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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1626413000 Fee: \$98.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/20/2016 01:22 PM Pg: 1 of 31

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 17-09-322-005

Address:

Street: 165 NORTH DES PLAINES STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60661

Lender: PNC BANK, NATIONAL ASSOCIATION

Borrower: 165 NORTH DESPLAINES, LLC

Loan / Mortgage Amount: \$47,825,000.00

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.

Box 400

Certificate number: 0A097B51-60BA-4DBE-865A-5440C77B818B

Execution date: 9/16/2016

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THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Jones Day
555 California Street, 26th Floor
San Francisco, CA 94104-1500
Attn: Emily L. Douglas, Esquire

Property of Cook County Clerk's Office

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

executed by

165 NORTH DESPLAINES, LLC,
a Delaware limited liability company,
as the Mortgago.

in favor of

PNC BANK, NATIONAL ASSOCIATION,
a national banking association,
in its capacity as the Administrative Agent,
as the Mortgagee

Dated: September 16, 2016

This document serves as a Fixture Filing under the Illinois Uniform Commercial Code, 810 ILCS 5/1 et seq.

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THIS MORTGAGE SECURES A NOTE WHICH PROVIDES FOR A VARIABLE INTEREST RATE

THIS CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING IS INTENDED TO BE EFFECTIVE AS A FINANCING STATEMENT WITH RESPECT TO THE GOODS DESCRIBED HEREIN BY ITEM OR TYPE WHICH ARE OR BECOME FIXTURES RELATED TO THE REAL PROPERTY DESCRIBED IN THIS MORTGAGE.

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

Term or Maturity Date (exclusive of any renewal or extension rights): September 16, 2019

THIS CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as this "**Mortgage**") is made and entered into this 16th day of September, 2016 by

165 NORTH DESPLAINES, LLC, a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, having a mailing address located at c/o Gerding Edlen, 1477 NW Everett St., Portland, Oregon 97209 (hereinafter referred to as the "**Mortgagor**"),

IN FAVOR OF

PNC BANK, NATIONAL ASSOCIATION, a national banking association duly organized and validly existing under the laws of the United States of America, having an office located at 249 Fifth Avenue, Pittsburgh, Pennsylvania 15222, in its capacity as the administrative agent (hereinafter, together with its successors and assigns in such capacity, referred to as the "**Mortgagee**") for the lenders from time to time party to the Loan Agreement described herein (hereinafter collectively referred to as the "**Lenders**" and singly referred to as a "**Lender**").

W I T N E S S E T H:

WHEREAS, the Mortgagor is the owner of certain tracts or parcels of real property described on Exhibit A attached hereto and made a part hereof, together with the improvements now or hereafter erected thereon; and

WHEREAS, the Mortgagor, the Mortgagee and the Lenders have entered into that certain Construction Loan Agreement, dated as of the date hereof (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "**Loan Agreement**"); and

WHEREAS, the Lenders have agreed to make available to the Mortgagor, pursuant to the terms, conditions and provisions of the Loan Agreement, a construction loan in the aggregate maximum principal amount of up to FORTY-SEVEN MILLION EIGHT HUNDRED TWENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$47,825,000.00) (hereinafter, as it may be from time to

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time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the “**Loan**”); and

WHEREAS, the Loan is evidenced by, *inter alia*, certain promissory notes of even date herewith, executed by the Mortgagor, as the maker, and delivered to each of the Lenders, as the payee, in the aggregate principal amount of Forty-Seven Million Eight Hundred Twenty-Five Thousand Dollars (\$47,825,000) (hereinafter, as the same may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, together with any subsequent note executed by the Mortgagor in favor of a Lender, shall be from time to time collectively referred to as the “**Notes**” and individually as a “**Note**”); and

WHEREAS, all defined terms used but not expressly defined herein shall have the same meanings when used herein as set forth in the Loan Agreement.

NOW, THEREFORE, for the purpose of securing the payment and performance of the following obligations (hereinafter collectively referred to as the “**Secured Obligations**”):

- (a) all indebtedness, together with all interest thereon, evidenced by the Notes and any future amendments, modifications, supplements, replacements or substitutions, thereto and thereof;
- (b) any sums advanced by the Mortgagee and/or any of the Lenders or which may otherwise become due pursuant to the provisions of the Notes, the Loan Agreement, this Mortgage or any of the other Loan Documents, including, without limitation, any PNC-Provided Interest Rate Hedge; and
- (c) all other obligations of the Mortgagor owed to the Mortgagee and/or any of the Lenders, now existing or hereafter arising in connection with the Loan, provided, nevertheless, that this Mortgage shall not extend to or secure any obligation of the Mortgagor which is defined as “consumer credit” under Regulation Z promulgated by the Board of Governors of the Federal Reserve System and which is not exempted from application thereof,

the Mortgagor, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, does hereby irrevocably bargain, convey, mortgage, encumber, transfer, warrant, hypothecate, pledge, set over, assign unto and does hereby grant to the Mortgagee, its successors and assigns forever, for the benefit of the Lenders, a security interest in the following described real and personal property, all accessions and additions thereto, all substitutions therefor and replacements, products, and proceeds thereof, and all reversions and remainders of such property (hereinafter collectively referred to as the “**Mortgaged Premises**”) now owned or held or hereafter acquired, to wit:

- (i) all of the Mortgagor’s estate and interest in and to certain real property located at 165 North Desplaines Street in the City of Chicago, County of Cook and State of Illinois, as more particularly described on Exhibit A attached hereto and made a part hereof, together with any and all of the easements, rights of way, privileges, liberties, hereditaments, gores, streets, alleys, passages, ways, waters, watercourses, rights and appurtenances thereunto belonging or appertaining, and all of the estate, right, title, interest, claim and demand whatsoever of the Mortgagor therein and in the public streets and ways adjacent thereto, either in Law or in equity, in possession or expectancy (hereinafter collectively referred to as the “**Land**”);

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- (ii) the structures and buildings and all additions and improvements thereto now or hereafter erected upon the Land (including all “**Equipment**”, as such term is hereinafter defined, constituting fixtures) (hereinafter collectively referred to as the “**Improvements**”);
- (iii) all building materials of every kind and nature intended to be installed in or on the Land or the Improvements, all machinery, apparatus, equipment, fittings, furniture, appliances and fixtures of every kind and nature whatsoever and regardless of whether the same may now or hereafter be attached or affixed to the Land or the Improvements, including, without limitation, all electrical, antipollution, heating, lighting, incinerating, power, air conditioning, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communication machinery, apparatus, equipment, fittings, appliances and fixtures, and all engines, pipes, pumps, tanks, motors, conduits, ducts, compressors, elevators and escalators, and all articles of personal property and goods of every kind and nature whatsoever, including all shades, awnings and carpets now or hereafter affixed to, attached to, placed upon, or used or usable in any way in connection with the use, enjoyment, occupancy or operation of the Land or Improvements (hereinafter collectively referred to as the “**Equipment**”);
- (iv) all leases, subleases, rental agreements, registration cards and agreements, if any, and other agreements now or hereafter in existence relating to the use, occupancy or possession of the Land, improvements or Equipment or any part thereof, and all rights, title and interests of the Mortgagor thereunder, including, without limitation, all cash and securities deposited thereunder to secure performance by the tenants of their obligations thereunder, and including further, the right to amend or terminate the same or waive the provisions thereof, and the right to receive and collect the rents thereunder and all guaranties thereof (hereinafter collectively referred to as the “**Leases**”);
- (v) all loan funds held by the Mortgagee or any of the Lenders, whether or not disbursed, all funds deposited by the Mortgagor with the Mortgagee or any of the Lenders pursuant to the Loan Agreement or otherwise, including, without limitation, all reserves, deferred payments, deposits, refunds, costs, savings and payments of any kind relating to the Improvements (hereinafter collectively referred to as the “**Deposits**”);
- (vi) all revenues, income, rents, issues and profits of the Land, Improvements, Equipment and Leases (hereinafter collectively referred to as the “**Rents**”), including all proceeds of the conversion, voluntary or involuntary, of the Land, Improvements and Equipment or any part thereof into cash or liquidated claims, including proceeds of insurance and condemnation awards or payments in lieu thereof;
- (vii) all of Mortgagor’s right, title and interest, now or hereafter acquired, to the payment of money to Mortgagor under any Swap at any time entered into by Mortgagor in connection with the Loan;
- (viii) any and all agreements, now or hereafter in existence providing for or relating to the construction, alteration, maintenance, repair, operation, franchising, or management of the Land and/or the Improvements or any part thereof, as well as the plans and specifications therefor, and all copies thereof (together with the right to amend or terminate the same or waive the provisions of the foregoing) and any amendments, renewals and replacements thereof; to the extent permitted by the relevant authorities, all licenses, permits and approvals for the ownership, construction, maintenance, operation,

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use and occupancy of the Land and/or Improvements or any part thereof and any amendments, renewals and replacements thereof; all of the Mortgagor's rights, title and interests in all warranties and guaranties from contractors, subcontractors, suppliers and manufacturers to the maximum extent permissible relating to the Land and/or the Improvements or any part thereof; all bonds and insurance policies covering or affecting the Land and/or the Improvements or any part thereof; and

