

Illinois Anti-Predatory
Lending Database
Program

CT

Certificate of Exemption

16NW7121026SK

394

Doc#: 1619018017 Fee: \$76.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 07/08/2016 09:15 AM Pg: 1 of 15

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 05-27-309-023-0000

Address:

Street: 1316 ELMWOOD AVE

Street line 2:

City: WILMETTE

State: IL

ZIP Code: 60091

Lender: James F Flaherty III and Mary H Flaherty, not personally but as Trustees of the Flaherty Trust dated September 25, 1997 as amended and restated from time to time

Borrower: CHRISTOPHER W HESBURGH AND MARY T HESBURGH

Loan / Mortgage Amount: \$683,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

Certificate number: A31140CC-5E80-4D00-910C-C13A954BC1D6

Execution date: 6/30/2016

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This Instrument Prepared by and
After Recording Mail to:

David G. Spak, Attorney at Law
1555 Stratford Road
Deerfield, Illinois 60015

Premises:

1316 Elmwood Avenue
Wilmette, Illinois 60091

PIN:

05-27-309-023-0000

JUNIOR MORTGAGE

This Junior Mortgage is made June 30, 2016 by CHRISTOPHER W. HESBURGH and MARY T. HESBURGH (together, "Mortgagor"), husband and wife, not as tenants in common or as joint tenants, but as Tenants by the Entirety, of 1316 Elmwood Avenue, Wilmette, Illinois 60091, in favor of JAMES F. FLAHERTY III and MARY H. FLAHERTY, NOT PERSONALLY, BUT AS TRUSTEES OF THE FLAHERTY TRUST DATED SEPTEMBER 25, 1997, AS AMENDED AND RESTATED FROM TIME TO TIME ("Mortgagee"), of 11601 Wilshire Boulevard, Suite 1600, Los Angeles, California, 90025.

Mortgagor is justly indebted to Mortgagee in the principal sum of SIX HUNDRED EIGHTY-THREE THOUSAND AND 00/100 DOLLARS (\$683,000.00) as evidenced by a certain Promissory Note of even date herewith executed by Mortgagor and made payable to the order of and delivered to Mortgagee (the "Note"), whereby Mortgagor promises to pay the said principal sum, together with interest thereon, from the date and at the rate set forth therein, at the office of Mortgagee, or at such other place as may be designated in writing by the legal holders thereof until the entire principal balance remaining unpaid plus accrued interest shall be due and payable as required therein.

NOW, THEREFORE, in order to secure the payment of the said principal sum and interest thereon and the performance of the covenants and agreements herein contained, Mortgagor does by these presents grant, bargain, sell, convey, and mortgage unto Mortgagee, its successors and assigns forever, the real estate and all of its estate, right, title, and interest therein situated in the Village of Wilmette, County of Cook and State of Illinois, as more particularly described in Exhibit "A" attached hereto and made a part hereof (sometimes herein referred to as the "real estate"), which real estate, together with the following described property, is collectively referred to as the "premises";

TOGETHER WITH:

- (1) All right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, vaults, and alleys adjoining the premises,
- (2) All and singular the tenements, hereditaments, easements, minerals, appurtenances, passages, waters, water courses, riparian, irrigation, and drainage rights, and other rights, liberties, and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license and the reversion and reversions and remainder and remainders thereof,
- (3) All rents, issues, proceeds, and profits accruing and to accrue from the premises (which are pledged primarily and on a parity with the real estate, and not secondarily), and
- (4) All buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs of such improvements now or

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hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the premises, and all fixtures now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the premises, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning, and sprinkler equipment and fixtures and appurtenances thereto, and all items of furniture, furnishings, equipment, and personal property owned by the Mortgagor used or useful in the operation of the said real estate, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed, intended, and declared that all the aforesaid property owned by said Mortgagor and placed by it on the premises or used in connection with the operation or maintenance of the premises shall, so far as permitted bylaw, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate, and covered by this Mortgage, and as to any of the property aforesaid which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code), this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as Secured Party (as such term is defined in the Uniform Commercial Code), it being further understood and agreed that the provisions of this subparagraph (4) shall not apply or attach to any trade fixtures or personal property of any tenant of the premises;

