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Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Doc#: 1518716070 Fee: \$132.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 07/06/2015 03:45 PM Pg: 1 of 48

Report Mortgage Fraud  
800-532-8785

8977930-1-2 CT 4 of 7 NWC

The property identified as: **PIN:** 17-16-204-005-0000

**Address:**

**Street:** 39 S. LaSalle Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60603

**Lender:** U.S. Bank National Association

**Borrower:** KHP III 39 Chicago LLC

**Loan / Mortgage Amount:** \$66,500,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

**Certificate number:** E06F8C97-04CC-4C48-8960-0306309C2167

**Execution date:** 7/2/2015

CCRD REVIEWER

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8977930, -1, -2 CT 497 NWK

**PREPARED BY AND WHEN  
RECORDED RETURN TO:**

Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101  
Attention: James D. Gradel

(Space Above For Recording Use)

## MORTGAGE ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (Security for Construction Loan)

### Coversheet Recording Information:

**MORTGAGOR:** KHP III 39 CHICAGO LLC, a Delaware limited liability company  
**MORTGAGEE:** U.S. BANK NATIONAL ASSOCIATION, a national banking association

MORTGAGE  
12187-2474/1.EGAL126098745.5  
7/1/15

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Property of Cook County Clerk's Office

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## MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, FIXTURE FILING (Security for Construction Loan)

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage") is made and entered into as of July 2, 2015, by KHP III 39 CHICAGO LLC, a Delaware limited liability company ("Mortgagor"), whose principal address is 222 Kearny Street, Suite 200, San Francisco, California 94108, in favor of U.S. BANK NATIONAL ASSOCIATION, a national banking association ("Mortgagee"), whose mailing address is 1420 Fifth Avenue, 8<sup>th</sup> Floor, PD-WA-T8RE, Seattle, Washington 98101.

### GRANTS AND AGREEMENTS

Fixture Filing. For purposes of Article 9 of the Uniform Commercial Code, this Mortgage constitutes a Security Agreement with Mortgagor being the Debtor and Mortgagee being the Secured Party. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Mortgage, and this Mortgage, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement naming Mortgagor as the Debtor and Mortgagee as the Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. For the purposes of the fixture filing, the name of the record owner is KHP III 39 CHICAGO LLC. The addresses of the Debtor and Secured Party are set forth in the preamble to this Mortgage.

In consideration of the benefit that will accrue to Mortgagor as a result of Mortgagee making a loan (the "Loan") to 39 CHICAGO BUILDING LLC, a Delaware limited liability company ("Borrower"), evidenced by the Note described below, Mortgagor hereby irrevocably MORTGAGES, GRANTS, TRANSFERS, CONVEYS and ASSIGNS to Mortgagee all of Mortgagor's present and future estate, right, title, claim and interest, either in law or in equity, in and to the following property (the "Property"):

(a) The lessee's interest in and to the Ground Lease dated January 9, 2014, by and between The University of Chicago, as lessor, and Mortgagor, as lessee, an amended and restated memorandum of which was recorded on July 8, 2004, in the office of the Cook County, Illinois, Recorder of Deeds as Document No. 0419027073, which amended and restated memorandum was subsequently amended by an amended memorandum of ground lease dated January 9, 2014 and recorded on January 10, 2014 in the office of the Cook County, Illinois, Recorder of Deeds as Document No. 1401022120 (together with all amendments, modifications, exhibits and supplements thereto, the "Ground Lease"),

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covering certain real property located in Cook County, Illinois and legally described on Exhibit A ("Premises").

(b) All of Mortgagor's estate, right, title, claim and interest in the Premises acquired by Mortgagor (i) in connection with its exercise of the option to purchase the Premises set forth in the Ground Lease, (ii) in connection with its exercise of the right of first refusal to purchase the Premises set forth in the Ground Lease or (iii) in any other manner.

(c) All rights to the alleys, streets and roads adjoining or abutting the Premises, all easements, access, air and development rights, minerals and oil, gas and other hydrocarbon substances, water, water rights and water stock, and all other rights, hereditaments, privileges and appurtenances now or hereafter belonging or in any way appertaining to the Premises (together with the Premises, the "Land").

(d) All buildings, improvements and tenements now or hereafter located on the Land ("Improvements"), including, without limitation, all fixtures, articles and accessions of property attached to, or used or adapted for use in the ownership, development, operation or maintenance of the Land and Improvements (whether such items are leased, owned or subject to any title-retaining or security instrument); all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus; all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces; all ranges, stoves, disposals, refrigerators and other appliances; all escalators and elevators, baths, sinks, all cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash; all carpeting, underpadding, floor covering, paneling, and draperies; all furnishings of public spaces, halls and lobbies; and all shrubbery and plants. All such items shall be deemed part of the Land and not severable wholly or in part without material injury to the freehold.

(e) All of the present and future rents, revenues, issues, accounts general intangibles, investment property, instruments, money, cash equivalents, profits and income of the Land and Improvements, and all present and future leases and other agreements for the occupancy or use of all or any part of the Land and Improvements, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature, and all guarantees of tenants' or occupants' performance under such leases and agreements.

(f) All of Mortgagor's assets, including, without limitation, tangible and intangible personal property now or hereafter used or acquired in connection with or in any way arising out of or related to the ownership, development, operation or maintenance of the Land and Improvements (except to the extent any of the foregoing is owned by the Property Manager and Mortgagor does not have any right or interest therein), including, without

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limitation, all furniture, furnishings, equipment, supplies, inventory and other goods, wherever located, whether in the possession of Mortgagor, warehousemen, bailee or any other person; all site plans, plats, architectural plans, specifications, work drawings, surveys engineering reports, test borings, market surveys, and other similar work products; all permits, licenses, franchises and trade names; all contract rights (including, without limitation, all architectural, construction, engineering, consulting and management contracts, all insurance policies, and all performance, payment, completion and other surety bonds); and all claims, causes of action, warranties, accounts receivable, escrow accounts, insurance policies, deposits (including tax, insurance and other reserves), instruments, documents, general intangibles and business records.

(g) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to the Land or the Improvements.

(h) All other right, title and interest Mortgagor may now have or acquire under the Ground Lease, including, without limitation, all rights of first refusal and options to purchase or lease the Land or Improvements or any portion thereof or interest therein set forth in the Ground Lease, all rights and interests of Mortgagor in any bankruptcy proceeding involving the lessor under the Ground Lease, and any greater estate in the Land (including, without limitation, fee simple title interest) and Improvements now owned or hereafter acquired.

(i) All proceeds (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, all insurance proceeds and condemnation awards.

(j) All proceeds of the foregoing.

TO SECURE THE FOLLOWING ("Secured Obligations"):

(1) Payment of the sum of \$66,500,000, with interest thereon, according to the terms and provisions of the promissory note of even date herewith made by Borrower, payable to Mortgagee (the "Note").

(2) Payment of all other sums which are or may become owing from Mortgagor or Borrower under the Loan Documents (as hereinafter defined).

(3) Performance of all obligations of Mortgagor under that certain Unconditional Guaranty of even date herewith made by Mortgagor for the benefit of Mortgagee (the "Mortgagor Guaranty").

(4) Performance of all other obligations of Mortgagor and Borrower under the Loan Documents.



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(5) Payment and performance of all obligations of Mortgagor under this Mortgage, together with all advances, payments or other expenditures made by Mortgagee as or for the payment or performance of any such obligations of Mortgagor.

(6) Payment and performance of all obligations, if any, and the contracts under which they arise, which any rider attached to and recorded with this Mortgage recites are secured hereby.

(7) Payment and performance of all future advances and other obligations that the then record owner of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when any such advance or other obligation is evidenced by a writing which recites that it is secured by this Mortgage.

(8) All modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (a) modifications, extensions or renewals at a different rate of interest, or (b) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

(9) All indebtedness, obligations, covenants and agreements of Mortgagor or Borrower under any agreement between Mortgagor or Borrower and Mortgagee, whether or not in writing, relating to (i) any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, cap, collar or floor transaction, swap option, or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and unless the context otherwise clearly requires, any master agreement relating to or governing any or all of the foregoing, (ii) funds transfers, whether by Fedwire, Automated Clearing House or other means, and (iii) granting provisional credit for deposits or paying checks, drafts or other instruments.

The term "obligations" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, joint or several, including without limitation, all principal, interest, charges, including prepayment charges and late charges, and loan fees at any time accruing or assessed on any Secured Obligation.

As used herein, the term "Loan Documents" means the Note, this Mortgage, the Loan Agreement between Borrower and Mortgagee of even date herewith (as amended or otherwise modified from time to time, the "Loan Agreement"), the Mortgagor Guaranty and all related agreements executed by Borrower or Mortgagor, and any and all modifications,

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extensions, renewals and replacements thereof, except there shall be excluded from the definition of "Loan Documents" as that term is used in this Mortgage (a) that certain Unsecured Real Estate Environmental Indemnity (the "Indemnity Agreement") of even dated herewith made by Borrower, KHP FUND III, L.P. and KHP III Hotel Holding, LLC (collectively, the "KHP Guarantors") in favor of Mortgagee and (b) each guaranty of the obligations of Borrower to Mortgagee under the Loan Agreement executed by the KHP Guarantors (the "KHP Guaranties"). The Secured Obligations may be indexed, amended, modified, adjusted, renewed or renegotiated as provided in the Loan Agreement or by agreement of the applicable parties to the Loan Documents. Borrower's and the KHP Guarantors' obligations under the Indemnity Agreement, and the KHP Guarantors' obligations under the KHP Guaranties are not secured by this Mortgage. Except as provided in the preceding sentence, all terms of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property are hereby deemed to have notice of the terms of the Secured Obligations and that this Mortgage secures future advances, and to have notice, if provided therein, that: (a) the Note, the Loan Agreement or any other Secured Obligation may permit borrowing, repayment and reborrowing and (b) the rate of interest on one or more of the Secured Obligations may vary from time to time. Absent default under the terms of the Secured Obligations, all advances thereunder by Mortgagee are obligatory and are secured by this Mortgage. All such obligatory advances shall have the same priority as the funds initially advanced under any such Secured Obligation.