- (ix) all personal property of the Mortgagor, including the following, all whether now owned or hereafter acquired or arising and wherever located: (1) accounts; (2) securities entitlements, securities accounts, commodity accounts, commodity contracts and investment property; (3) deposit accounts; (4) instruments (including promissory notes); (5) documents (including warehouse receipts); (6) chattel paper (including electronic chattel paper and tangible chattel paper); (7) inventory, including raw materials, work in process, or materials used or consumed in the Mortgagor's business, items held for sale or lease or furnished or to be furnished under contracts of service, sale or lease, goods that are returned, reclaimed or repossessed; (8) goods of every nature, including stock-in-trade, goods on consignment; (9) equipment, including machinery, vehicles and furniture; (10) fixtures; (11) agricultural liens; (12) as-extracted collateral; (13) letter of credit rights; (14) general intangibles, of every kind and description, including payment intangibles, software, computer information, source codes, object codes, records and data, all existing and future customer lists, choses in action, claims (including claims for indemnification or breach of warranty), books, records, patents and patent applications, copyrights, trademarks, tradenames, tradestyles, trademark applications, goodwill, blueprints, drawings, designs and plans, trade secrets, contracts, licenses, license agreements, formulae, tax and any other types of refunds, returned and unearned insurance premiums, rights and claims under insurance policies; (15) all supporting obligations of all of the foregoing property; (16) all property of the Mortgagor now or hereafter in the Mortgagee's possession or in transit to or from, or under the custody or control of, the Mortgagee, or any affiliate thereof; (17) all cash and cash equivalents thereof; and (18) all cash and noncash proceeds (including insurance proceeds) of all of the foregoing property, all products thereof and all additions and accessions thereto, substitutions therefor and replacements thereof (hereinafter collectively referred to as the "Other Property").

TO HAVE AND TO HOLD the Mortgaged Premises unto the Mortgagee, its successors and assigns, to its own use forever in accordance with the provisions hereof, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

PROVIDED THAT if the Mortgagor shall well and truly pay, or there shall otherwise be paid to the Mortgagee and the Lenders, the indebtedness evidenced by the Notes secured hereby at the time and in the manner provided in the Notes, the Loan Agreement, and this Mortgage, and the Mortgagor shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Notes, the Loan Agreement, and in the other Loan Documents, then these presents and the lien and interest hereby transferred and assigned shall cease, terminate and be void. The Mortgagee shall release the Mortgaged Premises and renounce any other rights granted to it herein and shall execute, at the request of the Mortgagor, a release of this Mortgage and any other instrument to that effect deemed necessary or desirable, upon full payment and performance being made on the indebtedness and covenants secured hereby.

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THIS MORTGAGE IS GRANTED TO SECURE FUTURE ADVANCES MADE PURSUANT TO THE NOTE AND OTHER LOAN DOCUMENTS.

THE MORTGAGOR hereby warrants, covenants, and agrees as follows:

1. Warranty of Title. The Mortgagor hereby represents and warrants that: (a) the Mortgagor has a good and marketable fee simple title to the Land and the Improvements and all other property constituting a part of the Mortgaged Premises, in each case free and clear of all liens and encumbrances, except as may otherwise be set forth on Exhibit B attached hereto and made a part hereof; (b) the Mortgagor has good and legal right, power and authority to convey its interest in the Mortgaged Premises; (c) this Mortgage is a valid and enforceable first lien on Mortgaged Premises and the Mortgagee shall, subject to the Mortgagor's right of possession prior to an Event of Default, quietly enjoy and possess the Mortgaged Premises; (d) the Mortgagor shall preserve such title as the Mortgagor warrants herein and the validity and priority of the lien hereof and shall forever warrant and defend the same to the Mortgagee against the claims of all Persons and parties whomsoever; and (e) the Mortgagor shall execute, acknowledge and deliver to the Mortgagee any further assurances of the title conveyed or intended to be conveyed by this Mortgage, and of the title to any part of the Mortgaged Premises that the Mortgagor may be bound to convey to the Mortgagee.

2. Use of Proceeds. The Mortgagor represents and warrants to Lender that the proceeds of the obligations secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligations secured by this Mortgage constitute (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

3. Payment and Performance of Secured Obligations. The Mortgagor shall punctually pay the principal and interest and all other sums due or to become due under the Notes as provided therein and shall pay and perform all other Secured Obligations when due as provided in the Loan Documents. This Mortgage secures the payment of the entire indebtedness secured hereby, provided, however, that the total amount secured by this Mortgage (excluding interest, costs, expenses, charges, fees, protective advances and indemnification obligations, all of any type or nature) shall not exceed an amount equal to 200% of the face amount of the Note.

4. Legal Requirements. The Mortgagor shall promptly comply with and conform to or cause to be complied with and conformed to all present and future Laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted governmental authority or agency and all covenants, restrictions and conditions which may be applicable to the Mortgagor or to the Mortgaged Premises or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any of the Improvements located on the Mortgaged Premises (hereinafter collectively referred to as the "Legal Requirements").

5. Mortgagor's Existence. The Mortgagor and any subsequent owner of the interest of the Mortgagor in the Mortgaged Premises (other than an individual) shall do all things necessary to preserve and keep in full force and effect its legal existence, franchises, rights, and privileges under the Laws of the state of its formation and its right to own property and transact business in the State of Illinois.

6. Impositions.

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(a) Before the date when any fine, late charge or other penalty for late payment may be imposed, the Mortgagor shall pay and discharge or cause to be paid or discharged all taxes of every kind and nature (including real and personal property taxes on the Mortgaged Premises, income, franchise, withholding, profits and gross receipts taxes, any tax imposed directly or indirectly on the Mortgagee with respect to the Mortgaged Premises or this Mortgage, the value of the equity of the Mortgagor therein or the indebtedness evidenced by the Notes; provided, that, Mortgagor shall not be responsible for income tax payable by Mortgagee on account of the repayment of the Loan), all charges for any easement or agreement maintained for the benefit of any of the Mortgaged Premises, all general and special assessments (including, without limitation, any condominium or planned unit development assessments, if any), levies, permits, inspection and license fees, all mortgages and other liens which may be permitted by the Mortgagee, all ground, water and sewer rents and charges and all other charges and liens, whether of a like or different nature, even if unforeseen or extraordinary, imposed upon or assessed against the Mortgagor or any of the Mortgaged Premises or arising in respect of the occupancy, use or possession thereof. The Mortgagor shall comply in all respects with all agreements, mortgages, covenants, easements and restrictions now or hereafter affecting the Land or the Improvements. The obligations referred to in this Section 6 shall be hereinafter collectively referred to as the “**Impositions**”. Within ten (10) days after the payment of any Imposition, the Mortgagor shall deliver to the Mortgagee evidence acceptable to the Mortgagee of such payment. The Mortgagor shall also deliver to the Mortgagee within five (5) days of receipt thereof copies of all settlements and notices pertaining to the Impositions which may be issued by any governmental authority.

(b) Subject to the right of the Mortgagor to contest the payment of an Imposition as provided in Section 10 below, the Mortgagee may, after notice to the Mortgagor, pay or perform any Imposition and add the amount so paid or the cost incurred to the Secured Obligations and all such amounts shall on demand be due and payable, together with interest thereon, from the date of such demand at the Default Rate specified in the Loan Agreement.

7. Insurance.

(a) The Mortgagor shall maintain the insurance coverages required by the Loan Agreement, including Section 4.6 thereof. The amounts, form and content of the insurance policies shall at all times be reasonably satisfactory to the Mortgagee. The Mortgagor shall pay, as they become due, all premiums for such insurance, shall keep each policy in full force and effect, shall deliver to the Mortgagee copies of such policies of insurance with evidence of the payment of the full premium therefor at least thirty (30) days prior to the expiration date of each policy. Each policy shall provide for written notice to the Mortgagee at least thirty (30) days prior to any cancellation, nonrenewal or amendment of such insurance.

(b) The Mortgagor shall deliver to the Mortgagee at the time of each renewal of the policy, a statement reasonably satisfactory to the Mortgagee as to the then replacement and insurable values of the Improvements as determined by the underwriter of fire insurance on the Mortgaged Premises or by a qualified appraiser approved by the Mortgagee.

(c) The Mortgagor shall promptly comply with and conform to (i) all provisions of each such insurance policy and (ii) all requirements of the insurers thereunder applicable to the Mortgagor or any portion of the Mortgaged Premises or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of any of the Improvements located on the Mortgaged Premises. The Mortgagor shall not use or permit any party to use any of the Mortgaged Premises in any manner which would permit the insurer to cancel any insurance policy.

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(d) In the event of any loss as a result of a casualty affecting the Mortgaged Premises, the Mortgagee, in its sole discretion, shall have the exclusive right to adjust, collect and compromise all insurance claims, and the Mortgagor shall not adjust, collect or compromise any claims under said policies without the prior express written consent of the Mortgagee. Each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to the Mortgagee instead of to the Mortgagor and the Mortgagee jointly, and the Mortgagor hereby appoints the Mortgagee as the Mortgagor's attorney-in-fact (coupled with an interest) to endorse any draft therefor and the Mortgagor shall not have any claim against said insurance proceeds payable on account thereof.

