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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



**Report Mortgage Fraud**  
**844-768-1713**



Doc# 2225649062 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 09/13/2022 04:21 PM PG: 1 OF 49

The property identified as: **PIN: 32-19-102-045-0000**

**Address:**

**Street:** 31 Olympic Village Drive

**Street line 2:**

**City:** Chicago Heights

**State:** IL

**ZIP Code:** 60411

**Lender:** Olympic-Chicago Heights Limited Partnership

**Borrower:** Olympic Village LLC

**Loan / Mortgage Amount:** \$16,431,167.00

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:** 7F1080D4-0975-459B-BF8B-9A52E37E80A0

**Execution date:** 9/8/2022

10 of 11

Property of Cook County Clerk's Office

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AND WHEN RECORDED MAIL  
TO:**

Mark D. Yura, Esq.  
DLA Piper LLP (US)  
444 West Lake Street, Suite 900  
Chicago, Illinois 60606

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**THIRD MORTGAGE AND SECURITY AGREEMENT AND  
FIXTURE FILING WITH ASSIGNMENT OF LEASES AND RENTS**

Cover Sheet

Date: September 8, 2022

Borrower: OLYMPIC VILLAGE LLC, a Delaware limited liability company

Borrower's State Of Organization: Delaware

Borrower's Organizational ID Number: 3694322

Lender: OLYMPIC-CHICAGO HEIGHTS LIMITED PARTNERSHIP, an Illinois limited partnership

Note Amount: \$16,431,167.00

Maturity Date: September 7, 2057

State: Illinois

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## MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING WITH ASSIGNMENT OF LEASES AND RENTS

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## THIRD MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING WITH ASSIGNMENT OF LEASES AND RENTS

**THIS THIRD MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING WITH ASSIGNMENT OF LEASES AND RENTS** (this "Mortgage") is made as of September 8, 2022, by and between **OLYMPIC VILLAGE LLC**, a Delaware limited liability company having an address at 790 Estate Drive, Suite #200, Deerfield, IL 60015 ("Borrower") and **OLYMPIC-CHICAGO HEIGHTS LIMITED PARTNERSHIP**, an Illinois limited partnership, having an address at 790 Estate Drive, Suite #200, Deerfield, IL 60015 ("Lender").

### GRANTING CLAUSES

For good and valuable consideration and to secure the payment of an indebtedness in the principal sum of up to SIXTEEN MILLION FOUR HUNDRED THIRTY-ONE THOUSAND ONE HUNDRED SIXTY-SEVEN AND NO/100 Dollars (\$16,431,167.00) (the "Stated Loan Amount") payable in lawful money of the United States, to be paid according to that certain Promissory Note of even date herewith from Borrower to Lender, in the stated principal amount of the Stated Loan Amount and by this reference made a part hereof (said Promissory Note, as the same may hereafter be amended, modified, consolidated or extended, collectively, the "Note") with a maturity date of September 7, 2057;

And also to secure all other obligations and liabilities due or to become due to Lender, all amounts, sums and expenses paid hereunder by or payable to Lender according to the terms hereof, and all other covenants, obligations and liabilities of Borrower under the Note, Borrower's obligations under this Mortgage, and any other instrument executed by Borrower evidencing, securing or delivered in connection with the loan evidenced by the Note (all of the foregoing instruments, collectively, the "Loan Documents"), and together with all interest on said indebtedness, obligations, liabilities, amounts, sums, Advances (as hereinafter defined) and expenses (all of the foregoing, collectively, the "Indebtedness"), Borrower has created a security interest in and mortgaged, warranted, granted, bargained, sold, conveyed, assigned, pledged, transferred and set over, and does by these presents create a security interest in and MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, CONVEY, ASSIGN, PLEDGE, TRANSFER and SET OVER unto Lender, its successors and assigns forever, WITH MORTGAGE COVENANTS and with all other STATUTORY RIGHTS AND COVENANTS in the State (as hereinafter defined), together with all interest that Borrower may hereafter acquire in the following property:

The parcel or parcels of land described in Exhibit A attached hereto and by this reference made a part hereof (the "Land");

TOGETHER with the buildings, foundations, structures and improvements (including fixtures) now or hereafter located on or in the Land (collectively, the "Improvements");

TOGETHER with all right, power, privilege, option, title and interest, if any, of Borrower in and to the streets and roads, opened or proposed, abutting the Land, all strips and gores within or adjoining the Land, the air space and right to use the air space above the Land, all rights of

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ingress and egress to and from the Land, all easements, rights of way, reversions, remainders, estates, rights, titles, interests, privileges, servitudes, tenements, hereditaments, and appurtenances now or hereafter affecting the Land or the Improvements, all royalties and rights and privileges appertaining to the use and enjoyment of the Land or the Improvements, including all air, lateral support, streets, alleys, passages, vaults, drainage, water, oil, gas and mineral rights, development rights, all leases and licenses and options to purchase or lease, and all other interests, estates or claims, in law or in equity, which Borrower now has or hereafter may acquire in or with respect to the Land or the Improvements (collectively, the "Appurtenances");

The Land, the Improvements and the Appurtenances are hereinafter collectively referred to as the "Premises";

TOGETHER with all equipment, fittings, furniture, furnishings, appliances, apparatus, and machinery in which Borrower now or hereafter has a possessory or title interest (excluding personal property owned by tenants) and now or hereafter installed in or located upon the Premises and all building materials, supplies and equipment now or hereafter delivered to the Premises and intended to be installed therein or located thereon; all fixtures, inventory, other goods and personal property of whatever kind and nature now contained on or in or hereafter placed on or in the Premises and used or to be used in connection with the letting or operation thereof, in which Borrower now has or hereafter may acquire a possessory or title interest (excluding personal property owned by tenants) and all renewals or replacements of any of the foregoing property or articles in substitution thereof, including beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, liners, pillows, blankets, glassware, silverware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, ice makers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures (including bidets), fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers, and other equipment used in the operation of the Premises (collectively, the "Equipment");

TOGETHER with all right, power, privilege, option, title and interest of Borrower in and under all present or future accounts, deposit accounts, documents, instruments, chattel paper, and general intangibles (including "payment intangibles"), as the foregoing terms are defined in the Code (as hereinafter defined), all deposits, monies or escrows held by Lender or Lender's agent or any accounts established pursuant hereto or pursuant to any other Loan Documents, and all contract rights, equipment leases, operating leases and licenses, Operating Agreements (as hereinafter defined), derivative investments, letters of credit, and rate cap agreements, including casualty insurance policies and liability insurance policies (irrespective of whether such policies are required to be obtained or maintained in force pursuant to this Mortgage or other Loan Documents), trade names, trademarks, servicemarks, logos, copyrights, goodwill, franchises,

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books, records, plans, specifications, permits, licenses, approvals, actions, claims under the Federal Bankruptcy Code (as hereinafter defined) and causes of action which now or hereafter relate to, are derived from or are used in connection with the Premises or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, the "Intangibles");

TOGETHER with all right, power, privilege, option, title and interest of Borrower in and under all existing and future leases, lettings, tenancies, occupancy agreements, licenses to occupy and other similar arrangements affecting the Premises or any part thereof now or hereafter entered into and all amendments, extensions, renewals and guaranties thereof, all security therefor, including letter of credit rights, guaranties and other supporting obligations, and all moneys payable thereunder, whether entered into before or after the filing by or against Borrower of any petition for relief under the Federal Bankruptcy Code (collectively, the "Leases");

TOGETHER with all rents, income, accounts, receivables, issues, profits, security deposits, including the proceeds from letters of credit, guarantees and other supporting obligations, all other payments and profits from the Leases and the use and occupation of the Premises, including fixed and additional rents, cancellation payments, option payments, all revenues and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Premises, or personalty located thereon, telephone and television systems, laundry, the provision or sale of other goods and services, service charges, vending machine sales, and other payments and benefits to which Borrower may now or hereafter be entitled from the Premises, the Equipment or the Intangibles or under or in connection with the Leases (collectively, the "Property Income"), including the immediate and continuing right to make claim for, receive, collect and receipt for Property Income, including the right to make claim in a proceeding under the Federal Bankruptcy Code and to apply the same to the payment of the Indebtedness, all whether before or after the filing by or against Borrower of any petition for relief under the Federal Bankruptcy Code; and

TOGETHER with all proceeds, judgments, claims, compensation, awards of damages and settlements pertaining to or resulting from or in lieu of any condemnation or taking of the Premises by eminent domain or any casualty loss or damage to any of the Premises, the Equipment, the Intangibles, the Leases or the Property Income, and including also, the right to assert, prosecute and settle claims arising out of or pertaining to such condemnation or taking or such casualty loss under insurance policies constituting an Intangible and to apply for and receive payments of proceeds under such insurance policies and in any condemnation or taking, the right to apply for and receive all refunds with respect to the payment of property taxes and assessments and all other proceeds from the conversion, voluntary or involuntary, of the Premises, the Equipment, the Intangibles, the Leases or the Property Income, or any part thereof, into cash or liquidated claims. Collectively, all of the foregoing, are herein referred to as the "Proceeds."

The Equipment, the Intangibles, the Leases, the Property Income and the Proceeds are hereinafter collectively referred to as the "Collateral." The Premises and the Collateral are hereinafter collectively referred to as the "Mortgaged Property."

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TO HAVE AND TO HOLD the Mortgaged Property, with all the privileges and appurtenances to the same belonging, and with the possession and right of possession thereof, unto Lender and its successors and assigns forever.

## ARTICLE I

### DEFINITION OF TERMS

As used in this Mortgage, the terms set forth below shall have the following meanings:

"Advances" means all sums, amounts or expenses advanced or paid and all costs incurred by Lender, as provided in this Mortgage or in any other Loan Document, upon failure of Borrower to pay or perform any obligation or covenant contained herein or in such other Loan Document.

"Anti-Money Laundering Laws" means the USA Patriot Act of 2001, the Bank Secrecy Act, as amended through the date hereof, Executive Order 13324 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended through the date hereof, and other federal laws and regulations and executive orders administered by the United States Department of the Treasury, Office of Foreign Assets Control ("OFAC") which prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals (such individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanction and embargo programs), and such additional laws and programs administered by OFAC which prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on any of the OFAC lists.

"Appurtenances" has the meaning assigned in the Granting Clauses.

"Bankruptcy Proceeding" means any proceeding, action, petition or filing under the Federal Bankruptcy Code or any similar state or federal law now or hereafter in effect relating to bankruptcy, reorganization or insolvency, or the arrangement or adjustment of debts.

"Borrower" means the party or parties identified and defined as Borrower on the Cover Sheet and in the preamble of this Mortgage, any subsequent owner of the Mortgaged Property, and its or their respective heirs, executors, legal representatives, successors and assigns.

