-17-229-050-0000
1123 W. Van Buren St., Chicago, IL 60607 | 17-17-229-013-0000
1121 W. Van Buren St., Chicago, IL 60607 | 17-17-229-014-0000