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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



1327745066

**Doc#:** 1327745066 **Fee:** \$88.00  
RHSP Fee:\$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 10/04/2013 02:11 PM Pg: 1 of 26

**Report Mortgage Fraud**  
800-532-8785

NHS # 13000031917 - 1 of 4

The property identified as: **PIN:** 17-16-210-007-0000

**Address:**

**Street:** 120 South LaSalle Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60603

**Lender:** SUNTRUST BANK

**Borrower:** TR 120 S. LASALLE CORP., a Delaware corporation

**Loan / Mortgage Amount:** \$80,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 770 et seq. because it is commercial property.

**Certificate number:** 83702441-5C54-4AB2-8D7A-900CA8B36D0F

**Execution date:** 10/01/2013

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Prepared by

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

John A. Decker, Esquire  
Hunton & Williams LLP  
600 Peachtree Street, N.E., Suite 4100  
Atlanta, Georgia 30308 2216

## MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

TR 120 S. LASALLE CORP., a Delaware corporation

("Mortgagor")

to

SUNTRUST BANK, a Georgia banking corporation,  
as Administrative Agent for the benefit of the Lenders

("Administrative Agent")

October 1, 2013

Location: 120 South LaSalle Street  
Chicago, Cook County, Illinois 60603  
Tax Parcel No. 17-16-210-007-0000

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## MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

**THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT** (as amended, restated, supplemented or otherwise modified, from time to time, this “**Mortgage**”) is made as of October 1, 2013, by **TR 120 S. LASALLE CORP.**, a corporation incorporated organized and existing under the laws of the State of Delaware, having an address of c/o LPC Realty Advisors I, LP, 120 North LaSalle Street, Suite 1750, Chicago, Illinois 60602, Attention: Jenifer Ratcliffe (together with its permitted successors and assigns, collectively, “**Mortgagor**”) for the benefit of **SUNTRUST BANK**, a Georgia banking corporation, having an address at 211 Perimeter Center Parkway, Suite 100, Atlanta, Georgia 30346, as Administrative Agent for the benefit of the Lenders (as defined in the Loan Agreement) (together with its successors and assigns, collectively, “**Administrative Agent**”).

### WITNESSETH:

A. This Mortgage is given to secure a loan (the “**Loan**”) in the principal sum of [EIGHTY MILLION AND NO/100 DOLLARS (\$80,000,000.00)] or so much thereof as may be advanced pursuant to that certain Loan Agreement dated as of the date hereof between Mortgagor, TR 183 W. Monroe Garage LLC, a Delaware limited liability company, Administrative Agent and the Lenders (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”) and evidenced by one or more Promissory Notes dated the date hereof made by Mortgagor to Lenders (such Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter collectively referred to as the “**Note**”). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.

B. Mortgagor desires to secure the payment of the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon and all other sums (including any prepayment fees) due to Administrative Agent and Lenders in respect of the Loan and the Loan Documents (the “**Debt**”) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents.

C. This Mortgage is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Mortgagor of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Mortgage.

**NOW THEREFORE**, in consideration of the making of the Loan by Lenders and the covenants, agreements, representations and warranties set forth in this Mortgage:

### ARTICLE 1 GRANTS OF SECURITY

Section 1.1 Property Conveyed. Mortgagor does hereby irrevocably, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Administrative Agent, for the benefit of the Lenders, and its successors and assigns, the following property, rights, interests and estates now owned, or hereafter acquired by Mortgagor (collectively, the “**Property**”):

Mortgage – 120 S. LaSalle  
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(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the “**Land**”);

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, be expressly made subject to the lien of this Mortgage;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the “**Improvements**”);

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All “equipment,” as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Mortgagor, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Mortgagor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “**Equipment**”). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants under Leases (as hereinafter defined) except to the extent that Mortgagor shall have any right or interest therein;

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Mortgagor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the “**Fixtures**”). Notwithstanding the foregoing, “Fixtures” shall not include any property

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which Tenants are entitled to remove pursuant to Leases except to the extent that Mortgagor shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, assignable contract rights, accounts, accounts receivable, franchises, assignable licenses, certificates and assignable permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code), whether tangible or intangible, other than Fixtures, which are now or hereafter owned by Mortgagor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the “**Personal Property**”), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the “**Uniform Commercial Code**”), superior in lien to the lien of this Mortgage and all proceeds and products of any of the above;

(h) Leases and Rents. All leases and other similar agreements granting rights of use or occupancy of the Land and the Improvements heretofore or hereafter entered into by Mortgagor, whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. § 101 *et seq.*, as the same may be amended from time to time (the “**Bankruptcy Code**”) (collectively, the “**Leases**”) and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment and performance of the Obligations, including the payment of the Debt. For avoidance of doubt, Leases shall not include subleases, sub-subleases or similar agreements entered into by tenants of the Property except to the extent of any rights or remedies of Mortgagor obtained by virtue of any such subleases, sub-subleases or similar agreements;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All insurance proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction of same, in each case, irrespective of the time period to which they relate;

