

# UNOFFICIAL COPY

## Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud  
800-532-8785

Doc#: 1705306033 Fee: \$90.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 02/22/2017 08:33 AM Pg: 1 of 22

The property identified as: **PIN:** 09-28-300-008-0000

**Address:**

**Street:** 1600 and 1630 Birchwood Avenue

**Street line 2:**

**City:** Des Plaines

**State:** IL

**ZIP Code:** 60018

**Lender:** ANTARES CAPITAL L.P.

**Borrower:** FFR Properties, LLC

**Loan / Mortgage Amount:** \$180,000,000.00

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

**Certificate number:** 4294A7BD-ED27-416C-8DC9-2C4D2F9B49A3

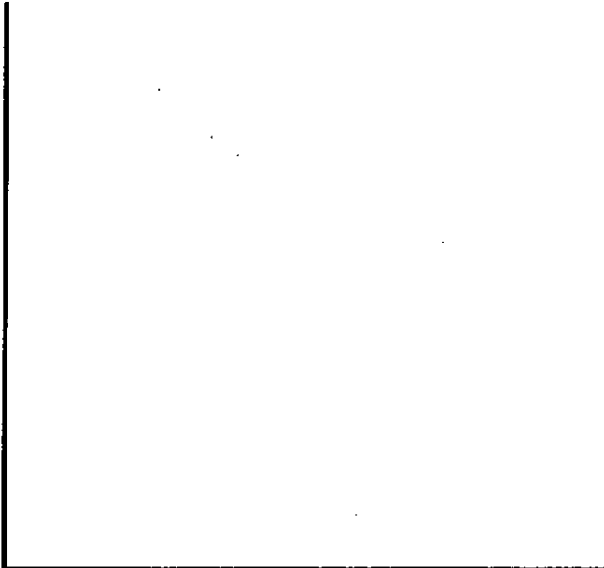
**Execution date:** 2/16/2017

# UNOFFICIAL COPY

**PREPARED BY AN-AFTER  
RECORDING RETURN TO:**

Katten Muchin Rosenman LLP  
525 West Monroe Street, Suite 1900  
Chicago, Illinois 60661-3693  
Attn: Alana Ibarra

When Recorded Return To: H. KARBON  
First American Title Insurance Company  
National Commercial Services  
30 N. LaSalle St., Suite 2700  
Chicago, IL 60652  
File No: NCS 032359



ABOVE SPACE FOR RECORDER'S USE ONLY

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

MADE BY

**FFR PROPERTIES, LLC,**  
a Delaware limited liability company,  
as "Mortgagor"

TO

**ANTARES CAPITAL LP,**  
a Delaware limited partnership,  
as "Mortgagee"

THIS MORTGAGE RELATES TO PROPERTY LOCATED IN COOK COUNTY, ILLINOIS

THIS MORTGAGE IS ALSO A FINANCING STATEMENT COVERING FIXTURES, AND IS TO BE INDEXED IN THE REAL ESTATE RECORDS.

THE NAMES OF THE DEBTOR AND THE SECURED PARTY, THE MAILING ADDRESS OF THE SECURED PARTY FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED, THE ORGANIZATION IDENTIFICATION NUMBER OF THE DEBTOR, THE MAILING ADDRESS OF THE DEBTOR AND A STATEMENT INDICATING THE TYPES, OR DESCRIBING THE ITEMS, OF COLLATERAL, ARE AS DESCRIBED IN THIS MORTGAGE.

# UNOFFICIAL COPY

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

This MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this “Mortgage”) is made as of this 16<sup>th</sup> day of February, 2017, executed by FFR Properties, LLC, a Delaware limited liability company (“Mortgagor”), whose address is 1600 Birchwood Avenue, Des Plaines, Illinois 60018, in favor of ANTARES CAPITAL LP, a Delaware limited partnership, whose address is 500 West Monroe Street, Chicago, Illinois 60661, in its capacity as agent (in such capacity, “Mortgagee”) for all of the Lenders (as such term is defined in the Credit Agreement described below).