"Business Day" means any day other than a Saturday, Sunday or other day on which national banks in the State are not open for business.

"Code" means the Uniform Commercial Code of the State, as the same may be amended from time to time or any successor statute thereto.

"Collateral" has the meaning assigned in the Granting Clauses.

"Default Rate" has the meaning assigned in the Note.



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"Environmental Law" means any present or future federal, state or local law, statute, regulation or ordinance, and any judicial or administrative order or judgment thereunder, pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Premises, including each of the following as in effect on the date hereof or hereafter amended: the Comprehensive Environmental Response, Compensation and Liability Act 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §§ 136 et seq.; the Occupational Safety & Health Act of 1970, as amended, 29 U.S.C. § 651 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. § 300f et seq.; the National Environmental Policy Act, as amended, 42 U.S.C. § 4321 et seq.; and the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq.

"Equipment" has the meaning assigned in the Granting Clauses.

"Event of Default" means any one or more of the events described in Section 4.01.

"Federal Bankruptcy Code" means Title 11 of the United States Code, as the same may be amended from time to time or any successor statute thereto.

"First Mortgage" means that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated on or about the date hereof made by Borrower to and in favor of First Mortgage Lender to secure the First Mortgage Loan, which encumbers the Land and shall be recorded with the Recorder of Deeds of Cook, County, Illinois.

"First Mortgage Lender" means NEF Preservation PB Fund I LP, a Delaware limited partnership, and its successors and assigns as the holder of the First Mortgage Loan.

"First Mortgage Loan" means that certain loan in the maximum principal amount of \$17,200,000.00 made by First Mortgage Lender to Borrower on or about the date hereof.

"First Mortgage Loan Documents" means the First Mortgage and all other notes, mortgages, instruments, guaranties, certificates and agreements that evidence and/or secure the First Mortgage Loan.

"Hazardous Substance" means any material, waste or substance which is:

(i) included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in or pursuant to any Environmental Law, or subject to regulation under any Environmental Law;

(ii) listed in the United States Department of Transportation Optional Hazardous Materials Table, 49 C.F.R. § 172.101, as to date or hereafter amended, or in the United States Environmental Protection Agency List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302, as to date or hereafter amended; or

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(iii) explosive, radioactive, asbestos, asbestos containing material, Microbial Matter, a hydrocarbon, a polychlorinated biphenyl, oil, or a petroleum product.

"Impositions" means all taxes (including ad valorem taxes) or payments in lieu of taxes of every kind and nature, sewer rents, charges for water, for setting or repairing meters and for all other utilities serving the Premises, and assessments, levies, inspection and license fees and all other charges imposed upon or assessed against the Mortgaged Property or any portion thereof (including the Property Income), and any stamp or other taxes which might be required to be paid, or with respect to any of the Loan Documents, any of which might, if unpaid, affect the enforceability of any of the remedies provided in this Mortgage or result in a lien on the Mortgaged Property or any portion thereof, regardless of to whom assessed.

"Indebtedness" has the meaning assigned in the Granting Clauses.

"Intangibles" has the meaning assigned in the Granting Clauses.

"Land" has the meaning assigned in the Granting Clauses.

"Late Charge" means any charge designated as such and payable by Borrower for tardy performance by Borrower under the Note, this Mortgage or any other Loan Document.

"Leases" has the meaning assigned in the Granting Clauses.

"Lender" means OLYMPIC-CHICAGO HEIGHTS LIMITED PARTNERSHIP, an Illinois limited partnership, the lender identified as such on the Cover Sheet and in the preamble of this Mortgage, and its successors and assigns (including any other holders from time to time of the Note).

"Loan" means the loan made by Lender to Borrower evidenced by the Note.

"Loan Documents" has the meaning assigned in the Granting Clauses.

"Losses" means claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages of whatever kind or nature (including attorneys' fees, costs and expenses).

"Management Agreements" means the management agreements and leasing commission agreements for the Premises and the agreements, licenses and leases set forth in Exhibit C.

"Maturity Date" means the date set forth as the Maturity Date on the Cover Sheet of this Mortgage.

"Microbial Matter" means the presence of fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including mold, mildew and viruses,

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whether or not such Microbial Matter is living, which poses a threat to the health, safety or welfare of any Person or adversely affects the value of the Mortgaged Property.

"Mortgaged Property" has the meaning assigned in the Granting Clauses.

"Note" has the meaning assigned in the Granting Clauses.

"OFAC Prohibited Person" means, a country, territory, individual or Person (i) listed on, included within or associated with any of the countries, territories, individuals or entities referred to on The Office of Foreign Assets Control's List of Specially Designated Nationals and Blocked Persons or any other prohibited person lists maintained by governmental authorities, or otherwise included within or associated with any of the countries, territories, individuals or entities referred to in or prohibited by OFAC or any other Anti-Money Laundering Laws, or (ii) which is obligated or has any interest to pay, donate, transfer or otherwise assign any property, money, goods, services, or other benefits from the Mortgaged Property directly or indirectly, to any countries, territories, individuals or entities on or associated with anyone on such list or in such laws.

"Operating Agreement" means that certain Amended and Restated Operating Agreement of Borrower dated on or about the date hereof, as may be amended.

"Permitted Encumbrances" means the liens and security interests created by this Mortgage and the other Loan Documents and those exceptions to title set forth in Exhibit B.

"Person" means and includes any individual, corporation, partnership, joint venture, limited liability company, association, bank, joint stock company, trust, unincorporated organization or government, or an agency or political subdivision thereof.

"Premises" has the meaning assigned in the Granting Clauses.

"Proceeds" has the meaning assigned in the Granting Clauses.

"Property Income" has the meaning assigned in the Granting Clauses.

"Release" means the release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of a Hazardous Substance no matter how or by whom or what caused.

"Remediation" means and includes any response, remedial, removal or corrective action, activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance or underground storage tank, any actions to prevent, cure or mitigate any Release of a Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or underground storage tank.

"Second Mortgage" means that certain Second Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated June 30, 2022 between Olympic-

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Chicago Heights Limited Partnership, an Illinois limited partnership, as assigned to and assumed by Borrower to and in favor of Second Mortgage Lender to secure the Second Mortgage Loan, which encumbers the Land and was recorded with the Recorder of Deeds of Cook, County, Illinois on \_\_\_\_\_, 2022 as Document Number \_\_\_\_\_.

"Second Mortgage Lender" means CAMBRIDGE REALTY CAPITAL LTD OF ILLINOIS, an Illinois corporation, and its successors and assigns as the holder of the Second Mortgage Loan.

"Second Mortgage Loan" means that certain loan in the maximum principal amount of \$13,000,000.00 made by Second Mortgage Lender to Borrower on or about June 30, 2022.

"Second Mortgage Loan Documents" means the Second Mortgage and all other notes, mortgages, instruments, guaranties, certificates and agreements that evidence and/or secure the Second Mortgage Loan.

"State" means the State or Commonwealth in which the Land is situated.

"Subordination and Standstill Agreement" means that certain Subordination and Standstill Agreement, dated of even date herewith, entered into by and among Borrower, Second Mortgage Lender, and First Mortgage Lender.

## ARTICLE II

### COVENANTS, WARRANTIES AND REPRESENTATIONS OF BORROWER

Borrower covenants, warrants, represents and agrees as follows:

Section 2.01 Payment of the Indebtedness. Borrower shall punctually pay the Indebtedness at the times and in the manner provided in the Note, this Mortgage and the other Loan Documents, all in lawful money of the United States of America.

Section 2.02 Title to the Mortgaged Property.

(a) Borrower has fee simple title (or such lesser estate therein as may be specified in Exhibit A) to the Premises and good indefeasible title to the balance of the Mortgaged Property, free and clear of liens and encumbrances except Permitted Encumbrances.

(b) Borrower has full power and lawful authority to encumber the Mortgaged Property in the manner and form herein set forth.

(c) This Mortgage is and will remain a valid and enforceable lien on and security interest in the Mortgaged Property.

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(d) Borrower will preserve such title and will forever warrant and defend the same and the validity and priority of the lien hereof to Lender against all claims whatsoever, subject to the lien of the First Mortgage and the other Permitted Encumbrances.

Section 2.03 Maintenance of the Mortgaged Property. Borrower shall maintain the Mortgaged Property in good and safe condition, working order and repair, and comply with all existing and future federal, state and local laws, ordinances, rules and regulations and court orders affecting or which may be interpreted as affecting the Mortgaged Property, including the Americans with Disabilities Act and all zoning, subdivision, land use, environmental, traffic, fire, building, and occupational safety and health rules, regulations, codes, acts and statutes to which it is subject, provided that Borrower may contest in good faith any such law, ordinance, rule or regulation so long as such contest operates as a stay to the enforcement of such law, ordinance, rule or regulation. Borrower shall permit Lender and its agents to enter upon and inspect: (a) the areas of the Mortgaged Property which are open to the public at all reasonable hours without prior notice and (b) all other areas of the Mortgaged Property at all reasonable hours with reasonable prior notice (provided that Lender shall in no event be required to provide Borrower with more than 48 hours prior notice), except that no notice shall be required in the event of an emergency. Borrower shall not, without the prior consent of Lender: (a) change the use of the Premises; (b) cause or permit the use or occupancy of any part of the Premises to be discontinued if such discontinuance would violate any zoning or other law, ordinance or regulation; (c) consent to any zoning reclassification, modification or restriction affecting the Premises; (d) threaten, commit or permit any waste, structural or material alteration, demolition or removal of the Mortgaged Property or any portion thereof (provided that the Equipment included within the Collateral may be removed if replaced with similar items of equal or greater value); or (e) take any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of ownership. No provision of this Section 2.03 shall prohibit Borrower from undertaking and completing or permitting a tenant to undertake and complete tenant improvement work authorized under Leases previously approved by Lender or not requiring Lender's prior approval.

Section 2.04 Insurance; Restoration.

(a) Borrower shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Lender, and in all events, in compliance with all requirements under the First Mortgage Loan Documents.

(b) In the event of any damage to or destruction of the Premises and/or Equipment, Borrower shall give prompt written notice to Lender and shall promptly commence and diligently continue to completion the repair, restoration and rebuilding of the Premises and/or Equipment so damaged or destroyed in full compliance with all legal requirements, and the terms of the First Mortgage Loan Documents, and free and clear from any and all liens and claims. Such repair, restoration and rebuilding of the Premises are sometimes hereinafter collectively referred to as the "Work." Borrower shall not adjust, compromise or settle any claim for insurance proceeds in excess of \$150,000

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without the prior consent of Lender, which consent shall not be unreasonably withheld. Except as provided herein and subject to the terms and conditions of the First Mortgage Loan Documents, Lender shall have the option in its sole discretion to apply any insurance Proceeds it may receive pursuant to this Mortgage (less any cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees) to the payment of the Indebtedness or to allow all or a portion of such Proceeds to be used for the Work. If any insurance Proceeds are applied to reduce the Indebtedness, provided no default hereunder or under any of the other Loan Documents shall have occurred and be continuing, Lender shall apply the same, without any prepayment fee, in accordance with the provisions of Section 6 of the Note. Notwithstanding the foregoing, if an Event of Default shall have occurred and be continuing, Lender, at its option, may apply any insurance Proceeds to the Indebtedness in such order and priority as Lender deems appropriate in its sole discretion (and any prepayment fee required to be paid under the Note shall be due and owing).