TO HAVE AND TO HOLD the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth;

PROVIDED, HOWEVER, that if the Mortgagor shall pay the principal and all interest as provided in the Note, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

MORTGAGOR FURTHER COVENANTS and agrees as follows:

1. **Payment of Principal and Interest.** Mortgagor shall pay promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner herein and in the Note provided.
2. **Future Advances.** To the extent that Mortgagee has bound itself to make advances of the Loan from time to time and Mortgagor acknowledges that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the Illinois Foreclosure Act, 735 ILCS 5/15 et seq. (1992) (the "Foreclosure Act").
3. **Taxes; Financial Statements.** Mortgagor shall immediately pay, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other charges of whatever kind, ordinary or extraordinary, which may be levied or imposed against the premises, and to furnish to Mortgagee, upon Mortgagee's request, official receipts therefor within thirty (30) days after payment thereof. Within thirty (30) days after written request from Mortgagee, Mortgagor shall provide Mortgagee with copies of Mortgagor's annual federal income tax returns and/or such personal financial statements as Mortgagee requests. Mortgagor's failure to provide the same shall constitute a default pursuant to Paragraph 22(a) below.
4. **Insurance.**
 - (a) **Casualty.** Mortgagor shall keep the improvements now existing or hereafter erected on the premises constantly insured against loss or damage under such types and forms of insurance policies (including, without limitation, so-called "builder's risk" insurance during the conduct of any construction, repairs, rehabilitation and/or improvement of the premises) and in the minimum amount of the outstanding balance of the principal sum from time to time and for such periods as Mortgagee may from time to time require, and Mortgagor shall pay promptly, when due, any premiums on such insurance. Unless Mortgagee otherwise agrees, all such insurance shall provide "all risk" full insurable value replacement cost coverage and shall be carried with companies having a Best's rating of A+ or A acceptable to the

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Mortgagee and the policies and renewals (or certificates evidencing same), marked by the insurer "PAID", shall be delivered to the Mortgagee at least thirty (30) days before the expiration of the old policies and shall have attached thereto standard noncontributing mortgage clauses in favor of and entitling the Mortgagee alone to collect any and all of the proceeds payable under all such insurance, as well as standard waiver of subrogation endorsements, and shall contain provision for ten (10) days notice to Mortgagee prior to any cancellation or amendment thereof. Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of a change in ownership or of occupancy of the premises (if approved in writing by Mortgagee), immediate notice thereof by mail shall be delivered to all insurers. In the event of any loss covered by such insurance, Mortgagor shall immediately notify Mortgagee in writing, and Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly and solely to Mortgagee (who may, but need not, make proof of loss) and Mortgagee is hereby authorized to adjust, collect, and compromise in its discretion all claims under all policies, and Mortgagor shall sign, upon demand by Mortgagee, all receipts, vouchers, and releases required by such insurance companies. After deducting any costs of collection, Mortgagee may use or apply the proceeds, at its option, (i) as a credit upon any portion of the indebtedness secured hereby, or (ii) in the event there is no default hereunder, to repairing and restoring the improvements, in which event the Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the indebtedness secured hereby, or (iii) to deliver same to the Mortgagor. If Mortgagee shall elect to apply such proceeds to restoring the improvements, such proceeds shall be made available, from time to time, upon Mortgagee being furnished with satisfactory evidence of the estimated cost of such restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, Mortgagor shall furnish Mortgagee with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. In the event of foreclosure of this Mortgage, or other transfer of title to the premises in the extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagor, in and to any insurance policies then in force, and any claims or proceeds thereunder shall pass to Mortgagee or any purchaser or grantee. If Mortgagee, in its reasonable discretion, determines that any insurance provided by Mortgagor, does not comply with the insurance requirements set forth herein, then Mortgagee may, at any time and at its own discretion, procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in such amount and carried in such company as it may determine, the cost of which shall be repaid to Mortgagee by Mortgagor upon demand. Mortgagor shall furnish to Mortgagee, upon its request, estimates or appraisals of insurable value, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building or buildings and improvements on the premises.