(e) Notwithstanding any term, condition, or provision of this Mortgage or any other Loan Document to the contrary, in the event of the total destruction of the Mortgaged Premises, all insurance proceeds shall be payable to the Mortgagee and such proceeds may be applied by the Mortgagee, in its sole discretion, to (i) any part of the Secured Obligations, and in any order (notwithstanding that such Secured Obligations may not then be due and payable) or (ii) to the repair, restoration, replacement and rebuilding of the Mortgaged Premises. The Mortgagee shall not be deemed to have made such election until it has specifically done so in writing. Until so elected, the Mortgagee shall not in any circumstances be deemed to have waived its right to make such election.

(f) Notwithstanding any term, condition or provision of this Mortgage or any other Loan Document to the contrary, in the event of a partial destruction of the Mortgaged Premises, the Mortgagee shall disburse all of the insurance proceeds in which the Mortgagor and/or the Mortgagee have a legal or beneficial ownership interest, for the purposes of repairing, restoring, replacing and rebuilding the Mortgaged Premises in accordance with the Mortgagee's standard construction loan disbursement requirements set forth in the Loan Agreement and in accordance with the terms and conditions of Section 14 of this Mortgage, so long as the Mortgagor satisfies the following terms and conditions, all as determined by the Mortgagee, in its sole discretion: (i) the Mortgagor shall request in writing that the Mortgagee make such insurance proceeds available to repair, restore, replace and rebuild the Mortgaged Premises; (ii) no Event of Default or Potential Default under the Loan Documents shall have occurred and be continuing; (iii) the Mortgagor shall have delivered evidence satisfactory to the Mortgagee that the Mortgaged Premises can be fully repaired, restored, replaced and rebuilt no later than the then current Maturity Date; (iv) the Mortgagor shall have deposited with the Mortgagee, for disbursement in connection with the repair, restoration, replacement and rebuilding of the Mortgaged Premises, the amount by which the cost of such repair of the Mortgaged Premises to substantially the same value, condition and character as existed prior to such damage is estimated by the Mortgagee to exceed the net insurance proceeds available for said repair, etc. and the Mortgagor shall also have deposited with the Mortgagee any other amounts required under Section 14(a) of this Mortgage; (v) the repair, restoration, replacement and rebuilding work shall be performed under a fixed price, guaranteed maximum price, or stipulated sum contract satisfactory to the Mortgagee in accordance with plans and specifications reviewed and approved by the Mortgagee, in its reasonable discretion, and in compliance with all applicable federal, state and local laws, all as more fully described in Sections 13(b) and (c) below; (vi) the Mortgagor shall pay as and when due in accordance with the terms of the Loan Agreement all of the Mortgagee's costs and expenses incurred in connection with the collection and disbursement of said insurance proceeds, including, without limitation, inspection, engineering and legal fees; (vii) Mortgagor shall have caused the Guarantor to execute and deliver to Mortgagee a guaranty of completion in form and substance similar to the Completion Guaranty delivered to Mortgagee on the Closing Date; and (viii) any insurance proceeds relating to damaged or destroyed tenant fit-up Improvements shall be used and applied to restore, repair, replace and rebuild said tenant fit-up Improvements all as provided for in the Lease(s) of each affected tenant in the Mortgaged Premises. In the event the Mortgagor fails to comply with or satisfy all of the terms, conditions, and provisions of this Section 7(f), then all insurance proceeds shall be payable to the Mortgagee and such proceeds may be applied by the Mortgagee, in its sole

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discretion, (1) to any part of the Secured Obligations, and in any order (notwithstanding that such Secured Obligations may not then be due and payable) or (2) to the repair and restoration of the Mortgaged Premises. The Mortgagee shall not be deemed to have made such election until it has specifically done so in writing. Until so elected, the Mortgagee shall not in any circumstances be deemed to have waived its right to make such election.

(g) In the event of any casualty (whether or not insured against) resulting in damage to any of the Mortgaged Premises, unless the Mortgagee shall have applied the insurance proceeds to the payment of the Secured Obligations pursuant to Sections 7(e) and/or (f) above, the Mortgagor, whether or not such insurance proceeds shall be sufficient for the purpose, shall promptly commence and diligently continue to restore the Mortgaged Premises as nearly as possible to its value, condition, and character immediately prior to such casualty.

(h) Any separate insurance concurrent in form or contributing in the event of a loss with that required to be maintained under this Section 7 shall contain a non-contributory mortgagee clause in favor of and acceptable to the Mortgagee, and a copy of such policy shall be delivered promptly to the Mortgagee; provided, however, that no such concurrent or contributing insurance shall be maintained without the prior express written consent of the Mortgagee.

8. Installments for Insurance, Taxes and Other Charges. Without limiting the effect of Sections 7 and 8 above, the Mortgagor shall if requested by the Mortgagee after the occurrence of an Event of Default, pay to the Mortgagee monthly with the monthly installments of interest on the Notes, an amount equal to one-twelfth (1/12) of the annual premiums for the insurance policies referred to hereinabove and the annual Impositions and any other item which at any time may be or become a lien upon the Mortgaged Premises (hereinafter referred to as the “**Escrow Charges**”); and on demand from time to time the Mortgagor shall pay to the Mortgagee any additional sums necessary to pay when due the Escrow Charges, all as reasonably estimated by the Mortgagee. The amounts so paid shall be security for the Escrow Charges and shall be used in payment thereof. No amount so paid to the Mortgagee shall be deemed to be trust funds but may be commingled with general funds of the Mortgagee. At the Mortgagee’s option, the Mortgagee from time to time may waive and after any such waiver may reinstate, the provisions of this Section 8 requiring the monthly payments. In the event any interest of the Mortgagor in the Mortgaged Premises is sold or otherwise transferred, whether voluntarily or involuntarily, then all of the interest of the Mortgagor in and to the Escrow Charges shall vest in the successor to such interest of the Mortgagor in the Mortgaged Premises; subject, nevertheless, to the rights of the Mortgagee hereunder.

9. No Other Financing or Liens; Sale of Mortgaged Premises.

(a) Without the prior express written consent of the Mortgagee, the Mortgagor shall not enter into any lease for any personal property, as lessee, which is now or hereafter intended to be a part of the Mortgaged Premises or is to be used in connection with the operation of the Mortgaged Premises, or, subject to the terms, conditions, and provisions of Section 10 below, create or cause or permit to exist any lien on, or security interest in, any part of the Mortgaged Premises, other than as created by this Mortgage and the other Loan Documents and other than in favor of the Lenders.

(b) The Mortgagor shall have no right to permit the holder of any subordinate mortgage or other subordinate lien, whether or not consented to by the Mortgagee, to terminate any lease of all or a portion of the Mortgaged Premises whether or not such lease is subordinate (whether by Law or the terms of such lease or a separate agreement) to the lien of this Mortgage. The holder of any subordinate mortgage or other subordinate lien shall have no such right, whether by foreclosure of its mortgage or lien

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or otherwise, to terminate any such lease, whether or not permitted to do so by the Mortgagor or as a matter of Law, and any such attempt to terminate any such lease shall be ineffective and void.

(c) The Mortgagor shall not sell, assign, give, mortgage, pledge, hypothecate, encumber or otherwise transfer the Mortgaged Premises, or any part thereof or interest therein voluntarily or involuntarily, other than (i) any Leases approved in writing by the Mortgagee, or (ii) as otherwise set forth in the Loan Agreement or in any of the other Loan Documents. Subject to the Mortgagor's right of contest under Section 10 below and except as permitted by the Loan Documents, no lien or encumbrance of any type, whether voluntary or involuntary, shall be permitted to be filed or entered against any part of the Mortgaged Premises or the interests of the Mortgagor therein.

10. Right of Contest. The Mortgagor may, in good faith, contest, by proper legal proceedings, the validity of any Legal Requirement or the validity or amount of any Imposition, provided that, (a) an Event of Default or Potential Default does not exist, (b) the Mortgagor provides the Mortgagee with security reasonably satisfactory to the Mortgagee assuring compliance with or payment of the Legal Requirement or Imposition and any additional charge, interest, penalty, expense or other payment which may arise from or be incurred as a result of such contest, and (c) such contest operates to suspend enforcement of compliance with or collection or enforcement of the Legal Requirement or Imposition and is maintained and prosecuted with diligence.

11. Maintenance and Impairment of Security; Mortgagee's Inspection Rights. The Mortgagor shall keep the Mortgaged Premises in good condition and order and in a saleable or rentable and tenantable, as appropriate, state of repair and shall make or cause to be made, as and when necessary, all repairs, renewals, and replacements, structural and nonstructural, exterior and interior, foreseen and unforeseen, ordinary and extraordinary, provided, however, that no structural repairs, renewals, or replacements shall be made without the Mortgagee's prior express written consent. The Mortgagor shall not remove, demolish, or alter the Mortgaged Premises or any Improvements constituting a part thereof, nor commit or suffer waste with respect thereto, nor permit the Mortgaged Premises to become deserted or abandoned. The Mortgagor shall permit the Mortgagee and its agents at any reasonable time and from time to time to enter upon and visit the Mortgaged Premises for the purpose of inspecting and appraising the same. The Mortgagor hereby covenants and agrees not to take or permit any action with respect to the Mortgaged Premises which will in any manner impair the security of this Mortgage.

