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Doc#: 1526415037 Fee: \$76.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/21/2015 01:37 PM Pg: 1 of 20

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption

Report Mortgage Fraud  
800-532-8785

NCS 743249 SM 2 OF 4

The property identified as: **PIN:** 08-26-410-006-0000

**Address:**

**Street:** 2475 Touhy Avenue

**Street line 2:**

**City:** Elk Grove Village

**State:** IL

**ZIP Code:** 60007

**Lender:** JPMorgan Chase Bank, N.A.

**Borrower:** HB 2727 Higgins, LLC and HB 2201 West Lunt, LLC

**Loan / Mortgage Amount:** \$21,200,000.00

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:** D60E0835-3F1C-43B6-B3A1-FDECF4FC009F

**Execution date:** 9/17/2015

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This instrument was prepared by  
and after recording return to:

GoodSmith Gregg & Unruh LLP  
150 S. Wacker Drive, Suite 3150  
Chicago, Illinois 60606  
Attention: Kenneth D. Crews

## **MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

**THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING** (as may be amended, restated, supplemented or otherwise modified from time to time, this "Mortgage") is made as of September 17, 2015 by **HB 2727 HIGGINS, LLC**, an Illinois limited liability company ("Touhy Mortgagor"), **HB 2201 WEST LUNT, LLC**, an Illinois limited liability company ("Nicholas Mortgagor"), and together with Touhy Mortgagor, "Mortgagors", with offices at 1000 West Irving Park Road, Suite 150, Itasca, Illinois 60148, for the benefit of **JPMORGAN CHASE BANK, N.A.**, a national banking association, with offices at 10 South Dearborn, 19th Floor, Chicago, Illinois 60603, as mortgagee, assignee and secured party (together with any successors and/or permitted assigns in such capacity, "Mortgagee").

### **ARTICLE I**

#### **RECITALS**

**WHEREAS**, Mortgagors are the owners of certain parcels of real property situated in Cook County in the State of Illinois (the "State"), as more fully described in Exhibit A attached hereto, and made a part hereof (the "Premises");

**WHEREAS**, Mortgagee and Mortgagors have entered into as of even date herewith that certain Term Loan and Security Agreement (together with any and all renewals, amendments, modifications, supplements, restatements, extensions for any period, or increases or rearrangements thereof, the "Loan Agreement"), pursuant to which Mortgagee has agreed to make a loan (the "Loan") to or for the benefit of Mortgagors in the aggregate principal amount of up to Twenty-One Million Two Hundred Thousand and 00/100 Dollars (\$21,200,000.00), upon the terms and subject to the conditions set forth in the Loan Agreement, and all as more fully described in the Loan Agreement. Unless otherwise set forth herein, capitalized terms used herein without definition shall have the meanings assigned to such terms in the Loan Agreement.

**WHEREAS**, the Loan is evidenced by a certain promissory note of even date herewith made by Mortgagors in favor of Mortgagee in the face amount of Twenty-One Million Two Hundred Thousand and 00/100 Dollars (\$21,200,000.00) (as may be amended, restated, supplemented or otherwise modified from time to time, the "Note");

**WHEREAS**, Mortgagors wish to provide further assurance and security to Mortgagee and, as a condition to Mortgagee entering into the Loan Agreement, Mortgagee is requiring that Mortgagors grant to Mortgagee a security interest in and a first priority mortgage lien on the Property (as hereinafter defined) to secure (a) all principal and interest owing with respect to the Loan, (b) all fees, expenses, reimbursements, indemnities and other indebtedness, liabilities or obligations owing by Mortgagors under the Loan Agreement, the Note and the other Loan Documents, (c) all Swap Obligations under Swap Agreements, if any, with Lender or its Affiliates, and (d) all Banking Services Obligations (collectively, the "Obligations"); and

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**WHEREAS**, based on the appraised value of the Premises as of the Closing Date, forty-two percent (42%) of the Obligations shall be considered the primary obligations of Touhy Mortgage (the "Touhy Primary Obligations") and shall be secured by liens on Touhy Mortgage's assets, and fifty-eight percent (58%) of the Obligations shall be considered the primary obligations of Nicholas Mortgage (the "Nicholas Primary Obligations") and shall be secured by liens on Nicholas Mortgage's assets. Based on the appraised value of the Premises as of the Closing Date, fifty-eight percent (58%) of the Obligations shall be considered the secondary obligations of the Touhy Borrower (the "Touhy Secondary Obligations") and shall also be secured by liens on Touhy Mortgage's assets, and forty-two percent (42%) of the Obligations shall be considered the secondary obligations of the Nicholas Borrower (the "Nicholas Secondary Obligations") and shall also be secured by liens on Nicholas Mortgage's assets. The Touhy Primary Obligations, the Nicholas Primary Obligations, the Touhy Secondary Obligations, and the Nicholas Secondary Obligations collectively constitute one hundred percent (100%) of the Obligations; and

**WHEREAS**, Mortgages derive substantial direct and indirect economic benefit from the making of the Loan and other benefits to be provided under the Loan Agreement and the other Loan Documents, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.

## ARTICLE II THE GRANT

**NOW, THEREFORE**, in order to secure the payment and performance of (a) the Touhy Primary Obligations, (b) the Nicholas Primary Obligations, (c) the Touhy Secondary Obligations, and (d) the Nicholas Secondary Obligations, in each case, whether direct or indirect, absolute or contingent, or otherwise, that may now or hereafter become owing or otherwise arise, and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by Mortgagee to Mortgages, the Recitals above stated, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally and firmly bound, Mortgages hereby **GRANT, ASSIGN, RELEASE, TRANSFER, REMISE, WARRANT, CONVEY, SET OVER and MORTGAGE** to Mortgagee and its successors and assigns forever (and grant to Mortgagee and its successors and assigns forever a continuing security interest in and to) the Premises, together with all of the following described property, now owned or hereafter acquired, all of which other such property is pledged primarily on a parity with the Premises and not secondarily (the Premises and the following described rights, interests, claims and property are collectively referred to as the "Property"):

(a) all estate, right, title and interest of Mortgages in and to all buildings, structures and other improvements of every kind and description now or hereafter erected, situated or placed upon the Premises (the "Improvements"), together with any and all Personal Property (as defined in Paragraph (j) below) and all attachments now or hereafter owned by any Mortgage and located in or on, forming part of, attached to, used or intended to be used in connection with, or incorporated in any such Improvements, including all extensions of, additions to, betterments, renewals of, substitutions for and replacements for any of the foregoing;