MORTGAGOR HEREBY REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

## 1. TITLE AND USE

### 1.1 Warranty of Title

Mortgagor warrants, represents, covenants and agrees as follows: (a) Mortgagor holds a valid leasehold interest to the Premises and marketable fee-simple title to the other portions of the Property, and upon acquiring the fee-simple interest in the Property, will hold marketable fee-simple interest in all of the Property, with the full right and power to grant, convey and assign the Property; (b) the Property is free from liens, encumbrances, exceptions and other charges of any kind whatsoever, except for the Permitted Exceptions (as such term is defined in the Loan Agreement); (c) no other lien or encumbrance, whether superior or inferior to this Mortgage, shall be created or suffered to be created by Mortgagor without the prior written consent of Mortgagee; (d) no default on the part of Mortgagor or, to Mortgagor's Knowledge, any other person exists under any of the Permitted Exceptions and all of the Permitted Exceptions are in full force and effect and in good standing, without modification; (e) complete and current copies of the Permitted Exceptions have been furnished to Mortgagee, and none of the Permitted Exceptions have been or will be modified by Mortgagor without Mortgagee's prior written consent to the extent required by the Loan

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Agreement; (f) Mortgagor shall comply in all material respects with all the terms of the Permitted Exceptions and shall deliver to Mortgagee a copy of all material claims, demands and notices delivered to Mortgagor in connection with the Permitted Exceptions; (g) Mortgagee has the right to contact the other parties to the Permitted Exceptions to confirm the status thereof, and Mortgagor shall, from time to time, but in any event no more than once per calendar year, at the reasonable request of Mortgagee, request of such parties a certificate confirming such information regarding the Permitted Exceptions as Mortgagee may reasonably request or as permitted under such Permitted Exceptions; and (h) Mortgagor shall warrant and defend the Property unto Mortgagee against all claims and demands of any other person whatsoever, subject only to nondelinquent taxes and assessments and the Permitted Exceptions while this Mortgage is in effect. As used herein, "Knowledge" means the actual knowledge of either (i) Ben Rowe, and if Ben Rowe ceases to be an Administrative Member of Kimpton Investment Partners III LLC, then any replacement Administrative Member of Kimpton Investment Partners III LLC; or (ii) Judith Miles, and if Judith Miles ceases to be an Administrative Member of Kimpton Investment Partners III LLC, then any replacement Administrative Member of Kimpton Investment Partners III LLC; and/or (iii) Eric Moulton, and if Eric Moulton ceases to be the asset manager for the Property, then any replacement asset manager for the Property.

## 1.2 Non-Agricultural Use, Commercial Loan

Mortgagor represents and warrants to Mortgagee that (a) the Property is not used principally for agricultural purposes and (b) the Loan secured by this Mortgage was not made primarily for personal, family or household purposes.

## 2. MORTGAGOR'S COVENANTS

### 2.1 Intentionally Omitted

### 2.2 Payment of Taxes, Utilities, Liens and Charges

#### (a) Taxes and Assessments

Except as the same may otherwise be paid under Section 3, and subject to Mortgagor's right to contest such taxes and assessments, Mortgagor shall pay (or cause to be paid) when due directly to the payee thereof all taxes and assessments (including, without limitation, nongovernmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Mortgage. Upon request, Mortgagor shall promptly furnish to Mortgagee all notices of amounts due under this subparagraph and all receipts evidencing such payments.

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## (b) Utilities

Mortgagor shall pay (or cause to be paid) when due all utility charges and assessments for services furnished to the Property.

## (c) Labor and Materials

Mortgagor shall pay (or cause to be paid) when due the claims of all persons supplying labor or materials to or in connection with the Property subject to Mortgagor's right to contest such claims under the Loan Agreement and Section 2.2(d) of this Mortgage.

## (d) Liens and Charges

Mortgagor shall promptly discharge (or cause to be discharged) any lien, encumbrance or other charge, whether superior or inferior to this Mortgage, which may be claimed against the Property; provided that Mortgagor shall have the right to contest the amount or validity in whole or in part of any lien, encumbrance or other charge against the Property as provided in the Loan Agreement.

## (e) Taxes, Assessments and Other Charges Imposed on Mortgagee

If, at any time after the date of this Mortgage, any law is enacted or changed (including any interpretation thereof) which subjects Mortgagee to any increase in any tax (except income taxes), assessment or other charge in any form measured by or based on any portion of the indebtedness secured by this Mortgage, Mortgagor shall pay such increased amount to Mortgagee on demand.

## 2.3 Insurance

### (a) Coverages Required

Mortgagor shall keep (or cause to be kept) the insurance coverages in effect with respect to the Property as required by Borrower under the Loan Agreement.

### (b) Policies

Each insurance policy shall be with a company and in a form acceptable to Mortgagee as required under the Loan Agreement. Each hazard insurance policy shall include a Form 438BFU or equivalent mortgagee endorsement in favor of Mortgagee. Each liability insurance policy shall name Mortgagee as an additional insured. All required policies will provide for written notice to Mortgagee prior to the effective date of any cancellation or material amendment to the extent required under Schedule 4.2 of the Loan Agreement. Mortgagor shall furnish to Mortgagee the original of each required insurance policy, or a certified copy thereof together with a certificate of insurance setting forth the

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coverage, the limits of liability, the carrier, the policy number and the expiration date (except as otherwise provided in Schedule 4.2 of the Loan Agreement). As security for the Secured Obligations, Mortgagor hereby assigns to Mortgagee all required insurance policies, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation.

## (c) Payment; Renewals

Mortgagor shall promptly furnish (or cause to be furnished) to Mortgagee all renewal notices relating to insurance policies. Except as the same may otherwise be paid under Section 3, Mortgagor shall pay (or cause to be paid) all premiums on insurance policies directly to the carrier. At least 30 days prior to the expiration date of each such policy, Mortgagor shall furnish (or cause to be furnished) to Mortgagee a renewal policy in a form acceptable to Mortgagee, together with evidence that the renewal premium has been paid.

## (d) Application of Insurance Proceeds

In the event of any loss for which costs to repair or restore the Property are reasonably expected to be in excess of \$250,000, Mortgagor shall give prompt written notice thereof to the insurance carrier and Mortgagee. Mortgagor hereby authorizes Mortgagee to receive insurance proceeds (the "Net Proceeds") on behalf of Mortgagor; provided, however, if the Net Proceeds shall be less than the \$500,000 (the "Threshold Amount") and the costs of repairing or restoring the Property as nearly as possible to the condition of the Property immediately prior to the event of loss shall be less than the Threshold Amount, the Net Proceeds shall be disbursed by Mortgagee to Mortgagor upon receipt. Mortgagee may participate in any settlement discussions with any insurance companies (and shall approve the final settlement, which approval shall not be unreasonably withheld or delayed) with respect to any casualty in which the net proceeds or the costs of completing the Restoration are equal to or greater than the Threshold Amount. If the Net Proceeds are equal to or greater than the Threshold Amount or the costs of repairing or restoring the Property is equal to or greater than the Threshold Amount, Mortgagee shall make the Net Proceeds available to repair or restore the Property in accordance with and subject to Section 2.3(e). Mortgagee shall apply any Net Proceeds equal to or greater than the Threshold Amount received by it hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and then, in its absolute discretion and without regard to the adequacy of its security, to:

(1) The payment of the Secured Obligations, whether then due and payable or not. Any such application of proceeds to principal on the Note shall be without the imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof; or

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(2) The reimbursement of Mortgagor, under Mortgagee's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Mortgagee may, at its option, condition the reimbursement on Mortgagee's approval of the plans and specifications of the reconstruction, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Mortgagee may reasonably require.

Nothing herein contained shall be deemed to excuse Mortgagor from restoring, repairing or maintaining the Property as provided in Section 2.4, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount.

Notwithstanding anything herein to the contrary, (i) for so long as that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of the date hereof (the "Borrower Mortgage"), between Borrower, as mortgagor, and Mortgagee, as mortgagee, is in effect, Mortgagor shall not be required to comply with Section 2.3(d) hereof provided that the Borrower complies with Section 2.3(d) of the Borrower Mortgage, and (ii) the provisions of Section 2.3(d) are subject in all respects to the provisions of the Ground Lease, and in the event of a conflict between the terms of Section 2.3(d) and the Ground Lease, the terms of the Ground Lease shall control.

## (e) Application of Insurance Proceeds to Restoration

Notwithstanding the provisions of Section 2.3(d), Mortgagor, rather than Mortgagee, shall have the right to direct the application of Net Proceeds to payment of the Secured Obligations or to repair or restoration of the Property upon satisfaction of the following conditions:

(1) There is then no Default (as defined in the Loan Agreement) or Event of Default.

(2) If the proceeds are to be applied to repair or restoration, then in addition to the matters required under Section 2.3(d)(2) above, Mortgagee shall have approved in its reasonable, good faith discretion each of the following with respect to the repair or restoration: (i) the construction contract, and if required by Mortgagee, payment and performance bonds with dual obligee rider; (ii) evidence that the insurance proceeds are adequate to restore the Property to its condition immediately prior to the casualty, and if insufficient, the deficiency shall be deposited with Mortgagee for disbursement prior to disbursement of insurance proceeds; (iii) evidence that Mortgagor has funds or insurance proceeds sufficient to pay operating expenses, taxes, debt service and other carrying costs of the Property through the period of repair or restoration; (iv) evidence that upon such repair or restoration, the Property will be in substantial compliance with all applicable laws, ordinances and regulations; (v) reasonable evidence that such repair or restoration of the

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Property will be completed at least 30 days before the current maturity date under the Note; and (vi) evidence that upon the completion of any such repair or restoration of the Property will produce sufficient income and be of sufficient value to be adequate security for the Secured Obligations.