(l) Rights. The right to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Administrative Agent in the Property, and may commence or appear in and defend any such action or proceeding in the name and on behalf of Mortgagor while any Event of Default is continuing;

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(m) Agreements. All assignable agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications, declarations, restrictions, owners' association agreements and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof, and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any Event of Default hereunder, to receive and collect any sums payable to Mortgagor thereunder;

(n) Trademarks. All trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Loan Agreement, the Cash Management Agreement, the Lockbox Agreement or any other Loan Document (but excluding amounts to be deposited by Mortgagor into a deposit account or accounts to be established at SunTrust Bank after the date hereof relating to prior reserve accounts maintained by Mortgagor for tenant improvements in the Improvements and which are being refunded in connection with the closing of the Loan, except to the extent such amounts are held in accounts maintained pursuant to the Cash Management Agreement), together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof (excluding any funds distributed to any owner of an interest in Mortgagor from such accounts, provided such distribution was not prohibited by the Loan Documents);

(p) Uniform Commercial Code Property. All documents, instruments, chattel paper and intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and general intangibles relating to the Property;

(q) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash, or a liquidation or other claims or otherwise; and

(r) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (q) above.

AND without limiting any of the other provisions of this Mortgage, to the extent permitted by applicable law, Mortgagor expressly grants to Administrative Agent, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Mortgage be deemed conclusively to be real estate and conveyed hereby.

Section 1.2 Assignment of Rents. Mortgagor hereby absolutely and unconditionally assigns to Administrative Agent all of Mortgagor's right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases and Section 7.1(h) of this Mortgage, Administrative Agent grants to Mortgagor a revocable



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license to collect, receive, use and enjoy the Rents and to exercise all of the rights of the landlord under the Leases, in a manner not prohibited by the Loan Documents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due in respect of operating expenses for the Property and on the Debt, for use in the payment of such sums.

Section 1.3 Security Agreement. This Mortgage is a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Mortgage, Mortgagor hereby grants to Administrative Agent, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “Collateral”). If an Event of Default shall occur and be continuing, Administrative Agent, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Administrative Agent may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Administrative Agent after the occurrence and during the continuance of an Event of Default, Mortgagor shall, at its expense, assemble the Collateral and make it available to Administrative Agent at a convenient place (at the Land if tangible property) reasonably acceptable to Administrative Agent. Mortgagor shall pay to Administrative Agent on demand any and all expenses, including reasonable legal expenses and attorneys’ fees, incurred or paid by Administrative Agent in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Administrative Agent with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Administrative Agent to the payment of the Debt in such priority and proportions as Administrative Agent in its discretion shall deem proper.

Section 1.4 Mortgage. This instrument is made under the provisions of the existing laws of the State of Illinois relating to mortgages, and is intended to constitute a security agreement under the Uniform Commercial Code. All references in this instrument to the lien hereof shall be deemed to refer to the security title hereby conveyed and all security interests and liens created hereby.

Section 1.5 Pledges of Monies Held. Mortgagor hereby pledges to Administrative Agent any and all monies now or hereafter held by Administrative Agent or on behalf of Administrative Agent in connection with the Loan, including, without limitation, any sums deposited in the Lockbox Account (as defined in the Cash Management Agreement) and proceeds thereof, as additional security for the Obligations until expended or applied as provided in this Mortgage.

## GRANT

To secure payment of the Obligations and the performance and discharge of the Other Obligations (as hereinafter defined), plus (a) interest thereon at the applicable rates specified in the instruments evidencing any such Obligations, (b) the Hedging Obligations, if any, owed by Mortgagor to Administrative Agent, Lender or Affiliate of any Lender, and (c) the payment of all other sums advanced by Administrative Agent to protect the security of this Mortgage, together with interest on such sums at

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the highest rate then applicable with respect to any of the Obligations secured by this Mortgage, Mortgagor GRANTS, BARGAINS, ASSIGNS, SELLS and CONVEYS to Administrative Agent, the Property in fee simple, subject to the terms and conditions of this Mortgage, TO HAVE AND TO HOLD the Property, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Property unto Administrative Agent for so long as any of the Obligations remains outstanding. Repayments of the Obligations from any source other than an enforcement of Administrative Agent's rights hereunder shall be deemed to be applied first to that portion of the Obligations in excess of the amount secured hereby.

## ARTICLE 2 DEBT AND OBLIGATIONS SECURED

Section 2.1 Obligations. This Mortgage and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Obligations, including, but not limited to, the Debt.

Section 2.2 Other Obligations. This Mortgage and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "Other Obligations"):

- (a) the performance of all other obligations of Mortgagor contained herein;
- (b) the payment and performance of each other obligation of Mortgagor contained in the Loan Agreement and any other Loan Document;
- (c) the performance of each obligation of Mortgagor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document; and
- (d) the payment and performance of all present and future debts, obligations and liabilities of Mortgagor under or relating to any interest rate, hedge or cap agreement entered into with Administrative Agent or an affiliate of the Administrative Agent with respect to the Loan.