(b) all estate, claim, demand, right, title and interest of Mortgages now owned or hereafter acquired, including without limitation, any after-acquired title, franchise, license, remainder or reversion, in and to any and all (i) land or vaults lying within the right-of-way of any street, avenue, way, passage, highway, or alley, open or proposed, vacated or otherwise, adjoining the Premises; (ii) alleys, sidewalks, streets, avenues, strips and gores of land belonging, adjacent or pertaining to the Premises or the Improvements; (iii) storm and sanitary sewer, water, gas, electric, railway and telephone services relating to the Premises and the Improvements; (iv) development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Premises or any part thereof; and (v) tenements, hereditaments, easements, appurtenances, other rights, liberties, reservations, allowances and privileges relating to the Premises or the Improvements or in any way now or hereafter appertaining thereto, including homestead and any other claims at law or in equity;

(c) all right, title and interest of Mortgages in any and all leases, management agreements, arrangements, concessions or agreements, written or oral, relating to the use and occupancy of the Premises or the Improvements or any portion thereof, now or hereafter existing or entered into (collectively "Leases");

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- (d) all of Mortgagors' right, title and interest in rents, issues, profits, royalties, revenue, advantages, income, avails, claims against guarantors, all cash or security deposits, advance rentals, deposits or payments given and other benefits now or hereafter derived directly or indirectly from the Premises and Improvements under the Leases or otherwise (collectively "Rents"), it being intended that this granting clause shall constitute an absolute and present assignment of the Rents, subject, however, to the revocable license given to Mortgagors to collect and use the Rents as provided in this Mortgage;
- (e) all of Mortgagors' right, title and interest in and to the Project Documents;
- (f) any interests, estates or other claims of every name, kind or nature, both in law and in equity, which Mortgagors now have or may acquire in the Premises and Improvements or other rights, interests or properties comprising the Property now owned or hereafter acquired;
- (g) all right, title and interest of Mortgagors in all plans, specifications, architectural renderings, drawings, license, permits, soil test reports, other reports of examinations or analyses of the Premises or the Improvements, contracts for services to be rendered to any Mortgagor or otherwise in connection with the Improvements and all other property, contracts, reports, proposals and other materials now or hereafter existing in any way relating to the Premises or the Improvements or the construction of additional Improvements;
- (h) all rights of Mortgagors under any contracts executed by any Mortgagor with any provider of goods or services for or in connection with any construction undertaken on or services performed or to be performed in connection with the Premises or the Improvements;
- (i) all right, title and interest of Mortgagors in and to (i) ground water on, under, pumped from or otherwise available to the Premises or any other water rights appurtenant to the Premises, whether as a result of groundwater rights, contractual rights, or otherwise and whether riparian, appropriative, or otherwise; (ii) rights to remove or extract any such ground water including any permits, rights or licenses granted by any governmental authority or agency and any rights granted or created by any easement, covenant, agreement or contract with any person or entity; (iii) rights to which the Premises is entitled with respect to surface water, whether such rights are appropriative, riparian, prescriptive or otherwise and whether or not pursuant to permit or other governmental authorization; (iv) rights to store any such water; (v) water rights, water allocations for water not yet delivered, distribution rights, delivery rights, water storage rights, or other water-related entitlements appurtenant to or otherwise applicable to the Premises by virtue of the Premises being situated within the boundaries of any governmental water district or within the boundaries of any private water company, mutual water company, or other non-governmental entity; and (vi) any shares, or any rights under such shares, of any private water company, mutual water company, or other nongovernmental entity pursuant to which Mortgagors or the Premises may receive water;
- (j) all right, title and interest of Mortgagors in and to all the following tangible personal property owned by any Mortgagor (the "Personal Property"):
  - (i) all building materials, equipment and goods which are procured now or in the future for use on or in connection with the Improvements or the construction, reconstruction, alteration, repair or incorporation in or to the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements and whether or not such materials, goods or equipment have been delivered to the Premises;
  - (ii) all machines, machinery, fixtures, apparatus, equipment and articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, plumbing, sprinkler, waste removal, refrigeration, ventilation, and all fire sprinklers, alarm systems, protection, electronic monitoring equipment and devices now or at any time hereafter located in, on or at the Premises or used or useful in connection therewith;
  - (iii) all window, structural, maintenance and cleaning equipment and rigs now or at any time hereafter located in, on or at the Premises or used or useful in connection therewith; and
  - (iv) all fixtures now or at any time hereafter located in, on or at the Premises or the Improvements.

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(k) all the estate, interest, right, title or other claim or demand which any Mortgagor now has or may hereafter have or acquire with respect to (i) proceeds of insurance in effect with respect to the Property and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively "Awards");

(l) all right, title and interest of Mortgagors in all Swap Agreements entered into in connection with any Swap Obligations and all rights that any Mortgagor may now or hereafter have to any and all payments, disbursements, distributions or proceeds owing, payable or required to be delivered to any Mortgagor on account of any and all Swap Obligations;

(m) all of Mortgagors' interest in and to all operating accounts, the Loan funds, whether disbursed or not and any other monies on deposit with or for the benefit of Mortgagee, including deposits for the payment of real estate taxes and insurance, any cash collateral account, the Excess Cash Flow Account, and any bank accounts of any Mortgagor, including all funds, items, instruments, investments, securities and other things of value at any time paid, deposited, credited or held in or in transit to any account;

(n) all of Mortgagors' interest, if any, in and to all of the following types of collateral, as defined in the Uniform Commercial Code as in effect from time to time in the State of Illinois (the "Code"): accounts, contract rights, general intangibles, chattel paper, documents, instruments, inventory, goods, equipment, investment property, deposit accounts, letter of credit rights, commercial tort claims, health care receivables and all books and records relating to the foregoing, provided that Mortgagors will cooperate with Mortgagee in obtaining "control" as defined in the Code with respect to collateral consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper;

(o) all books and records pertaining to any and all of the property described in the preceding granting clauses, including computer-readable memory and any computer hardware or software necessary to access and process such memory;

(p) all proceeds and products and renewals of, additions and accretions to, substitutions and replacements for, and changes in any of the property described in the preceding granting clauses; and

(q) any and all after-acquired right, title or interest of Mortgagors in and to any property of the types described in the preceding granting clauses.