(3) Each disbursement shall be made in accordance with and subject to the provisions of the Loan Agreement.

(4) Mortgagor shall execute and deliver to Mortgagee such additional security documents and instruments as Mortgagee deems necessary to continue and to perfect Mortgagee's security interest in the Property.

Notwithstanding anything herein to the contrary, (i) for so long the Borrower Mortgage is in effect, Mortgagor shall not be required to comply with Section 2.3(e) hereof provided that the Borrower complies with Section 2.3(e) of the Borrower Mortgage, and (ii) the provisions of Section 2.3(e) are subject in all respects to the provisions of the Ground Lease, and in the event of a conflict between the terms of Section 2.3(e) and the Ground Lease, the terms of the Ground Lease shall control.

## (f) Transfer of Title

If the Property is sold pursuant to Section 4 or if Mortgagee otherwise acquires title to the Property, Mortgagee shall have all of the right, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition (provided that the foregoing shall not apply to proceeds of business interruption or liability insurance).

## 2.4 Preservation and Maintenance of Property; Right of Entry

### (a) Preservation and Maintenance

Mortgagor represents and warrants that the Improvements are free from damage caused by fire or other casualty. Mortgagor shall (i) not commit or suffer any physical waste or permit any impairment or deterioration of the Property, (ii) not abandon the Property, (iii) restore or repair (or cause to be restored or repaired) promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) keep (or cause to be kept) the Property, including the improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and shall replace (or cause to be replaced) fixtures, equipment, machinery and appliances of the Property when necessary in Mortgagor's reasonable discretion to keep such items in good condition and repair, and (v) generally operate and

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maintain (or cause the same to be operated and maintained) the Property in a commercially reasonable manner.

## (b) Alterations

None of the Improvements shall be structurally altered, removed or demolished, in whole or in part, without Mortgagee's prior written consent not to be unreasonably withheld, conditioned or delayed, provided Mortgagee's consent shall not be required for (w) the Construction (as defined in the Loan Agreement), (x) capital improvements, the anticipated cost of which do not exceed \$500,000, (y) alterations which are required to be performed under the Operating Agreement (as defined in the Loan Agreement), or (z) any alterations or improvements required on an urgent basis to address life-safety issues (provided that Mortgagor uses commercially reasonable efforts to promptly notify Mortgagee thereof). Mortgagor shall not remove any fixture or chattel covered by this Mortgage and adapted to the use and enjoyment of the Property at any time without Mortgagee's prior written consent unless actually replaced by an article of equal suitability which is owned by Mortgagor free and clear of any lien or security interest.

## (c) Right of Entry

Mortgagee is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property to determine Mortgagor's compliance with this Section.

### 2.5 Intentionally Omitted

### 2.6 Use of Property

Mortgagor represents and warrants to Mortgagee that the Land, the Improvements and their intended use by Mortgagor comply in all material respects with all applicable restrictive covenants, zoning and subdivision laws, ordinances, regulations and legal requirements, building codes, flood disaster laws, applicable health and environmental laws and regulations and all other laws, ordinances, regulations, orders and legal requirements issued by any state, federal or municipal authority having or claiming jurisdiction over the Property. Mortgagor shall comply, in all material respects, with all laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions applicable to the Property and its intended use. Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the use for which all or any part of the Property was intended at the time this Mortgage was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property without Mortgagee's prior written consent not to be unreasonably withheld, conditioned or delayed.



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## 2.7 Condemnation

### (a) Proceedings

Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking (including, without limitation, any change in the grade of the Property), whether direct or indirect, of the Property or part thereof or interest therein, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Mortgagor authorizes Mortgagee, at Mortgagee's option, to settle or compromise any claim with respect to proceeds from such claim which exceed the Threshold Amount in connection with such condemnation or other taking. Subject to Article 14 of the Ground Lease, all awards, payments, damages, direct, consequential and otherwise, claims and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Mortgagee, and all proceeds of any such awards, payments, damages or claims shall be paid to Mortgagee.

### (b) Application of Condemnation Proceeds

Mortgagee shall apply any such proceeds in the manner and upon the terms and conditions set forth in Section 2.3(d) relating to the application of insurance proceeds.

## 2.8 Protection of Mortgagee's Security

Mortgagor shall give notice to Mortgagee of and shall appear in and defend any action or proceeding that may, if adversely determined, affect the Property in material manner, the interests of Mortgagee therein, or the rights or remedies of Mortgagee under the Loan Documents. If any such action or proceeding is commenced and there is an uncured Event of Default, or Mortgagor fails to perform any of the Secured Obligations beyond any applicable notice and cure period, Mortgagee may, at its option following notice to Mortgagor, make any appearances, disburse any sums, pay or settle any claims that have resulted in or may result in a lien of any portion of the Property, make any entries upon the Property and take any actions as may be necessary or desirable to (i) protect or enforce the security of this Mortgage, (ii) remedy Mortgagor's failure to perform the Secured Obligations (without waiving such default by Mortgagor), or (iii) otherwise protect Mortgagee's interests in the Property. Mortgagor shall pay all actual out-of-pocket losses, damages, fees, costs and expenses incurred by Mortgagee in taking such actions; including, without limitation, reasonable legal fees.

## 2.9 Reimbursement of Mortgagee's Expenses

All amounts disbursed by Mortgagee pursuant to Section 2.8 or any other provision of this Mortgage or the other Loan Documents, with interest thereon at the Default Rate (as such term is defined in the Loan Agreement) from the date of disbursement until repaid, shall

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constitute a Secured Obligation. All such amounts shall be immediately due and payable and bear interest from the date of disbursement at the lesser of the Default Rate or the maximum rate permitted by law.

## 2.10 Books and Records on Property

Mortgagor shall keep and maintain at Mortgagor's address stated above or at the Property, or such other place as Mortgagee may approve in writing, books of account and records adequate to reflect correctly the results of operation of the Property and copies of all written contracts, leases and other documents affecting the Property. Such books, records, contracts, leases and other documents shall be subject to examination, inspection and copying at any reasonable time upon advanced written notice by Mortgagee, but in any event, no more than one per year, unless an Event of Default is continuing. Mortgagor shall furnish to Mortgagee, within 30 days after Mortgagee's request therefor, the following documents, each certified to Mortgagee by Mortgagor as being true, correct and complete in all material respects: (a) copies of all leases and other agreements for occupancy or use of all or any portion of the Property, (b) a rent roll for the Property, showing the name of each tenant, and for each tenant, the suite occupied, the number of square feet rented, the lease expiration date, the rent payable, the date through which rent has been paid, the amount of any security deposit, and the number and term of any renewal options, (c) copies of the most recent real and personal property tax statements for the Property, and (d) copies of the most recent statements for the insurance coverage maintained pursuant to this Mortgage.

## 2.11 Leasehold Provisions

(a) Mortgagor hereby covenants and warrants and represents to Mortgagee with respect to the Ground Lease and Mortgagor's leasehold estate thereunder as follows:

(1) As of the date hereof, the Ground Lease is in full force and effect and, except as otherwise disclosed to the Mortgagee prior to the date hereof, unmodified by any writing or otherwise;

(2) As of the date hereof, all rent, additional rent and/or other charges reserved in or payable under the Ground Lease have been paid to the extent that they are payable to the date hereof;

(3) As of the date hereof, Mortgagor enjoys the quiet and peaceful possession of the leasehold estate;

(4) As of the date hereof, Mortgagor has not delivered or received any notices of default under the Ground Lease and is not in default under any of the terms of the Ground Lease and there are no circumstances which, with the passage of time or the giving of notice or both, would constitute a default under the Ground Lease;

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- (5) As of the date hereof, the lessor under the Ground Lease is not in default under any of the terms of the Ground Lease on its part to be observed or performed;
- (6) As of the date hereof, Mortgagor has delivered to Mortgagee a true, accurate and complete copy of the Ground Lease;
- (7) Mortgagor shall timely pay the rent and all other sums and charges payable under the Ground Lease;
- (8) Mortgagor shall timely perform and observe all of the terms, covenants and conditions required to be performed and observed by the lessee under the Ground Lease, the breach of which could (beyond applicable notice and/or cure periods) permit any party to the Ground Lease to validly terminate the Ground Lease (including, but without limiting the generality of the foregoing, any payment obligations), shall do all things necessary to preserve and to keep unimpaired its rights under the Ground Lease, shall not waive, excuse or discharge any of the material obligations of the lessor under the Ground Lease without Mortgagee's prior written consent in each instance (which consent shall not be unreasonably withheld, conditioned or delayed) and shall diligently and continuously enforce the material obligations of the lessor under the Ground Lease;
- (9) Mortgagor shall not do, permit or suffer any event or omission as a result of which there could occur a default under the Ground Lease or any event which, with the giving of notice or the passage of time, or both, would constitute a default under the Ground Lease which could permit any party to the Ground Lease to validly terminate the Ground Lease (including, but without limiting the generality of the foregoing, a default in any payment obligation);
- (10) Mortgagor shall not cancel, terminate, surrender, modify or amend or in any way alter or permit the alteration of any of the provisions of the Ground Lease or agree to any termination, amendment, modification or surrender of the Ground Lease without Mortgagee's prior written consent in each instance (which consent shall not be unreasonably withheld, conditioned or delayed);
- (11) Mortgagor will promptly notify Mortgagee of any defaults by any party under the Ground Lease and shall deliver to Mortgagee copies of any notice of default by any party under the Ground Lease, or of any notice from the lessor under the Ground Lease of its intention to terminate the Ground Lease or to reenter and take possession of the Property, promptly upon delivery or receipt of such notice, as the case may be;

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(12) Mortgagor shall promptly furnish to Mortgagee copies of such information and evidence as Mortgagee may reasonably request concerning Mortgagor's due observance, performance and compliance with the terms, covenants and conditions of the Ground Lease;

(13) Mortgagor shall not consent to the subordination of the Ground Lease to any mortgages of the fee interest and/or leasehold interest in the Property;

(14) Any default under the Ground Lease or any failure by Mortgagor to perform its obligations under the Ground Lease shall constitute a default hereunder; and

(15) Mortgagor, at its sole cost and expense, shall execute and deliver to Mortgagee, within five days after request, such documents, instruments or agreements as may be required to permit Mortgagee to cure any default under the Ground Lease.