(b) **Liability.** Mortgagor shall carry and maintain comprehensive public liability insurance as may be required from time to time by Mortgagee in forms, amounts, and with companies having a Best's rating of A+ or A or satisfactory to Mortgagee, and Mortgagor will apply all insurance proceeds under such policies to the payment and discharge of the liabilities in respect of which such proceeds are collected. It is understood and agreed that policy shall name Mortgagee as an additional insured party thereunder. Certificates of such insurance, premiums prepaid, shall be deposited with Mortgagee and shall contain provision for ten (10) days' notice to Mortgagee prior to any cancellation or amendment thereof.

(c) **Term Life.** Mortgagor shall carry and maintain a life insurance policy or policies in amounts and with companies having ratings as may be required from time to time by Mortgagee; provided, however, that the minimum total coverage of such policy or policies shall be the total principal amount of the Loan and the loans evidenced and secured by the Senior Promissory Note and the Junior Financing Documents (as defined in Paragraph 19 below). Mortgagor shall direct the insurer that the proceeds of such policy or policies shall first be used to repay the amounts due and owing pursuant to the Junior Financing Documents, then to repay the amounts due and owing pursuant to the Note, and then to repay the amounts due and owing pursuant to the Senior Promissory Note.

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5. **Preservation, Restoration and Use of Premises.** Mortgagor shall complete, within a reasonable time, any building or buildings or other improvements now or at any time in the process of being constructed upon the real estate. No building or other improvement on the premises shall (except as required by law) be altered, removed, or demolished nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the prior written consent of Mortgagee, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels, or articles of personal property covered hereby or by any separate security agreement given in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels, and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title thereto. Mortgagor shall promptly repair, restore, or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. Mortgagor shall not permit, commit, or suffer any waste, impairment, or deterioration of the premises or any part or improvement thereof, and shall keep and maintain the premises and every part thereof in good repair and condition and effect such repairs as Mortgagee may reasonably require, and, from time to time, make all needful and proper replacements and additions thereto so that said buildings, fixtures, machinery, and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Mortgagor shall not suffer or permit the premises to be abandoned or to be used for a purpose other than that for which the premises are presently used, or represented to Mortgagee to be used. Mortgagor shall not subject the premises to any use covenants or restrictions and shall not initiate, join in or consent to any change in any existing private restrictive covenant, zoning ordinance, or other public or private restriction limiting or defining the uses which may be made of or the kind of improvements which can be constructed or placed on the premises or any part thereof, and shall promptly notify Mortgagee of, and appear in and defend, at its sole cost and expense, any such proceedings seeking to effect any of the foregoing. Mortgagor shall not subdivide the real estate and shall not subject the premises to the provisions of the condominium laws of the state in which the premises are situated.

6. **Compliance with Governmental Insurance and Other Requirements.** Mortgagor shall comply with all statutes, ordinances, orders, requirements, or decrees relating to the premises or the use thereof of any federal, state, or municipal authority, and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance required under paragraph 4 hereof and to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions, and nonconforming uses) privileges, franchises, and concessions which are applicable to the premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the premises. If any building or other improvement on the premises must be altered or removed to enable Mortgagor to comply with the foregoing provisions of this paragraph 6, Mortgagor shall not commence any such alterations or removals without Mortgagee's prior approval of the need therefor and the plans and specifications pertaining thereto. After such approval which shall not be unreasonably withheld or delayed, Mortgagor, at its sole cost and expense, shall effect the alterations or removal so required and approved by Mortgagee. Mortgagor shall not by act or omission permit any building or other improvement on land not subject to the lien of this Mortgage to rely on the premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the premises or any interest therein to be so used. Similarly, no building or other improvement on the premises shall rely on any land not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void. Mortgagor shall duly and punctually perform and comply with all covenants and conditions expressed as binding upon it under any recorded document or any other agreement of any nature whatsoever binding upon it which pertains to the premises.