(c) In the event of the foreclosure of this Mortgage or other transfer of title to or assignment of the Mortgaged Property in extinguishment of the Indebtedness in whole or in part, all right, title and interest of Borrower in and to all policies of insurance required by this Mortgage any insurance Proceeds shall inure to the benefit of and pass to Lender or any purchaser or transferee at the foreclosure sale of the Mortgaged Property.

(d) Lender may notify any and all insurers under casualty insurance policies constituting part of the Intangibles that Lender has a security interest pursuant to the provisions of this Mortgage in and to such insurance policies and any proceeds thereof, and that any payments under those insurance policies are to be made directly to Lender. Lender's rights under this Section 2.04(d) may be exercised by Lender or a court appointed receiver appointed upon the request of Lender and irrespective of whether or not a default shall have occurred under this Mortgage.

(e) If any insurance Proceeds are used for the Work, then (except as provided herein) such Proceeds shall be held by Lender (or as otherwise required by the First Mortgage Lender) and shall be paid out from time to time at the request of Borrower directly to the contractors, materialmen and others performing the Work as the Work progresses (less any cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees and costs allocable to inspecting the Work and the plans and specifications therefor), subject to each of the following conditions:

(i) If the Work is structural and if the cost of the Work is reasonably estimated to exceed Two Hundred Thousand Dollars (\$200,000), the Work shall be conducted under the supervision of a certified and registered architect or engineer. Before Borrower commences any Work, other than temporary work to protect property or prevent interference with business, Lender shall have approved the plans and specifications for the Work, which approval shall not be unreasonably withheld or delayed, it being nevertheless understood that such plans and specifications shall provide for Work so that, upon completion thereof, the Premises shall at least equal in value and general utility to the Premises immediately prior to the damage or destruction.

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(ii) Each request for payment shall be made on not less than fifteen Business Days prior notice to Lender and shall be accompanied by a certificate of the architect or engineer in (i) above (or a certificate given by Borrower if no architect or engineer is so required) stating (A) that all of the Work completed has been done in compliance with the approved plans and specifications, if required under (i) above, (B) that the sum requested is justly required to reimburse Borrower for payments by Borrower, or is justly due to the contractor, subcontractors, materialmen, laborers, engineers, architects or other Persons rendering services or materials for the Work (giving a brief description of such services and materials), and that when added to all sums previously paid out by Lender does not exceed the value of the Work done to the date of such certificate, (C) if the sum requested is to cover payment relating to repair and restoration of Equipment required or relating to the Premises, that title to the items of Equipment covered by the request for payment is vested in Borrower, and (D) that the amount of such Proceeds remaining in the hands of Lender will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as Lender may require an estimate of the cost of such completion). Additionally, each request for payment shall contain a statement signed by Borrower approving both the Work done to date and the Work covered by the request for payment in question.

(iii) Each request for payment shall be accompanied by (A) written confirmation from the First Mortgage Lender that it approves the requested disbursement, and (B) proper and valid waivers of lien covering that part of the Work for which payment or reimbursement is being requested and (C) if required by Lender, a search prepared by a title company or licensed abstractor, or by other evidence satisfactory to Lender that there has not been filed with respect to the Premises any mechanics' or other lien or instrument for the retention of title relating to any part of the Work not discharged of record. Additionally, as to any Equipment covered by the request for payment, Lender shall be furnished with evidence of payment therefor and such further evidence satisfactory to assure Lender of its valid first lien on the Equipment.

(iv) Lender shall have the right to inspect the Work at all reasonable times upon reasonable prior notice and may condition any disbursement of Proceeds upon the satisfactory completion, as determined in Lender's reasonable discretion, of any portion of the Work for which payment or reimbursement is being requested. Neither the approval by Lender of the plans and specifications for the Work nor the inspection by Lender of the Work shall make Lender responsible for the preparation of such plans and specifications or the compliance of such plans and specifications, or of the Work, with any applicable law, regulation, ordinance, covenant or agreement.

(v) Proceeds shall not be disbursed more frequently than once each calendar month.

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(vi) Any request for payment made after the Work has been completed shall be accompanied by (and to the extent issued by the applicable governmental authority) a copy or copies of any certificate or certificates required by law to render occupancy and full operation of the Premises legal.

(vii) Upon completion of the Work and payment in full therefor, any unexpended Proceeds shall either be paid over to Borrower or shall be applied to the reduction of the Indebtedness (as provided in Section 6 of the Note).

(f) Upon any failure on the part of Borrower to promptly commence the Work or to proceed diligently and continuously to completion of the Work or upon any Event of Default, Lender, at its sole option, shall be entitled to apply at any time all or any portion of insurance Proceeds it then holds to the Indebtedness or to the curing of any Event of Default under this Mortgage, the Note or any other Loan Document.

(g) Notwithstanding any other provision of this Section 2.04, if no Event of Default shall exist and be continuing (nor any matter has occurred which, after notice or passage of time or both, would constitute an Event of Default) and in Lender's reasonable judgment the cost of the Work is less than \$150,000 as of the date of loss or damage to the Premises and/or Equipment and the Work can be completed in less than 180 days after date of issuance of the permits necessary to commence the Work, then Lender shall, upon request by Borrower, permit Borrower to apply for and receive the insurance Proceeds directly from the insurer (and Lender shall advise the insurer to pay over such Proceeds directly to Borrower), provided that Borrower shall apply such insurance Proceeds solely to the prompt and diligent commencement and completion of such Work.

Section 2.05 Condemnation. Borrower shall notify Lender immediately of the actual or threatened commencement of any proceedings for the condemnation or taking of the Premises or any portion thereof and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in such proceedings and Borrower shall deliver to Lender all instruments requested by Lender to permit such participation. Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain the Proceeds of any such condemnation and to make any compromise or settlement in connection with such proceedings, subject to the provisions of this Mortgage, subject to the terms and provisions of the First Mortgage Loan Documents. Borrower shall not adjust, compromise, settle or enter into any agreement with respect to such proceedings without the prior consent of Lender. All Proceeds of any condemnation, or purchase in lieu thereof, of the Premises or any portion thereof are hereby assigned to and shall be paid to Lender, subject only to the rights of the First Mortgage Lender under the First Mortgage Loan Documents. Borrower hereby authorizes Lender to collect and receive such Proceeds, to give proper receipts and acquittances therefor and, in Lender's sole discretion, to apply such Proceeds (less any cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees, costs and expenses allocable to inspecting any repair, restoration or rebuilding work and the plans and specifications therefor) toward the payment of the Indebtedness or to the repair, restoration or rebuilding of the Premises in the manner and subject to the conditions set forth in Section 2.04(h). If the Proceeds are used to reduce the Indebtedness, they shall be applied in the order provided in Section 2.04(d), without any prepayment fee. Borrower shall



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promptly execute and deliver all instruments requested by Lender for the purpose of confirming the assignment of the condemnation Proceeds to Lender.

## Section 2.06 Impositions.

(a) Borrower shall pay and discharge all Impositions prior to delinquency and Borrower shall furnish to Lender evidence of the timely payment of such Impositions within 15 days after such payments are made in the form of either validated receipts or cancelled checks. Borrower's obligation to pay Impositions pursuant to this Mortgage shall include, to the extent permitted by applicable law, taxes resulting from future changes in law which impose upon Lender an obligation to pay any property taxes or other Impositions or which otherwise adversely affect Lender's interests. Should Borrower default in the payment of any Impositions, Lender may (but shall not be obligated to) pay such Impositions or any portion thereof and Borrower shall reimburse Lender on demand for all such Advances. Deposits made by Borrower to Lender pursuant to Section 2.07 shall be used for payment of Impositions, subject to the terms and conditions of Section 2.07.

(b) Borrower shall not be required to pay, discharge or remove any Imposition so long as Borrower contests in good faith such Imposition or the validity, applicability or amount thereof by an appropriate legal proceeding which operates to prevent the collection of such amounts and the sale of the Mortgaged Property or any portion thereof; provided, however, that such contest will not result in a tax certificate or other sale of the tax lien and prior to the date on which such Imposition would otherwise have become delinquent Borrower shall have: (i) given Lender prior notice of such contest; and (ii) deposited with Lender in cash or via letter of credit satisfactory to Lender, and shall deposit such additional amounts or letters of credit as are necessary to keep on deposit at all times, an amount equal to at least 110% of the total of: (A) the balance of such Imposition then remaining unpaid (after taking into account any monies previously deposited by Borrower with Lender pursuant to Section 2.07 for such contested Impositions); and (B) all interest, penalties, costs and charges accrued or accumulated thereon. Any such contest shall be prosecuted with due diligence, and Borrower shall promptly pay the amount of such Imposition as finally determined together with all interest, penalties, costs and charges payable in connection therewith. Lender shall have full power and authority to apply any amount deposited with Lender under this Section 2.06(b) to the payment of any unpaid Imposition to prevent the sale of any tax lien or the sale or forfeiture of the Mortgaged Property for non-payment thereof. Lender shall have no liability, however, for failure to so apply any amount deposited unless Borrower requests the application of such amount to the payment of the particular Imposition for which such amount was deposited. Any surplus retained by Lender after payment of the Imposition for which a deposit was made shall be repaid to Borrower unless an Event of Default shall have occurred and is continuing under the provisions of this Mortgage, in which case said surplus may be retained by Lender to be applied to the Indebtedness. Notwithstanding any provision of this Section 2.06(b) to the contrary, Borrower shall pay any Imposition which it might otherwise be entitled to contest if, in the reasonable opinion of Lender, failure to pay will result in a tax certificate or other sale of the tax lien or the Mortgaged Property is in jeopardy or in danger of being forfeited or

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foreclosed. If Borrower refuses to pay any such Imposition, Lender may (but shall not be obligated to) make such payment and Borrower shall reimburse Lender on demand for all such Advances. Additionally, in such event, if Lender is prevented by law or judicial or administrative order from paying such Imposition, then Lender, at its option, may declare the entire Indebtedness immediately due and payable.