### RECITALS

A. Mortgagee and the Lenders have agreed, subject to the terms and conditions of that certain Credit Agreement dated as of July 11, 2011, by and among the Lenders, Mortgagee (acting in its capacity as successor to General Electric Capital Corporation) and Mortgagor (as the same may be amended, restated, supplemented or otherwise modified and in effect from time to time, the “Credit Agreement”), to make credit facilities available to Mortgagor in the aggregate principal amount of One Hundred Eighty Million and No/100ths Dollars (\$180,000,000.00) consisting of (i) a term loan in a principal amount not to exceed One Hundred Sixty Million and No/100ths Dollars (\$160,000,000.00) in the principal amount of (the “Term Loan”) and a revolving loan (the “Revolving Loan”) in the aggregate at any time outstanding of Twenty Million and No/100ths Dollars (\$20,000,000.00). The Revolving Loan may be evidenced by certain Revolving Notes, if any, in the aggregate original principal amount of Twenty Million and No/100ths Dollars (\$20,000,000.00) executed by Mortgagor in favor of the Lenders (which notes, together with all notes issued in substitution or exchange therefor and all amendments thereto and restatements thereof, are hereinafter referred to as the “Revolving Notes”), and certain Term Note, if any, in the aggregate original principal amount of One Hundred Sixty Million and No/100ths Dollars (\$160,000,000.00) executed by Mortgagor in favor of the Lenders (which notes, together with all notes issued in substitution or exchange therefor and all amendments thereto and restatements thereof, are hereinafter referred to as the “Term Notes”) (the Revolving Notes and the Term Notes, together with all notes issued in substitution or exchange therefor and all amendments thereto and restatements thereof, are referred to as the “Notes”). The Revolving Notes, if any, provide for certain payments as set forth therein and in the Credit Agreement with the balances thereof due and payable no later than the earlier to occur of: (a) July 9, 2019 and (b) the date on which the Aggregate Revolving Loan Commitment shall terminate in accordance with the provisions of the Credit Agreement. The Term Notes, if any, provide for certain payments as set forth therein and in the Credit Agreement with the balances thereof due and payable no later than July 9, 2019. Capitalized terms used but not defined herein shall have the same meanings herein as such terms have in the Credit Agreement.

B. Mortgagee and the Lenders wish to secure: (i) the prompt payment of the Loans, together with all interest, and other amounts, if any, due in accordance with the terms of the Credit Agreement, as well as the prompt payment of any additional indebtedness of Mortgagor and the other Credit Parties accruing to the Lenders or Mortgagee on account of any future

# UNOFFICIAL COPY

payments, advances or expenditures made by the Lenders and Mortgagee pursuant to the Notes, the Credit Agreement, this Mortgage or any other Loan Documents; (ii) the prompt performance of each and every covenant, condition, and agreement of Mortgagor and the other Credit Parties contained in the Loan Documents; and (iii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and indebtedness of any kind or nature now or hereafter owing, arising, due or payable from Mortgagor or the other Credit Parties to the Lenders or Mortgagee in connection with the transactions contemplated by the Credit Agreement. All obligations, liabilities and indebtedness of every nature of Mortgagor and the other Credit Parties to the Lenders and Mortgagee (including the Obligations) are hereinafter sometimes collectively referred to as the “**Obligations**”.

C. Inasmuch as the Credit Agreement provides for advances to be made in the future (“**Future Advances**”), this Mortgage is given to, and shall, secure not only existing indebtedness, but also the payment of any and all Future Advances, whether such Future Advances are obligatory or are to be made at the option of the Lenders, or otherwise in accordance with the Credit Agreement. The parties hereto intend that, in addition to any other Obligations secured hereby, this Mortgage shall secure unpaid balances of Revolving Loans made after this Mortgage is delivered to the recorder for record. Such Revolving Loans are evidenced by the Credit Agreement and may be evidenced by Revolving Notes. The maximum amount of Indebtedness of Mortgagor to Mortgagee and Lenders arising under the Credit Agreement and the other Loan Documents, which shall consist of the aggregate balance of the Loans at any time either before or after this Mortgage is delivered to the recorder for record, exclusive of interest thereon and of protective advances which may be outstanding at any time is Three Hundred Sixty Million Dollars and No/100ths Dollars (\$360,000,000.00) (the “**Maximum Amount**”). Any such advances and reborrowings shall be secured by this Mortgage and afforded priority against all subsequent lien holders as if advanced on the date hereof. Mortgagor hereby agrees that it shall not execute or file or record any notice limiting the maximum principal amount that may be so secured, and that no such notice shall be of any force and effect whatsoever unless Mortgagee shall have consented thereto in writing signed by Mortgagee and recorded in the public records of the county in which the Land (as hereinafter defined) is situated.

NOW, THEREFORE, IN CONSIDERATION OF LENDERS MAKING THE LOANS AND TO SECURE the prompt payment and performance of all Obligations of Mortgagor and the other Credit Parties to the Lenders and Mortgagee under the Credit Agreement and the other Loan Documents, including all liabilities, obligations and indebtedness of Mortgagor under this Mortgage, and in further consideration of the foregoing Recitals, which are hereby incorporated herein by this reference, Mortgagor has executed this Mortgage and does hereby mortgage, convey, assign, warrant, transfer, pledge and grant to Mortgagee, for the benefit of the Lenders (and grants to Mortgagee for the benefit of the Lenders a security interest in) all right, title and interest of Mortgagor in and to the following described property and all proceeds thereof (which property is hereinafter sometimes collectively referred to as the “**Property**”):

- (i) The real estate described on Exhibit A attached hereto (the “**Land**”);
- (ii) All of the following (collectively, the “**Improvements**”): all buildings, improvements and fixtures of every kind or nature situated on the Land; all machinery,

# UNOFFICIAL COPY

appliances, equipment, furniture and all other personal property of every kind or nature located in or on, or attached to, or used or to be used in connection with the Land, buildings, structures, improvements or fixtures; all building materials and goods procured for use or in connection with the foregoing; and all additions, substitutions and replacements to any of the foregoing;

(iii) All easements, servitudes, rights-of-way, water courses, mineral rights, water rights, air rights and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto (“**Appurtenances**”);