7. **Liens and Encumbrances.** Except as specifically permitted hereunder, Mortgagor shall keep the premises free from liens of mechanics and materialmen and from all other liens, charges, and encumbrances of whatever nature, regardless of (i) whether the same arise voluntarily or involuntarily on the part of Mortgagor and (ii) whether the same are subordinate to, prior to, or on a parity with the lien of this Mortgage, and shall furnish to Mortgagee satisfactory evidence of the payment and discharge of any such liens, charges, and encumbrances, asserted or claimed to exist against the premises, excepting, however, any lien or encumbrance expressly consented to by Mortgagee with respect to which

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Mortgagor shall pay, when due, the indebtedness secured thereby and upon Mortgagee's request, furnish to Mortgagee satisfactory evidence of such payment or payments. In the event Mortgagor shall suffer or permit any superior or junior lien to be attached to the premises, Mortgagee, at its option, has the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest to be immediately due and payable without notice to Mortgagor.

8. **Sale, Conveyance or Other Transfers.** If Mortgagor shall, without the prior written consent of Mortgagee, which consent Mortgagee may, in its absolute discretion, withhold, sell, transfer, convey, encumber, lease, or assign the title to all or any portion of the premises, or the rents, issues, or profits therefrom, whether by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing, then any of the foregoing acts, omissions, or occurrences shall constitute an event of default hereunder and Mortgagee, at its option, shall then have the unqualified right to accelerate the maturity of the Note, causing the full principal balance and accrued interest, to be immediately due and payable without notice to Mortgagor; and, in addition, Mortgagee shall also be entitled to pursue any and all rights and remedies granted hereunder or otherwise available to it, at law or in equity.

9. **Stamp Tax.** If at any time the United States government or any state, or municipal government shall require Internal Revenue or other documentary stamps hereon or on the Note secured hereby, or shall otherwise impose a tax or impose an assessment on this Mortgage or on the Note or shall require payment of an interest equalization tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of Mortgagee thirty (30) days after the mailing of notice of such election to Mortgagor, provided, however, said election shall be unavailing and this Mortgage and Note shall be and remain in effect, if Mortgagor lawfully may pay for such stamps or such tax including interest and penalties thereon to or on behalf of Mortgagee and Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

10. **Effect of Change in Laws Regarding Taxation.** In the event of the enactment, after the date of this Mortgage, of any law of the state in which the premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if, in the opinion of counsel for Mortgagee, (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted bylaw, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable within thirty (30) days from the giving of such notice. Notwithstanding the foregoing, Mortgagor shall not be obligated to pay any portion of Mortgagee's federal or state income tax.

11. **Mortgagee's Performance of Defaulted Acts.** In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. Mortgagee is hereby authorized to make or advance, in the place and stead of the Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions, or liens asserted against the premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof, and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this paragraph, and may do so whenever, in its judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security

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intended to be created by this instrument, and in connection with any such advance, Mortgagee, at its option, may and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest thereon at the default interest rate. 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 Mortgagor.

12. **Eminent Domain.** Any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the premises, by any governmental or other lawful authority for taking, by condemnation or eminent domain, the whole or any part of the premises or any improvement located thereon or any easement therein or appurtenant thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, which award Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittance therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all or any part of the said premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor shall make, execute, and deliver to Mortgagee, at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning to Mortgagee all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. The proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all of its expenses in connection with such proceedings, including reasonable costs and attorneys' fees, to the reduction of the indebtedness secured hereby or to restoring the improvements, in which event the same shall be paid out in the same manner as is provided, with respect to insurance proceeds, in paragraph 4(a) hereof.