## Section 2.07 Intentionally Omitted.

Section 2.08 Mortgage Taxes. Borrower shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon Lender by reason of its ownership of, or measured by amounts payable under, the Note, this Mortgage or any other Loan Document (other than income, franchise and doing business taxes), and shall pay all stamp taxes and other taxes required to be paid on the Note, this Mortgage or the other Loan Documents. If Borrower fails to make such payment within five days after notice thereof from Lender, Lender may (but shall not be obligated to) pay the amount due, and Borrower shall reimburse Lender on demand for all such Advances. If applicable law prohibits Borrower from paying such taxes, charges, filing, registration and recording fees, excises, levies, stamp taxes or other taxes, then Lender may declare the Indebtedness then unpaid to be immediately due and payable. In such event, no prepayment fee shall be charged.

## Section 2.09 Organization and Authority.

(a) The execution and delivery of the Note, this Mortgage and the other Loan Documents have been duly authorized and there is no provision in Borrower's organizational documents, as amended, requiring further consent for such action by any other Person, other than the consent of the First Mortgage Lender, which consent is evidenced by First Mortgage Lender's signature hereto.

(b) Borrower is duly organized, validly existing and in good standing under the laws of the state of its formation.

(c) Borrower has all necessary franchises, licenses, authorizations, registrations, permits and approvals and full power and authority to own and operate its properties, including the Mortgaged Property, and carry on its business as now conducted in each jurisdiction where Borrower conducts its business.

(d) The execution and delivery of and performance of its obligations under the Loan Documents: (i) will not result in Borrower being in default under any provision of its organizational documents, as amended, any court order, or any mortgage, deed of trust or other agreement to which it is a party; and (ii) do not require the consent of or any filing with any governmental authority.

(e) All necessary and required actions have been duly taken by and on behalf of Borrower to make and constitute the Loan Documents, and the Loan Documents constitute, legal, valid and binding obligations enforceable in accordance with their respective terms, subject only to the application of bankruptcy and other laws affecting the rights of creditors generally.

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Section 2.10 Maintenance of Existence. So long as it owns the Mortgaged Property, Borrower shall do all things necessary to preserve and keep in full force and effect its existence, franchises, licenses, authorizations, registrations, permits and approvals under the laws of the state of its formation and the State, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court now or hereafter applicable to Borrower or to the Mortgaged Property or any portion thereof.

Section 2.11 Payment of Liens. Borrower shall pay when due all payments and charges due under or in connection with any liens and encumbrances on and security interests in the Mortgaged Property or any portion thereof, all rents and charges under any ground leases and other leases forming a part of the Mortgaged Property, and all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a lien on the Mortgaged Property or any portion thereof, and shall cause the prompt (but in no event later than 45 days after imposition), full and unconditional discharge (or bonding or insuring by title company endorsement) of all liens imposed on or against the Mortgaged Property or any portion thereof. Borrower shall do or cause to be done, at the sole cost of Borrower, everything necessary to fully preserve the initial priority of the lien of this Mortgage. If Borrower fails to make any such payment or if a lien attaches to the Mortgaged Property or any portion thereof and Borrower does not provide a bond or a title insurance endorsement to cover such lien within 10 Business Days of the filing of such lien, Lender may (but shall not be obligated to) make such payment or discharge such lien and Borrower shall reimburse Lender on demand for all such Advances.

Section 2.12 Costs of Defending and Upholding the Lien. Lender may, after notice to Borrower: (a) appear in and defend any action or proceeding, in the name and on behalf of either Lender or Borrower, in which Lender is named or which Lender in its reasonable judgment determines may adversely affect the Mortgaged Property, this Mortgage, the lien hereof or any other Loan Document; and (b) institute any action or proceeding which Lender in its reasonable judgment determines should be instituted to protect its interest in the Mortgaged Property or its rights under this Mortgage or any other Loan Document, including foreclosure proceedings. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees, costs and expenses) relating to or incurred by Lender in connection with any such action or proceeding.

Section 2.13 Costs of Enforcement. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' and appraisers' fees, costs and expenses and the expenses and reasonable fees of any receiver or similar official) of or incidental to the collection of the Indebtedness, any foreclosure of this Mortgage or any other Loan Document, any enforcement, compromise or settlement of this Mortgage, any other Loan Document or the Indebtedness, or any defense or assertion of the rights or claims of Lender in respect of any thereof, by litigation or otherwise.

Section 2.14 Interest on Advances and Expenses. All Advances made and any reasonable expenses incurred at any time by Lender pursuant to the provisions of this Mortgage or the other Loan Documents or under applicable law shall be secured by this Mortgage as part of the Indebtedness, with equal rank and priority. All such Advances and expenses shall bear interest at the Default Rate from the date that each such Advance or expenses is made or incurred

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to the date of repayment and all such Advances and expenses with interest thereon shall be payable to Lender on demand.

Section 2.15 Indemnification. Borrower shall indemnify, defend and hold Lender and Lender's directors, officers, employees and agents harmless from and against and reimburse them for all Losses which may be imposed upon, asserted against, or incurred or paid by any of them: (a) by reason of, on account of or in connection with any act or occurrence relating to the Mortgaged Property or any bodily injury, death, other personal injury or property damage occurring in, upon or in the vicinity of the Premises from any cause whatsoever; (b) as a result of the failure of Borrower to perform any of its obligations under any of the Loan Documents; (c) on account of any transaction otherwise arising out of or in any way connected with the Mortgaged Property, this Mortgage or the Indebtedness, or (d) on account of the First Mortgage Loan or any transaction otherwise connected with the First Mortgage Lender or the First Mortgage Loan.

Section 2.16 Financial Statements; Records. Borrower shall keep adequate books and records of account in accordance with either (A) generally accepted accounting principles, or (B) in accordance with other methods reasonably acceptable to Lender, in each case as consistently applied, and shall promptly furnish to Lender such rent rolls, operating statements, balance sheets, and profit and loss statements as reasonably requested by Lender from time to time.

Section 2.17 Prohibition Against Conveyances and Encumbrances.

(a) Except as hereinafter provided and except for the liens granted to First Mortgage Lender to secure the First Mortgage Loan pursuant to the First Mortgage Loan Documents and the Second Mortgage Lender to secure the Second Mortgage Loan pursuant to the Second Mortgage Loan Documents, without the prior consent of Lender in Lender's sole and absolute discretion, neither Borrower nor any Person shall convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) all or any portion of any legal or beneficial interest in all or any portion of the Mortgaged Property including the Leases. Notwithstanding anything to the contrary contained in this Mortgage, the following shall be permitted without the prior consent of the Lender: (i) the removal and replacement of Borrower's managing member in accordance with the Operating Agreement, and (ii) transfers of interests of, and in, the Borrower's investor member and special member in accordance with the Operating Agreement.

Section 2.18 Estoppel Certificates. Within 10 Business Days of a request by Lender, Borrower shall furnish to Lender a duly acknowledged written statement confirming: (a) the original principal amount of the Note; (b) the unpaid principal amount of the Note; (c) the rate of interest of the Note; (d) the terms of payment and maturity date of the Note; (e) the date installments of interest and/or principal were last paid; (f) that, except as provided in detail in such statement, there are no offsets or defenses against the Indebtedness or defaults or events which with the passage of time or the giving of notice, or both, would constitute an Event of

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Default under the Note, this Mortgage or the other Loan Documents; and (g) such other information that Lender shall reasonably request. Borrower shall use commercially reasonable efforts to also furnish to Lender within 30 days of its request therefor tenant estoppel letters from such tenants of the Premises as Lender may require, but such requests as to any one tenant shall not be made more often than once in a calendar year period.

## Section 2.19 Assignment of Leases and Property Income.

(a) Borrower hereby absolutely, presently, unconditionally and irrevocably assigns, transfers and sets over to Lender all of the right, title and interest of Borrower in and to the Leases and the Property Income. Borrower shall not otherwise assign, transfer or encumber in any manner the Leases or the Property Income or any portion thereof. Borrower shall have a license, revocable by Lender, to collect and use the Property Income as the same becomes due and payable so long as no Event of Default has occurred, but may not collect any Property Income more than 30 days in advance of the date the same becomes due. The assignment in this Section 2.19 shall constitute an absolute, irrevocable and present assignment of the Leases and the Property Income, and not an additional assignment for security, and the existence or exercise of Borrower's revocable license to collect Property Income shall not operate to subordinate this assignment to any subsequent assignment. The exercise by Lender of any of its rights or remedies under this Section 2.19 shall not be deemed or construed to make Lender: (i) a mortgagee-in-possession; (ii) responsible for the payment of any taxes or assessments with respect to the Premises, (iii) liable to perform any obligation of the lessor under any Lease(s) or under applicable law, (iv) liable to any person for any dangerous or defective condition in the Premises or for any negligence in the management, upkeep, repair, or control of the Premises resulting in loss or injury or death to any Person, or (v) be liable in any manner for the remediation of any environmental impairment except that caused by the gross negligence or willful misconduct of Lender.

(b) Intentionally Omitted.

(c) Borrower shall perform all obligations as lessor under all Leases and shall enforce all of the terms, covenants and conditions contained in upon the part of the lessee thereunder to be performed or observed, short of termination thereof.

(d) Intentionally Omitted.

(e) Intentionally Omitted.

(f) Intentionally Omitted.

(g) Upon Lender's request after an Event of Default which is continuing, Borrower shall deliver to Lender any or all of the tenant security deposits, including any letters of credit, under the Leases, together with: (i) any assignment of the proceeds of such security deposits; (ii) any assignment and transfer of such letters of credit or the proceeds thereof; and (iii) any tenants' consents to assignment of such security deposits and assignment and transfer of such letters of credit, as Lender shall reasonably request. All security deposits delivered to Lender shall be held without interest and may be

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commingled with Lender's other funds (unless the payment of interest thereon and a separate account therefor is required under applicable tenant leases or by law).

(h) Borrower hereby agrees that Lender may authorize and direct the tenants named in the Leases and all Lease guarantors, to pay over to Lender or such other party as Lender may direct, all Property Income upon receipt from Lender of written notice to the effect that an Event of Default exists, and to continue to do so until the tenants and Lease guarantors are otherwise notified by Lender.

(i) Upon the occurrence of an Event of Default, Lender may, with or without exercising any other rights or remedies: (i) give or require Borrower to give notice to any or all tenants under the Leases authorizing and directing them to pay all Property Income under the Leases directly to Lender; and (ii) without regard to any waste, adequacy of the security or solvency of Borrower, apply for the appointment of a receiver of the Mortgaged Property to which appointment Borrower hereby consents, whether or not foreclosure proceedings have been commenced under this Mortgage and whether or not a foreclosure sale has occurred.