**TO HAVE AND TO HOLD** the Property hereby mortgaged and conveyed, or so intended, together with its rents, issues and profits, unto Mortgagee, its successors and assigns, forever, for the uses and purposes herein set forth, and Mortgagors do hereby bind themselves and their respective successors and assigns to **WARRANT AND FOREVER DEFEND** the Property unto Mortgagee and unto its or their successors and assigns, against any and every person lawfully claiming or attempting to claim the same or any part thereof by, through and under any Mortgagor.

Mortgagors hereby represent, warrant and covenant to and with Mortgagee and with the purchaser at any foreclosure or other sale hereunder that, at the execution and delivery hereof: (a) Mortgagors own good and marketable title to the Property, (b) the Property is free from all encumbrances and exceptions to title (and any claim of any other person) other than the Permitted Encumbrances, (c) Mortgagors have good and lawful right to sell, mortgage and convey their interest in the Property, and (d) Mortgagors and their respective successors and assigns shall forever warrant and defend the Property against all claims and demands whatsoever.

If and when all of the Obligations have been indefeasibly paid and performed and there exist no further commitments of Mortgagee under the Loan Documents which could give rise to Obligations, then this Mortgage and the estate, right and interest of Mortgagee in and to the Property shall cease and shall be released by Mortgagee delivering to Mortgagors a satisfaction of this Mortgage in proper recordable form at the cost of Mortgagors, but



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until such time shall remain in full force and effect.

This Mortgage secures the payment of future advances which may be made after the date hereof to the same extent as if such future advances were made on the date of the execution of this Mortgage. The parties hereby acknowledge and intend that all advances of the Loan, including future advances whenever hereafter made, shall be secured by this Mortgage with priority from the time this Mortgage is recorded.

It is expressly understood and agreed that the indebtedness secured hereby will in no event exceed Forty-Two Million Four Hundred Thousand and 00/100 Dollars (\$42,400,000.00). The Loan secured hereby bears interest at a fluctuating rate as more particularly described in the Loan Agreement. The Loan secured hereby has an initial maturity date of September 17, 2017, subject to two (2) one-year extension options on the terms and conditions set forth in the Loan Agreement.

**ALL PERSONS WHO MAY HAVE OR ACQUIRE AN INTEREST IN ALL OR ANY PORTION OF THE PROPERTY WILL BE DEEMED TO HAVE NOTICE THAT THIS MORTGAGE SECURES OBLIGATIONS IN ADDITION TO PRINCIPAL AND INTEREST OWING ON THE LOAN, SUCH OBLIGATIONS BEING INCLUDED IN THE DEFINITION OF "OBLIGATIONS" SET FORTH ABOVE.**

## ARTICLE III GENERAL AGREEMENTS

Section 3.01 Incorporation of Recitals. Each of the Recitals set forth above is incorporated herein as if entirely set forth herein.

Section 3.02 Payment and Performance of the Obligations. Mortgagors shall pay and perform (or cause to be paid and performed) promptly and when due all of the Obligations required to be paid and performed by them under, and in the manner provided in, the Loan Agreement, this Mortgage and the other Loan Documents to which it is a party.

Section 3.03 Impositions. Mortgagors shall timely pay, when due and owing, all general taxes, special taxes, general assessments, special assessments, water charges, sewer charges, and any other charges, fees, taxes, claims, levies, expenses, liens (including mechanics' liens, materialmen's liens and similar liens) and assessments, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise (all of the foregoing being herein collectively referred to as "Impositions"), that may be asserted against the Property or any part thereof or interest therein, provided that Mortgagors may contest such Impositions in accordance with Section 4.02(c) of the Loan Agreement.

Section 3.04 Payment of Impositions by Mortgagee. Upon Mortgagors' failure to pay the Impositions as provided above, Mortgagee is hereby authorized to make or advance, in the place and stead of Mortgagors, any payment relating to Impositions, unless such Imposition is then being contested by Mortgagors in accordance with Section 3.03. Mortgagee may do so after giving any notice required by the Loan Agreement according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy or the validity of any Impositions, lien, sale, forfeiture, or related title or claim. Mortgagee is further authorized to make or advance, in place of Mortgagors, unless such matter is being contested by Mortgagors in accordance with Section 3.03, any payment relating to any apparent adverse title, lien, statement of lien, encumbrance, claim, charge, or payment otherwise relating to any other purpose herein and hereby authorized (except the Permitted Encumbrances), but not enumerated in this Section, whenever, in Mortgagee's judgment and discretion, such advance seems necessary or desirable to protect the full security intended to be created by this Mortgage. All such advances and indebtedness authorized by this Section shall constitute Obligations secured hereby, whether or not they exceed the amount of the Loan, and shall be repayable by Mortgagors upon demand with interest at the Default Rate that is or would be applicable to Floating Rate Advances.

Section 3.05 Insurance and Insurance Proceeds.

Mortgagors, at their sole cost and expense, shall maintain or cause to be maintained all insurance on the

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Property that is required to be maintained under the Loan Agreement.

(a) All such insurance policies (and any other insurance policies) with respect to the Property shall contain a standard, non-contributory mortgagee clause naming Mortgagee, and its successors and assigns, as an additional insured under all liability insurance policies, as the first mortgagee and loss payee on all property insurance policies, and as the sole loss payee on all rental loss or business interruption insurance policies and shall be otherwise in form and substance reasonably acceptable to Mortgagee.

(b) If any damage to, destruction or loss of or other casualty with respect to any of the Property shall occur, the proceeds of any insurance available as a result of such destruction, loss or casualty shall be disbursed and administered in accordance with the terms and provisions of the Loan Agreement.

Section 3.06 Condemnation Awards. In the event of any taking of the Property or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of the Property or any part thereof, by any governmental authority, civil or military (each, a "Taking"), the terms and provisions of the Loan Agreement shall govern and control the rights and obligations of Mortgagors and Mortgagee with respect to the administration of proceedings related to such Taking, as well as the possession and application of any proceeds, award or payment arising therefrom.

Section 3.07 Restoration. In the event of a casualty loss, damage to or destruction of the Property or any part thereof, the terms and provisions of the Loan Agreement shall govern and control with respect to the restoration, repair and replacement thereof.