13. **Acknowledgment of Debt.** Mortgagor shall furnish from time to time within seven (7) days after Mortgagee's request, a written statement, duly acknowledged, verifying the amount due under this Mortgage (as reflected on the books and records of Mortgagee) and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

14. **Assignment of Rents.** All right, title and interest of the Mortgagor in and to all present leases affecting the premises, and including and together with any and all future leases upon all or any part of the premises, and together with all of the rents, income, receipts, revenues, issues and profits from or due or arising out of the premises have been transferred and assigned simultaneously herewith to the Mortgagee as further security for the payment of said indebtedness. All leases affecting the premises shall be submitted by the Mortgagor to the Mortgagee for its approval prior to the execution thereof. All approved and executed leases shall be specifically assigned to Mortgagee by instrument in form satisfactory to Mortgagee. All or any such leases shall, at the option of Mortgagee, be paramount or subordinate to this Mortgage.

15. **Inspection of Premises.** Mortgagor shall permit Mortgagee or its agents to inspect the premises at all reasonable times, and access thereto shall be permitted for such purpose.

16. **Partial Invalidity.** Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage or the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and

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enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. If, under the circumstances, interest in excess of the limit allowable by law shall have been paid by Mortgagor in connection with the loan evidenced by the Note, such excess shall be applied by Mortgagee to the unpaid principal balance of the Note or refunded to Mortgagor in the manner to be determined by Mortgagee and if any such excess interest has accrued, Mortgagee shall eliminate such excess interest so that under no circumstances shall interest on the loan evidenced by the Note exceed the maximum rate allowed by law.

17. **Subrogation.** If the proceeds of the loan made by Mortgagee to Mortgagor, or any part thereof, or any amount paid out or advanced by Mortgagee, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the premises or any part thereof, then Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

18. **Mortgagee's Right to Deal With Transferee.** In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from Mortgagor's covenants and/or undertakings hereunder, including, without limitation, paragraph 8 hereof, and without Mortgagee waiving its right to accelerate the Note as set forth in said paragraph 8.

19. **Subordination.** Mortgagee hereby acknowledges that this Mortgage and the lien thereof shall be and remain subject and subordinate to that certain Mortgage dated the date hereof made by Mortgagor in favor of Mortgagee (the "Senior Mortgage") securing a promissory note in the principal amount of \$417,000 (the "Senior Promissory Note"), which Senior Mortgage shall be recorded with the Cook County Recorder of Deeds prior to the recording of this Mortgage. Additionally, Mortgagee agrees to allow Mortgagor to execute and deliver to Mortgagee an additional subordinate promissory note in the principal amount of \$500,000 secured by a junior mortgage subordinate in all respects to the lien and priority of this Mortgage (such promissory note and junior mortgage collectively referred to herein as the "Junior Financing Documents"). It shall be an event of default under this Mortgage if Mortgagee commits any breach or act of default pursuant to any one or more of the Senior Mortgage, the Senior Promissory Note, and Junior Financing Documents. Upon such a breach or act of default pursuant to the Senior Mortgage, The Senior Promissory Note, and/or the Junior Financing Documents, Mortgagee shall be entitled to any or all of the remedies for Mortgagee's default hereunder, including, without limitation, those remedies set forth in Paragraph 22 hereof. So long as any portion of the debts evidenced and secured by this Mortgage or the Junior Financing Documents remains outstanding and unpaid, Mortgagor shall not accrue, accumulate or otherwise incur any other debt or obligation to pay money, including, without limitation, credit card debt, vehicle lease, or vehicle purchase financing, whether secured or unsecured, without Mortgagee's prior written approval, which Mortgagee may give or withhold at Mortgagee's sole and absolute discretion. The foregoing covenant regarding future debts or obligations shall exclude (a) credit card debt less than 30 days old so long as Mortgagor pays such debt in full on or before the payment due dates and (b) vehicle lease or purchase financing payments not in excess of Mortgagor's currently existing vehicle lease or purchase financing payments.

20. **Releases.** Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the premises or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Note and this Mortgage or guaranty, if any, given as additional security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness herein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage.