## Section 2.20 Environmental Matters; Warranties; Notice; Indemnity.

(a) Intentionally Omitted

(b) Borrower shall not install, use, generate, manufacture, produce, store, Release, discharge or dispose of on, under or about the Premises, or transport to or from any portion of the Premises, any Hazardous Substance or allow any other Person to do so, except under conditions permitted by applicable Environmental Laws, except for cleaning supplies in reasonable quantities used in the operation of the Premises so long as the supplies are maintained, used, stored and disposed of in accordance with all applicable Environmental Laws. Additionally, except with the prior consent of Lender, no portion of the Premises shall be leased, used or occupied for dry cleaning operations or the storage of any chemicals used in the dry cleaning process.

(c) Borrower shall keep and maintain the Premises in compliance with, and shall not cause or permit the Premises to be in violation of, applicable Environmental Laws.

(d) Borrower shall promptly provide notice to Lender of:

(i) any proceeding, investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance on, under or about the Premises or the migration of any Hazardous Substance to or from adjoining property;

(ii) all claims made or threatened by any Person against Borrower, any other party occupying the Premises or any portion thereof, or the Premises, relating to any loss or injury allegedly resulting from any Hazardous Substance; and

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(iii) the discovery of any occurrence or condition on the Premises or on any real property adjoining or in the vicinity of the Premises, of which Borrower becomes aware, which might cause the Premises or any portion thereof to be in violation of any Environmental Law or subject to any restriction on ownership, occupancy, transferability or use under any Environmental Law (collectively, an "Environmental Violation").

(e) Lender may join and participate in, as a party if it so determines, any legal or administrative proceeding or action concerning the Premises or Equipment under any Environmental Law. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees, costs and expenses) relating to or incurred by Lender in connection with any such action or proceeding.

(f) Borrower shall indemnify, defend and hold Lender and Lender's directors, officers, employees and agents harmless from and against any and all claims, demands, liabilities, losses, damages, judgments, fines, penalties, costs and expenses (including reasonable attorneys' fees, costs and expenses) directly or indirectly arising out of or attributable to: (i) a breach of any warranty or representation contained in this Section 2.20, Section 2.21 or Section 2.22 or of any other provision thereof; (ii) an action against Borrower to enforce any of the provisions of this Section 2.20, Section 2.21 or Section 2.22; and (iii) the installation, use, generation, manufacture, production, storage, Release, threatened Release, or presence of a Hazardous Substance on, under, or about the Premises or any portion thereof including: (i) all direct and consequential damages; (ii) the costs of any required Remediation; and (iii) the costs of the preparation and implementation of any plans for Remediation, closure or other required plans. Except in the event of payment in full of the Loan by Borrower to Lender and where Lender never was in possession of the Mortgaged Property, this indemnity shall survive the satisfaction, release or extinguishment of the lien of this Mortgage including any extinguishment of such lien by foreclosure or deed in lieu thereof.

(g) Notwithstanding anything provided in Section 2.20(f) to the contrary, the indemnity provided for in Section 2.20(f) above shall not extend to Hazardous Substances present on the Premises or first released at or from the Premises (A) after payment in full of the Loan and the recording of a discharge of this Mortgage provided the Loan has been paid as required by the Loan Documents without acceleration and without a declared default; or (B) after foreclosure or deed in lieu of foreclosure and the recording of the deed to the Premises resulting from the foreclosure or deed in lieu of foreclosure to Lender or, in the case of a foreclosure, other third party successful bidder has taken possession, provided in the event of (A) or (B) above (x) such Hazardous Substances were placed or deposited on or released at or from the Premises by third parties unrelated in any way to Borrower or any person or entity affiliated with or having an interest in Borrower or a member or shareholder of Borrower, after the dates of such foreclosure and recording of the deed following foreclosure or deed in lieu of foreclosure and in each case after the taking of possession by Lender or other third party bidder at the foreclosure sale, and (y) such deposit was not caused by and does not result from the negligent or intentional action of Borrower or any person or entity having a direct or

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indirect interest in Borrower or affiliated with Borrower or member or shareholder of Borrower.

## Section 2.21 Environmental Matters; Remediation.

(a) If any investigation, site monitoring, containment, cleanup, removal, restoration or other Remediation of any kind or nature is required, reasonably necessary or desirable under any applicable Environmental Law because of or in connection with the current or future presence, suspected presence, Release or suspected Release of a Hazardous Substance into the air, soil, ground water, surface water, or soil vapor on, under or about the Premises or any portion thereof, Borrower shall promptly commence and diligently prosecute to completion all such Remediation. In all events, such Remediation shall be commenced within 45 days after any demand therefor by Lender or such shorter period as may be required under any applicable Environmental Law.

(b) All Remediation shall be performed by contractors, and under the supervision of a consulting engineer, each approved in advance by Lender. All costs and expenses of such Remediation and of Lender's monitoring or review of such Remediation (including reasonable attorneys' fees, costs and expenses) shall be paid by Borrower. If Borrower does not timely commence and diligently prosecute to completion the Remediation, Lender may (but shall not be obligated to) cause such Remediation to be performed. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees, costs and expenses) relating to or incurred by Lender in connection with monitoring, reviewing or performing any Remediation.

(c) Except with Lender's prior consent, Borrower shall not commence any Remediation or enter into any settlement agreement, consent decree or other compromise relating to any Hazardous Substances or Environmental Laws which might, in Lender's reasonable judgment, impair the value of Lender's security hereunder. Lender's prior consent shall not be required, however, if the presence or threatened presence of Hazardous Substances on, under or about the Premises poses an immediate threat to the health, safety or welfare of any person or is of such a nature that an immediate remedial response is necessary, and it is not possible to obtain Lender's prior consent. In such event Borrower shall notify Lender as soon as practicable of any action taken.

Section 2.22 Intentionally Omitted.

Section 2.23 Intentionally Omitted.

Section 2.24 Intentionally Omitted.

Section 2.25 Intentionally Omitted.



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Section 2.26 Intentionally Omitted.

Section 2.27 Intentionally Omitted.

Section 2.28 Compliance with Laws. To Borrower's actual knowledge, the Mortgaged Property is in compliance with all provisions of all zoning, subdivision, land use, environmental, traffic, fire, building, and occupational safety and health rules, regulations, codes, acts and statutes to which it is subject.

Section 2.29 First Mortgage Loan Covenants. Borrower represents, warrants, covenants and agrees as follows with respect to the First Mortgage Loan:

(a) Borrower shall pay when due all amounts due and payable under the First Mortgage Loan and will observe and perform as and when due all obligations, covenants and undertakings of Borrower under the First Mortgage Loan Documents.

(b) Borrower will not acquire, nor permit an affiliate of Borrower to acquire, nor solicit any other person to acquire any interest in the First Mortgage Loan or the First Mortgage Loan Documents.

(c) Borrower shall send to Lender all notices and other communications that Borrower gives to or receives from First Mortgage Lender, on the same business day that such notices or other communications are given or received by Borrower.

(d) Borrower shall not revoke, rescind, modify, amend, restate, supplement or terminate any of the First Mortgage Loan Documents, nor waive or release any rights or claims of Borrower thereunder (in writing or otherwise), without Lender's prior written consent (in the sole and absolute discretion of Lender).

(e) Without first obtaining the express written consent of Lender (in Lender's sole and absolute discretion), Borrower shall not take any action nor do any thing which requires the consent or approval of the First Mortgage Lender under the First Mortgage Loan Documents.

(f) Borrower shall not seek or accept any additional advances, nor re-borrow any previously borrowed funds, under the First Mortgage Loan, without Lender's prior written consent (in the sole and absolute discretion of Lender).

(g) Lender from time to time may (in Lender's sole and absolute discretion) pay or perform any obligations of Borrower or any other obligor under or with respect to the First Mortgage Loan. All cost and expenses incurred by Lender (including reasonable attorneys' fees) to pay or perform any obligations of Borrower or any other obligor under or with respect to the First Mortgage Loan, plus an administrative fee of five percent (5%) of such costs and expenses, shall (i) constitute protective advances under State law and additional Indebtedness secured by this Mortgage, (ii) shall be due and payable by Borrower to Lender upon demand, and (iii) shall bear interest at the Default Rate (as defined in the Note) from the date of demand until paid in full by Borrower.

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(h) If and to the extent that Lender pays or performs Borrower's obligations under the First Mortgage Loan Documents, Lender shall be subrogated to the rights, liens and benefits of the First Mortgage Lender under the First Mortgage Loan Documents.

(i) Borrower shall indemnify, defend and hold Lender harmless from and against all Losses that may be incurred or suffered by Lender or asserted against Lender as a result of, in connection with or in any way related to the First Mortgage Loan.

Section 2.30 Second Mortgage Loan Covenants. Borrower represents, warrants, covenants and agrees as follows with respect to the Second Mortgage Loan:

(a) Borrower shall pay when due all amounts due and payable under the Second Mortgage Loan and will observe and perform as and when due all obligations, covenants and undertakings of Borrower under the Second Mortgage Loan Documents. Notwithstanding anything contained herein to the contrary, Lender shall allow Borrower to service monthly payments under the Second Mortgage Loan before servicing payments under this Loan.

(b) Borrower will not acquire, nor permit an affiliate of Borrower to acquire, nor solicit any other person to acquire any interest in the Second Mortgage Loan or the Second Mortgage Loan Documents.

(c) Borrower shall send to Lender all notices and other communications that Borrower gives to or receives from Second Mortgage Lender, on the same business day that such notices or other communications are given or received by Borrower.

(d) Borrower shall not revoke, rescind, modify, amend, restate, supplement or terminate any of the Second Mortgage Loan Documents, nor waive or release any rights or claims of Borrower thereunder (in writing or otherwise), without Lender's prior written consent (in the sole and absolute discretion of Lender).

(e) Without first obtaining the express written consent of Lender (in Lender's sole and absolute discretion), Borrower shall not take any action nor do any thing which requires the consent or approval of the Second Mortgage Lender under the Second Mortgage Loan Documents.

(f) Borrower shall not seek or accept any additional advances, nor re-borrow any previously borrowed funds, under the Second Mortgage Loan, without Lender's prior written consent (in the sole and absolute discretion of Lender).

(g) Lender from time to time may (in Lender's sole and absolute discretion) pay or perform any obligations of Borrower or any other obligor under or with respect to the Second Mortgage Loan. All cost and expenses incurred by Lender (including reasonable attorneys' fees) to pay or perform any obligations of Borrower or any other obligor under or with respect to the Second Mortgage Loan, plus an administrative fee of five percent (5%) of such costs and expenses, shall (i) constitute protective advances under State law and additional Indebtedness secured by this Mortgage, (ii) shall be due and payable by Borrower to Lender upon demand, and (iii) shall bear interest at the

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Default Rate (as defined in the Note) from the date of demand until paid in full by Borrower.