Section 3.08 Maintenance of Property. Except as may otherwise be expressly provided or permitted in the Loan Agreement, Mortgagors shall:

(a) promptly repair, restore, replace or rebuild any portion of the Property which may become damaged, destroyed, altered, removed, severed, or demolished, ordinary wear and tear excepted, whether or not proceeds of insurance are available or sufficient for the purpose, with replacements at least equal in quality and condition as previously existed, free from any security interest in, encumbrances on or reservation of title thereto;

(b) keep the Property in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims

(c) comply with all Legal Requirements, the terms and conditions of all Permitted Encumbrances (including, without limitation, all covenants, conditions, restrictions, and requirements set forth in "no further remediation" letters) and all conditions and requirements necessary to preserve any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Property or which have been granted to or contracted for by any Mortgagor in connection with the contemplated use of the Property;

(d) not initiate, join in or consent to any change in any restrictive covenant, zoning ordinance or other private or public restriction affecting the Property without Mortgagee's prior written consent; and

(e) not make any material alterations to the Property.

Section 3.09 Prohibited Liens and Transfers.

(a) Except as may otherwise be expressly permitted by the Loan Agreement, no Mortgagor shall create, suffer, or permit to be created or filed against the Property any mortgage lien or other lien superior or inferior to the lien created by this Mortgage. To the extent that any lien, privilege or other security device is created by operation of law, Mortgagors shall cause such security device to be released as soon as practicable after its creation. Mortgagors may contest any lien claim arising from any work performed, material furnished, or obligation incurred by Mortgagors as and to the extent permitted in the Loan Agreement.

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(b) Except as may otherwise be expressly permitted by the Loan Agreement, no Mortgagor shall sell, lease or convey all or any part of the Property.

Section 3.10 Stamp Taxes. If at any time the United States government, or any federal, state, or municipal governmental subdivision, requires Internal Revenue or other documentary stamps or levies any tax on this Mortgage, the Note, the Loan Agreement, any other Loan Document or the Loan, or requires payment of any tax in the nature of or comparable to the United States Interest Equalization Tax on the Obligations, then Mortgagors shall pay such tax, including interest and penalties, in the required manner.

Section 3.11 Change in Tax Laws. In the event of the enactment, after the date of this Mortgage, of any law of the United States, or any state or political subdivision thereof, (i) deducting from the value of the Premises, for the purpose of taxation, the amount of any lien thereon; (ii) imposing upon Mortgagee the payment of all or any part of the taxes, assessments, charges or liens hereby required to be paid by any Mortgagor; or (iii) changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or any Mortgagor's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the Obligations (each, a "Tax Law Change"), then Mortgagors, upon demand by Mortgagee, and as required by law, shall pay such taxes, assessments, charges, or liens or reimburse Mortgagee therefor. If, in the opinion of counsel for Mortgagee, it would be unlawful to require any Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then either the applicable provisions of the Loan Agreement shall apply or, if the Loan Agreement does not contain any such provisions, Mortgagee shall determine in its sole discretion the appropriate manner in which to address such Tax Law Change such that neither Mortgagee nor its lien on the Property is adversely affected, including, without limitation, declaring all of the Obligations to be and become immediately due and payable. Nothing contained in this Section 3.11 shall be construed as obligating Mortgagors to pay any portion of Mortgagee's federal, state and local income tax.

Section 3.12 Assignment of Leases and Rents. All right, title, and interest of Mortgagors in and to each Lease, together with all of the rents, income, receipts, revenues, issues, avails and profits from or due or arising out of the Property are hereby transferred and assigned simultaneously herewith to Mortgagee as further security for the payment and performance of the Obligations. Any permitted Lease shall be subordinate to this Mortgage. Although it is the intention of the parties that the assignment contained in this Section shall be a present and absolute assignment, it is expressly understood and agreed, anything to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section unless a Default (as hereinafter defined) shall have occurred and be continuing under this Mortgage.

Following the occurrence and during the continuance of a Default, (a) if requested by Mortgagee, Mortgagors shall promptly send written notification of same to each tenant under any Lease, (b) Mortgagee shall have all of the rights and powers as are provided herein, (c) each tenant shall pay all Rents directly to Mortgagee upon Mortgagee's notice to tenants indicating the occurrence and continuance of a Default (but without proof thereof), and (d) Mortgagee shall have the authority, as Mortgagors' attorney-in-fact (such authority being coupled with an interest and irrevocable), to sign the name of Mortgagors and to bind Mortgagors on all papers and documents relating to the operation, leasing and maintenance of the Property.

Mortgagee confers upon Mortgagors a revocable license ("License") to collect and retain the Rents and other sums under any Lease as they become due and payable, and to enjoy all the rights and privileges of landlord under the Leases, subject to the provisions of the Loan Documents, for so long as no Default exists. During the continuance of a Default, the License shall be automatically revoked.

If any Mortgagor, as lessor under any Lease, shall neglect or refuse to perform, observe and keep all of the covenants, provisions and agreements contained in such Lease, then Mortgagee, after giving any written notice to Mortgagors required by the Loan Agreement may perform and comply with any such Lease covenants, agreements and provisions. All costs and expenses incurred by Mortgagee in complying with such covenants, agreements, and provisions shall constitute Obligations secured hereby, whether or not they exceed the amount of the Loan, and shall be payable upon demand with interest at the Default Rate that is or would be applicable to Floating Rate Advances.

Mortgagee shall not be obligated to perform or discharge any obligation, duty or liability under any Lease,



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and Mortgagors shall and do hereby agree, except to the extent of Mortgagee's gross negligence or willful misconduct as determined by a court of competent jurisdiction, to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which they may or might incur under any Lease or under or by reason of the assignment of any such Lease and of and from any and all claims and demands whatsoever which may be asserted against them by reason of all alleged obligations or undertakings on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained in any Lease. Should Mortgagee incur any such liability, loss or damage under any Lease or under or by reason of its assignment, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall constitute Obligations secured hereby, whether or not they exceed the amount of the Loan, and shall be payable on demand with interest at the Default Rate that is or would be applicable to Floating Rate Advances.