12. Use of Mortgaged Premises. Unless the Mortgagee otherwise gives its prior express written consent, the Mortgagor shall not use or permit others to use the Mortgaged Premises for other than the intended uses described in the Loan Agreement and shall use and permit others to use the Mortgaged Premises only as permitted by Law.

13. Condemnation. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any portion or all of the Mortgaged Premises, shall notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings and the Mortgagor shall deliver to the Mortgagee all instruments requested by it to permit such participation. Any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof, is hereby assigned to and shall be received and collected directly by the Mortgagee, and any award or compensation shall be applied by the Mortgagee, in its sole discretion, (a) to any part of the Secured Obligations and in any order (notwithstanding that any of such Secured Obligations may not then be due and payable) or (b) to the repair and restoration of the Mortgaged Premises. The Mortgagee shall not be deemed to have made such election until it has specifically done so in writing. Until so elected, the Mortgagee shall not in any circumstances be deemed to have waived its right to make such election. Unless the Mortgagee, in its

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sole discretion, shall have elected to apply the award or compensation to the payment of the Secured Obligations as provided above, the Mortgagor shall promptly, whether or not such award or compensation shall be sufficient for the purpose, commence and diligently continue to restore the Mortgaged Premises as nearly as possible to its value, condition and character immediately prior to such damage. In such event, the Mortgagee shall have the right to hold the award or compensation and disburse it to the Mortgagor or for the account of the Mortgagor as the restoration progresses, as provided in Section 14 below.

14. Restoration. All amounts received by the Mortgagee pursuant to Section 7 or Section 13 above and which is permitted to be applied to the restoration of the Mortgaged Premises in accordance with the terms of said Section 7 and/or Section 13 above, may either be held in a restoration fund (hereinafter referred to as the "Restoration Fund") by the Mortgagee or, if it refuses to serve, one of the Lenders or another bank or trust company appointed by the Mortgagee, as restoration fund trustee (hereinafter referred to as the "Restoration Fund Trustee"), with any additions thereto that may be required by the Mortgagee as hereinafter provided. The interest or income, if any, received on all deposits or investments of any moneys in the Restoration Fund shall be added to the Restoration Fund. Neither the Mortgagee nor the Restoration Fund Trustee shall be liable or accountable for any loss resulting from any such deposit or investment, or for any withdrawal, redemption or sale of deposits or investments. The Mortgagee and/or the Restoration Fund Trustee may impose reasonable charges for services performed in managing the Restoration Fund and may deduct such charges therefrom. Restoration shall be performed only in accordance with the following conditions:

(a) prior to the commencement of restoration and from time to time during restoration, the Mortgagee may require the Mortgagor to deposit additional moneys, including, without limitation, any additional moneys necessary to cover interest expense anticipated by the Mortgagee to be incurred by the Mortgagor in connection with such restoration, into the Restoration Fund in amounts which in the Mortgagee's reasonable judgment are sufficient to defray all costs to be incurred to complete the restoration and all costs associated therewith, including labor, materials, architectural and design fees and expenses and contractor's fees and expenses, and the Mortgagee shall have approved a budget and cost breakdown for the restoration, together with a disbursement schedule, in detail satisfactory to the Mortgagee;

(b) prior to commencement of restoration, the contracts, contractor's plans and specifications (if applicable) for the restoration shall have been approved by the Mortgagee and all governmental authorities having jurisdiction, and the Mortgagee shall be provided with satisfactory title insurance and acceptable surety bonds insuring satisfactory completion of the restoration and the payment of all subcontractors and materialmen;

(c) all restoration work shall be performed under a fixed price, guaranteed maximum price, or stipulated sum contract satisfactory to the Mortgagee and the Mortgagee's inspecting architect;

(d) at the time of any disbursement, no Event of Default or Potential Default shall have occurred and be continuing, no mechanics' or materialmen's liens shall have been filed and remain undischarged or bonded and an endorsement satisfactory to the Mortgagee to its title insurance policy shall have been delivered to the Mortgagee;

(e) disbursements from the Restoration Fund shall be made from time to time, but not more frequently than once each calendar month, for completed work under the aforesaid contracts (subject to retainage) and for other costs associated therewith and approved by the Mortgagee, upon receipt of evidence satisfactory to the Mortgagee of the stage of completion and of performance of the work in a

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good and workmanlike manner in accordance with the contracts, plans and specifications as approved by the Mortgagee;

(f) the Mortgagor shall pay the cost of the Mortgagee's inspecting architect or engineer and the cost of any attorney's fees and disbursements incurred by the Mortgagee in connection with such restoration;

(g) the Mortgagee shall have the option to retain up to the greater of (i) five percent (5%) and (ii) the percent Retainage required in the General Construction Contract, in each case, of costs incurred under the General Construction Contract, of the cost of all work until the restoration is fully completed, as determined by the Mortgagee in its sole and absolute discretion, and all occupancy permits therefor have been issued;

(h) the Mortgagee may impose such other reasonable conditions, including a restoration schedule, as are customarily imposed by construction lenders to assure complete and lien-free restoration;

(i) any sum remaining in the Restoration Fund upon completion of restoration shall, at the Mortgagee's option, be applied to any part of the Secured Obligations and in any order (notwithstanding that any of such Secured Obligations may not then be due and payable) or be paid to the Mortgagor; and

(j) at the time such Restoration is commenced, no Event of Default or Potential Default shall have occurred and be continuing

If within forty-five (45) days after the occurrence of any loss or damage to the Mortgaged Premises or such longer period as may be reasonably acceptable to the Mortgagee, the Mortgagor shall not have submitted to the Mortgagee and received the Mortgagee's approval of plans and specifications for the repair, restoration or rebuilding of such loss or damage or shall not have obtained approval of such plans and specifications from all governmental authorities whose approval is required, or if, after such plans and specifications are approved by the Mortgagee and by all such governmental authorities, the Mortgagor shall fail to commence promptly such repair, restoration or rebuilding, or if thereafter the Mortgagor shall fail to carry out diligently such repair, restoration or rebuilding or are delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with such work, or if any other condition of this Section 14 is not satisfied, then (i) the Mortgagee may, at its option, in addition to all other rights herein set forth, and, after giving the Mortgagor thirty (30) days written notice of the nonfulfillment of one or more of the foregoing conditions, and failing the Mortgagor's fulfillment of said conditions within said thirty (30) day period, declare that an Event of Default has occurred and/or apply all proceeds to the payment of any Secured Obligations, and/or (ii) the Mortgagee, or any lawfully appointed receiver of the Mortgaged Premises, may at their respective options, perform or cause to be performed such repair, restoration or rebuilding, and may take such other steps as they deem advisable to carry out such repair, restoration or rebuilding, and may enter upon the Mortgaged Premises for any of the foregoing purposes, and the Mortgagor hereby expressly and voluntarily waives, for itself and all others holding under it, any claim against the Mortgagee, the Lenders, and such receiver (other than a claim based upon the alleged gross negligence or intentional misconduct of the Mortgagee, the Lenders, or any such receiver) arising out of anything done by them or any of them pursuant to this paragraph and the Mortgagee may, in its discretion, apply any insurance or condemnation proceeds held by it or the Restoration Fund Trustee to reimburse itself and/or such receiver for all amounts expended or incurred by it in connection with the performance of such work, including attorney's fees, and any excess costs shall be paid by the Mortgagor to the Mortgagee and the Mortgagor's obligation to pay such excess costs shall be secured by the lien of this Mortgage and shall bear interest at the Default Rate specified in the Loan Agreement, until paid.

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The Mortgagor expressly and voluntarily waives any and all right to claim or recover against the Mortgagee, the Lenders, and their respective officers, employees, agents and representatives, for loss of or damage to the Mortgagor, the Mortgaged Premises, the Mortgagor's property or the property of others under the Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage or the Loan Agreement.

15. Books and Records. The Mortgagor shall maintain, and the Mortgagee shall have access to, complete and adequate books of account and other records relating to the financing, development, construction, leasing, management, operation and use of the Mortgaged Premises as the Mortgagee may require, and the Mortgagor shall discuss the finances and business of the Mortgaged Premises with the Mortgagee, as the Mortgagee may request. Such books and records shall be kept in all material respects in accordance with GAAP. The Mortgagor shall permit the Mortgagee to photocopy such books and records on the Mortgaged Premises, or, if photocopying facilities are not available on the Mortgaged Premises, at a copying facility selected by the Mortgagee, in its reasonable discretion.

16. Leases.

(a) The Mortgagor shall not (i) execute an assignment or pledge of the Rents and/or the Leases other than in favor of the Mortgagee, or (ii) accept any prepayment of an installment of any Rents more than one (1) month before the due date of such installment.

(b) The Mortgagor shall not, without the prior express written consent of the Mortgagee (and except as may otherwise be set forth in the Loan Agreement), (i) amend, modify, extend, or consent to the surrender of any Lease, or give any consent to any tenant pursuant to any Lease other than Leases for residential tenants on the Mortgagor's standard form of Lease approved by the Mortgagee, and then only in the reasonable discretion of a commercially prudent landlord, or (ii) make or enter into any Lease (other than Leases for residential tenants on the Mortgagor's standard form of Lease approved by the Mortgagee) without the prior express written consent of the Mortgagee, it being the express understanding of the Mortgagee and the Mortgagor that the Mortgagee shall have the right to approve the terms, conditions and provisions of each Lease (other than Leases for residential tenants on the Mortgagor's standard form of Lease approved by the Mortgagee).