(h) If and to the extent that Lender pays or performs Borrower's obligations under the Second Mortgage Loan Documents, Lender shall be subrogated to the rights, liens and benefits of the Second Mortgage Lender under the Second Mortgage Loan Documents.

(i) Borrower shall indemnify, defend and hold Lender harmless from and against all Losses that may be incurred or suffered by Lender or asserted against Lender as a result of, in connection with or in any way related to the Second Mortgage Loan.

## ARTICLE III

### SECURITY AGREEMENT

Section 3.01 Warranties, Representations and Covenants of Borrower. Borrower covenants, warrants, represents and agrees with and to Lender as follows:

(a) This Mortgage constitutes a security agreement under the Code and serves as a fixture filing in accordance with the Code. This Mortgage creates, and Borrower hereby grants to Lender, a security interest in favor of Lender as secured party under the Code with respect to all property (specifically including the Collateral) included in the Mortgaged Property which is covered by the Code. The mention of any portion of the Mortgaged Property in a financing statement filed in the records normally pertaining to personal property shall not derogate from or impair in any manner the intention of Borrower and Lender hereby declared that all items of the Collateral are part of the real property encumbered hereby to the fullest extent permitted by law, regardless of whether any such item is physically attached to the Improvements or whether serial numbers are used for the better identification of certain items. Specifically, the mention in any such financing statement of: (i) the rights in or to the Proceeds of any policy of insurance; (ii) any condemnation Proceeds; (iii) Borrower's interest in any Leases or Property Income; or (iv) any other item included in the Mortgaged Property, shall not be construed to alter, impair or impugn any rights of Lender as determined by this Mortgage or the priority of Lender's lien upon and security interest in the Mortgaged Property. Any such mention shall be for the protection of Lender in the event that notice of Lender's priority of interest as to any portion of the Mortgaged Property is required to be filed in accordance with the Code to be effective against or take priority over the interest of any particular class of Persons, including the federal government or any subdivision or instrumentality thereof.

(b) Except for the security interest granted by this Mortgage, Borrower is and, as to portions of the Collateral to be acquired after the date hereof, will be the sole owner of the Collateral, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever except Permitted Encumbrances. Borrower shall notify Lender of, and shall defend the Collateral against, all claims and demands of all Persons at any time claiming the same or any interest therein.

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(c) Except as otherwise provided in this Mortgage, Borrower shall not lease, sell, convey or in any manner transfer the Collateral without the prior consent of Lender.

(d) The Collateral is not used or bought for personal, family or household purposes.

(e) The Collateral shall be kept on or at the Premises, and Borrower shall not remove the Collateral from the Premises without the prior consent of Lender, except such portions or items of the Collateral as are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Borrower with items of equal or greater value.

(f) Intentionally Omitted.

(g) Borrower shall not change its place of formation or its entity name without providing Lender with 60 days prior notice. In the event of any change in name, identity or structure of Borrower, Borrower shall notify Lender thereof and promptly after request shall execute, file and record such Code forms as are necessary to maintain the priority of Lender's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall require the filing or recording of additional Code forms or continuation statements, Borrower shall, promptly after request, execute, file and record such Code forms or continuation statements as Lender shall deem necessary (subject to Lender's right to sign such statements on behalf of Borrower as provided in Section 3.01(h)), and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall initially pay such expenses, Borrower shall promptly reimburse Lender for the expenses.

(h) Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to execute in the name of and on behalf of Borrower any and all financing statements and continuations thereof and to file with the appropriate public office on its behalf and at its expense any financing or other statements signed only by Lender, as secured party, in connection with the Collateral covered by this Mortgage.

(i) Borrower represents that its exact legal name is as set forth on the Cover Sheet of this Mortgage.

(j) Borrower's Federal Tax Identification Number is [ ] and Borrower's Organizational Number is [ ].

(k) Borrower shall not file any termination statements concerning the Mortgaged Property without Lender's prior consent unless the Indebtedness has been repaid and this Mortgage has been released.

(l) Where Collateral is in possession of a third party, Borrower will join with Lender in notifying the third party of Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Lender.

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(m) Borrower will cooperate with Lender in obtaining control with respect to Collateral consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper.

Section 3.02 Financing Statements. A CARBON, PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS MORTGAGE OR ANY FINANCING STATEMENT RELATING TO THIS MORTGAGE SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

Section 3.03 Addresses. The state of organization, organizational ID number and mailing address of Borrower and the address of Lender from which information concerning the security interest granted hereby may be obtained are set forth on the Cover Sheet of this Mortgage. Borrower maintains its sole place of business or its chief executive office at the address shown on said Cover Sheet, and Borrower shall immediately notify Lender in writing of any change in said place of business or chief executive office.

Section 3.04 Fixture Filing. This Mortgage shall constitute a fixture filing under the Code as to any goods and other personal property included in the Mortgaged Property in which Borrower has granted to Lender a security interest as provided in this Article III which are or may become fixtures under applicable law. This fixture filing is to be recorded in the Cook County, Illinois Recorder's Office.

## ARTICLE IV

### DEFAULT AND REMEDIES

Section 4.01 Events of Default. Each of the following shall constitute an Event of Default under the Note, this Mortgage and the other Loan Documents:

(a) Failure to pay any principal, interest, deposit or other amount due under the Note, this Mortgage or any other Loan Document within 10 days after the date such amount is due.

(b) Except as provided in Section 4.01(a) and Sections 4.01(c) to 4.01(y), inclusive, failure to perform or comply with any term, obligation, covenant or condition contained in the Note, this Mortgage or any other Loan Documents, within 30 days after the delivery of written notice from Lender of such failure; provided that if such default is not reasonably capable of being cured (without taking into account financial capability) within such 30 day period, such failure shall not constitute an Event of Default so long as Borrower commences the cure of such default within such 30 day period, diligently prosecutes such cure to completion and completes the cure within 120 days after delivery of such written notice from Lender.

(c) The occurrence of an Event of Default, or default after passage of any applicable grace or cure period, under any of the other Loan Documents.

(d) If Borrower consents to the filing of, or commences or consents to the commencement of, any Bankruptcy Proceeding with respect to Borrower.

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(e) If any Bankruptcy Proceeding shall have been filed against Borrower and the same is not withdrawn, dismissed, canceled or terminated within 90 days of such filing.

(f) If Borrower is adjudicated bankrupt or insolvent or a petition for reorganization of Borrower.

(g) If a receiver, liquidator or trustee of Borrower or of any of the properties of Borrower, shall be appointed.

(h) If Borrower shall make an assignment for the benefit of its creditors or shall admit in writing the inability to pay its debts generally as they become due.

(i) Any breach, default or violation by Borrower under the First Mortgage Loan Documents.

(j) Any breach, default or violation by Borrower under the Second Mortgage Loan Documents.

Section 4.02 Remedies. Upon the occurrence of any Event of Default, Lender may take such actions against Borrower and/or the Mortgaged Property or any portion thereof as it deems advisable to protect and enforce its rights against Borrower and in and to the Mortgaged Property, without notice or demand except as set forth herein. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Such actions may include the following:

(a) Lender may declare the entire principal balance under the Note then unpaid, together with all accrued and unpaid interest thereon, prepayment fees thereunder, and all other unpaid Indebtedness, to be immediately due and payable.

(b) Lender may enter into or upon the Mortgaged Property, personally or by its agents, nominees or attorneys, and may dispossess Borrower and its agents and servants therefrom, and thereupon Lender at its sole discretion may: (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every portion of the Mortgaged Property and conduct business thereon, in any case either in the name of Lender or in such other name as Lender shall deem best; (ii) complete any construction on the Mortgaged Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (iv) exercise all rights and powers of Borrower with respect to the Mortgaged Property, whether in the name of Borrower or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Property Income; and (v) apply the receipts of Property Income to the payment of the Indebtedness (including any prepayment fee payable under the Note) in such order as Lender shall determine in its sole discretion, after deducting therefrom all expenses (including reasonable attorneys' fees, costs and

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expenses) incurred in connection with the aforesaid operations and all amounts necessary to pay the Impositions, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Lender, its agents, nominees and attorneys.

(c) With or without entry, personally or by its agents, nominees or attorneys, Lender may sell all or any portion of the Mortgaged Property and all or any portion of Borrower's estate, right, title, interest, claim and demand therein and right of redemption thereof at one or more private or public sales in the manner and to the extent permitted by law, as an entirety or in parcels or portions, and Lender shall have any statutory power of sale as may be provided by law in the State.

(d) Lender may institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or upon credit, as an entirety or in parcels or portions.

(e) Lender may institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Mortgage for the balance of the Indebtedness not then due.

(f) Lender may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained in the Note, this Mortgage or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(g) Lender shall have the rights and may take such actions as are set forth, described or referred to in any rider entitled "Rider Applicable State Law Provisions" attached hereto and made a part hereof, or as are permitted by the laws of the State.

(h) Except as otherwise provided for in this Mortgage and the other Loan Documents, Lender may recover judgment on the Note, either before, during or after any proceedings for the foreclosure or enforcement of this Mortgage.

(i) Lender may secure the appointment of a receiver, trustee, liquidator or similar official of the Mortgaged Property or any portion thereof, and Borrower hereby consents and agrees to such appointment, without notice to Borrower and without regard to the adequacy of the security for the Indebtedness and without regard to the solvency of Borrower or any other Person liable for the payment of the Indebtedness, and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Lender to receive the Property Income pursuant to this Mortgage.

(j) Lender may exercise any or all of the remedies available to a secured party under the Code.

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(k) Lender may pursue any other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents.

(l) Lender may apply any funds then on deposit with Lender for payment of Impositions, ground rent or insurance premiums in the manner provided for in Section 2.07.

(m) Lender in its sole discretion may surrender any insurance policies and collect the unearned premiums and apply such sums against the Indebtedness.

(n) To the extent permitted by law, exercise any power of sale.

## Section 4.03 General Provisions Regarding Remedies.

(a) Proceeds of Sale. The proceeds of any sale of the Mortgaged Property received by Lender, or part thereof, shall be distributed and applied to the amounts set forth in Section 6 of the Note in such order and priority as Lender deems appropriate in its sole discretion.

(b) Effect of Judgment. No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Borrower shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any portion thereof, or any rights, powers or remedies of Lender hereunder. Such lien, rights, powers and remedies of Lender shall continue unimpaired as before.

(c) Continuing Power of Sale. The power of sale conferred upon Lender in this Mortgage shall not be exhausted by any one or more sales as to any portion of the Mortgaged Property remaining unsold, but shall continue unimpaired until all of the Mortgaged Property is sold or all of the Indebtedness is paid.

(d) Right to Purchase. At any sale of the Mortgaged Property or any portion thereof pursuant to the provisions of this Mortgage, Lender shall have the right to purchase the Mortgaged Property being sold, and in such case shall have the right to credit against the amount of the bid made therefor (to the extent necessary) all or any portion of the Indebtedness then due.