**Section 3.13 Releases.** Without notice and without regard to the consideration therefor, and to the existence at that time of any inferior liens, Mortgagee may release from the lien created hereby all or any part of the Property, or release from liability any person obligated to repay or perform any Obligations, without affecting the liability of any party under the Loan Agreement, any of the Note, this Mortgage, or any of the other Loan Documents (including without limitation any guaranty given as additional security) and without in any way affecting the priority of the lien created hereby. Mortgagee may agree with any liable party to extend the time for payment and/or performance of any part or all of the Obligations. Such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay and/or perform the Obligations, but shall extend the lien created by this Mortgage as against the title of all parties having any interest in the Property, subject to the Obligations.

**Section 3.14 Further Assurances.** Mortgagors agree that, upon request of Mortgagee from time to time, they will, at Mortgagors' sole cost and expense, execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary to fully effectuate the intent of this Mortgage. In the event that Mortgagors shall fail to do any of the foregoing, Mortgagee may, in its sole discretion, do so in the name of any Mortgagor, and Mortgagors hereby appoint Mortgagee as their attorney-in-fact to do any of the foregoing (such authority being coupled with an interest and irrevocable).

**Section 3.15 Environmental Provisions.** The representations, warranties and covenants contained in the Environmental Indemnity Agreement are incorporated herein by this reference as if fully set forth herein.

**Section 3.16 Grant of Security Interest.**

(a) **Security Agreement.** The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Mortgagee. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, Mortgagors as debtors hereby grant Mortgagee as secured party a security interest in all such Property (including, any replacement or substituted property) and Rents, to secure payment and performance of the Obligations. This Mortgage constitutes a security agreement under the Code covering all such Property and Rents. Mortgagee shall have all of the rights and remedies of a secured party under the Code, as well as all other rights and remedies available at law or in equity.

(b) **Financing Statements.** Mortgagors shall execute, as applicable, and deliver one or more financing statements and such other documents as Mortgagee may from time to time require to perfect or continue the perfection of Mortgagee's security interest in any Property or Rents. Mortgagors shall pay all reasonable and customary fees and costs that Mortgagee may incur in filing this Mortgage (including any extensions, renewals and amendments thereof and reproductions of this Mortgage) and such other documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. Mortgagors hereby authorize and empower Mortgagee and irrevocably appoint Mortgagee as Mortgagors' agent and attorney-in-fact to execute and file, on Mortgagors' behalf, all financing statements, refilings, amendments, renewals and continuations thereof as Mortgagee deems necessary or advisable to create, preserve and protect such lien. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it. Mortgagors hereby authorize Mortgagee to file financing statements covering "all assets" or "all personal

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property” of Mortgagors, as debtor, as contemplated by Section 9-504 of the Code.

## ARTICLE IV DEFAULT AND REMEDIES

Section 4.01 Default. The occurrence of a “Default” under and as defined in the Loan Agreement or in any other Loan Document shall constitute a Default (“Default”) under this Mortgage.

Section 4.02 Remedies. Following the occurrence and during the continuance of a Default:

(a) Foreclosure. Mortgagee may immediately foreclose this Mortgage in whole or separately in parcels by judicial or other action permitted by applicable law. Mortgagee may be the purchaser at any sale.

(b) Mortgagee’s Other Rights. Mortgagee shall have the right to take such other steps to protect and enforce its rights, whether by action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained in this Mortgage, or in aid of the execution of any power granted in this Mortgage, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect, including, without limitation, the right of possession and the right to obtain the appointment of a receiver as described below.

Section 4.03 Mortgagee’s Performance of Mortgagors’ Obligations. Following the occurrence and during the continuance of a Default, Mortgagee, both before and after acceleration of the Obligations or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to do any one or more of the following: (i) make any payment or perform any act herein, or in the Loan Agreement, the Note, any of the other Loan Documents or any document or instrument related thereto which is required of any Mortgagor (whether or not such Mortgagor is personally liable therefor) in any form and manner deemed expedient to Mortgagee; (ii) purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, (iii) redeem from any tax sale or forfeiture affecting the Premises, (iv) contest any Impositions, or (v) complete any incomplete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and Improvements shall be operational and usable for their intended purposes. Mortgagee, in making any payment hereby authorized, (a) for the payment of Impositions, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim or lien which may be asserted; or (c) for the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating cost and expenses thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

Section 4.04 Protective Advances. All advances, disbursements and expenditures made by Mortgagee after a Default, before and during foreclosure, prior to sale, and where applicable, after sale, including interest thereon at the Default Rate that is or would be applicable to Floating Rate Advances, are hereinafter referred to as “Protective Advances”, and shall include, without limitation:

- (1) Advances, disbursements and expenditures made pursuant to Section 4.03.
- (2) Any amount expended by Mortgagee in restoring the Property in excess of the actual or estimated proceeds of insurance or condemnation;
- (3) Advances, disbursements and expenditures in accordance with the terms of this Mortgage to: (a) protect, preserve or restore the Property; (b) preserve the lien of this Mortgage or the priority thereof; or (c) enforce this Mortgage;
- (4) Payments of (i) when due, installments of principal, interest or other obligations in accordance

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with the terms of any Prior Encumbrance (as hereinafter defined); (ii) when due, installments of real estate taxes and other Impositions; (iii) other obligations authorized by this 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;

(5) Reasonable attorneys' fees and other costs incurred in connection with: (i) the exercise of Mortgagee's rights to make Protective Advances; (ii) the foreclosure of this Mortgage; (iii) any other litigation or administrative proceeding relating to the Property to which Mortgagee may be or become or be threatened or contemplated to be a party, including probate and bankruptcy proceedings; or (iv) in the preparation for the commencement or defense of any such suit or proceeding; in each case including, without limitation, filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, appraisals, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Property;

(6) Mortgagee's fees and costs arising between the entry of judgment of foreclosure and the confirmation hearing;

(7) Payment by Mortgagee of any Impositions as may be permitted by this Mortgage;

(8) Mortgagee's advances of any amount required to make up a deficiency in deposits for installments of Impositions as may be permitted by this Mortgage;

(9) Expenses deductible from proceeds of sale referred to in Subsections (a) and (b) of Section 15-1512 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq (as amended from time to time, the "Act"); and

(10) Expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, without regard to the limitation to maintaining insurance in effect at the time any receiver, deed of trust beneficiary or mortgagee takes possession of the Property; (ii) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, reciprocal easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (iii) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member; (iv) operating deficits incurred by Mortgagee as a mortgagee in possession or reimbursed by Mortgagee to any receiver; (v) all amounts paid to any public authority for the use or occupancy of any street, alley, or public way; (vi) fees and costs incurred to obtain an environmental assessment report relating to the Property; and (vii) any monies expended in excess of the face amount of the Note.