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21. **Expenses Incurred by Mortgagee.** Any costs, damages, expenses or fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with (i) sustaining the lien of this Mortgage or its priority, (ii) obtaining any commitment for title insurance or title insurance policy, (iii) protecting the premises, (iv) protecting or enforcing any of Mortgagee's rights hereunder, (v) recovering any indebtedness secured hereby, (vi) any litigation or proceedings (including, but not limited to, bankruptcy, probate and administrative law proceedings) affecting this Mortgage, the Note, or the premises, or (vii) preparing for the commencement, defense or participation in any threatened litigation or proceedings as aforesaid, or as otherwise enumerated in paragraph 23(c) hereof, shall be so much additional indebtedness secured hereby and shall be immediately due and payable by Mortgagor, without notice, with interest thereon at the default interest rate.

22. **Remedies on Default.**

(a) **Events of Default.** It shall constitute a default under this Mortgage when and (i) if any default occurs in the due and punctual payment of the entire principal sum secured hereby, or of any installment thereof, or of interest thereon, or of any installment of interest, or (ii) if any default occurs in the due and punctual performance of or compliance with any other term, covenant or condition in this Mortgage, or in the Note (including, without limitation, a material adverse change in the financial condition of Mortgagor, as determined by Lender in its sole discretion, and in the event of default in the payment of principal or interest on any other debt owed by Mortgagor to Lender or any other lender), or in any other instrument now or hereafter evidencing or securing said indebtedness, including, without limitation, any guaranty, assignment of rents or assignment of leases given to secure such indebtedness, or (iii) if Mortgagor or any guarantor of the indebtedness secured hereby (a) is voluntarily adjudicated a bankrupt or insolvent, or (b) seeks or consents to the appointment of a receiver or trustee for itself or for all or any part of its property or (c) files a petition seeking relief under or files an answer admitting the material allegations of a petition filed against it under any bankruptcy or similar laws of the United States or any state, or (d) makes a general assignment for the benefit of creditors, or (e) admits in writing its inability to pay its debts as they mature, or (f) takes any action for the purpose of effecting any of the foregoing, or (iv) if any order, judgment or decree is entered upon an application of a creditor of Mortgagor, or guarantor of the indebtedness secured hereby, without the consent of the party against whom it is entered, by a court of competent jurisdiction (a) appointing a receiver or trustee of all or a substantial part of the assets of Mortgagor or guarantor, as the case may be, or (b) approving any petition filed against Mortgagor, or any guarantor of the indebtedness secured hereby seeking relief under any bankruptcy or other similar laws of the United States or any state and remains in force, undischarged or unstayed for a period of sixty days.

(b) **Remedies.** In addition to any other remedy herein specified, if any default under this Mortgage shall occur, Mortgagee may, at its option, (i) declare the entire indebtedness secured hereby to be immediately due and payable, without notice or demand (each of which is hereby expressly waived by Mortgagor) whereupon the same shall become immediately due and payable, (ii) institute proceedings for the complete foreclosure of this Mortgage, (iii) institute proceedings to collect any delinquent installment or installments of the indebtedness secured hereby without accelerating the due date of the entire indebtedness by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of such indebtedness only and any sale of the premises under such a foreclosure proceeding shall be subject to and shall not affect the unmatured part of the indebtedness and this Mortgage shall be and continue as a lien on the premises securing the unmatured indebtedness, (iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect, or (v) enforce this Mortgage in any other manner permitted under the laws of the state in which the premises are situated.

(c) **Expense of Litigation.** In any suit to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under this Mortgage or the Note there shall be allowed and included, as additional indebtedness in the judgment or decree, all expenditures and expenses which may reasonably be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar

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data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which maybe had pursuant to such decree the true condition of the title to or value of the premises.