Section 2.3 Debt and Other Obligations. Mortgagor's obligations for the payment of the Debt and the performance of the Other Obligations may sometimes be referred to collectively herein as the "Obligations."

## ARTICLE 3 MORTGAGOR COVENANTS

Mortgagor covenants and agrees that throughout the term of the Loan:

Section 3.1 Payment of Debt. Mortgagor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Mortgage.

Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

Section 3.3 Insurance. Mortgagor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Mortgagor and the Property as required pursuant to the Loan Agreement.



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Section 3.4 Maintenance of Property. Mortgagor shall cause the Property to be maintained in a good and safe condition and repair as required pursuant to the Loan Agreement. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements and any other alterations or improvements and any related demolition that do not have a Material Adverse Effect on the value of the Property) without the consent of Administrative Agent. Notwithstanding anything to the contrary herein or in the Loan Agreement, Mortgagor shall have the right without Administrative Agent's consent, from time to time to alter and improve the Property (and perform related demolition) so long as the cost of any single alteration or improvement (or series of related alterations or improvements), does not exceed \$5,000,000 in the aggregate; provided, however, that except with respect to tenant improvement work and for alterations and improvements disclosed in the Annual Budget, for which no notice shall be required, Mortgagor shall provide Administrative Agent with written notice of any single alteration or improvement (or series of related alterations or improvements), the cost of which is anticipated to exceed \$250,000, including a reasonably detailed description of such alterations or improvements together with the anticipated cost thereof. In each instance where Administrative Agent's consent is required hereunder, such consent shall not be unreasonably withheld, conditioned or delayed. Subject to Administrative Agent making the Proceeds available to Mortgagor for restoration pursuant to the Loan Agreement. Mortgagor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any fire or other casualty or become damaged, worn or dilapidated or which may be affected by any condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

Section 3.5 Waste. Mortgagor shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that invalidates or allows the cancellation of any insurance policy required under the Loan Agreement, or do or permit to be done thereon anything that has a Material Adverse Effect on the value of the Property or the security of this Mortgage. Mortgagor will not, without the prior written consent of Administrative Agent, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 Payment for Labor and Materials. (a) Mortgagor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("**Labor and Material Costs**") incurred by Mortgagor or any entity on behalf of Mortgagor in connection with the Property, unless Mortgagor is contesting the same pursuant to Section 3.6(b) or the applicable provisions of the Loan Agreement, and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests created hereby and by the other Loan Documents, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests created hereby and by the other Loan Documents, except as specifically permitted under the Loan Agreement including any mechanics' and materialmen's liens being contested by Mortgagor pursuant to the Loan Agreement.

(b) Notwithstanding Section 3.6(a), after prior written notice to Administrative Agent, Mortgagor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs and any mechanics' and/or materialmen's lien filed in connection therewith, provided that Mortgagor complies with the provisions of Section 5.6 of the Loan Agreement.

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Section 3.7 Performance of Other Agreements. Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by Mortgagor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

## ARTICLE 4 OBLIGATIONS AND RELIANCES

Section 4.1 Relationship of Mortgagor, Lenders and Administrative Agent. The relationship as between Mortgagor and the Lenders and Administrative Agent is solely that of debtor and creditor, and neither Administrative Agent nor Lender has any fiduciary or other special relationship with Mortgagor, and no term or condition of any of the Loan Agreement, the Note, this Mortgage or the other Loan Documents shall be construed so as to deem the relationship between Mortgagor and Administrative Agent and Lenders to be other than that of debtor and creditor.

Section 4.2 No Reliance on Lenders or Administrative Agent. The general partners, members, principals and (if Mortgagor is a trust) beneficial owners of Mortgagor, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Mortgagor, Administrative Agent and Lenders are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Mortgagor is not relying on Lenders' or Administrative Agent's expertise, business acumen or advice in connection with the Property.

Section 4.3 No Administrative Agent Obligations. (a) Notwithstanding the provisions of Subsections 1.1(h), (m), and 1.1(n) or Section 1.2, Administrative Agent is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Administrative Agent pursuant to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Administrative Agent shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or the effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Administrative Agent.

Section 4.4 Reliance. Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Mortgage and the other Loan Documents, Lenders and Administrative Agent are expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lenders or Administrative Agent; that such reliance existed on the part of Administrative Agent and Lenders prior to the date hereof, that the warranties and representations are a material inducement to Lenders in making the Loan; and that Lenders would not be willing to make the Loan and accept this Mortgage in the absence of the warranties and representations as set forth in the Loan Agreement.