(e) Right to Terminate Proceedings. Lender may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in Section 4.02 at any time before the conclusion thereof, as determined in Lender's sole discretion and without prejudice to Lender.

(f) No Waiver or Release. Lender may resort to any remedies and the security given by the Loan Documents, in whole or in part, and in such portions and in such order as determined in Lender's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Loan Documents. The failure of Lender to exercise any right, remedy or option provided in the Loan Documents to the fullest extent not prohibited by applicable laws shall not be



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deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Loan Documents. To the fullest extent not prohibited by applicable laws, no acceptance by Lender of any payment after the occurrence of an Event of Default and no payment by Lender of any Advance or obligation for which Borrower is liable hereunder shall be deemed to waive or cure such Event of Default or Borrower's liability to pay such obligation. To the fullest extent not prohibited by applicable laws, no sale of all or any portion of the Mortgaged Property, no forbearance on the part of Lender, and no extension of time for the payment of the whole or any portion of the Indebtedness or any other indulgence given by Lender to Borrower or any other Person, shall operate to release or in any manner affect Lender's interest in the Mortgaged Property or the liability of Borrower to pay the Indebtedness, except to the extent that such liability shall be reduced by Proceeds of the sale of all or any portion of the Mortgaged Property received by Lender. No waiver by Lender shall be effective unless it is in writing and then only to the extent specifically stated.

(g) No Impairment; No Release. The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including: (i) any renewal, extension or modification which Lender may grant with respect to any of the Indebtedness; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Indebtedness. To the fullest extent not prohibited by applicable laws, if the Mortgaged Property is sold and Lender enters into any agreement with the then owner of the Mortgaged Property extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof or of any other Loan Document, Borrower shall continue to be liable to pay the Indebtedness according to the tenor of any such agreement unless expressly released and discharged in writing by Lender.

(h) Waivers and Agreements Regarding Remedies. To the fullest extent that Borrower may legally do so, Borrower:

(i) agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisal or appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal or appraisement, stay of execution, extension and notice of election to accelerate or declare due the whole of the Indebtedness;

(ii) waives all rights to a marshalling of the assets of Borrower, Borrower's partners, if any, and others with interests in Borrower, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Mortgaged Property for the collection of the Indebtedness without any prior or different resort for collection, or the right of

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Lender to the payment of the Indebtedness out of the Proceeds of sale of the Mortgaged Property in preference to every other claimant whatsoever;

(iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one in good faith, which denies the existence or sufficiency of the facts upon which the foreclosure action is grounded or which is based on Lender's wrongful actions. If any defense, counterclaim or setoff (other than one permitted by the preceding sentence) is raised by Borrower in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, the foregoing waiver shall not bar a separate action for such damage (unless such claim is required by law or applicable rules of procedure to be pleaded in or consolidated with the action initiated by Lender), but such separate action shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying any such foreclosure action;

(iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any laws pertaining to the rights and remedies of sureties;

(v) waives the defense of laches and any applicable statutes of limitation; and

(vi) waives any right to have any trial, action or proceeding tried by a jury.

(i) Lender's Discretion. To the fullest extent not prohibited by applicable laws, Lender may exercise its rights, options and remedies and may make all decisions, judgments and determinations under this Mortgage and the other Loan Documents in its sole unfettered discretion.

(j) Recitals of Facts. Intentionally Omitted.

(k) Lender's Right to Waive, Consent or Release. Lender may at any time, in writing: (i) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (ii) consent to Borrower doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (iii) release any portion of the Mortgaged Property, or any interest therein, from this Mortgage and the lien of the other Loan Documents. No such act shall in any way impair the rights of Lender hereunder except to the extent specified by Lender in such writing.

(l) Possession of the Mortgaged Property. Upon the occurrence of any Event of Default hereunder and demand by Lender at its option, Borrower shall immediately surrender or cause the surrender of possession of the Premises to Lender. If Borrower or any other occupant is permitted to remain in possession, such possession shall be as

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tenant of Lender and such occupant: (i) shall on demand pay to Lender monthly, in advance, reasonable use and occupancy charges for the space so occupied; and (ii) in default thereof, may be dispossessed by the usual summary proceedings. Upon the occurrence of any Event of Default and demand by Lender, Borrower shall assemble the Collateral and make it available at any place Lender may designate to allow Lender to take possession and/or dispose of the Collateral. The covenants herein contained may be enforced by a receiver of the Mortgaged Property or any portion thereof. Nothing in this Section 4.03(l) shall be deemed a waiver of the provisions of this Mortgage prohibiting the sale or other disposition of the Mortgaged Property without the prior consent of Lender.

(m) Limitations on Liability. Subject to the provisions of Section 10 of the Note, in any action or proceedings brought on the Note, this Mortgage or any other Loan Documents in which a money judgment is sought, Lender will look solely to the Mortgaged Property and other property described in the Loan Documents (including the Property Income and any other rents and profits from such property) for payment of the Indebtedness and, specifically and without limitation, Lender agrees to waive any right to seek or obtain a deficiency judgment against Borrower.

(n) Subrogation. If all or any portion of the proceeds of the Note or any Advance shall be 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 portion thereof, then Lender shall be subrogated to, and shall have the benefit of the priority of, such other lien or encumbrance and any additional security held by the holder thereof.

(o) Cure and Standstill. The Lender hereby agrees that any cure of any Event of Default under this Mortgage, the Note or any of the Loan Documents made or tendered by Lender's investor member or special member shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower. Notice of any Event of Default shall be given to Borrower's investor member in accordance with Section 5.01 below. Notwithstanding anything to the contrary contained in any of the Loan Documents, until the later of (i) the expiration of the Compliance Period (as defined in the Operating Agreement) and (ii) the date that the Lender is no longer affiliated with any member of the Borrower, the Lender will not (a) commence foreclosure proceedings with respect to the Mortgaged Property under this Mortgage including, but not limited to accelerating sums due under the Note, collecting rents, appointing (or seeking the appointment) of a receiver or exercising any other rights or remedies thereunder, (b) join with any other creditor in commencing any bankruptcy reorganization arrangement, insolvency or liquidation proceedings with respect to the Borrower, or (c) otherwise exercise any other rights or remedies under or in respect of this Mortgage or the Note secured hereby.

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## ARTICLE V

### MISCELLANEOUS

#### Section 5.01 Notices.

(a) All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by: (i) certified or registered United States mail, postage prepaid; (ii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery; or (iii) facsimile provided a confirming copy is sent the same day in the manner set forth in (ii) above, addressed in either case as follows:

If to Lender, at the following address:

OLYMPIC-CHICAGO HEIGHTS LIMITED PARTNERSHIP  
790 Estate Drive, Suite #200  
Deerfield, IL 60015

With a copy to:

DLA Piper LLP (US)  
444 West Lake Street, Suite 900  
Chicago, IL 60606  
Attn: Mark Yura

And

NEF Preservation PB Fund I LP  
10 South Riverside Plaza, Suite 1700  
Chicago, Illinois 60606  
Attention: General Counsel

If to Borrower, at the following address:

OLYMPIC VILLAGE LLC  
790 Estate Drive, Suite #200  
Deerfield, IL 60015

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With a copy to:

DLA Piper LLP (US)  
444 West Lake Street, Suite 900  
Chicago, IL 60606  
Attn: Mark Yura

NEF Preservation PB Fund I LP  
10 South Riverside Plaza, Suite 1700  
Chicago, Illinois 60606  
Attention: General counsel

Stratford Olympic Village Investors Limited  
Partnership  
c/o Stratford Capital Group LLC  
100 Corporate Place, Suite 404  
Peabody, MA 01960  
Attn: Asset Management - Olympic Village

Holland & Knight LLP  
10 St. James Avenue, 11th Floor  
Boston, MA 02116  
Attn: Jennifer C. Whalen-Dennis, Esq.

or to such other address and person as shall be designated from time to time by Lender or Borrower, as the case may be, in a written notice to the other party in the manner provided for in this Section 5.01. A notice shall be deemed to have been given: in the case of hand delivery or by facsimile, at the time of delivery; in the case of registered or certified mail, three Business Days after deposit in the United States mail; or in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day. A party receiving a notice which does not comply with the technical requirements for notice under this Section 5.01 may elect to waive any deficiencies and treat the notice as having been properly given.

(b) Intentionally Omitted.

(c) Borrower shall notify Lender promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to the Mortgaged Property; (ii) any material change in the occupancy of the Mortgaged Property; (iii) receipt of any notice from the holder of any other lien or security interest in the Mortgaged Property; or (iv) commencement of any judicial or administrative proceedings by, against or otherwise affecting Borrower or any guarantor, the Mortgaged Property, or any Person controlling, controlled by or under common control with Borrower or any guarantor, or any other action by any creditor thereof as a result of any default under the terms of any loan.

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Section 5.02 Binding Obligations: Joint and Several. The provisions and covenants of this Mortgage shall run with the land, shall be binding upon Borrower, its successors and assigns, and shall inure to the benefit of Lender, its respective successors and assigns. If there is more than one Borrower, all their obligations and undertakings hereunder are and shall be joint and several.

Section 5.03 Captions. The captions of the sections and subsections of this Mortgage are for convenience only and are not intended to be a part of this Mortgage and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

Section 5.04 Further Assurances. Borrower shall do, execute, acknowledge and deliver, at its sole cost and expense, such further acts, instruments or documentation, including additional title insurance policies or endorsements, as Lender may reasonably require from time to time to better assure, transfer and confirm unto Lender the rights now or hereafter intended to be granted to Lender under this Mortgage or any other Loan Document.

Section 5.05 Severability. To the fullest extent not prohibited by applicable laws, if any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 5.06 Borrower's Obligations Absolute. To the fullest extent not prohibited by applicable laws, all sums payable by Borrower hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any portion thereof; (b) any restriction or prevention of or interference with any use of the Mortgaged Property or any portion thereof; (c) any title defect or encumbrance or any eviction from the Premises or any portion thereof by title paramount or otherwise; (d) any Bankruptcy Proceeding relating to Borrower, any general partner of Borrower, or any guarantor or indemnitor, or any action taken with respect to this Mortgage or any other Loan Document by any trustee or receiver of Borrower or any such general partner, guarantor or indemnitor, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against Lender; (f) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing. To the fullest extent not prohibited by applicable laws, except as expressly provided herein, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Borrower.

Section 5.07 Amendments: Consents. This Mortgage cannot be altered, amended, modified or discharged orally and no executory agreement shall be effective to modify or discharge it in whole or in part, unless in writing and signed by the party against which

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enforcement is sought. No consent or approval required hereunder or under any other Loan Document shall be binding unless in writing and signed by the party sought to be bound.