(c) The Mortgagor shall promptly (i) perform all of the provisions of the Leases on the part of the landlord thereunder to be performed, (ii) appear in and defend any action or proceeding in any manner connected with the Leases or the obligations of the Mortgagor thereunder, (iii) within ten (10) days after a request by the Mortgagee, deliver to the Mortgagee a certificate from each tenant under all Leases (other than Leases for residential tenants) identifying such Lease with particularity and stating that no default by the Mortgagor or such tenant has occurred under the applicable Lease and no rent thereunder has been prepaid except for the current month, (iv) within ten (10) days after request by the Mortgagee, deliver to the Mortgagee a written statement containing the names of all tenants, the terms of all Leases and the spaces occupied and rentals payable thereunder, and a statement of all Leases which are then in default, including the nature of the default, (v) deliver to the Mortgagee promptly copies of any notices of default which the Mortgagor may at any time forward to or receive from a tenant of any Lease (other than Leases for residential tenants), and (vi) within ten (10) days after execution, deliver to the Mortgagee a fully executed counterpart of each Lease, any guaranty of any Lease, and/or any amendment or modification thereto, or a copy thereof certified by all parties thereto and guarantors thereof.

(d) Each Lease shall be subordinate to this Mortgage by its terms and shall require the tenant thereunder, upon request by the Mortgagee, to attorn to the Mortgagee or any other Person succeeding to

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the interest of the Mortgagor as a result of the enforcement of this Mortgage and shall recognize the Mortgagee or such successor in interest as landlord under the Lease without change in the provisions thereof; provided, however, that the Mortgagee or such successor in interest shall not be bound by (i) any prepayment of an installment of rent or other obligation other than rent for the current month, or (ii) any amendment or modification to any Lease made without the written consent of the Mortgagee or such successor in interest, or (iii) any obligations under the Lease to have been performed prior to the date that the Mortgagee or a purchaser in foreclosure or in lieu thereof shall have acquired title to the Mortgaged Premises. Each tenant, upon request by the Mortgagee or such successor in interest, shall execute and deliver an instrument or instruments confirming such subordination and such attornment. The Mortgagee agrees to entertain a request from any such tenant for non-disturbance, but the Mortgagor understands and agrees that the Mortgagee may grant or withhold its consent to such request, in the Mortgagee's sole and absolute discretion.

17. Recordation.

(a) The Mortgagor, forthwith upon the execution and delivery of this Mortgage and thereafter from time to time, shall cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the mixed or personal property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future Law in order to publish notice of and fully to protect the lien hereof upon, and the interest of the Mortgagee in, the Mortgaged Premises.

(b) The Mortgagor shall pay all filing, registration and recording fees, and all expenses incident to the preparation, execution, and acknowledgment of this Mortgage, any security instrument with respect to the Mortgaged Premises and any instrument of further assurance and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Notes, this Mortgage, the other Loan Documents, any security instrument with respect to the Improvements, or any instrument of further assurance.

18. Estoppel Certificates. The Mortgagor shall deliver duly executed and acknowledged estoppel certificates pursuant to the terms, provisions and conditions of Section 4.14 of the Loan Agreement.

19. Events of Default. The occurrence of any "Event of Default" (as such term is defined in the Loan Agreement) under the Loan Agreement shall constitute an Event of Default under this Mortgage.

20. Rights and Remedies of Mortgagee. If an Event of Default occurs, the Mortgagee may, at its option and notwithstanding any contrary provisions in the Loan Documents, without demand, notice or delay, do one or more of the following:

(a) The Mortgagee may declare the entire unpaid principal balance of the Secured Obligations, together with any and all unpaid accrued interest thereon, and all costs, expenses, and other sums due and owing in connection therewith, to be due and payable immediately.

(b) The Mortgagee may (i) institute and maintain an action of mortgage foreclosure against the Mortgaged Premises and the interests of the Mortgagor therein, (ii) institute and maintain an action on any instruments evidencing the Secured Obligations or any portion thereof, and (iii) take such other action at Law or in equity for the enforcement of any of the Loan Documents as the Law may allow, and in each such action the Mortgagee shall be entitled to all costs of suit and attorneys fees.

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(c) The Mortgagee may, in its sole and absolute discretion, and without releasing the Mortgagor or any other obligor or guarantor from any obligation under any of the Loan Documents and without waiving any Event of Default: (i) collect any or all of the Rents, including any Rents past due and unpaid; (ii) perform any obligation or exercise any right or remedy of the Mortgagor under any Lease; or (iii) enforce any obligation of any tenant of any of the Mortgaged Premises. The Mortgagee may exercise any right under this subsection (c) whether or not the Mortgagee shall have entered into possession of any of the Mortgaged Premises, and nothing herein contained shall be construed as constituting the Mortgagee a "mortgagee in possession", unless the Mortgagee shall have entered into and shall continue to be in actual possession of the Mortgaged Premises.

(d) The Mortgagor hereby authorizes and directs each and every present and future tenant of any of the Mortgaged Premises to pay all Rents directly to the Mortgagee and to perform all other obligations of that tenant for the direct benefit of the Mortgagee, as if the Mortgagee were the landlord under the Lease with that tenant, immediately upon receipt of a demand by the Mortgagee to make such payment or perform such obligations. The Mortgagor hereby expressly and voluntarily waives any right, claim, or demand it may now or hereafter have against any such tenant by reason of such payment of Rents or performance of obligations to the Mortgagee, and any such payment or performance to the Mortgagee shall discharge the obligations of the tenant to make such payment or performance to the Mortgagor. The Mortgagor shall indemnify the Mortgagee and hold the Mortgagee harmless from and against any and all claims, liabilities, damages, costs, and expenses (including attorneys' fees and whether any of such claims, liabilities, damages, costs, and expenses are direct, indirect, or consequential, and whether same shall result from the simple negligence of the Mortgagee) which may be asserted against or incurred by the Mortgagee by reason of any obligations of the Mortgagor to perform any provision of any Lease. The Mortgagee may apply the Rents received by the Mortgagee to the payment of any one or more of the following, in such order and amounts as the Mortgagee, in its sole and absolute discretion, may elect, whether or not the same be then due: (i) the Secured Obligations; (ii) liens on any of the Mortgaged Premises; (iii) Impositions; (iv) claims; (v) insurance premiums; (vi) other carrying charges; (vii) invoices of Persons who at any time have supplied goods or services to or for the benefit of any of the Mortgaged Premises; and (viii) all other costs and expenses of maintenance, repair, restoration, management, operation, ownership, use, leasing, occupancy, protection, security, insurance, alteration or improvement of any of the Mortgaged Premises, costs of enforcing the Mortgagee's rights under the Loan Documents, including, without limitation, any foreclosure sale hereunder and all attorneys' fees and costs. The Mortgagee may, in its sole discretion, determine the method by which, and extent to which, the Rents will be collected and obligations of tenants enforced; and the Mortgagee may waive or fail to perform or enforce any provision of any Lease. The Mortgagee shall not be accountable for any Rents or other sums it does not actually receive. The Mortgagor hereby appoints the Mortgagee as its attorney-in-fact (coupled with an interest) effective upon an Event of Default to perform all acts which the Mortgagor is required or permitted to perform under any and all Leases.

(e) The Mortgagee may, without releasing the Mortgagor or any obligor or guarantor (including, without limitation, the Guarantor) of any of the Secured Obligations from any obligation under any of the Loan Documents and without waiving any Event of Default, enter upon and take possession of the Mortgaged Premises or any portion thereof, with or without legal action and by force if necessary, or have a receiver appointed as a matter of strict right and without proof of depreciation or inadequacy of the value of the Mortgaged Premises, the insolvency of the Mortgagor, or any other proof, and, to the extent permitted by applicable law, Mortgagor hereby irrevocably consents to the appointment of such receiver, waives any and all defenses to such appointment, and agrees not to oppose any application therefor by Mortgagee. The Mortgagee or said receiver may manage and operate the Mortgaged Premises, make, cancel, enforce or modify the Leases or any of them, obtain and evict tenants, establish or change the amount of any Rents, and perform any acts and advance any sums which the

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Mortgagee deems proper to protect the security of this Mortgage, all such sums to be payable on demand, together with interest thereon at the Default Rate specified in the Loan Agreement, from the date of such demand, and such sums and interest to be secured by this Mortgage. Nothing herein is to be construed to deprive Mortgagee of any other right, remedy or privilege it may have under the law to have a receiver appointed.

(f) The Mortgagee may take possession of the Equipment and Other Property, or any portion thereof, and may use and deal with the same to the same extent as the Mortgagor is entitled to do so and may sell the same pursuant to Law and exercise such other rights and remedies with respect to the same as may be provided by Law, and file such continuation statements which it deems desirable.

(g) Intentionally Omitted.

(h) Intentionally Omitted.