(b) In the event of default by Mortgagor in the performance of any of its obligations under the Ground Lease, including, but without limiting the generality of the foregoing, any default in the payment of any sums payable thereunder, then, in each and every case, Mortgagee may, at its option, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Mortgagor thereunder in the name of and on behalf of Mortgagor. Mortgagor shall, on demand, reimburse Mortgagee for all advances made and expenses incurred by Mortgagee in curing any such default (including, without limiting the generality of the foregoing, reasonable attorneys' fees and disbursements), together with interest thereon computed at the Default Rate from the date that such advance is made, to and including the date the same is paid to Mortgagee.

(c) Mortgagor shall give Mortgagee notice of its intention to exercise each and every option, if any, to extend the term of the Ground Lease, at least 30 days prior to the expiration of the time to exercise such option under the terms thereof. If Mortgagor intends to extend the term of the Ground Lease, it shall deliver to Mortgagee, with the notice of such decision, a copy of the notice of extension delivered to the lessor thereunder, together with the terms and conditions of such extension.

(d) Mortgagor shall request and make diligent efforts to obtain, within 30 days after written demand by Mortgagee, an estoppel certificate from the lessor under the Ground Lease setting forth (i) the name of the lessee and the lessor thereunder, (ii) that the Ground Lease is in full force and effect and has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (iii) the basic rent payable under the Ground Lease, (iv) the date to which all rental charges have been paid by the lessee under the Ground Lease, (v) whether a notice of default has been received by the lessor under the Ground Lease which has not been cured, and if such notice has been received, the date it was received and the nature of the default, (vi) whether there are any

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alleged defaults of the lessee under the Ground Lease and, if there are, setting forth the nature thereof in reasonable detail, and (vii) if the lessee under the Ground Lease shall be in default, a complete description of the default.

(e) Anything contained herein to the contrary notwithstanding, this Mortgage shall not constitute an assignment of the Ground Lease within the meaning of any provision thereof prohibiting its assignment and Mortgagee shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage. Mortgagee shall be liable for the obligations of the lessee arising under the Ground Lease for only that period of time which Mortgagee is in possession of the Property or has acquired, by foreclosure or otherwise, and is holding all of Mortgagor's right, title and interest therein.

(f) It is hereby agreed that the fee title and leasehold estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of any of said estates in either the lessor under the Ground Lease, Mortgagor or a third party, whether by purchase or otherwise. If Mortgagor shall acquire fee title to the property leased to Mortgagor, or any other estate, title or interest in the property demised under the Ground Lease, or any portion thereof, then, immediately upon Mortgagor's acquisition thereof, this Mortgage automatically shall spread to cover Mortgagor's interest in such leased property on the same terms, covenants and conditions as set forth herein. Upon such acquisition, Mortgagor, at its sole cost and expense, shall deliver to Mortgagee an ALTA Form B Mortgage Title Insurance Policy issued by the Title Company (as defined in the Loan Agreement), insuring that this Mortgage, as so spread to cover Mortgagor's interest in such leased property, is a valid first lien on Mortgagor's interest therein, subject only to the Permitted Exceptions. It is the intention of Mortgagor and Mortgagee that no documents, instruments or agreements shall be necessary to confirm the foregoing spread of this Mortgage to cover Mortgagor's interest in such leased property, as aforesaid, and that such spread shall occur automatically upon the consummation of Mortgagor's acquisition of such estate, title or interest to such leased property. Notwithstanding the foregoing, Mortgagor shall make, execute, acknowledge and deliver to Mortgagee or so cause to be made, executed, acknowledged and delivered to Mortgagee, in form satisfactory to Mortgagee, all such further or other documents, instruments, agreements or assurances as may be required by Mortgagee to confirm the foregoing spread of this Mortgage to cover Mortgagor's interest in such leased property. Mortgagor shall pay all expenses incurred by Mortgagee in connection with the preparation, execution, acknowledgement, delivery and/or recording of any such documents, including, but without limiting the generality of the foregoing, all filing, registration and recording fees and charges, documentary stamps, mortgage taxes, intangible taxes and reasonable attorneys' fees, costs and disbursements.

(g) If any action or proceeding shall be instituted to evict Mortgagor or to recover possession of the Property or any part thereof or interest therein or any action or proceeding otherwise affecting the Ground Lease or this Mortgage shall be instituted, then Mortgagor will, immediately upon service thereof on or to Mortgagor, deliver to Mortgagee a true and

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complete copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings and papers, however designated, served in any such action or proceeding.

(h) If the Ground Lease contains provisions which require mandatory arbitration for the resolution of any disputes arising under the Ground Lease and, to the extent Mortgagor has any rights to agree to or approve such arbitration, Mortgagor will not agree to arbitrate any disputes arising under the Ground Lease without the written consent of Mortgagee, which consent can be withheld at the sole discretion of Mortgagee. Notwithstanding the foregoing, in the event that Mortgagee consents to such an arbitration, Mortgagor will give Mortgagee prompt written notice of the commencement of such arbitration and so long as no Event of Default shall have occurred and be continuing, (i) Mortgagee shall have the right to intervene and participate in any such proceeding, (ii) Mortgagor shall confer with Mortgagee to the extent which Mortgagee reasonably deems necessary for the protection of Mortgagee, upon the written request of Mortgagee, and (iii) Mortgagor shall select an arbitrator who is approved in writing by Mortgagee; provided, however, that if at the time any such proceeding shall be commenced or shall be in progress an Event of Default shall have occurred and be continuing, Mortgagor hereby irrevocably appoints and constitutes Mortgagee as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, to exercise, at the expense of Mortgagor, all right, title and interest of Mortgagor in connection with such arbitration, including the right to appoint arbitrators and to conduct arbitration proceedings on behalf of Mortgagor. Nothing contained herein shall obligate Mortgagee to participate in such arbitration.

(i) Mortgagor shall, within ten days after written demand therefor from Mortgagee, deliver to Mortgagee proof of payment of all items that are required to be paid by Mortgagor under the Ground Lease, including, without limitation, rent and other charges required to be paid under the Ground Lease.

(j) If the Ground Lease shall be terminated prior to the natural expiration of its term, and if Mortgagee or its designee shall acquire from the lessor under such Ground Lease a new lease of the Property demised thereunder and the improvements located thereon, Mortgagor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

### 3. RESERVES

#### 3.1 Deposits

If required by Mortgagee, Mortgagor shall, at the time of making each monthly installment payment under the Loan Agreement, deposit with Mortgagee a sum, as estimated by Mortgagee, equal to (i) the taxes and special assessments next due on the Property, and

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(ii) the premiums that will next become due on insurance policies as may be required under this Mortgage, less all sums already deposited therefor, divided by the number of months to elapse before two months prior to the date when such taxes and special assessments will become delinquent. If required by Mortgagee, Mortgagor shall promptly deliver to Mortgagee all bills and notices with respect to any taxes and assessments. Unless Mortgagor and Mortgagee otherwise agree in writing, Mortgagee shall not be required to pay Mortgagor any interest, earnings or profits on any sums deposited with Mortgagee. All sums deposited with Mortgagee under this Section 3.1 are hereby pledged as security for the Secured Obligations.

### 3.2 Application of Deposits

All such deposited sums shall be held by Mortgagee and applied in such order as Mortgagee elects to pay such taxes, assessments, premiums and other impositions or, upon any continuing Event of Default, may be applied in whole or in part, to the Secured Obligations. The arrangement provided for in this Section 3 is solely for the added protection of Mortgagee and entails no responsibility on Mortgagee's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Mortgage by Mortgagee, any funds on hand shall be turned over to the assignee and any responsibility of Mortgagee with respect thereto shall terminate. Each transfer of the Property in accordance with Section 4 shall automatically transfer to the transferee all rights of Mortgagor with respect to any funds deposited hereunder. Upon payment in full of the Secured Obligations, Mortgagee shall promptly refund to Mortgagor the remaining balance of any deposits then held by Mortgagee.

### 3.3 Adjustments to Deposits

If the total deposits held by Mortgagee exceed the amount deemed necessary by Mortgagee to provide for the payment of such taxes, assessments and premiums and such excess shall, provided there is no continuing Event of Default or any event which would constitute an Event of Default if not cured within the time allowed, be credited by Mortgagee on the next due installment or installments of such deposits. If at any time the total deposits held by Mortgagee are less than the amount deemed necessary by Mortgagee in its reasonable good faith discretion to provide for the payment of such taxes and assessments and premiums, Mortgagor shall promptly deposit the deficiency with Mortgagee after receipt of written demand from Mortgagee.

### 3.4 Conditional Waiver

Notwithstanding the foregoing, Mortgagee shall not require the payment of reserves as provided in this Section until a delinquency occurs in the payment of such taxes and assessments, premiums and other impositions, or until the occurrence and continuance of an Event of Default.

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## 3.5 Waiver of Required Deposits

Notwithstanding anything to the contrary contained in this Agreement, Mortgagor shall be relieved of its obligation to make deposits under Section 3 of this Mortgage for so long as Borrower is required to and does make all such required deposits into pursuant to Section 3 of the Borrower Mortgage or such deposits are expressly not required to be made into pursuant to the Borrower Mortgage.