## ARTICLE 5 FURTHER ASSURANCES

Section 5.1 Recording of Mortgage, Etc. Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage and any of the other

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Loan Documents creating the Liens or security interest or evidencing the Liens hereof upon the Property or conveying the security title and interest and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Liens or security interest hereof upon, and the interest of Administrative Agent in, the Property. Mortgagor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Mortgage, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any Mortgage with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges, other than franchise or income taxes of Administrative Agent or the Lenders, arising out of or in connection with the execution and delivery of this Mortgage, any deed of trust or mortgage supplemental hereto, any Mortgage with respect to the Property or any instrument of further assurance, and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, Etc. Mortgagor will, at the cost of Mortgagor, and without expense to Administrative Agent, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Administrative Agent shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Administrative Agent the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Administrative Agent, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, or for complying with all requirements of Governmental Authorities. The Mortgagor hereby irrevocably authorizes the Administrative Agent, its counsel or its representative, at any time and from time to time, to file financing statements and amendments as the Administrative Agent may deem necessary, including financing statements and amendments that describe the collateral covered by such financing statements as "all assets of Mortgagor" or "all personal property of Mortgagor" or words of similar effect, in order to perfect the security title and interests granted by Mortgagor under this Mortgage. Mortgagor grants to Administrative Agent an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Administrative Agent at law and in equity, including without limitation such rights and remedies available to Administrative Agent pursuant to this Section 5.2.

Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Law. (a) If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Administrative Agent's interest in the Property, Mortgagor will pay the tax, with interest and penalties thereon, if any. If Administrative Agent is advised by counsel chosen by it that the payment of tax by Mortgagor would be unlawful or taxable to Administrative Agent or unenforceable or provide the basis for a defense of usury, then Administrative Agent shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Administrative Agent shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

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(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Mortgage, or any of the other Loan Documents or shall impose any other tax or charge on the same (other than income or franchise taxes of Administrative Agent or the Lenders), Mortgagor will pay for the same, with interest and penalties thereon, if any.

Section 5.4 Splitting of Mortgage. This Mortgage and the Note may, at any time until the same shall be fully paid and satisfied, at the sole election of Administrative Agent, be split or divided into two or more notes and two or more mortgages, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Mortgagor, upon written request of Administrative Agent, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Administrative Agent and/or its designee or designees, substitute notes and mortgages in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses identical to those contained herein and in the Note, and such other documents and instruments as may be reasonably required by Administrative Agent that do not impose additional liabilities or costs on Borrower and do not adversely affect Borrower's rights under the Loan Agreement.

Section 5.5 Replacement Documents. Upon receipt of an affidavit of an officer of Administrative Agent as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Mortgagor will issue, in lieu thereof, a replacement Note or a replacement of such other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

## ARTICLE 6 DUE ON SALE/ENCUMBRANCE

Section 6.1 Lenders and Administrative Agent Reliance. Mortgagor acknowledges that Lenders and Administrative Agent have examined and relied on the experience of Mortgagor and its general partners, members, principals and beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for the repayment of the Debt and the performance of the Obligations, including the repayment of the Debt. Mortgagor acknowledges that Administrative Agent has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the repayment of the Debt and/or the performance of the Obligations, Administrative Agent can recover the Debt by a sale of the Property.

Section 6.2 No Transfer or Encumbrance. Except as expressly permitted in the Loan Agreement, Mortgagor shall not permit or suffer any Transfer of the Property, without the prior written consent of the Administrative Agent. Except as permitted under the Loan Agreement, without the prior written consent of Administrative Agent, Mortgagor will not permit the Property to become subject to any Lien, easement, right of way, roadway (public or private), common area, condominium regime, cooperative housing regime, restrictive covenant, Lease or other matter of any nature that would affect title to the Property. Mortgagor shall give Administrative Agent written notice of any default under any Lien.



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## ARTICLE 7 RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Administrative Agent may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Administrative Agent may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Administrative Agent:

- (a) declare the entire unpaid Debt to be immediately due and payable, any and all such notices and demands being hereby waived by Mortgagor;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any Governmental Requirements, in which case: (i) the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, (ii) Administrative Agent shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law, (iii) any Person, including Mortgagor or Administrative Agent, may bid and purchase at any such proceeding, (iv) Mortgagor agrees to pay the costs and expenses of each and any such proceeding, and (v) in the event of a sale by proceeding or otherwise, of less than all of the Property, this Mortgage shall continue as a Lien and a security interest on the remaining portion of the Property unimpaired and without loss of priority;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by Governmental Requirements, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Mortgage for the balance of the Obligations not then due, unimpaired and without loss of priority;
- (d) Intentionally deleted;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, which appointment is hereby authorized and consented to by Mortgagor, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, any guarantor, or indemnitor with respect to the Loan or any Person liable for the payment of the Debt or any part thereof;
- (h) the license granted to Mortgagor under Section 1.2 hereof shall automatically be revoked and Administrative Agent may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Administrative Agent upon