(i) Mortgagee may exercise from time to time any rights, powers and remedies available to it under the Uniform Commercial Code and as may be provided in this Mortgage and any other Loan Document. Mortgagor shall, promptly upon request by Mortgagee, assemble the Property other than the Land and Improvements ("**Other Collateral**") and make it available to Mortgagee at such place or places, as Mortgagee shall designate. Any notification of intended disposition required by any Legal Requirement or with respect to any Other Collateral shall be deemed reasonably and properly given if given at least ten (10) days before such disposition. Without limiting the generality of the preceding sentences of this Section 20(i), Mortgagee may, with respect to so much of the Other Collateral as is personal property under applicable Legal Requirements, to the fullest extent permitted by applicable Legal Requirements, without further notice, advertisement, hearing or process of law of any kind: (i) notify any person or other party obligated on the Other Collateral to perform directly for Mortgagee its obligations thereunder; (ii) enforce collection of any of the Other Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto; (iii) endorse any checks, drafts or other writings in the name of Mortgagor to allow collection of the Other Collateral; (iv) take control of any proceeds of the Other Collateral; (v) enter upon any Property where any of the Other Collateral may be located and take possession of and remove such Other Collateral; (vi) sell any or all of the Other Collateral, free of all rights and claims of Mortgagor therein and thereto, at any public or private sale; and (vii) bid for and purchase any or all of the Other Collateral at any such sale. Any proceeds of any disposition by Mortgagee of any of the Other Collateral may be applied by Mortgagee to the payment of expenses in connection with the Other Collateral, including attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by Mortgagee toward the payment of such of the Obligations and in such order of application determined by Mortgagee, and any excess shall be paid to Mortgagor or other secured parties, as their interests may appear. Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Note and other Loan Documents and, to the fullest extent permitted by applicable Legal Requirements, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by Mortgagee of any of its rights and remedies hereunder. Mortgagor hereby appoints Mortgagee its attorney-in-fact with full power of substitution to take possession of the Other Collateral upon any Event of Default and, as Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by Mortgagee to accomplish the disposition of the Other Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Obligations are outstanding.

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21. Sale in Parcels or Units. In case any sale under this Mortgage occurs by virtue of judicial proceedings, the Mortgaged Premises may be sold in one parcel or unit and as an entity, or in such parcels or units, and in such manner or order, as the Mortgagee in its sole and absolute discretion may elect.

22. Remedies Cumulative. All remedies contained in this Mortgage are cumulative and the Mortgagee also has all other remedies provided by Law or in equity or in any of the other Loan Documents. No delay or failure by the Mortgagee to exercise any right or remedy under this Mortgage will be construed to be a waiver of that right or remedy or a waiver of any Event of Default. The Mortgagee may exercise any one or more of its rights and remedies without regard to the adequacy of its security. One or more of the other Loan Documents may contain provisions pursuant to which all or a part of the Secured Obligations shall become immediately and automatically due and payable upon the occurrence of certain events described therein. Nothing in this Mortgage shall be construed as limiting the effectiveness of such provisions, and in the event of any inconsistency with the terms of this Mortgage, those provisions more advantageous to the Mortgagee shall govern.

23. No Merger.

(a) If the Mortgagee or any other Person or entity owning or holding this Mortgage shall acquire or shall become vested with fee title to the Mortgaged Premises or any other estate or interest in the Mortgaged Premises, such estates shall not merge as a result of such acquisition and shall remain separate and distinct from all other estates and interests in the Mortgaged Premises for all purposes after such acquisition. The lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and, in such event, the Mortgagee or such other Person or entity shall continue to have and enjoy all of the rights and privileges of the Mortgagee hereunder as to each separate estate unless and until the Mortgagee or such other Person or entity shall affirmatively elect in writing to merge such estates.

(b) Upon the foreclosure of the lien created hereby on the Mortgaged Premises, as herein provided, any Leases then existing shall not be destroyed or terminated by application of the doctrine of merger or by operation of Law or as a result of such foreclosure unless the Mortgagee or any purchaser at a foreclosure sale shall so elect by written notice to the lessee in question.

24. Mortgagee's and Lenders' Costs and Expenses. Upon the occurrence of an Event of Default or the exercise by Mortgagee of any of its rights hereunder, or if the Mortgagee or the Lenders shall become party, either as plaintiff or defendant or otherwise, to any suit or legal proceeding affecting any of the Mortgaged Premises or the Secured Obligations, or if the Mortgagee's or the Lenders' review and approval of any document, including a Lease, is requested by the Mortgagor or required by the Mortgagee or the Lenders, the Mortgagor shall pay to the Mortgagee or the Lenders, as the case may be, on demand, its or their respective costs, expenses, and reasonable attorneys' fees incurred in connection therewith. If such amounts are not paid, they shall be added to the principal secured hereby, shall be included as part of the Secured Obligations and shall bear interest at the Default Rate specified in the Loan Agreement from the date of their demand.

25. Security Agreement Under Uniform Commercial Code; Authorization to File Financing Statements; Fixture Filing.

(a) This Mortgage is a Security Agreement, as such term is defined in the Uniform Commercial Code of the State of Illinois, 810 ILCS 5/1 et seq. Notwithstanding the filing of a financing statement covering any of the Mortgaged Premises in the records normally pertaining to personal property, at the Mortgagee's option all of the Mortgaged Premises, for all purposes and in all proceedings,

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legal or equitable, shall be regarded (to the extent permitted by Law), as part of the Land, whether or not any such item is physically attached to the Land. The mention in any such financing statement of any of the Mortgaged Premises shall not be construed as in any way altering any of the rights of the Mortgagee or adversely affecting the priority of the lien granted hereby or by any other Loan Document, but such mention in the financing statement is hereby declared to be for the protection of the Mortgagee in the event any court shall at any time hold that notice of the Mortgagee's priority of interest, to be effective against any third party, must be filed in the Uniform Commercial Code records. The Mortgagor hereby specifically and irrevocably authorizes the Mortgagee, at any time and from time to time, to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate that the Mortgaged Premises consists of all assets of the Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Mortgaged Premises falls within the scope of Article 9 of the Uniform Commercial Code of the State of Illinois, 810 ILCS 5/1 et seq., or such jurisdiction, or is of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State of Illinois, 810 ILCS 5/1 et seq. for the sufficiency or filing office acceptance of any financing statement or amendment. The Mortgagor hereby covenants and agrees to furnish any such information to the Mortgagee promptly upon request. The Mortgagor will also execute and deliver to the Mortgagee on demand such other instruments as the Mortgagee may reasonably require in order to perfect, protect and maintain such security interests under the UCC on the aforesaid collateral.

(b) It is intended by Mortgagor and Mortgagee that this Mortgage be effective as a financing statement filed with the real estate records of Cook County, Illinois as a fixture filing in accordance with Section 5/9-102 of the Uniform Commercial Code of the State of Illinois. For purposes of this fixture filing, the "Debtor" is Mortgagor and the "Secured Party" is Mortgagee. A description of the Land which relates to the fixtures is set forth in Exhibit A attached hereto. Mortgagor is the record owner of the Land.

26. Representations and Warranties. The Mortgagor hereby represents and warrants that: (a) the Mortgagor is duly organized and validly existing under the Laws of the State of Delaware; (b) the Mortgagor has the requisite power to execute and perform the Loan Documents and to pay and perform the Secured Obligations; (c) the transactions contemplated in the Loan Documents are and will be in all respects legal and not in violation of any Law; (d) the Mortgagor knows of no adverse claim to the title and/or possession of the Mortgagor; (e) all information, reports, papers and data given to the Mortgagee with respect to the Mortgaged Premises or the Mortgagor are accurate in all material respects and complete insofar as completeness may be necessary to give the Mortgagee accurate knowledge of the subject matter, and there has been no material adverse change in any condition or fact stated therein; (f) the Mortgagor is not a party to or obligated under any instrument, and there is no litigation pending (or, to the Mortgagor's best knowledge, threatened), which does or might materially and adversely affect the Mortgagor or all or any portion of the Mortgaged Premises; (g) none of the Mortgaged Premises has been damaged by fire or other casualty which is not now fully restored; and (h) no notice of taking by eminent domain or condemnation of any of the Mortgaged Premises has been received, and the Mortgagor has no knowledge that any such taking is contemplated.

27. Waivers by Mortgagor. The Mortgagor, to the extent permitted by Law, hereby expressly and voluntarily waives all errors and imperfections in any proceedings instituted by the Mortgagee under any of the Loan Documents and all benefit of any present or future statute of limitations or moratorium Law or any other present or future Law, regulation or judicial decision which (a) exempts any of the Mortgaged Premises or any other property, real or personal, or any part of the proceeds arising from any sale thereof from attachment, levy or sale under execution, (b) provides for any stay of execution, marshalling of assets, exemption from civil process, redemption, extension of time for payment or

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valuation or appraisal of any of the Mortgaged Premises, or (c) conflicts with any provision of any of the Loan Documents.

28. Notices. Except as otherwise provided in this Mortgage, all notices hereunder shall be given in accordance with the notice requirements set forth in Section 11.5 of the Loan Agreement. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice.

29. Status of Parties. It is understood and agreed that nothing herein or in any of the other Loan Documents shall be construed to constitute a partnership, joint venture or co-tenancy between or among the Mortgagor, the Mortgagee, and any of the Lenders.

30. Successors. All of the grants, covenants, terms, provisions and conditions herein shall run with the Land and shall apply to, and bind the successors and assigns of the Mortgagor, and all present and future encumbrances, tenants and subtenants of any of the Mortgaged Premises, and shall inure to the benefit of the Mortgagee, its successors and assigns.