## 4. RESTRICTIONS ON TRANSFER OR ENCUMBRANCE

(a) Neither the Property nor any part thereof or interest therein shall be encumbered, sold (by contract or otherwise), conveyed, leased or otherwise transferred by Mortgagor other than pursuant to that certain Ground Sublease dated as of July 2, 2015 between Borrower, as sublessee, and Mortgagor, as lessor, as the same may be amended from time to time (the "Borrower Sublease") and that certain Master Lease between Borrower, as lessor, and 39 Chicago Master Tenant LLC, as the same may be amended from time to time (the "Master Lease") and the rights of the tenants thereunder; nor shall (except with respect to the Permitted Transfers defined below or in accordance with the Loan Agreement) there be any change in (i) the ownership or control of any of Mortgagor's stock if Mortgagor is a corporation, (ii) the ownership or control of any membership interest in Mortgagor if Mortgagor is a limited liability company, (iii) the ownership or control of any general partnership interest in Mortgagor if Mortgagor is a partnership, (iv) the direct or indirect ownership or control of any beneficial interests in Mortgagor if Mortgagor is not otherwise a natural person or persons, or (v) the ownership or control of any stock, membership, any partnership interest or any other beneficial interest in any corporation, partnership or other entity that KHP Fund III, L.P., a California limited partnership, has a direct or indirect ownership interest in, which entity also has a direct or indirect ownership interest in Mortgagor. Any such action without Mortgagee's prior written consent shall be deemed to increase the risk of Mortgagee and shall constitute an Event of Default if not corrected within five days after Mortgagee's delivery of written demand to Mortgagor. Mortgagee may, in its sole discretion, consent to any such action subject to such terms and conditions as Mortgagee may require.

(b) Notwithstanding the foregoing, the following transfers shall not be subject to Mortgagee's consent (collectively, the "Permitted Transfers"):

(i) any sale, conveyance or other transfer of any limited partnership interests in KHP Fund III, L.P. ("KHP Fund III");

(ii) any transfers by Kimpton Investment Partners III LLC, a Delaware limited liability company ("KIP III"), of interests in KHP Fund III, provided that following any such transfer KIP III (a) owns not less than 0.75% of the equity interests in KHP Fund III and (b) is the sole general partner of KHP Fund III;



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- (iii) any transfer of interests in KIP III by and among members of KIP III;
- (iv) any transfer of interests in KHP III GP, LLC (a) to or among the executives responsible for the day-to-day management of KHP Fund III or (b) by members of KHP III GP, LLC (1) for legitimate estate planning purposes or (2) resulting from the death, incapacity, disability or divorce of any such members;
- (v) any transfer of, or transfer of interests in, Kimpton Group Holding LLC;
- (vi) any transfer of interests in Kearny Street III LLC, a Delaware limited liability company ("Kearny III"): (a) to or among the executives responsible for the day-to-day management of KHP Fund III or (b) by members of Kearny III (1) for legitimate estate planning purposes or (2) resulting from the death, incapacity, disability or divorce of such members.
- (vi) the Borrower Sublease or Master Lease; and
- (vii) any other transfer to which Mortgagee has consented in writing in its sole discretion.

## 5. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

### 5.1 Grant to Mortgagee

This Mortgage constitutes a security agreement pursuant to the Uniform Commercial Code with respect to:

- (a) Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Mortgage, and any sums deposited with Mortgagee by Mortgagor pursuant to the terms of Section 3.1 herein; and
- (b) Any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Mortgagor as Debtor and Mortgagee as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of this Mortgage);

and Mortgagor hereby grants Mortgagee a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations. Mortgagor hereby authorizes Mortgagee to file or cause to be filed such financing statements as reasonably deemed necessary to perfect, preserve, continue, extend in time or maintain the security interests herein contained. To the extent permitted by applicable law, such financing statements may contain a description of collateral broader than as set forth in this Mortgage.

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Mortgagor and Mortgagee agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall be construed as limiting the parties' stated intention that everything used in connection with the production of income from the Property, or adapted for use therein, or which is described or reflected in this Mortgage, is and at all times shall be regarded as part of the Land.

## 5.2 Mortgagee's Rights and Remedies

With respect to the Property subject to the foregoing security interest, Mortgagee shall have all of the rights and remedies (i) of a secured party under the Uniform Commercial Code, (ii) provided herein, including, without limitation, the right to cause such Property to be sold by Mortgagee under the power of sale granted by this Mortgage, and (iii) provided by applicable law. In exercising its remedies, Mortgagee may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies. Upon demand by Mortgagee following a continuing Event of Default hereunder, Mortgagor shall assemble any items of personal property and make them available to Mortgagee at the Land. Mortgagee shall give Mortgagor at least ten days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law.

## 5.3 Use

(a) None of the personal property shall be used for any unlawful purpose, for hire or in any way which would limit or void any insurance required to be maintained under this Mortgage.

(b) The personal property is not used or bought for personal, family or household purposes.

## 6. ASSIGNMENT OF RENTS AND LEASES

### 6.1 Assignment of Rents and Leases

As security for the Secured Obligations, Mortgagor assigns and transfers to Mortgagee and grants Mortgagee a security interest in and to all right, title and interest of Mortgagor in and to: (a) any and all present and future leases, subleases, and licenses and other agreements for the occupancy or use of all or any part of the Property, and any and all extensions, renewals and replacements thereof ("Leases"); (b) all cash or security deposits, advance rentals and deposits of a similar nature under the Leases; (c) any and all guarantees of tenants' or occupants' performances under any and all Leases; and (d) all rents, issues,

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profits, accounts and revenues ("Rents") now due or which may become due or to which Mortgagor may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including, without limitation, minimum, additional, percentage and deficiency rents and liquidated damages.

## 6.2 Collection of Rents

So long as no Event of Default exists hereunder, Mortgagor shall have a license to, and shall, collect and receive all Rents of the Property as trustee for the benefit of Mortgagee and Mortgagor, apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency, second to the cost of insurance, maintenance and repairs required by the terms of this Mortgage, and third to the Secured Obligations, with the balance, if any, to the account of Mortgagor provided there is no continuing Event of Default. Upon delivery of written notice by Mortgagee to Mortgagor of an Event of Default hereunder, and stating that Mortgagee exercises its rights to the Rents, and without the necessity of Mortgagee entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Mortgagee shall immediately be entitled to possession of all Rents from the Property as the same become due and payable, including, without limitation, Rents then due and unpaid, and all such Rents shall immediately upon delivery of such notice be held by Mortgagor as trustee for the benefit of Mortgagee only. Upon delivery of such written notice by Mortgagee, Mortgagor hereby agrees to direct each tenant or occupant of the Property to pay all Rents to Mortgagee on Mortgagee's written demand therefor, without any liability on the part of said tenant or occupant to inquire further as to the existence of an Event of Default by Mortgagor. Mortgagor hereby authorizes Mortgagee as Mortgagor's attorney-in-fact to make such direction to tenants and occupants upon Mortgagor's failure to do so as required herein. Payments made to Mortgagee by tenants or occupants shall, as to such tenants and occupants, be in discharge of the payors' obligations to Mortgagor. Mortgagee may exercise, in Mortgagee's or Mortgagor's name, all rights and remedies available to Mortgagor with respect to collection of Rents. Nothing herein contained shall be construed as obligating Mortgagee to perform any of Mortgagor's obligations under any of the Leases.

## 6.3 Mortgagor's Representations and Warranties

As of the date hereof, Mortgagor hereby represents and warrants to Mortgagee that Mortgagor has not executed and will not execute any other assignment of said Leases or Rents, that Mortgagor has not performed and will not perform any acts and has not executed and will not execute any instrument which would prevent Mortgagee from exercising its rights under this Section 6, and that at the time of execution of this Mortgage there has been no anticipation or prepayment of any of the Rents of the Property for more than two (2) months prior to the due dates thereof (except with respect to advance deposits for bookings at the Property). Mortgagor further represents and warrants to Mortgagee that to Mortgagor's

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Knowledge all existing Leases are in good standing and there is no default by Mortgagor thereunder, and that there is no event or condition which, with notice or the passage of time or both, would be a default by Mortgagor thereunder, and would be reasonably expected to materially and adversely affect the Property. Mortgagor shall execute and deliver to Mortgagee such further assignments of Rents and Leases of the Property as Mortgagee may from time to time request.

## 6.4 Leases of the Property

Mortgagor shall comply in all material respects with and observe Mortgagor's obligations as landlord under all Leases (including, without limitation, Borrower Sublease) and will use reasonable efforts to do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or setoff. At Mortgagee's request, Mortgagor shall furnish Mortgagee with executed copies of all Leases now existing or hereafter made, excluding short term leases of or agreement to use hotel rooms, meeting rooms, banquet halls or similar facilities on the Property. Mortgagor shall be entitled to enter into, amend, modify or terminate any Leases; provided that any Leases for a term in excess of one year and of seven hundred fifty (750) square feet or more at the Property ("Major Leases") shall: (a) be upon terms and with tenants approved in writing by Mortgagee prior to Mortgagor's execution of any such lease; and (b) include estoppel, subordination, attornment and mortgagee protection provisions satisfactory to Mortgagee. Without Mortgagee's written consent not to be unreasonably withheld, conditioned or delayed, Mortgagor shall not (a) collect or accept payment of any Rents in respect of any Leases more than one month prior to the due dates thereof (other than security deposits); (b) modify in any material respect, surrender or terminate (other than a termination resulting from the expiration of the term) any Major Lease, unless by reason of a tenant default and then only in a commercially reasonable manner to preserve and protect the Property; (c) waive, discharge, release or modify in any material respect the obligations of any tenant or other occupant of the Property under any Major Lease; or (d) request or consent to the subordination of any non-residential Lease to any lien subordinate to this Mortgage. Mortgagee shall use commercially reasonable efforts to respond to any request for approval pursuant to this Section 6.4 within ten days; provided, that Mortgagee hereby approves of entry into the Master Lease. In the event that Mortgagee has not responded within such ten day period, Mortgagor may send a second request for approval to Mortgagee that specifies that such approval shall be deemed granted if Mortgagee does not respond within five days, and if Mortgagee does not respond within five days, such approval shall be deemed granted. Any attempted action in violation of this Section 6.4 shall be null and void. Notwithstanding anything contrary in the foregoing, without Mortgagee's prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed, Mortgagor may not cancel, terminate, surrender, modify or amend or in any way alter or permit the alteration of any of the provisions of the Ground Lease or the Borrower Sublease, or agree to any termination, amendment, modification or surrender of the Ground Lease or the Sublease.