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demand, and thereupon Administrative Agent may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Administrative Agent deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Administrative Agent, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Administrative Agent or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment and performance of the Obligations (including, without limitation, of the Debt), in such order, priority and proportions as Administrative Agent shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Taxes, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Administrative Agent, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and/or the Personal Property, or any part thereof, and to take such other measures as Administrative Agent may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Mortgagor at its sole cost and expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Administrative Agent at a convenient place acceptable to Administrative Agent. Any notice of sale, disposition or other intended action by Administrative Agent with respect to the Fixtures, the Equipment and/or the Personal Property sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Administrative Agent in accordance with the terms of the Loan Agreement, this Mortgage or any other Loan Document to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Taxes;
- (ii) Premiums for any insurance policy required under the Loan Agreement;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note; and/or

(v) All other sums payable pursuant to the Note, the Loan Agreement, this Mortgage and the other Loan Documents, including, without limitation, the prepayment fees, if applicable, and advances made by Administrative Agent pursuant to the terms of this Mortgage;

(k) pursue such other remedies as Administrative Agent may have under applicable law; and/or

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(l) apply the undisbursed balance of any deposits held by Administrative Agent, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Administrative Agent shall deem to be appropriate in its sole discretion.

**Section 7.2 Application of Proceeds.** While any Event of Default is continuing, the purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Administrative Agent pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Administrative Agent to the payment of the Obligations in such priority and proportions as Administrative Agent in its discretion shall deem proper.

**Section 7.3 Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, or provided in the other Loan Documents, Administrative Agent may, but without any obligation to do so and without notice or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Administrative Agent may deem necessary to protect the security hereof. Administrative Agent is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Administrative Agent upon demand. All such costs and expenses incurred by Administrative Agent in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period beginning on the first day after notice from Administrative Agent that such cost or expense was incurred and continuing until the date of payment to Administrative Agent. All such costs and expenses incurred by Administrative Agent together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Administrative Agent therefor.

**Section 7.4 Actions and Proceedings.** Administrative Agent has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, which Administrative Agent, in its sole discretion, decides should be brought to protect its interest in the Property, and may bring any such action or proceeding in the name and on behalf of Mortgagor while any Event of Default is continuing.

**Section 7.5 Recovery of Sums Required to be Paid.** Administrative Agent shall have the right from time to time as set forth in the Loan Agreement to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Administrative Agent thereafter to bring an action of foreclosure, or any other action, for any Default or Event of Default by Mortgagor existing at the time such earlier action was commenced.

**Section 7.6 Examination of Books and Records.** At reasonable times and upon reasonable prior notice (which may be given orally), Administrative Agent, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Mortgagor which reflect upon its financial condition, at the Property or at any office regularly maintained by Mortgagor where such books and records are located. Administrative Agent and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable prior notice (which may be given orally), Administrative Agent, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Mortgagor pertaining to the income, expenses and operation of the Property during reasonable business hours at any

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office of Mortgagor where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

Section 7.7 Other Rights, Etc. (a) The failure of Administrative Agent to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Administrative Agent to comply with any request of Mortgagor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Administrative Agent extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Administrative Agent shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the policies of insurance on the terms and conditions set forth in the Loan Documents or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Administrative Agent shall not be deemed an election of judicial relief, if any such possession is requested or obtained with respect to any Property or collateral not in Administrative Agent's possession.

(c) Administrative Agent may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Debt) to any other security held by Administrative Agent in such order and manner as Administrative Agent, in its discretion, may elect. Administrative Agent may take action to recover the Debt, or any portion thereof, or to enforce the Other Obligations or any covenant hereof without prejudice to the right of Administrative Agent thereafter to foreclose this Mortgage. The rights of Administrative Agent under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Administrative Agent shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Administrative Agent shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.8 Right to Release Any Portion of the Property. Administrative Agent may release any portion of the Property for such consideration as Administrative Agent may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Administrative Agent for such release, and Administrative Agent may accept by assignment, pledge or otherwise any other property in place thereof as Administrative Agent may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a Lien and security interest in the remaining portion of the Property.

Section 7.9 Violation of Laws. If the Property is not in full compliance with all requirements of Governmental Authorities, Mortgagor shall promptly remedy the noncompliance (unless Mortgagor is contesting in good faith any purported noncompliance pursuant to appropriate proceedings).

Section 7.10 Right of Entry. Upon reasonable notice to Mortgagor, Administrative Agent and its agents shall have the right to enter and inspect the Property at all reasonable times, subject to the rights of tenants under their Leases.