31. Attorney's Fees. The terms "reasonable attorneys' fees" or "reasonable counsel fees" as used in this Mortgage shall include, but not be limited to, reasonable attorneys' fees incurred in any and all judicial, bankruptcy, reorganization, arbitration and any other proceedings, including appellate proceedings, whether such proceedings arise before or after entry of a final judgment.

32. Assignment of Notes and/or Mortgage.

(a) The Mortgagor hereby covenants and agrees that nothing herein shall be deemed to prohibit the assignment or negotiation, with or without recourse, of the Notes or any future advances, extensions, renewals or substitutions, and any of the Loan Documents or any interest of the Mortgagee or the Lenders therein, or the assignment of this Mortgage.

(b) The Mortgagor hereby covenants and agrees that, if requested by the Mortgagee, the Mortgagor shall certify to the assignee of this Mortgage, to the Mortgagee, and to such other Persons as the Mortgagee may reasonably request that this Mortgage is in full force and effect, the amount or amounts of the principal balance due hereunder, the terms of the Notes and all such matters and in such form as the Mortgagee or such assignee may reasonably require. In the event that the Mortgagor shall fail to so certify such matters within ten (10) days after receipt of the Mortgagee's written request therefor, such failure shall be deemed to be an "Event of Default" (as such term is defined in the Loan Agreement).

33. Time of Essence. Time is of the essence as to all of the Mortgagor's obligations hereunder and under the Notes secured hereby and under any and all of the other Loan Documents

34. Intentionally Omitted.

35. Governing Law. The Mortgagor hereby covenants and agrees that this Mortgage shall be governed by and construed in accordance with the Laws of the State of Illinois, without regard to its principles of conflicts of Laws. Mortgagor and Mortgagee hereby agree that the chosen law bears a reasonable relationship to the loan transaction.

36. Mortgage Secures Future Advances. This Mortgage is given for the purpose of creating a lien on real property in order to secure not only existing indebtedness, but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, and whether

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made before or after default or maturity or other similar events, to the same extent as if such future advances were made on the date of the execution hereof, although there may be no advance made at the time of the execution hereof and although there may be no indebtedness outstanding at the time any advance is made. The types of future advances secured by and having priority under this Mortgage shall include, without limitation, (a) advances of principal under the Notes or other Loan Documents and (b) disbursements and other advances for the payment of taxes, assessments, maintenance charges, insurance premiums or costs relating to the Mortgaged Premises, for the discharge of liens having priority over the lien of this Mortgage, for the curing of waste of the Mortgaged Premises and for the payment of services, charges, and expenses incurred by reason of default and including late charges, reasonable attorneys' fees and court costs, together with interest thereon. The lien of this Mortgage, as to third Persons with or without actual knowledge thereof, shall be valid as to all such indebtedness and future advances, from the date of recordation, to the extent permitted by the Laws of the state in which the Mortgaged Premises is situated. The total amount of the indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid principal balance at any one time shall not exceed the maximum amount of the Secured Obligations.

37. Changes in the Laws Regarding Taxation. If any Law is enacted or adopted or amended after the date of this Mortgage which deducts the Secured Obligations from the value of the Mortgaged Premises for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Mortgagor's or the Mortgagee's (or any other Lender's) interest in the Mortgaged Premises, the Mortgagor shall pay such tax, with interest and penalties thereon, if any. If the Mortgagee determines that the payment of such tax or interest and penalties by the Mortgagor would be unlawful or taxable to the Mortgagee or any other Lender or unenforceable or provide the basis for a defense of usury, then the Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the entire Secured Obligations immediately due and payable, without prepayment premium or fee.

38. Documentary Stamps. If at any time the United States of America, any state or commonwealth thereof or any subdivision of any such state or commonwealth shall require revenue or other stamps to be affixed to the Notes or this Mortgage, or impose any other tax or charge on the same, the Mortgagor shall pay for the same, with interest and penalties thereon, if any.

39. Miscellaneous. (a) The section headings in this Mortgage are used only for convenience in finding the subject matters and are not part of this Mortgage or to be used in determining the intent of the parties or otherwise interpreting this Mortgage; (b) as used in this Mortgage, the singular shall include the plural as the context requires and the following words and phrases shall have the following meanings: (i) "including" shall mean "including but not limited to"; (ii) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (iii) "lien" shall mean "lien, charge, encumbrance, security interest, mortgage and/or deed of trust"; (iv) "obligation" shall mean "obligation, duty, covenant and/or condition"; (v) "any of the Mortgaged Premises" shall mean "the Mortgaged Premises or any part thereof or interest therein"; and (vi) "tenant" shall mean "tenant and/or subtenant and/or occupant and/or user of any of the Mortgaged Premises"; (c) any act which the Mortgagee is permitted to perform under the Loan Documents may be performed at any time and from time to time by the Mortgagee or any Person or entity designated by the Mortgagee; (d) each appointment of the Mortgagee as attorney-in-fact for the Mortgagor, under the Loan Documents is irrevocable and coupled with an interest; (e) except as otherwise specified herein, the Mortgagee has the right to refuse to grant its consent in its sole and absolute discretion whenever such consent is requested under the Loan Documents; (f) this Mortgage may be modified, amended, discharged or waived only by an agreement in writing signed by all of the parties hereto; (g) in the event any one or more of the provisions contained in the Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Loan Documents, but the Loan Documents

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shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein; (h) defined terms used but not expressly defined herein shall have the same meanings when used herein as set forth in the Loan Agreement; and (i) in exercising any rights or remedies provided for herein (including, without limitation, delivery of any default notices and the election of foreclosure or other judicial or non-judicial remedies) or in waiving any of the express terms of this Mortgage, the Mortgagee shall act only after prior express written notice to the Lenders and obtaining the approval of the Required Lenders.

40. **Waiver of Trial by Jury.** THE MORTGAGOR AND THE MORTGAGEE, BY ITS ACCEPTANCE OF THIS MORTGAGE, HEREBY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS RELATED TO ANY OF THE LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY THE MORTGAGOR AND THE MORTGAGEE AND THE MORTGAGOR HEREBY ACKNOWLEDGES AND AGREES THAT NEITHER THE MORTGAGEE NOR ANY PERSON ACTING ON BEHALF OF THE MORTGAGEE HAS OR HAVE MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. THE MORTGAGOR HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH SAID LEGAL COUNSEL. THE MORTGAGOR HEREBY ACKNOWLEDGES AND AGREES THAT THE OBLIGATION EVIDENCED BY THIS MORTGAGE IS AN EXEMPTED TRANSACTION UNDER THE TRUTH-IN-LENDING ACT, 15 U.S.C. SECTION 1601, *ET SEQ.* THE MORTGAGOR HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT IT HAS READ AND UNDERSTOOD THE MEANING OF THIS WAIVER PROVISION.

41. **TRUE AND CORRECT COPY.** THE MORTGAGOR ACKNOWLEDGES THAT THE MORTGAGOR HAS RECEIVED, WITHOUT CHARGE, A TRUE AND CORRECT COPY OF THIS MORTGAGE.

42. **Credit Support.** This Mortgage is intended to act (a) as a "Credit Support Document" (as such term is defined in any PNC-Provided Interest Rate Hedge), with respect to the Mortgagor and is hereby made a part of the "Schedule" (as such term is defined in such PNC-Provided Interest Rate Hedge) of any PNC-Provided Interest Rate Hedge entered into by a Loan Party in connection with the Notes which PNC-Provided Interest Rate Hedge shall include the Schedules thereto and all "Confirmations" (as such term is defined in the PNC-Provided Interest Rate Hedge) exchanged between the parties confirming transactions thereunder, and (b) as a "transfer" under a swap agreement made by or to a swap participant, in connection with a swap agreement, within the meaning of Section 546(g) of the Bankruptcy Code.

43. **Keepwell.** The Mortgagor, if it is a Qualified ECP Loan Party, hereby absolutely unconditionally and irrevocably (a) guarantees the prompt payment and performance of all Swap Obligations owing by each Non-Qualifying Party (it being understood and agreed that this guarantee is a guaranty of payment and not of collection), and (b) undertakes to provide such funds or other support as may be needed from time to time by any Non-Qualifying Party to honor all of such Non Qualifying Party's obligations under any Loan Document in respect of Swap Obligations (provided, however, that each Qualified ECP Loan Party shall only be liable under this Section 43 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 43, or

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otherwise under this Mortgage or any Loan Document, voidable under applicable law, including applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of the Mortgagor under this Section 43 shall remain in full force and effect until payment in full of the Obligations and termination of this Mortgage and the Loan Documents. The Mortgagor intends that this Section 43 constitute, and this Section 43 shall be deemed to constitute, a guarantee of the obligations of, and a “keepwell, support, or other agreement” for the benefit of each Non-Qualifying Party for all purposes of Section 1a(18)(A)(v)(II) of the CEA.