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## 6.5 Mortgagee in Possession; Appointment of Receiver

Upon any continuing Event of Default, Mortgagee may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Mortgagee's security, enter upon and take and maintain full control and possession of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Mortgagor could do the same, including, without limitation, the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Mortgagee to protect the security of this Mortgage. From and after any continuing Event of Default, if any owner of the Property shall occupy the Property or part thereof such owner shall pay to Mortgagee in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Mortgagee shall be entitled to remove such owner from the Property by any appropriate action or proceedings. Following a continuing Event of Default, Mortgagee shall be entitled (regardless of the adequacy of Mortgagee's security) to the appointment of a receiver, Mortgagor hereby consenting to the appointment of such receiver.

Said receiver may serve without bond and may be Mortgagee or an employee of Mortgagee. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receivers, all the rights and powers granted to Mortgagee in this Section 6. Mortgagee or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

## 6.6 Application of Rents

All Rents collected subsequent to delivery of written notice by Mortgagee to Mortgagor of an Event of Default shall be applied first to the out-of-pocket costs, if any, of taking control of and managing the Property and collecting the Rents, including, without limitation, reasonable attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Mortgagor under the Leases, and then to other Secured Obligations. Mortgagee or the receiver shall be liable to account only for those Rents actually received. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Property by reason of anything done or left undone by Mortgagee under this Section.

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## 6.7 Deficiencies

To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Mortgagor under the Leases, exceed the Rents of the Property, the excess sums expended for such purposes, plus interest, shall constitute a Secured Obligation. Such excess sums shall be payable upon demand by Mortgagee and shall bear interest from the date of disbursement at the lesser of the Default Rate or the maximum rate permitted by law.

## 6.8 Mortgagee Not Mortgagee in Possession

Nothing herein shall constitute Mortgagee a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property. Entry upon and taking possession by a receiver shall not constitute possession by Mortgagee.

## 6.9 Enforcement

Mortgagee may enforce this assignment without first resorting to or exhausting any security or collateral for the Secured Obligations.

## 7. LOAN AGREEMENT

### 7.1 Intentionally Omitted

### 7.1. Assignment of Claims

From time to time as Mortgagee deems necessary to protect Mortgagee's interest, Mortgagor shall, upon request of Mortgagee, execute and deliver to Mortgagee in such form as Mortgagee shall direct, assignments of any and all rights or claims which relate to the construction of the Improvements, and which Mortgagor may have against any party supplying or who has supplied labor, materials or services in connection with the construction of the Improvements.

### 7.2. Default Under the Loan Agreement

Upon an Event of Default, Mortgagee may, at its option, with or without entry upon the Property, exercise any of the rights or remedies provided in the Loan Agreement, exercise any of the rights or remedies provided in this Mortgage, or do both.

## 8. EVENTS OF DEFAULT

### 8.1 Events of Default

Any one or more of the following is an "Event of Default":

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- (a) Borrower fails to make any payment under the Note or any Secured Obligations when due.
- (b) Mortgagor fails to make any payment under this Mortgage, or any of the other Loan Documents to which it is a party, subject to all applicable grace, notice and cure periods set forth in Article VIII(a) of the Loan Agreement.
- (c) There is a default by Borrower or Mortgagor under any of the Permitted Exceptions, if not cured within any cure period given in the Permitted Exceptions.
- (d) There is a continuing Event of Default as defined in the Loan Agreement or an event of default under any of the other Loan Documents after Mortgagor's exhaustion of all applicable notice, cure and grace periods thereunder.
- (e) There is a continuing Event of Default under the Indemnity Agreement, subject to all applicable notice and cure periods thereunder.
- (f) Mortgagor fails to perform any other covenant, agreement or obligation under the Mortgagor Guaranty.
- (g) Mortgagor fails to perform any other covenant, agreement or obligation under this Mortgage, subject to Mortgagor's right to cure such default within 30 days after having received written notice of such default given by Mortgagee to Mortgagor.
- (h) Mortgagor fails to pay or perform any obligations under the Ground Lease after the expiration of any applicable grace period.

## 8.2 Form of Notice

At Mortgagee's option, any written notice of default given to Mortgagor under Section 8.1 may be given in the form of a statutory notice of default under applicable law or otherwise in accordance with Section 10.6 of the Loan Agreement.

## 9. REMEDIES

### 9.1 Acceleration Upon Default; Additional Remedies

Upon the occurrence and continuance of any Event of Default, subject to all applicable notice and cure periods, Mortgagee may, at its option and without notice to or demand upon Mortgagor, exercise any one or more of the following actions:

- (a) Declare all the Secured Obligations immediately due and payable.

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(b) Bring a court action to enforce the provisions of this Mortgage or any of the other Loan Documents.

(c) To apply to a court of competent jurisdiction for and obtain appointment of a receiver as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Mortgagor consents to such appointment.

(d) Foreclose this Mortgage as a mortgage.

(e) Obtain a deficiency judgment if the net sales proceeds of any sale of the Property under the power of sale granted by this Mortgage or pursuant to a judicial foreclosure are insufficient to pay in full all of the Secured Obligations.

(f) Elect to exercise any and all rights arising out of or related to the Ground Lease and the Leases and the Rents.

(g) Exercise any or all of the other rights and remedies under this Mortgage and the other Loan Documents.

(h) Exercise any other right or remedy available under law or in equity.

## 9.2 Foreclosure Subject to Tenancies; Rejection of Tenancies

(a) Mortgagee shall have the right, at its option, to foreclose this Mortgage subject to the rights of any tenant or tenants of the Property.

(b) In the event that there exists any Event of Default and a receiver is appointed, Mortgagor expressly consents to the right of the receiver to reject the sublease, and upon such request by the receiver, agrees to surrender possession of the Premises without the necessity of a forceable detainer proceeding.

## 9.3 Remedies Cumulative

To the extent permitted by law, every right and remedy provided in this Mortgage is distinct and cumulative to all other rights or remedies under this Mortgage or afforded by law or equity or any other agreement between Mortgagee and Mortgagor, and may be exercised concurrently, independently or successively, in any order whatsoever. Mortgagee may exercise any of its rights and remedies at its option without regard to the adequacy of its security.



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## 9.4 Mortgagee's Expenses

Mortgagor shall pay all of Mortgagee's actual out-of-pocket expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any suit is filed, including, without limitation, legal fees and disbursements, which includes reasonable attorneys' (including paralegals' and similar persons') fees and costs, including but not limited to those for negotiation, trial, appellate, bankruptcy, probate, arbitration, mediation and collection proceedings), foreclosure costs, title charges, and expenses incurred in any bankruptcy, reorganization, liquidation, receivership or similar proceeding. All such sums, with interest thereon, shall be additional indebtedness of Mortgagor secured by this Mortgage. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the lesser of the Default Rate or the maximum rate permitted by law.

## 10. GENERAL

### 10.1 No Offset

Mortgagor's obligation to timely pay and perform all obligations under the Note, this Mortgage, and the other Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance, including, without limitation, any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Mortgagor or any guarantor may have or claim against Mortgagee or any other person or entity. The foregoing shall not constitute a waiver of any claim or demand which Mortgagor or any guarantor may have in damages or otherwise against Mortgagee or any other person or entity; provided that Mortgagor shall maintain a separate action thereon.

### 10.2 Application of Payments

Except as applicable law or this Mortgage may otherwise provide, all payments received by Mortgagee under the Note or this Mortgage may be applied by Mortgagee to the Secured Obligations in such order as Mortgagee, at its option, may determine.

### 10.3 Appraisal Costs

In the event the Financial Institutions Reform, Recovery, and Enforcement Act, as amended, any regulatory agency, or any internal policy of Mortgagee requires Mortgagee to obtain an appraisal of the Property, or in the event that Mortgagee obtains an appraisal in connection with a foreclosure by power of sale or judicially, Mortgagor shall reimburse Mortgagee on demand for payment of the costs of such appraisal, except to the extent provided in the Loan Agreement.

### 10.4 Imposition of Tax

For purposes of this Section, "Tax" shall mean:

MORTGAGE:  
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(a) a specific tax on mortgages, deeds of trust or on all or any part of the indebtedness secured by a mortgage or deed of trust; or (b) a specific tax on the owner of the Property covered by a mortgage or deed of trust which the taxpayer is authorized or required to deduct from payments on the mortgage or deed of trust; or (c) a tax on property covered by a mortgage or deed of trust chargeable against a mortgagee or trustee under the mortgage or deed of trust or the holder of the note secured by the mortgage or deed of trust; or (d) a specific tax (other than an income tax or a gross receipts tax) on all or any portion of the obligations secured hereby or on payments of principal and interest made by a mortgagor under a mortgage or deed of trust. If any Tax is enacted subsequent to the date of this Mortgage, enactment of the Tax shall constitute an Event of Default, and Mortgagee may exercise any or all of the remedies available to it upon the occurrence of any Event of Default, unless Mortgagor pays the Tax (including any tax on the payment made) within 30 days after notice from Mortgagee that the tax law has been enacted.

## 10.5 Release of Mortgage

(a) Upon payment of all Secured Obligations, Mortgagee, without warranty, shall promptly deliver for recording in the appropriate real property records a satisfaction or release of Mortgage for the Property or that portion thereof then covered hereby, from the lien of this Mortgage. Mortgagor shall pay Mortgagee's reasonable costs incurred in so releasing the Property.

(b) Mortgagor agrees that Mortgagee in its sole discretion may release, for such consideration or none, as Mortgagee may require, any portion of the Property without, as to the remainder of the Property, in any way impairing or affecting the lien, security interest and priorities herein provided for Mortgagee compared to any subordinate lien holder or secured party.