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## ARTICLE 8 INDEMNIFICATION

Section 8.1 General Indemnification. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnitees from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) (collectively, the "Losses") imposed upon or incurred by or asserted against any Indemnitees and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Mortgage, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Obligations (including, but not limited to, the Debt) and the Note, the Loan Agreement, this Mortgage, and/or any other Loan Documents; (c) any and all lawful action that may be taken by Administrative Agent in connection with the enforcement of the provisions of this Mortgage or the Loan Agreement or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Mortgagor, any guarantor or indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, non-use or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Mortgagor to perform or to be in compliance with any of the terms of this Mortgage; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof to the extent requested or performed by Mortgagor; (h) the failure of any Person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Mortgage is made; (i) any failure of the Property to be in compliance with any and all requirements of law and all judgments, decrees and orders of any Governmental Authority; (j) the enforcement by any of the Indemnitees of the provisions of this Article 8; (k) any and all claims and demands whatsoever which may be asserted against Administrative Agent or the Lenders by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (l) the payment of any commission, charge or brokerage fee to anyone claiming through Mortgagor which may be payable in connection with the funding of the Loan; or (m) any misrepresentation made by Mortgagor in this Mortgage or any other Loan Document. Notwithstanding the foregoing, Mortgagor shall have no obligation to indemnify Indemnitees from any Losses (i) to the extent arising from any gross negligence or willful misconduct of any of the Indemnitees; (ii) any failure of any Indemnitee to perform its obligations under the Loan Documents subject to applicable cure periods, if any; or (iii) any event, condition or obligation arising or occurring on or after the date any Indemnitee takes title to or possession of the Property. Any amounts payable to Administrative Agent by reason of the application of this Section 8.1 shall become due and payable within five (5) Business Days after written demand and shall bear interest at the Default Rate from the date the loss or damage is sustained by Administrative Agent until such amounts and any applicable interest are paid. For purposes of this Mortgage, the term "Indemnitees" means Administrative Agent, the Lenders and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by this Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan secured hereby (including, but not limited to, Lenders, as well as custodians, trustees and other fiduciaries who hold or



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have held a full or partial interest in the Loan secured hereby for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Administrative Agent's assets and business).

Section 8.2 Mortgage and/or Intangible Tax. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnitees from and against any and all Losses imposed upon or incurred by or asserted against any Indemnitees and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Mortgage, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

Section 8.3 Intentionally Deleted.

Section 8.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses. Upon written request by any Indemnitee, Mortgagor shall defend such Indemnitee (if requested by any Indemnitee, in the name of the Indemnitee) by attorneys and other professionals approved by the Indemnitees, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Mortgagor and any Indemnitee and Mortgagor and such Indemnitee shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnitees that are different from or in addition to those available to Mortgagor, such Indemnitee shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnitee, provided that no compromise or settlement shall be entered without Mortgagor's consent, which consent shall not be unreasonably withheld or delayed. Upon demand, Mortgagor shall pay or, in the sole and absolute discretion of the Indemnitees, reimburse, the Indemnitees for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith. The provisions of this Section 8.4 shall survive any payment or prepayment of the Loan and any foreclosure or satisfaction of this Mortgage.

## ARTICLE 9 WAIVERS

Section 9.1 Waiver of Counterclaim. To the extent permitted by applicable law, Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Administrative Agent arising out of or in any way connected with this Mortgage, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

Section 9.2 Marshaling and Other Matters. To the extent permitted by applicable law, Mortgagor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.



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Section 9.3 Waiver of Notice. To the extent permitted by applicable law, Mortgagor shall not be entitled to any notices of any nature whatsoever from Administrative Agent except with respect to matters for which this Mortgage or the Loan Documents specifically and expressly provide for the giving of notice by Administrative Agent to Mortgagor and except with respect to matters for which Administrative Agent is required by applicable law to give notice. Mortgagor hereby expressly waives the right to receive any notice from Administrative Agent with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Administrative Agent to Mortgagor.

Section 9.4 Waiver of Statute of Limitations. To the fullest extent permitted by applicable law, Mortgagor hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment of the Debt or performance of its Other Obligations.

Section 9.5 Additional Waivers.

(a) MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE, TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE NOTE, THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. ADMINISTRATIVE AGENT IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

(b) MORTGAGOR EXPRESSLY WAIVES THE FOLLOWING TO THE EXTENT PERMITTED UNDER APPLICABLE LAW: (A) NOTICE AND HEARING: ANY RIGHT MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE STATE OF ILLINOIS OR THE CONSTITUTION OF THE UNITED STATES OF AMERICA TO NOTICE (EXCEPT FOR NOTICES REQUIRED BY THE LOAN DOCUMENTS) OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED TO ADMINISTRATIVE AGENT BY THIS MORTGAGE, AND MORTGAGOR WAIVES MORTGAGOR'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE UNDER POWER DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS MORTGAGE ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT PRIOR NOTICE OR JUDICIAL HEARING OR BOTH; AND (B) ALL HOMESTEAD EXEMPTION RIGHTS, IF ANY, WHICH MORTGAGOR OR MORTGAGOR'S FAMILY MAY HAVE PURSUANT TO THE CONSTITUTION AND LAWS OF THE UNITED STATES, THE STATE OF ILLINOIS OR ANY OTHER STATE OF THE UNITED STATES, IN AND TO THE PROPERTY AS AGAINST THE COLLECTION OF THE DEBT, OR ANY PART THEREOF. ALL WAIVERS BY MORTGAGOR IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY BY MORTGAGOR, AFTER MORTGAGOR HAS BEEN AFFORDED AN OPPORTUNITY TO BE INFORMED BY COUNSEL OF MORTGAGOR'S CHOICE AS TO POSSIBLE ALTERNATIVE RIGHTS. MORTGAGOR'S EXECUTION OF THIS MORTGAGE SHALL BE CONCLUSIVE EVIDENCE OF THE MAKING OF SUCH WAIVERS AND THAT SUCH WAIVERS HAVE BEEN INVOLUNTARILY, INTELLIGENTLY AND KNOWINGLY MADE.