All Protective Advances shall constitute Obligations secured hereby, regardless of whether any Loan proceeds have been disbursed and regardless of whether they exceed the amount of the Loan, and shall become immediately due and payable without notice and with interest thereon until paid at the Default Rate that is or would be applicable to Floating Rate Advances. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded.

The Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, be included in: (A) the determination of the amount of indebtedness secured by this Mortgage at any time; (B) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent amendment of such judgment, supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after entry of such judgment, it being hereby agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose; (C) the determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (D) the determination of the

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application of income in the hands of any receiver or mortgagee in possession; and (E) the computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of the Act.

All moneys paid for Protective Advances or any of the other purposes authorized in this Mortgage, the Loan Agreement or any other Loan Documents (including, without limitation, monies expended pursuant to Section 4.03 of this Mortgage and Article IX of the Loan Agreement) and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other moneys advanced by Mortgagee to protect the Property and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate that is or would be applicable to Floating Rate Advances for the period after demand until paid. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Default on the part of any Mortgagor.

Should the proceeds of the Loan or any part thereof, or any amount paid out or advanced under the Loan Documents by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any senior mortgage or any other lien or encumbrance upon the Property or any part thereof on a parity with or prior or superior to the lien hereof (a "Prior Encumbrance"), then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

Section 4.05 Right of Possession. Upon the occurrence and during the continuance of a Default, and upon Mortgagee's request to the court, Mortgagors shall, immediately upon Mortgagee's demand, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of the Property or any part thereof, personally or by its agent or attorneys. Mortgagee may enter upon and take and maintain possession or may apply to the court in which a foreclosure is pending to be placed in possession of all or any part of the Property, together with all documents, books, records, papers, and accounts of any Mortgagor or the then owner of the Property relating thereto. Mortgagee may exclude Mortgagors, such owner, and any agents and servants from the Property. As attorney-in-fact or agent of Mortgagors or such owner, or in its own name, Mortgagee may hold, operate, manage, and control all or any part of the Property and conduct the business thereof, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as it may deem proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Property, including actions for recovery of rent, actions in forcible entry and detainer, and actions in distress for rent, all without notice to Mortgagors. Without limitation of the foregoing, Mortgagee shall have all power, authority and duties as provided in Section 15-1703 of the Act.

Section 4.06 Application of Rent Payments. Any rents, issues, deposits, profits, and avails of the Property received by Mortgagee after taking possession of the Property, or pursuant to any assignment to Mortgagee under the provisions of this Mortgage or any of the other Loan Documents, shall be applied as provided under applicable law or, in case of a receivership, as the court may determine.

Section 4.07 Appointment of Receiver. Upon the occurrence and during the continuance of a Default, Mortgagee may, at Mortgagee's sole option, to the extent permitted by applicable law, make application to a court of competent jurisdiction for appointment of a receiver pursuant to Section 15-1702 of the Act for all or any part of the Property, as a matter of strict right, and Mortgagors do hereby irrevocably consent to such appointment, waive any and all notices of and defenses to such appointment and agree not to oppose any application therefor by Mortgagee, but nothing herein is construed to deprive Mortgagee of any other right, remedy or privilege Mortgagee may now have under the law to have a receiver appointed; provided that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Mortgagee to receive payment of all of the Rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Mortgage. To the extent permitted by applicable law, such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Obligations; without regard to the value of the Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Mortgagee or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act, including the power to take possession, control and care of the Property and to collect all Rents, issues, deposits, profits and avails thereof



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during the pendency of such foreclosure suit and apply all funds received toward the Obligations, and in the event of a sale and a deficiency where Mortgagors have not waived their statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagors or their administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such Rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then existing Leases and make new Leases of the Property or any part thereof, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagors and all persons whose interests in the Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his or its hands in payment in whole or in part of: (a) the Obligations, or any amounts included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a Protective Advance, and (b) the deficiency in case of a sale and deficiency.

Section 4.08 Application of the Rents or Proceeds from Foreclosure Sale. In any foreclosure of this Mortgage by judicial action, the proceeds of such foreclosure proceeding and/or the Rents paid to Mortgagee shall, to the extent permitted by law, be applied as follows:

First: to the ratable payment of the costs and expenses of such sale, including reasonable fees and expenses incurred by Mortgagee, its agents and attorneys, and of any judicial or private proceedings in which such sale may be made, and of all other expenses, liabilities and advances made or incurred by Mortgagee and its agents and attorneys under this Mortgage, together with interest at the Default Rate that is or would be applicable to Floating Rate Advances on such costs, expenses and liabilities and on all advances made by Mortgagee from the date any such cost, expense or liability is due, owing or unpaid or any such advance is made, in each case until paid in full.

Second: to the payment in full of the other Obligations.

Third: the surplus, if any, to be paid to whomever may be lawfully entitled to receive such surplus.

Section 4.09 Cumulative Remedies; Delay or Omission Not a Waiver. Each remedy or right of Mortgagee shall not be exclusive of, but shall be in addition to, every other remedy or right now or hereafter existing at law, in equity and/or under any of the Loan Documents. No delay in the exercise or omission to exercise any remedy or right accruing on the occurrence or existence of any Default hereunder and/or under any other Loan Document shall impair any such remedy or right or be construed to be a waiver of any such Default or acquiescence therein, nor shall it affect any subsequent Default of the same or different nature. Every such remedy or right may be exercised concurrently or independently and when and as often as may be deemed expedient by Mortgagee.

Section 4.10 No Merger. In the event of a foreclosure of this Mortgage, the Obligations then due Mortgagee shall not be merged into any decree of foreclosure entered by the court, and Mortgagee may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Obligations.