(d) **Mortgagee's Right of Possession in Case of Default.** In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings whether or not the entire principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises, or any part thereof, personally or by its agent or attorneys, as for condition broken and Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers, and accounts of Mortgagor or the then manager of the premises relating thereto, and may exclude Mortgagor, its agents, or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the power herein granted: (i) hold, operate, manage, and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor, (ii) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, (iii) elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, (iv) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the premises as to Mortgagee may seem judicious, (vi) insure and reinsure the premises and all risks incidental to Mortgagee's possession, operation, and management thereof, and (vii) receive all avails, rents, issues and profits.

(e) **Application of Rental Proceeds.** Any avails, rents, issues and profits of the premises received by Mortgagee after having possession of the premises, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage, shall be applied in payment of or on account of the following, in such order as Mortgagee (or in case of a receivership, as the court) may determine: (i) to the payment of the operating expenses of the premises, including reasonable compensation to Mortgagee or the receiver and its agent or agents, if management of the premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases and the payment of premiums on insurance hereinabove authorized, (ii) to the payment of taxes, special assessments, and water taxes now due or which may hereafter become due on the premises, or which may become a lien prior to the lien of this Mortgage, (iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of said premises, including the cost from time to time of installing or replacing personal property or fixtures necessary to the operation of the premises, and of placing said property in such condition as will, in the judgment of Mortgagee or receiver, make the premises readily rentable, (iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale, or (v) with respect to any overplus or remaining funds, to the Mortgagor, its successors, or assigns, as their rights may appear.

(f) **Appointment of Receiver.** Upon or at any time after the filing of any complaint to foreclose this Mortgage, Mortgagor consents upon application by Mortgagee to the appointment of a receiver of the premises, such appointment may be made either before or after sale without notice and 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 indebtedness

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secured hereby and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. Such receiver shall have the power to take possession, control, and care of the premises and to collect the rents, issues, and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by Mortgagor), as well as during any further times when Mortgagor, its heirs, administrators, executors, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the premises, during the whole of said period. To the extent permitted by law, said receiver may be authorized by the court to extend or modify any then existing leases and to make new leases, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder it being understood and agreed that any such leases and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

(g) **Sale of Premises.** Any real estate or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to the Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by the laws of the state in which the premises are situated. At any such sale, Mortgagee may bid for and acquire, as Purchaser, the premises or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

(h) **Application of Proceeds From Foreclosure Sale.** The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in paragraph 23(c) hereof, (ii) all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon, at the default interest rate, (iii) all principal and interest remaining unpaid on the Note, and (iv) any overplus to Mortgagor, its successors or assigns, as their rights may appear.

(i) **Application of Deposits Held by Mortgagee.** With respect to any deposits made with or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage, in the event of a default in any of the provisions contained in this Mortgage or in the Note secured hereby, Mortgagee may, at its option, without being required to do so, apply any monies or securities which constitute such deposits or any of Mortgagor's obligations herein or in the Note contained in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagee or to the then owner or owners of the premises. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

(j) **Waiver of Statutory Rights.** Mortgagor shall not apply for or avail itself 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, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the premises sold as an entirety.

(k) **Waiver of Defenses.** No action for the enforcement of the lien of this Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action of law upon the Note.

(l) **Partial Payments.** Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest thereon,

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immediately due and payable without notice, or any other rights of the Mortgagee at that time or any subsequent time, nor nullify any prior exercise of such option or such rights of Mortgagee without its express consent except and to the extent otherwise provided by law.

(m) **Tender of Payment After Acceleration.** Upon default by Mortgagor and following the acceleration of maturity as aforesaid, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale by Mortgagor, its successors or assigns shall constitute an evasion of the prepayment privilege and shall be deemed to be a voluntary prepayment hereunder. In case, after legal proceedings are instituted to foreclose the lien of this Mortgage, tender is made of the entire indebtedness due hereunder, Mortgagee shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including such expenditures as are enumerated above, and such expenses shall be so much additional indebtedness secured by this Mortgage, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses and charges shall have been paid in full.

(n) **Delays and Omissions.** No delay in the exercise of or failure to exercise any remedy or right accruing or any default under this Mortgage 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 of a different nature.