## 10.6 Mortgagee's Powers

Without affecting the liability of any person for payment or performance of the Secured Obligations or any of Mortgagee's rights or remedies, Mortgagee, at its option, may extend the time for payment of the Secured Obligations or any part thereof, reduce payment thereon, release anyone liable thereon, accept a renewal note or notes therefor, modify the terms and time of payment thereof, release the lien of this Mortgage on any part of the Property, take or release other or additional security, release or cause to be released all or any part of the Property, or consent to the making of any map or plat of the Property, consent to the granting of any easement or creating any restriction on the Property, or join in any subordination or other agreement affecting this Mortgage or the lien or charge hereof.

Mortgagor shall pay Mortgagee a reasonable service charge, together with such title insurance premiums and reasonable attorneys' fees as may be incurred at Mortgagee's option, for any such action if taken at Mortgagor's request.

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## 10.7 Subdivision

To the extent permitted by applicable law, Mortgagor hereby consents to a subdivision of the Property, if Mortgagee, in its sole discretion, determines that a subdivision of the Property is necessary or desirable to preserve the lien of this Mortgage, or to permit Mortgagee to foreclose on only a portion of the Property.

## 10.8 Subrogation

Mortgagee shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Note or any other indebtedness secured hereby.

## 10.9 Intentionally Omitted

## 10.10 Additional Documents; Power of Attorney

Mortgagor, from time to time, shall execute, acknowledge and deliver to Mortgagee upon request and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Mortgagee, as Mortgagee may request in order to perfect, preserve, continue, extend in time or maintain the assignments herein contained, the lien and security interest under this Mortgage, and the priority thereof. Mortgagor shall pay to Mortgagee upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

## 10.11 Forbearance by Mortgagee Not a Waiver

Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Mortgagee of any particular default shall constitute a waiver of any other default or of any similar default in the future. Without limiting the generality of the foregoing, the acceptance by Mortgagee of payment of any of the Secured Obligations after the due date thereof shall not be a waiver of Mortgagee's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage, nor shall Mortgagee's receipt of any awards, proceeds or damages under Sections 2.3 and 2.7 operate to cure or waive Mortgagor's default in payment of the Secured Obligations.

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## 10.12 Entire Agreement; Modifications and Waivers

This Mortgage, together with the other Loan Documents, the Indemnity Agreement and guaranties constitutes the entire understanding and agreement of Mortgagor and Mortgagee with respect to the Loan. The Loan Documents supersede all prior negotiations, discussions, and agreements with respect to the Loan, may not be contradicted by evidence of any alleged oral agreement, and may not be waived, changed, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

## 10.13 Notice

Any notice to Mortgagor under this Mortgage shall be to the address noted above or such other address as may be designated by Mortgagor in writing and shall be deemed to have been given if delivered in accordance with Section 11.6 of the Loan Agreement.

## 10.14 Governing Law; Severability; Captions

Except to the extent that the federal laws of the United States of America provide Mortgagee with greater rights or remedies, this Mortgage shall be governed by the laws of the State of Illinois. If any provision or clause of this Mortgage conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. The captions and headings of the paragraphs and Sections of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

THE LAWS OF THE STATE OF ILLINOIS SHALL APPLY TO THIS MORTGAGE; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL IN ANY EVENT BE CONSTRUED TO PROVIDE THAT THE SUBSTANTIVE LAW OF THE STATE OF ILLINOIS SHALL APPLY TO THE OBLIGATIONS AND INDEBTEDNESS SECURED BY THIS MORTGAGE, WHICH ARE AND SHALL CONTINUE TO BE GOVERNED BY THE SUBSTANTIVE LAW OF THE STATE OF WASHINGTON.

## 10.15 Definitions

As used herein: the term "Mortgagor" means Mortgagor herein named, together with any subsequent owner of the Property or any part thereof or interest therein; and the term "Mortgagee" means Mortgagee herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

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## 10.16 Successors and Assigns; Agents

This Mortgage shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Section 4. In exercising any rights hereunder or taking actions provided for herein, Mortgagee may act through its employees, agents or independent contractors as authorized by Mortgagee.

## 10.17 Number; Gender

This Mortgage shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

## 10.18 Time

Time is of the essence in connection with all obligations of Mortgagor herein.

## 10.19 Request for Notice

Mortgagor hereby requests that a copy of any notice of default and notice of sale hereunder be mailed to it at its address set forth at the beginning of this Mortgage.

## 10.20 Assignment of Loan Documents

Mortgagee may assign the Loan Documents in whole or in part. Mortgagee may make available to any proposed assignee or participant all credit and financial data with respect to Mortgagor and any guarantor as may be in the possession of Mortgagee. Mortgagor agrees to provide any additional information that any proposed assignee or participant may reasonably request.

## 10.21 Certain Obligations Unsecured

Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Mortgage shall not secure the following obligations (the "Unsecured Obligations"): (a) any obligations evidenced by or arising under the Indemnity Agreement or any KHP Guaranty, and (b) any other obligations in this Mortgage or in any of the other Loan Documents to the extent that such other obligations relate specifically to the presence on the Property of Hazardous Materials and are the same or have the same effect as any of the obligations evidenced by or arising under the Indemnity Agreement. Any breach or default with respect to the Unsecured Obligations shall constitute an Event of Default hereunder, notwithstanding the fact that such Unsecured Obligations are not secured by this Mortgage. Nothing in this Section shall, in itself, impair or limit Mortgagee's right to obtain

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a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all obligations that are secured by this Mortgage following foreclosure.

## 10.22 Jury Waiver

MORTGAGOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING OUT OF THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, WHETHER NOW OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND HEREBY CONSENTS AND AGREES THAT ANY SUCH CLAIM MAY, AT MORTGAGEE'S ELECTION, BE DECIDED BY TRIAL WITHOUT A JURY AND THAT MORTGAGEE MAY FILE AN ORIGINAL COUNTERPART OR COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE WAIVER AND AGREEMENT CONTAINED HEREIN.

## 10.23 Third Party Mortgagor

(a) Mortgagor represents and warrants to Mortgagee that: (i) this Mortgage is executed at Borrower's request; (ii) this Mortgage complies with all agreements between Mortgagor and Borrower regarding Mortgagor's execution hereof; (iii) Mortgagee has made no representation to Mortgagor as to the creditworthiness of Borrower; and (iv) Mortgagor has established adequate means of obtaining from Borrower on a continuing basis financial and other information pertaining to Borrower's financial condition. Mortgagor agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect Mortgagor's risks hereunder. Mortgagor further agrees that Mortgagee shall have no obligation to disclose to Mortgagor any information or material about Borrower which is acquired by Mortgagee in any manner. The liability of Mortgagor hereunder shall be reinstated and revived, and the rights of Mortgagee shall continue if and to the extent that for any reason any amount at any time paid on account of any Secured Obligation is rescinded or must otherwise be restored by Mortgagee, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as though such amount had not been paid. The determination as to whether any amount so paid must be rescinded or restored shall be made by Mortgagee in its sole discretion; provided however, that if Mortgagee chooses to contest any such matter at the request of Mortgagor, Mortgagor agrees to indemnify and hold Mortgagee harmless from and against all costs and expenses, including reasonable attorneys' fees, expended or incurred by Mortgagee in connection therewith, including without limitation, in any litigation with respect thereto.

(b) (i) Mortgagor waives any right to require Mortgagee to: (A) proceed against Borrower or any other person; (B) marshal assets or proceed against or exhaust any security held from Borrower or any other person; (C) give notice of the terms, time and place of any public or private sale or other disposition of personal property security held from Borrower or any other person; (D) take any action or pursue any other remedy in Mortgagee's power; or (E) make any presentment or demand for performance, or give any

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notice of nonperformance, protest, notice of protest or notice of dishonor hereunder or in connection with any obligations or evidences of indebtedness held by Mortgagee as security for or which constitute in whole or in part the Secured Obligations, or in connection with the creation of new or additional obligations.

(ii) Mortgagor waives any defense to its obligations hereunder based upon or arising by reason of: (A) any disability or other defense of Borrower or any other person; (B) the cessation or limitation from any cause whatsoever, other than payment in full, of any Secured Obligation; (C) any lack of authority of any officer, director, partner, agent or any other person acting or purporting to act on behalf of Borrower which is a corporation, partnership or other type of entity, or any defect in the formation of Borrower; (D) the application by Borrower of the proceeds of any Secured Obligation for purposes other than the purposes represented by Borrower to, or intended or understood by, Mortgagee or Mortgagor; (E) any act or omission by Mortgagee which directly or indirectly results in or aids the discharge of Borrower or any portion of any Secured Obligation by operation of law or otherwise, or which in any way impairs or suspends any rights or remedies of Mortgagee against Borrower; (F) any impairment of the value of any interest in any security for the Secured Obligations or any portion thereof, including without limitation, the failure to obtain or maintain perfection or recordation of any interest in any such security, the release of any such security without substitution, and/or the failure to preserve the value of, or to comply with applicable law in disposing of, any such security; (G) any modification of any Secured Obligation, in any form whatsoever, including without limitation the renewal, extension, acceleration or other change in time for payment of, or other change in the terms of, any Secured Obligation or any portion thereof, including increase or decrease of the rate of interest thereon; or (H) any requirement that Mortgagee give any notice of acceptance of this Mortgage. Until all Secured Obligations shall have been paid in full, Mortgagor shall not have any right of subrogation, and Mortgagor waives any right to enforce any remedy which Mortgagee now has or may hereafter have against Borrower or any other person, and waives any benefit of, or any right to participate in, any security now or hereafter held by Mortgagee. Mortgagor further waives all rights and defenses it may have arising out of: (1) any election of remedies by Mortgagee, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for any portion of the Secured Obligations, destroys Mortgagor's rights of subrogation or Mortgagor's rights to proceed against Borrower for reimbursement; or (2) any loss of rights Mortgagor may suffer by reason of any rights, powers or remedies of Borrower in connection with any anti-deficiency laws or any other laws limiting, qualifying or discharging Borrower's obligations, whether by operation of applicable law, or otherwise, including any rights Mortgagor may have to a fair market value hearing to determine the size of a deficiency following any trustee's foreclosure sale or other disposition of any security for any portion of the Secured Obligations.