43. Subordination of Property Manager’s Lien. Any property management agreement for the Mortgaged Premises entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Mortgaged Premises shall be subject and subordinate to the lien of this Mortgage and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of a Default hereunder. Such property management agreement or a short form thereof, at Mortgagee’s request, shall be recorded with the County Recorder of the county where the Mortgaged Premises is located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

44. State Specific Provisions. The terms and provisions set forth below in this Section 44 shall be construed, to the greatest extent possible, consistently with those set forth elsewhere in this Mortgage as being in addition to and supplementing such other terms and provisions set forth elsewhere in this Mortgage; however, notwithstanding anything to the contrary set forth elsewhere in this Mortgage, in the event of any conflict or inconsistency between the terms and provisions of this Section 44 and the terms and provisions set forth elsewhere in this Mortgage, the following terms and provisions of this shall govern and control but only to the extent of such conflicts:

(a) This Mortgage is given to secure “future advances” as defined and authorized under applicable Illinois statutes, including, without limitation, 205 ILCS 5/5d, 735 ILCS 5/15-1207 and 735 ILCS 5/15-1302. Mortgagee is obligated under the terms of the Loan Agreement to make advances upon the satisfaction of certain conditions as provided therein, and Mortgagor acknowledges and intends 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 Act. Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made pursuant to the terms and provisions of the Loan Agreement, whether such loans and advances are made as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of Mortgagee or otherwise (but not advances or loans made more than 20 years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and although there may be no advances made at the time of the execution of this Mortgage and although there may be no other indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Secured Obligations, including future advances, from the time of its filing of record in the office of the recorder of deeds of the county in which the Property is located. This Mortgage shall be valid and shall have priority over all subsequent liens and encumbrances, including statutory liens except taxes and assessments levied on the Property, to the extent of the maximum amount secured hereby.

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(b) The Secured Obligations of Mortgagor pursuant to the note issued under the Loan Agreement, which obligations are secured by this Mortgage, include, among other things, the obligation to pay interest on the unpaid principal balance of the Loan described in the Loan Agreement, which interest accrues from time to time at a variable rate of interest as provided in the Loan Agreement and the Promissory Note Secured by Mortgages issued thereunder.

(c) Intentionally Omitted.

(d) Intentionally Omitted.

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

(i) Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Mortgage shall be inconsistent with any provision of the Act, 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. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of that certain Section 20 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of a Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Mortgage, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.

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

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

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

(B) payments by Mortgagee of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance, (ii) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (iii) other obligations authorized by the Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

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

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

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

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

(G) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Section 15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the

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Property; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Property and (ix) if the Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.

(iv) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 15 1302 of the Act. All 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, apply to and be included in:

(A) any determination of the amount of indebtedness secured by this Mortgage at any time;

(B) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose.

(C) if right of redemption has not been waived by this Mortgage, computation of amounts required to redeem, pursuant to Sections 15 1603(d)(2) and 1603(e) of the Act;

(D) determination of amounts deductible from sale proceeds pursuant to Section 15 1512 of the Act;

(E) application of income in the hands of any receiver or mortgagee in possession; and

(F) computation of any deficiency judgment pursuant to Sections 15 1508(b)(2), 15 1508(e) and 15 1511 of the Act;

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

(vi) Mortgagor acknowledges that the Mortgaged Premises does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. The Loan is a business loan transaction in the stated amount solely for the purpose of carrying on the business of Mortgagor and none of the proceeds of the Loan will be used for any personal, family or agricultural purposes whatsoever. No portion of the Property is used or will be used as a dwelling.

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(vii) Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.

45. Maximum Amount Secured. The maximum principal indebtedness secured by this Mortgage shall not exceed two hundred percent (200%) of the face amount of the Note.

46. Collateral Protection Act. Unless Mortgagor provides Mortgagee with evidence of the insurance required by this Mortgage or any other Loan Document, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Premises or any other collateral for the Secured Obligations. This insurance may, but need not, protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Premises or any other collateral for the Secured Obligations. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required under by this Mortgage or any other Loan Document. If Mortgagee purchases insurance for the Mortgaged Premises or any other collateral for the Secured Obligations, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Secured Obligations. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

Mortgagor acknowledges and agrees that (A) the proceeds of the Loan will be used in accordance with subparagraph (1)(1) of Section 4 of "Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 105/4 (1)(1)); (B) the indebtedness secured hereby has been incurred by Mortgagor solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said Section 4; (C) the indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the secured indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 et. Seq. and has been entered into solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said section.

The Mortgagor acknowledges that it has read and understood all the provisions of this Mortgage, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

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IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be duly executed and delivered, all as of the day and year first above written.

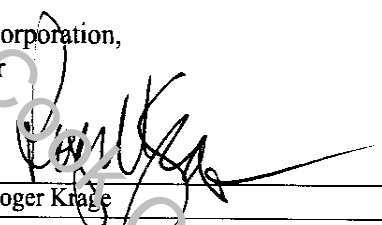
MORTGAGOR:

165 NORTH DESPLAINES, LLC,
a Delaware limited liability company

By: Gerding Edlen Green Cities III, L.P.,
a Delaware limited partnership
Its: Sole Member

By: Gerding Edlen Fund Management III, LLC,
a Delaware limited liability company
Its: General Partner

By: GEDL, Inc.,
an Oregon corporation,
Its: Manager

By: 
Name: Roger Krag
Title: Sr VP Finance

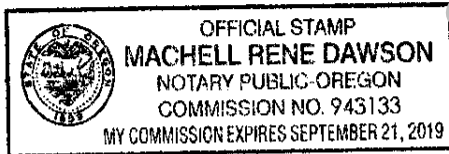
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STATE OF OREGON

COUNTY OF MULTNOMAH

I, Machell Rene Dawson, a notary public in and for the State of Oregon, DO HEREBY CERTIFY THAT Roger Krage, personally known to me to be the Sr. V.P. Finance of GEDI, Inc., an Oregon corporation, which is the Manager of Gerding Edlen Fund Management III, LLC, a Delaware limited liability company, which is the General Partner of Gerding Edlen Green Cities III, L.P., a Delaware limited partnership, which is the sole Member of 165 NORTH DESPLAINES, LLC, a Delaware limited liability company, and 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 as such she signed and delivered the said instrument pursuant to proper authority given, as her free and voluntary act, and as the free and voluntary act and deed of 165 NORTH DESPLAINES, LLC, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29th day of August, 2016.



Machell Rene Dawson
Notary Public

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EXHIBIT "A"

**ATTACHED TO AND MADE A PART OF THAT CERTAIN CONSTRUCTION MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING
STATEMENT EXECUTED BY 165 NORTH DESPLAINES, LLC, AS MORTGAGOR, IN
FAVOR OF PNC BANK, NATIONAL ASSOCIATION, IN ITS CAPACITY AS
ADMINISTRATIVE AGENT, AS MORTGAGEE,
DATED SEPTEMBER 16, 2016**

Legal Description of the Land

Real property in the City of Chicago, County of Cook, State of Illinois, described as follows:

PARCEL 1:

LOTS 5, 6 AND 8 AND THE NORTH 52.93 FEET OF LOT 7, TOGETHER WITH THE VACATED ALLEY LYING EAST OF THE EAST LINE OF LOT 6 AND THE NORTH 52.93 FEET OF LOT 7 AND LYING WEST OF THE WEST LINE OF LOT 5 AND THE NORTH 52.93 FEET OF LOT 8, ALL IN BLOCK 26 IN ORIGINAL TOWNSHIP OF CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, (EXCEPT THAT PART THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 00 DEGREES 03 MINUTES 18 SECONDS WEST ALONG THE EAST LINE OF LOTS 5 AND 8, A DISTANCE OF 154.56 FEET TO THE SOUTHEAST CORNER OF SAID LOT 8; THENCE NORTH 89 DEGREES 07 MINUTES 27 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 8 A DISTANCE OF 60.20 FEET; THENCE NORTH 00 DEGREES 01 MINUTES 40 SECONDS WEST, 154.57 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 5; THENCE SOUTH 89 DEGREES 06 MINUTES, 57 SECONDS EAST, ALONG SAID NORTH LINE 60.42 FEET, TO THE POINT OF BEGINNING), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EAST 57 FEET OF LOT 2 IN ASSESSOR'S DIVISION OF LOT 7 AND LOT 10 IN BLOCK 26 IN ORIGINAL TOWNSHIP OF CHICAGO AFORESAID; IN COOK COUNTY, ILLINOIS.

FOR INFORMATION ONLY:

THE PROPERTY ADDRESS IS: 165 NORTH DESPLAINES STREET, CHICAGO, ILLINOIS 60661

PERMANENT INDEX NUMBER: 17 09 322 005; 17 09 322 009 AND A PORTION OF 17 09 322 013.

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EXHIBIT "B"

**ATTACHED TO AND MADE A PART OF THAT CERTAIN CONSTRUCTION MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING
STATEMENT EXECUTED BY 165 NORTH DESPLAINES, LLC, AS MORTGAGOR, IN
FAVOR OF PNC BANK, NATIONAL ASSOCIATION, IN ITS CAPACITY AS
ADMINISTRATIVE AGENT, AS MORTGAGEE,
DATED SEPTEMBER 16, 2016**

Permitted Encumbrances

All exceptions to title as set forth in the Loan Policy of Title Insurance issued by Chicago Title Insurance Company to the Mortgagee, for the benefit of the Lenders, dated effective September 16, 2016, Policy No. 1401-008982432-DS in the aggregate principal amount of \$47,825,000, together with all endorsements thereto.

Property of Cook County Clerk's Office