(o) **Rescission of Election.** Acceleration of maturity, once made by Mortgagee may, at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed. Whereupon, in either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and power of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

(p) **Remedies Cumulative and Concurrent.** The rights and remedies of Mortgagee as provided in the Note, in this Mortgage and in the guaranty of any guarantor shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor, any guarantor or the premises, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by the laws of the state in which the premises are situated. If Mortgagee elects to proceed under one right or remedy under this Mortgage or the Note, Mortgagee may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under this Mortgage or the Note.

23. **Giving of Notice.** Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Mortgage shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; (c) registered or certified United States mail, postage prepaid, return receipt requested; or (d) email or similar electronic transmission.

If to Mortgagee: James F. Flaherty III and Mary H. Flaherty, Trustees
The Flaherty Trust Dated September 25, 1997
11601 Wilshire Boulevard
Suite 1600
Los Angeles, California, 90025
Email: jay@flaherty.cc

If to Mortgagor: Chris and Mary Hesburgh
1316 Elmwood Avenue
Wilmette, Illinois 60091
Email: chris.hesburgh@gmail.com

Such addresses may be changed by notice to the other party given in the same manner as provided in this Mortgage. Any notice, demand, request or other communication sent pursuant to subparagraph (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subparagraph (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand,

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request or other communication sent pursuant to subparagraph (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service. Any notice, demand, request or other communication sent pursuant to subparagraph (d) shall be served and effective upon such successful electronic transmission.

24. **Time is of the Essence.** It is specifically agreed that time is of the essence of this Mortgage. The waiver of the options or obligations secured hereby shall not at any time thereafter be held to be abandonment of such rights.

25. **Mortgagee's Lien for Service Charge and Expenses.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses, and advances due to or incurred by the Mortgagee in connection with this transaction.

26. **Default Interest Rate.** The term "default interest rate" is deemed to mean interest at the rate of five percent (5%) per annum in excess of the interest rate from time to time prevailing under the Note until paid.

27. **Modifications.** This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

28. **Covenants to Run with the Land.** All the covenants hereof shall run with the land.

29. **Captions.** The captions and headings of various paragraphs are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

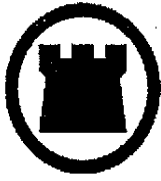
30. **Construction.** This Mortgage and the rights and indebtedness hereby secured shall be construed and enforced according to the laws of the State of Illinois.

31. **Binding on Successors and Assigns, etc.** This Mortgage and all provisions hereof shall extend and be binding upon Mortgagor's successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include and refer to (in addition to Mortgagor) all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

32. **Further Assurances.** Mortgagor shall execute, acknowledge and deliver to Mortgagee and to any subsequent holder from time to time upon demand (and pay the costs of preparation and recording thereof) any further instrument or instruments, including, but not limited to, mortgages, security instruments, financing statements, assignments and renewal and substitution notes, so as to reaffirm, to correct and to perfect the evidence of the obligation hereby secured and the lien of Mortgagee to all or any part of the premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof, and will do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage. Provided the foregoing to the contrary notwithstanding, nothing in this paragraph contained shall be so construed as to increase the obligations of the Mortgagor beyond those which might arise pursuant to this Mortgage and the Note secured hereby.

33. **Recording and Filing.** Mortgagor, at its expense, will cause this Mortgage and all supplements thereto for which constructive notice must be given to protect Mortgagee, at all times to be recorded and filed, and re-recorded and refiled, in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing re-recording, refiling taxes, fees and other charges to the maximum extent permitted by the laws of the state in which the premises are situated.

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CHICAGO TITLE
COMPANY

LEGAL DESCRIPTION

Order No.: 16NW7121026SK

For APN/Parcel ID(s): 05-27-309-023-0000

THE EAST 1/2 OF LOT 14 IN BLOCK 18 IN GAGE'S ADDITION TO WILMETTE IN SECTION 27,
TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK
COUNTY, ILLINOIS.

Property of Cook County Clerk's Office