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(iii) If any of said waivers is determined to be contrary to any applicable law or public policy, such waiver shall be effective to the extent permitted by applicable law or public policy.

## 10.24 Compliance with Illinois Mortgage Foreclosure Law.

(a) Illinois Mortgage Foreclosure Law. It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Mortgagor agrees and covenants that:

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

(ii) Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale;

(iii) In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties and provisions set forth in Sections 15-1701 and 15-1703 of the Act;

(iv) Mortgagor acknowledges that the Mortgaged Property does not constitute "agricultural real estate", as said term is defined in Section 15-1201 of the Act or "residential real estate" as defined in Section 15-1219 of the Act;

(v) Pursuant to 735 ILCS 5/15-1601(b), Borrower waives any and all rights of redemption from sale under any order of foreclosure of this instrument, or other rights of redemption, which may run to Borrower or any other Owner of Redemption, as that term is defined in 735 ILCS 5/15-1212. Borrower waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by Illinois law;



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(vi) All advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage, or the Loan Agreement or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act herein below referred to:

(1) all advances by Mortgagee in accordance with the terms of the Mortgage or the Loan Agreement to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, as referred to in Subsection (b) (5) of Section 5/15-1302 of the Act;

(2) payments by Mortgagee of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrances; (ii) 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 Mortgage Property or any part thereof; (iii) other obligations authorized by the Mortgage; or (iv) 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 5/15-1505 of the Act;

(3) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(4) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of the Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the Mortgaged Property;

(5) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearings as referred to in Section 5/15-1508 (b) (1) of the Act;

(6) expenses deductible from proceeds of sale as referred to in Section 5/15-1512 (a) and (b) of the Act; and

(7) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Mortgaged Property or any portion thereof

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constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Mortgagor's 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; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property imposed by Section 5/15-1704 (c) (1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required 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; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Mortgaged Property and (ix) if the Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force;

(vii) All Protective Advances shall be additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note; and

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

(b) MORTGAGOR'S WAIVER OF RIGHTS. EXCEPT AS OTHERWISE SET FORTH HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR WAIVES THE BENEFIT OF ALL LAWS NOW EXISTING OR THAT MAY SUBSEQUENTLY BE ENACTED PROVIDING FOR (I) ANY APPRAISEMENT BEFORE SALE OF ANY PORTION OF THE MORTGAGED PROPERTY, (II) ANY EXTENSION OF THE TIME FOR THE ENFORCEMENT OF THE COLLECTION OF THE INDEBTEDNESS OR THE CREATION OR EXTENSION OF A PERIOD OF REDEMPTION FROM ANY SALE MADE IN COLLECTING SUCH DEBT OR (III) EXEMPTION OF THE MORTGAGED PROPERTY FROM ATTACHMENT, LEVY OR

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SALE UNDER EXECUTION OR EXEMPTION FROM CIVIL PROCESS. EXCEPT AS OTHERWISE SET FORTH HEREIN, TO THE FULL EXTENT MORTGAGOR MAY DO SO, MORTGAGOR AGREES THAT MORTGAGOR WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE PROVIDING FOR ANY APPRAISEMENT, VALUATION, STAY, EXEMPTION, EXTENSION, REINSTATEMENT OR REDEMPTION, OR REQUIRING FORECLOSURE OF THIS MORTGAGE BEFORE EXERCISING ANY OTHER REMEDY GRANTED HEREUNDER AND MORTGAGOR, FOR MORTGAGOR AND ITS SUCCESSORS AND ASSIGNS, AND FOR ANY AND ALL PERSONS EVER CLAIMING ANY INTEREST IN THE MORTGAGED PROPERTY, TO THE EXTENT PERMITTED BY LAW, HEREBY WAIVES AND RELEASES ALL RIGHTS OF REINSTATEMENT, REDEMPTION, VALUATION, APPRAISEMENT STAY OF EXECUTION, NOTICE OF ELECTION TO MATURE OR DECLARE DUE THE WHOLE OF THE SECURED INDEBTEDNESS AND MARSHALLING IN THE EVENT OF FORECLOSURE OF THE LIENS HEREBY CREATED.

(c) Certain Insurance Disclosures. Pursuant to the Illinois Collateral Protection Act and the Illinois Financial Institution Insurance Sales Law, Mortgagee hereby notifies Mortgagor as follows:

You may obtain insurance required in connection with your loan or extension of credit from any insurance agent, broker, or firm that sells such insurance, provided the insurance requirements in connection with your loan are otherwise complied with. Your choice of insurance provider will not affect our credit decision or your credit terms. Unless you provide us with evidence of the insurance coverage required by your agreements with us, we may purchase insurance at your expense to protect our interest in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreements. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we 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 your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

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(d) Limit on Amount Secured. Notwithstanding anything contained herein to the contrary, in no event shall the total amount secured by this Mortgage exceed \$133,000,000.

(e) Business Purposes. The proceeds of the indebtedness secured hereby referred to herein shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured by this Mortgage constitutes (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

(f) If any provision of this Mortgage is inconsistent with any applicable provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.

## 10.25 No Recourse.

Mortgagor shall have no personal liability or obligation under the Obligations (as defined in the Loan Agreement) or under this Mortgage except to the extent of its interest in the Property.

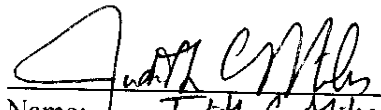
[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first above written.

“Mortgagor”

KHP III 39 CHICAGO LLC, a Delaware limited liability company

By:   
 Name: Judith C. Miles  
 Title: Secretary

STATE OF \_\_\_\_\_ )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the \_\_\_\_\_ of KHP III 39 CHICAGO LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

Dated: \_\_\_\_\_, 2015.

\_\_\_\_\_  
 (Signature of Notary)

\_\_\_\_\_  
 (Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of \_\_\_\_\_,  
 residing at: \_\_\_\_\_

My appointment expires: \_\_\_\_\_

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## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California )  
County of SAN FRANCISCO )

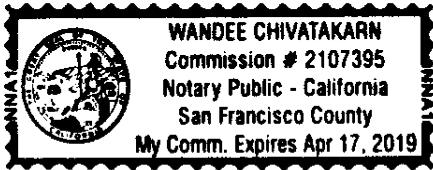
On JUNE 23, 2015 before me, Wandee Chivatakarn, Notary Public,  
*Date Here Insert Name and Title of the Officer*

personally appeared Judith C. Miles  
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature Wandee Chivatakarn  
*Signature of Notary Public*

Place Notary Seal Above

### OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

#### Description of Attached Document

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

#### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

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## EXHIBIT A to Mortgage

### Legal Description

The Land is located in Cook County, Illinois and is legally described as follows:

(A) THE FEE ESTATE IN THE IMPROVEMENTS LOCATED ON PARCELS 1 AND 2 OF THE LAND DESCRIBED BELOW:

(B) THE LEASEHOLD ESTATE CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY: THE UNIVERSITY OF CHICAGO, A NOT FOR PROFIT CORPORATION OF ILLINOIS, AS LESSOR, AND ROC II IL LASALLE, LLC, A DELAWARE LIMITED LIABILITY COMPANY DATED JANUARY 9, 2014, AN AMENDED MEMORANDUM OF LEASE RECORDED JANUARY 10, 2014 AS DOCUMENT NUMBER 1401022120 AND AS FURTHER AMENDED BY THAT CERTAIN GROUND LEASE ASSIGNMENT TO KHP III 39 CHICAGO LLC, A DELAWARE LIMITED LIABILITY COMPANY RECORDED JANUARY 10, 2014 AS DOCUMENT NUMBER 1401022121, WHICH LEASE DEMISES THE FOLLOWING DESCRIBED LAND FOR A TERM OF YEARS BEGINNING JANUARY 9, 2014 AND ENDING JULY 7, 2103:

PARCEL 1:

THE SOUTH 80.00 FEET OF LOTS 6, 7 AND 8 (EXCEPT THAT PART OF LOT 8 TAKEN AND USED FOR LASALLE STREET) IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## PARCEL 2:

THE VACATED PUBLIC ALLEY, LYING NORTH OF AND ADJOINING LOTS 21 TO 28, BOTH INCLUSIVE; LYING SOUTH OF AND ADJOINING LOTS 29, 31, 32 AND 33; LYING EAST OF THE EAST LINE OF SOUTH LASALLE STREET, AS WIDENED, AND LYING WEST OF AND ADJOINING LOTS 18 AND 19 IN ASSESSOR'S DIVISION OF BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 28 AFORESAID; THENCE EAST ALONG THE NORTH LINE OF LOTS 28, 27, 26, 25, 24, 23, 22 AND 21 AFORESAID TO THE NORTHEAST CORNER OF LOT 21 AFORESAID; THENCE NORTH ALONG THE WEST LINE OF LOTS 18 AND 19 TO THE SOUTHEAST CORNER OF LOT 33 AFORESAID; THENCE WEST ALONG THE SOUTH LINE OF LOTS 33, 32 AND 31 AND PART OF LOT 29 TO A POINT 45.10 FEET EAST OF THE WEST LINE OF SAID LOT 29; THENCE SOUTH PARALLEL WITH SAID WEST LINE, A DISTANCE OF 8.00 FEET; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 29 TO THE SOUTHWEST CORNER OF LOT 29, BEING ALSO THE EAST LINE OF SOUTH LASALLE STREET, AS WIDENED; THENCE SOUTH ALONG SAID EAST LINE OF SOUTH LASALLE STREET, AS WIDENED, TO THE POINT OF BEGINNING, EXCLUDING THEREFROM THE EAST 22.75 FEET THEREOF, ALL IN COOK COUNTY, ILLINOIS.

Address: 39 South LaSalle Street, Chicago, Cook County Illinois 60603.

PIN(s): 17-16-204-005-0000; 17-16-204-024-0000