Section 4.11 Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied to the restoration of the Property shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In case of the foreclosure of this Mortgage, the court in its judgment may provide that the judgment creditor may cause a new or additional loss clause to be attached to each of said policies making the loss thereunder payable to said judgment creditor; and any such foreclosure judgment may further provide, unless the right of redemption has been waived, that in case of redemption under said judgment, pursuant to applicable law, then, and in every such case, the redemptory may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redemptory. In the event of foreclosure sale,

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Mortgagee is hereby authorized, but not required, without the consent of any Mortgagor, to assign or cause a receiver to assign any and all insurance policies to the purchaser at the sale, or to take such other action as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

Section 4.12 Waiver of Statutory Rights. Mortgagors shall not apply for or avail themselves of any appraisal, valuation, redemption, stay, extension, or exemption laws, or any so-called "moratorium laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and Mortgagors hereby waive the benefit of such laws (to the extent permitted by applicable law). Mortgagors, for themselves and all who may claim through or under them, waive any and all rights to have the Property and estates comprising the Property marshaled upon any foreclosure of the lien of this Mortgage, and agree that any court having jurisdiction to foreclose such lien may order the Property sold in its entirety. To the extent permitted by applicable law, Mortgagors further waive any and all rights of reinstatement or redemption with respect to any foreclosure of this Mortgage, for itself and on behalf of: (i) any trust estate of which the Premises are a part and all beneficially interested persons; (ii) each and every person acquiring any interest in the Property or title to the Premises subsequent to the date of this Mortgage; and (iii) all other persons. Mortgagors acknowledge that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act). Further, Mortgagors acknowledge that the Loan constitutes a business loan which comes within the purview of Subparagraph l(c) of Section 4 of the Interest Act (815 ILCS 205/0.01 et seq.).

Section 4.13 Uniform Commercial Code Remedies. Following the occurrence and during the continuance of a Default, Mortgagee may exercise any or all of the remedies granted to a secured party under the Code.

Section 4.14 Sale of Personal Property. Following the occurrence and during the continuance of a Default, Mortgagee shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(a) For purposes of this Section 4.14, Mortgagee may elect to treat as personal property any Property which is intangible or which can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Mortgagee may dispose of any personal property, in any manner permitted by Article 9 of the Code, including any public or private sale, or in any manner permitted by any other applicable law.

(b) In connection with any sale or other disposition of such Property, Mortgagors agree that the following procedures constitute a commercially reasonable sale: Mortgagee shall mail written notice of the sale to Mortgagors not later than thirty (30) days prior to such sale. Mortgagee will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Mortgagee will make such Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding the foregoing, Mortgagee shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

## ARTICLE V MISCELLANEOUS

Section 5.01 Notices. Any notice, demand, request or other communication that Mortgagee or Mortgagors may desire or be required to give to the other shall be in writing and shall be mailed or delivered in the manner set forth in the Loan Agreement. Except as otherwise specifically required, notice of the exercise of any right or option granted to Mortgagee by this Mortgage is not required to be given.

Section 5.02 Time of Essence. Time is of the essence of this Mortgage.

Section 5.03 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land

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constituting the Premises.

**SECTION 5.04 GOVERNING LAW. THIS MORTGAGE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE STATE OF ILLINOIS (INCLUDING, WITHOUT LIMITATION, 735 ILCS SECTION 105/5-1 ET SEQ.), BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS. TO THE EXTENT THAT THIS MORTGAGE MAY OPERATE AS A SECURITY AGREEMENT UNDER THE CODE, MORTGAGEE SHALL HAVE ALL RIGHTS AND REMEDIES CONFERRED THEREIN FOR THE BENEFIT OF A SECURED PARTY AS SUCH TERM IS DEFINED IN THE CODE.**

Section 5.05 Rights and Remedies Cumulative. All rights and remedies in this Mortgage are cumulative. The holder(s) of the Note and the beneficiary(ies) of every other obligation secured hereby may recover judgment, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy.

Section 5.06 Severability. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase, or word, or their application, in any circumstance, is held invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included.

Section 5.07 Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by any party, to or of any breach or default by any other party shall be deemed a consent to or waiver of the performance by such defaulting party of any other obligations or the performance by any other party of the same, or of any other obligations.

Section 5.08 Headings. The headings of sections and paragraphs in this Mortgage are for convenience of reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions.

Section 5.09 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

Section 5.10 Deed in Trust. If title to the Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction against the creation of any lien on the Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

Section 5.11 Successors and Assigns. This Mortgage shall be binding upon Mortgagors, their successors, assigns, legal representatives, and all other persons or entities claiming under or through any Mortgagor. "Mortgagee", when used herein, shall include JPMorgan Chase Bank, N.A., together with its successors, assigns and/or legal representatives. "Mortgagors", when used herein, shall include all such persons and entities and any others liable for the payment or performance of the Obligations, or any part thereof, whether or not they have executed the Loan Agreement, the Note, this Mortgage, or any other Loan Document.

Section 5.12 Mortgagee in Possession. Nothing contained in this Mortgage shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Property.

Section 5.13 Compliance with Act. Anything elsewhere herein contained to the contrary notwithstanding:

(a) in the event that any provision in this Mortgage shall be inconsistent with any provision of the 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 be construed in a manner consistent with the Act;

(b) if any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of

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Mortgagors which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted under the Act to the full extent permitted by law;

(c) without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure; and

(d) it is the intention of the parties to conform strictly to the usury laws, whether state or federal, that are applicable to the Loan Documents. All agreements between Mortgagors and Mortgagee, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid by Mortgagors for the use, forbearance or detention of the money loaned or to be loaned under the Loan Documents, or for the payment or performance of any covenant or obligation contained herein or in the Loan Documents, exceed the maximum amount permissible under applicable federal or state usury laws. If under any circumstances whatsoever fulfillment of any provision hereof or of the Loan Documents, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity. If under any circumstances Mortgagors shall have paid an amount deemed interest by applicable law, which would exceed the highest lawful rate, such amount that would be excessive interest under applicable usury laws shall be applied to the reduction of the principal amount owing in respect of the Loan and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal and any other amounts due hereunder, the excess shall be refunded to Mortgagors. All sums paid or agreed to be paid for the use, forbearance or detention of the principal under the Loan Documents shall, to the extent permitted by applicable law, and to the extent necessary to preclude exceeding the limit of validity prescribed by law, be amortized, prorated, allocated and spread from the date of this Mortgage until payment in full of the Obligations so that the actual rate of interest on account of such principal amounts is uniform throughout the term hereof. The terms and provisions of this subparagraph shall control and supersede every other provision of this Mortgage.