Section 9.6 Survival. The indemnifications made pursuant to Article 8 herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction

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release or other termination of this Mortgage, or any other Loan Document, any assignment or other transfer of all or any portion of this Mortgage, or any other Loan Document or Administrative Agent's interest in the Property (but, in such case, such indemnification shall benefit both the Indemnitees and any such assignee or transferee), any exercise of Administrative Agent's rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Mortgagor or by Administrative Agent following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Mortgagor from the Obligations or any portion thereof.

## ARTICLE 10 NOTICES

All notices or other written communications hereunder shall be delivered in accordance with the Loan Agreement.

## ARTICLE 11 APPLICABLE LAW

### Section 11.1 Governing Law.

(a) This Mortgage, and the interpretation and enforcement thereof, shall be governed by the laws of the State of Illinois.

(b) Any legal suit, action or proceeding against Administrative Agent, any Lender or Mortgagor arising out of or relating to this Mortgage shall be instituted in any Federal or state court in Cook County, Illinois, and Mortgagor waives any objections which it may now or hereafter have based on venue and/or *forum non conveniens* of any such suit, action or proceeding, and Mortgagor hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

Section 11.2 WAIVER OF TRIAL BY JURY. MORTGAGOR AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. ADMINISTRATIVE AGENT IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

Section 11.3 Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Mortgagor, Lenders and Administrative Agent are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Lenders or Administrative Agent shall never exceed the Maximum Rate or amount, (b) in calculating whether any interest exceeds the Maximum Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Mortgagor to Lenders and Administrative Agent, and (c) if through any contingency or

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event, Lenders or Administrative Agent receive or is deemed to receive interest in excess of the Maximum Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Mortgagor to Lenders, or if there is no such indebtedness, shall immediately be returned to Mortgagor.

Section 11.4 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

## ARTICLE 12 DEFINITIONS

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in the singular or plural form and the word "**Mortgagor**" shall mean "each Mortgagor and any subsequent owner or owners of the Property or any part thereof or any interest therein" the word "**Administrative Agent**" shall mean "Administrative Agent, in its capacity as administrative agent for the Lenders and any subsequent administrative agent appointed in accordance with the terms of the Loan Agreement," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage, as amended, restated or otherwise modified, from time to time," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**," "**legal fees**" and "**counsel fees**" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels, incurred or paid by Administrative Agent in protecting its interest in the Property, the Leases and/or the Rents and/or enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

Section 13.1 No Oral Change. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Administrative Agent, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 13.2 Successors and Assigns. This Mortgage shall be binding upon, and shall inure to the benefit of, Mortgagor and Administrative Agent and their respective successors and permitted assigns as set forth in the Loan Agreement. Administrative Agent may sell, assign, pledge, participate, transfer or delegate, as applicable, to one or more Persons all or a portion of its rights and obligations under this Mortgage and the other Loan Documents.

Section 13.3 Inapplicable Provisions. If any provision of this Mortgage is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Mortgage, such provision shall be fully severable and this Mortgage shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Mortgage, and the remaining provisions of this Mortgage shall remain in full force and effect and shall not be affected by the illegal,

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invalid or unenforceable provision or by its severance from this Mortgage, unless such continued effectiveness of this Mortgage, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

Section 13.4 Headings, Etc. The headings and captions of the various Sections of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 13.5 Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 13.6 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Administrative Agent shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Administrative Agent and are merged with the lien and security interest created herein as cumulative security for the payment performance and discharge of the Obligations (including, but not limited to, the payment of the Debt).

Section 13.7 Entire Agreement. The Note, the Loan Agreement, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between Mortgagor and Administrative Agent with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Mortgagor, Lenders and Administrative Agent with respect thereto. Mortgagor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Mortgage and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Administrative Agent to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Mortgage and the other Loan Documents.

Section 13.8 Limitation on Administrative Agent's Responsibility. No provision of this Mortgage shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Administrative Agent, nor shall it operate to make Administrative Agent responsible or liable for any waste committed on the Property by the Tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Administrative Agent a "mortgagee in possession."

Section 13.9 Time is of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of the Mortgagor under this Mortgage, the Note and any and all other Loan Documents.