**Section 5.08 Other Loan Documents and Exhibits.** All of the agreements, conditions, covenants, provisions and stipulations contained in the Note and the other Loan Documents, and each of them, which are to be kept and performed by Borrower are hereby made a part of this Mortgage to the same extent and with the same force and effect as if they were fully set forth in this Mortgage, and Borrower shall keep and perform the same, or cause them to be kept and performed, strictly in accordance with their respective terms. The Cover Sheet and each exhibit, schedule and rider attached to this Mortgage are integral parts of this Mortgage and are incorporated herein by this reference. In the event of any conflict between the provisions of any such exhibit, schedule or rider and the remainder of this Mortgage, the provisions of such exhibit, schedule or rider shall prevail.

**Section 5.09 Legal Construction.**

(a) The enforcement of this Mortgage shall be governed by, and construed and interpreted in accordance with, the laws of the State.

(b) All terms contained herein shall be construed, whenever the context of this Mortgage so requires, so that the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

(c) The terms "include" and "including" as used in this Mortgage shall be construed as if followed by the phrase "without limitation". The words "hereof," "herein" and "hereunder" and words of similar import when used in this Mortgage shall refer to this Mortgage as a whole and not to any particular provision of this Mortgage, and Article, Section and Exhibit references contained in this Mortgage are references to Articles, Sections and Exhibits in or to this Mortgage unless otherwise specified.

(d) Any provision of this Mortgage or in the other Loan Documents permitting the recovery of "attorneys' fees", "attorneys' fees and expenses", "attorneys' fees and costs" or "attorneys' fees, costs and expenses" or any similar term shall be deemed: (i) to include such attorneys' fees, costs and expenses; (ii) to include such fees, costs and costs incurred in all probate, appellate and bankruptcy proceedings, as well as any post-judgment proceedings to collect or enforce any judgment or order relating to the Indebtedness or any of the Loan Documents; and (iii) shall be deemed to be separate and several, and shall survive merger into judgment.

**Section 5.10 Merger.** So long as any Indebtedness shall remain unpaid, fee title to and any other estate in the Mortgaged Property shall not merge, but shall be kept separate and distinct, notwithstanding the union of such estates in any Person.

**Section 5.11 Time of the Essence.** Time shall be of the essence in the performance of all obligations of Borrower under this Mortgage.

**Section 5.12 Satisfaction.** If all of the Indebtedness is paid in full in accordance with the Note, this Mortgage and the other Loan Documents and all of the covenants, warranties,

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conditions, undertakings and agreements made in the Note, this Mortgage and the other Loan Documents are fully kept and performed, then in that event only all rights of Lender under this Mortgage and the other Loan Documents shall terminate and the Mortgaged Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby and thereby, and Lender shall release or cause to be released such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost (to the extent permitted by the law of the State), and this Mortgage shall be void; provided, however, that no provision of this Mortgage or any other Loan Document which, by its own terms, is intended to survive such payment, performance, and release (nor the rights of Lender under any such provision) shall be affected in any manner thereby and such provision shall, in fact, survive. Recitals of any matters or facts in any release instrument executed by Lender under this Section 5.12 shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, such an instrument may describe the grantee or releasee as "the person or persons legally entitled thereto" and Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees or releases of any of the Mortgaged Property. When this Mortgage has been fully released or discharged by Lender, the release or discharge hereof shall operate as a release and discharge and as a reassignment of all future Leases and Property Income with respect to the Mortgaged Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

Section 5.13 Business Purpose of Loan. Borrower stipulates and warrants that the purpose of the Loan is for the sole purpose of carrying on or acquiring a business, professional or commercial enterprise. Borrower further stipulates and warrants that all proceeds will be used for said business, professional or commercial enterprise.

[SIGNATURE PAGE FOLLOWS]



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

**BORROWER:**

OLYMPIC VILLAGE LLC, a Delaware limited liability company

By: \_\_\_\_\_

Name: Andrew Delman

Title: Authorized Signatory

Property of Cook County Clerk's Office

**COOK COUNTY CLERK OFFICE  
RECORDING DIVISION  
118 N. CLARK STREET  
CHICAGO, IL 60602-1007**

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## ACKNOWLEDGMENT

STATE OF ILLINOIS       §  
  §  
COUNTY OF Cook       §

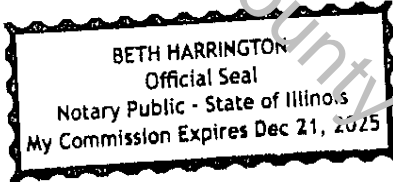
I, Beth Harrington, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Andrew DeMan as Authorized Signatory of OLYMPIC VILLAGE LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he/she, being thereunto duly authorized, signed and delivered said instrument as the free and voluntary act of said limited liability company and as his/her own free and voluntary act, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 26<sup>th</sup> <sup>August</sup> day of ~~September~~, 2022

My Commission expires:  
12/21/25

Beth Harrington  
Notary Public

Beth Harrington  
Printed/Typed Name of Notary



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## EXHIBIT A

### DESCRIPTION OF LAND

THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE EAST 707.80 FEET OF THE SOUTH 402.09 FEET THEREOF) AND (EXCEPT THE WEST 624.00 FEET), AND (EXCEPT THE EAST 27.00 FEET THEREOF HERETOFORE DEDICATED FOR DIVISION STREET BY INSTRUMENT RECORDED NOVEMBER 20, 1968 AS DOCUMENT 20681865), AND (EXCEPT THE NORTH 20.00 FEET THEREOF HERETOFORE DEDICATED FOR 209TH STREET BY INSTRUMENT RECORDED MARCH 24, 1970 AS DOCUMENT 21118273), AND EXCEPT ANY PART THEREOF FALLING IN LINCOLN HIGHWAY, IN COOK COUNTY, ILLINOIS; AND EXCEPTING THE FOLLOWING DESCRIBED TRACT OF LAND:

THE SOUTH 402.09 FEET (EXCEPT THE WEST 624.00 FEET, THE EAST 707.80 FEET AND THE SOUTHERLY 46.00 FEET THEREOF) OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 31 Olympic Village, Chicago Heights, IL 60411  
PIN: 32-19-102-045-000

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## EXHIBIT B

### PERMITTED ENCUMBRANCES

1. The lien of the First Mortgage.
2. The lien of the Second Mortgage.

Property of Cook County Clerk's Office

COOK COUNTY CLERK OFFICE  
RECORDING DIVISION  
118 N. CLARK ST. ROOM 120  
CHICAGO, IL 60602-1387

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## EXHIBIT C

### MANAGEMENT AGREEMENTS

Management Agreement dated as of September 8, 2022 between Olympic Village LLC and SHP Management Corp.

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COOK COUNTY CLERK OFFICE  
RECORDING DIVISION  
118 N. CLARK ST. ROOM 120  
CHICAGO, IL 60602-1387

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## RIDER

### APPLICABLE STATE LAW PROVISIONS

The following provisions are incorporated by reference into this Mortgage. If any conflict or inconsistency exists between this Rider and the remainder of the attached Mortgage, this Rider shall govern.

(a) **Protective Advances.** Without limitation on anything contained in this Mortgage, all advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after a 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 or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 *et seq.* (the "Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, "Protective Advances"):

(i) all advances by Lender in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5-1302 of the Act;

(ii) payments by Lender of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Mortgaged Property; (B) when due installments of 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 Mortgaged Property or any part hereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

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

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

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

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(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act;

(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Lender to be for the benefit of the Mortgaged Property or required to be made by the owner 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; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member if in any way affecting the Mortgaged Property; (G) costs incurred by Lender for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Mortgaged 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 Default Rate. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditor, from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Indebtedness secured by this Mortgage at any time; (B) the amount of the Indebtedness found due and owing to Lender in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any 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 right of redemption is deemed not to be waived by this Mortgage, computation of any amounts required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5-1603 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (E) application of income in the hands of any receiver or Lender in possession; and (F) computation of any deficiency judgment pursuant to subsections (b) (2) and (e) of sections 15-1508 and Section 15-1511 of the Act.

(b) **Waiver of Right of Redemption and Reinstatement.** Without limiting the generality of Section 4.03(h)(i) of this Mortgage, the waiver by Borrower of its rights of redemption and reinstatement in such Section, include the waiver of such rights as provided under 735 ILCS 5/15-1601 and 735 ILCS 5/15-1602.

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(c) **Business Loan Recital/Statutory Exemption.** (i) Borrower acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 205/4(1)(1)); (B) the Indebtedness secured hereby has been incurred by Borrower solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said Section 4; (C) the Indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the secured Indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et. seq.* has been entered into solely for business purposes of Borrower and Borrower's investment or profit, as contemplated by said section.

(ii) Without limiting the generality of anything contained herein, Borrower acknowledges and agrees that the transaction of which this Mortgage is part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201 (1992)) or residential real estate (as defined in 735 5/15-1219 (1992)).

(d) **Maximum Principal Amount.** This Mortgage shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. This Mortgage also secures any and all future obligations and Indebtedness arising under or in connection with this Mortgage, which future obligations and Indebtedness shall have the same priority as if all such future obligations and Indebtedness were made on the date of execution hereof. Nothing in this Section or in any other provision of this Mortgage shall be deemed an obligation on the part of Lender to make any future advances of any sort. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage shall secure (in addition to any Loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Lender in connection with the Indebtedness to be secured hereby and which are to be reimbursed by Borrower under the terms of this Mortgage; provided, however, that in no event shall the total amount of Loan proceeds disbursed plus such additional amounts exceed 200% of the Stated Loan Amount.

(e) **Lender in Possession.** In addition to any provision of the Mortgage authorizing the Lender to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in the Mortgage, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

(f) **Illinois Mortgage Foreclosure Act.** It is the express intention of Lender and Borrower that the rights, remedies, powers and authorities conferred upon Lender pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provisions in this Mortgage are deemed inconsistent with any provision in the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render



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unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(g) **Collateral Protection Act.** Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows:

Unless the Borrower provides Lender with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or any of the other Loan Documents, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Mortgaged Property or any other collateral for the Indebtedness. This insurance may, but need not protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Mortgaged Property or any other collateral for the Indebtedness. Borrower may later cancel any insurance purchased by Lender but only after providing Lender with evidence that Borrower has obtained insurance as required by the Mortgage, the Loan Agreement or any of the other Loan Documents. If Lender purchases insurance for the Mortgaged Property or any other collateral for the Indebtedness, Borrower will be responsible for the costs of that insurance, including interest in any other charges that Lender 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 more than the cost of insurance that Borrower may be able to obtain on its own.

(h) **Sealed Instrument.** Borrower intends for this Mortgage to be executed and delivered by Borrower, and accepted by Lender, as a sealed instrument.