Section 5.14 Incorporation of Loan Agreement and Other Loan Documents. The terms of the Loan Agreement and the other Loan Documents are incorporated by reference herein as though set forth in full detail. In the event of any conflict between the terms and provisions of this Mortgage and any other Loan Document, the terms and provisions of such other Loan Document shall control, and the Loan Agreement shall control over all other Loan Documents.

Section 5.15 Fixture Filing. To the extent any items of Personal Property are or are to become fixtures upon the Premises under applicable law, and to the extent permitted under applicable law, the recording hereof in the real estate records of the county in which the Premises are located shall operate from the time of recording as a fixture filing or fixture financing statement with respect to such Personal Property, and the following information is applicable for the purpose of such fixture filing, to wit:

|   |   |
|---|---|
| Name and Address of the Debtor:<br><br>The Mortgagors having an address set forth on first page hereof.   | Name and Address of the Secured Party:<br><br>The Mortgagee having an address set forth on the first page hereof. |
| This Financing Statement covers the following types or items of property:<br>The Personal Property.   |   |
| This instrument covers all of the Personal Property which is or is to become fixtures upon the Premises described in Exhibit "A" attached hereto. |   |



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The name of the record owner of the Premises on which such fixtures are or are to be located is Mortgagors.

This financing statement (fixture filing) is intended to be filed for record in the real estate records of the county in which the Premises are located.

Section 5.16 Maintenance of Encumbrance Amount. If at any time this Mortgage shall secure less than all of the principal amount of the Obligations, it is expressly agreed that any repayments of the principal amount of the Obligations shall not reduce the amount of the encumbrance of this Mortgage until the encumbrance amount shall equal the principal amount of the Obligations outstanding.

Section 5.17 Counterparts. This Mortgage may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument.

Section 5.18 Additional Provisions.

(a) Payment of Taxes and Fees. Mortgagors agree to pay all transfer taxes, recordation taxes, recording fees, and any other fees required by or imposed by the State or the county in which the Premises are located in order to record this Mortgage in the Recorder's Office of the County in which the Premises are located.

(b) No Assumption of Obligations. In the event of a foreclosure of the Property, Mortgagee shall not assume any liability of any Mortgagor for any Mortgagor's violation of any environmental laws, statutes, codes, regulations, or practices and Mortgagors' indemnifications as contained herein and in the Loan Agreement and the other Loan Documents shall survive said foreclosure for as long as set forth in the Loan Agreement or applicable Loan Document.

(c) WAIVER OF JURY TRIAL. MORTGAGORS, AND BY ITS ACCEPTANCE HEREOF, MORTGAGEE, HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT OR THEY MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). MORTGAGORS, AND BY ITS ACCEPTANCE HEREOF, MORTGAGEE (A) CERTIFY THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGE THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 5.18 Incorporation by Reference. This Mortgage shall be subject to Sections 10.13, 10.19, 10.20, and 10.21 of the Loan Agreement, the terms and provisions of which are hereby incorporated herein by reference as if set forth in full.


Section 5.19 Joint and Several. Notwithstanding the characterization of the Obligations set forth in the fifth (5<sup>th</sup>) "WHEREAS" clause of the Recitals to this Mortgage, the obligations of Mortgagors under this Mortgage and the other Loan Documents are joint and several, and Mortgagee has the right to hold any Mortgagor liable for payment of the full amount of the Obligations. Mortgagee may release or settle with any Mortgagor at any time without affecting the continuing liability of the other Mortgagor. Mortgagee may proceed under this Mortgage or any of the other Loan Documents against any Mortgagor without proceeding against the other Mortgagor. Until final payment in full of the Obligations, each Mortgagor waives any benefit of and any right to participate in any security for the Obligations.

*[signature and notary pages follow]*

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagors have duly signed and delivered this Mortgage as of the date first above written.

**HB 2727 HIGGINS, LLC**, an Illinois limited liability company

By:   
Name: Ken Freese  
Title: Manager

**HB 2201 WEST LUNT, LLC**, an Illinois limited liability company

By:   
Name: Ken Freese  
Title: Manager

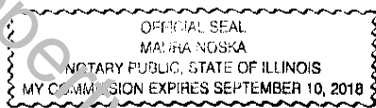
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF Illinois )  
COUNTY OF COOK )

I, Maura Noska, a Notary Public in and for and residing in said County and State,  
DO HEREBY CERTIFY THAT Ron Frain, the Manager of **HB 2727 HIGGINS, LLC**, an  
Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the  
foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said  
instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company for  
the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11 day of August, 2015.



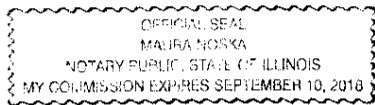
Maura Noska  
Notary Public

My Commission Expires:  
9/10/18

STATE OF Illinois )  
COUNTY OF COOK )

I, Maura Noska, a Notary Public in and for and residing in said County and State,  
DO HEREBY CERTIFY THAT Ron Frain, the Manager of **HB 2201 WEST LUNT, LLC**,  
an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the  
foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said  
instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company for  
the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11 day of August, 2015.



Maura Noska  
Notary Public

My Commission Expires:  
9/10/18

# UNOFFICIAL COPY

## EXHIBIT A

Real property in Elk Grove Village, County of Cook, State of Illinois, described as follows:

LOT 1 IN HIGGINS AND TOUHY SUBDIVISION, BEING A RE-SUBDIVISION OF LOTS 32 AND 33 IN CENTEX INDUSTRIAL PARK UNIT NO. 6, BEING A SUBDIVISION IN SECTIONS 26 AND 35, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 20, 2007 AS DOCUMENT 0720115111, IN COOK COUNTY, ILLINOIS.

Address: 2475 Touhy Avenue  
Elk Grove Village, Illinois 60007

PIN(s): 08-26-410-006-0000  
08-35-201-012-0000

TOGETHER WITH:

THE WEST 516.68 FEET OF LOT 13 IN CENTEX INDUSTRIAL PARK UNIT NO. 3, BEING A SUBDIVISION IN SECTION 35, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 1, 1959 AS DOCUMENT 17525861 AND FILED IN THE OFFICE OF THE REGISTER OF TITLES AS DOCUMENT LR1858615, IN COOK COUNTY, ILLINOIS.

Address: 1701 - 1751 Nicholas Boulevard  
Elk Grove Village, Illinois 60007

PIN(s): 08-35-202-<sup>012</sup>~~22~~-0000