Section 13.10 Recourse. The obligations of Mortgagor hereunder are subject to the terms and limitations of Section 9.18 of the Loan Agreement, which are incorporated herein by reference.



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## ARTICLE 14 MISCELLANEOUS PROVISIONS

Section 14.1 Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article 14 and the other provisions of this Mortgage, the terms and conditions of this Article 14 shall control and be binding.

Section 14.2 Use of Real Property. Mortgagor acknowledges that the Real Property does not constitute agricultural real estate as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 (1996), *et seq.* (the "Act") or residential real estate as defined in Section 15-1219 of the Act.

Section 14.3 Future Advances. In addition to any other obligation secured by this Mortgage, this Mortgage shall also secure all monies advanced by Administrative Agent in accordance with the terms of this Mortgage or the Loan Agreement to (a) preserve or restore the Property, (b) preserve the lien of this Mortgage or the priority thereof, or (c) enforce this Mortgage whether made as an obligation, made at the option of Administrative Agent, made after a reduction to a zero (0) or other balance, or made otherwise, to the same extent as if the future obligations and advances were made on the date of execution of this Mortgage; and (ii) future modifications, extensions and renewals of any indebtedness or obligations secured by this Mortgage. The lien of this Mortgage with respect to such future obligations, advances, modifications, extensions and renewals shall have the same priority to which this Mortgage otherwise would be entitled under 735 ILCS 5/15-1302 without regard to the fact that such future obligations, advances, modifications, extensions, or renewals may occur after this Mortgage is executed.

Section 14.4 Release Of Mortgage. Upon payment of all sums secured by this Mortgage, Administrative Agent shall release this Mortgage without charge to Mortgagor and without representation, warranty or recourse to the Administrative Agent. Mortgagor shall pay all costs of recordation and reasonable charges related to such release. Nothing therein or herein shall limit or impair the right of the Administrative Agent to enforce and realize upon any of the Property.

Section 14.5 Maximum Amount Of Indebtedness Secured. Notwithstanding anything to the contrary set forth in this Mortgage, Mortgagor acknowledges that the principal amount of the Debt secured hereby is up to Eighty Million and 00/100 Dollars (\$80,000,000.00) in the aggregate, and that the maximum aggregate amount of principal, interest and other indebtedness (now or hereafter owed) secured by this Mortgage is One Hundred Sixty-Million and 00/100 Dollars (\$160,000,000.00).

Section 14.6 Business Loan Recitals/Statutory Exemptions. Mortgagor acknowledges and agrees that (i) the obligations secured hereby constitutes a business loan which comes within the purview of Section 4 of the Interest Act (815 ILCS 205/0/01 *et seq.*) and (ii) that the Obligations is an exempt transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 *et seq.*

Section 14.7 Illinois Collateral Protection Act Notice. Pursuant to Section 10 of the Illinois Collateral Protection Act, 815 I.L.C.S. 180/10, the Mortgagor is hereby formally notified, and the Mortgagor hereby acknowledges and agrees, that unless the Mortgagor provides Administrative Agent with evidence of the insurance coverage provided by this Mortgage or the Loan Agreement, Administrative Agent may purchase insurance at Mortgagor's expense to protect Administrative Agent's interests in Mortgagor's collateral. This insurance may, but need not, protect the Mortgagor's interests. The coverage that the Administrative Agent purchases may not pay any claim that the Mortgagor makes or any claim that is made against the Mortgagor in connection with the collateral. The Mortgagor may later cancel any insurance purchased by the Administrative Agent, but only after providing the Administrative Agent with evidence that the Mortgagor has obtained insurance as required by the



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Mortgage or the Loan Agreement. If the Administrative Agent purchases insurance for the collateral, the Mortgagor will be responsible for the costs of that insurance, including interest and any other charges the Administrative Agent may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Mortgagor's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance the Mortgagor may be able to obtain on its own.

Section 14.8 State Foreclosure Law. Anything elsewhere herein contained to the contrary notwithstanding, (a) in the event that any provision in this Mortgage shall be inconsistent with any provision of the State of Illinois law regarding foreclosure (the "Foreclosure Law"), the provisions of the Foreclosure Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with Foreclosure Law; and (b) if any provision of this Mortgage shall grant to Administrative Agent (including Administrative Agent acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Mortgage, any rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Administrative Agent or such receiver under the Foreclosure Law in the absence of said provision, Administrative Agent and such receiver shall be vested with the rights granted under the Foreclosure Law to the full extent permitted by law.

[NO FURTHER TEXT ON THIS PAGE]



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## EXHIBIT A

### LEGAL DESCRIPTION

#### **120 South LaSalle**

THE EAST ½ OF LOT 2, ALL OF LOT 3 AND THAT PART OF LOT 4 LYING WEST OF THE WEST LINE OF LASALLE STREET (EXCEPT THE SOUTH 10 FEET OF SAID LOTS TAKEN FOR ALLEY) IN BLOCK 96 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

Tax Parcel No. 17-16-210-007-0000