(iv) All agreements for the use, enjoyment or occupancy of the Land and/or Improvements now or hereafter entered into (the “**Leases**”) and all rents, prepayments, termination payments, royalties, profits, issues and revenues from the Land and/or Improvements from time to time accruing under the Leases or otherwise (the “**Rents**”), reserving to Mortgagor, however, so long as no “**Event of Default**” (hereinafter defined) has occurred and is continuing, a revocable license to receive and apply the Rents in accordance with the terms and conditions of Section 9 of this Mortgage;

(v) To the extent assignable, Mortgagor’s interest in all claims, demands, judgments, insurance proceeds, tax refunds, rights of action, awards of damages, compensation, and settlements hereafter made resulting from or relating to (a) the taking of the Land or the Improvements or any part thereof under the power of eminent domain, (b) any damage (whether caused by such taking, by casualty or otherwise) to the Land, Improvements or Appurtenances or any part thereof, or (c) the ownership or operation of the Property;

(vi) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements, Appurtenances or any other property of the types described in the preceding granting clauses; and

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

TO HAVE AND TO HOLD the Property and all parts thereof together with the rents, issues, profits and proceeds thereof, unto Mortgagee, to its own proper use, benefit, and advantage forever, subject, however, to the terms, covenants, and conditions herein.

Mortgagor covenants and agrees with each Lender and Mortgagee as follows:

1. **Payment of Indebtedness; Performance of Obligations** Mortgagor shall promptly pay and perform when due all of the Obligations under the Credit Agreement and the other Loan Documents.

2. **Taxes and Other Obligations.** Mortgagor shall pay, when due, and before any interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions and other charges that have heretofore been, or may hereafter be, imposed, levied or assessed upon, or against, the Property, or any part thereof, subject, however, to Mortgagor’s right to contest the amount or validity thereof, subject to and in accordance with, the terms and conditions set forth in the Credit Agreement.

# UNOFFICIAL COPY

3. **Use of Property.** Unless required by applicable law or as otherwise permitted by the terms of the Credit Agreement, Mortgagor shall not (a) permit material changes in the use of any part of the Property from the use existing at the time this Mortgage was executed, or (b) initiate or acquiesce in a change in the zoning classification of the Property without Mortgagee's prior written consent, which consent shall not be unreasonably withheld.

4. **Insurance and Condemnation.**

(a) **Insurance.**

(i) Mortgagor shall keep the Improvements insured, and shall maintain general liability and other insurance coverage, all in such amounts and as is otherwise required by the Credit Agreement.

(ii) In case of loss or damage by fire or other casualty, Mortgagor shall give prompt written notice thereof to the insurance carrier(s) and to Mortgagee. Subject to the terms of the Credit Agreement, upon Mortgagor's failure to act, Mortgagee is authorized and empowered, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact (such appointment is coupled with an interest), at its option, to make or file proofs of loss or damage and to settle and adjust any claim under insurance policies which insure against such risks, or to direct Mortgagor, in writing, to agree with the insurance carrier(s) on the amount to be paid in regard to such loss. The insurance proceeds are hereby assigned as security to Mortgagee and shall be paid and applied in accordance with the terms of the Credit Agreement.

(b) **Condemnation.** Mortgagor shall within three (3) Business Days of its receipt of notice thereof, notify Mortgagee of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Mortgagor shall, after consultation with Mortgagee, appear in and prosecute any such action or proceeding. Upon Mortgagor's failure to act, Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor (such appointment as attorney-in-fact is coupled with an interest), to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Property, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Mortgagee and applied in accordance with the Credit Agreement. Subject to the terms of the Credit Agreement, Mortgagee is authorized (but is under no obligation) to collect any such proceeds.

5. **Preservation and Maintenance of Property.** Mortgagor shall: (a) not commit waste or permit impairment or deterioration of the Property, subject to ordinary wear and tear and damage by fire or other casualty; (b) not abandon the Property; (c) keep the Property in good repair and restore or repair promptly, in a good and workmanlike manner, all or any part of the Property to the equivalent of its condition as of the date hereof, subject to ordinary wear and tear, or such other condition as Mortgagee may approve in writing, upon any damage or loss thereto; (d) comply in all material respects with all laws, ordinances, regulations and requirements of any



# UNOFFICIAL COPY

governmental body applicable to the Property; and (e) give notice in writing to Mortgagee of and, unless otherwise directed in writing by Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security granted by this Mortgage or the rights or powers of the Lenders or Mortgagee under this Mortgage.

6. **Protection of Security.** If (a) Mortgagor or any other Party fails to pay or perform the Obligations, or (b) any action or proceeding is commenced which materially adversely affects or would reasonably be expected to materially adversely affect the Property or any Lender's or Mortgagee's interest therein, including any material loss, damage, cost, expense or liability incurred by any Lender or Mortgagee with respect to (i) any environmental matters relating to the Property or (ii) the preparation of the commencement or defense of any action or proceeding or any threatened action or proceeding affecting the Loan Documents or the Property, then Mortgagee, at its option, may make such appearances, disburse such sums and take such action as it deems reasonably necessary, to protect the Property or the Lenders' or Mortgagee's interest therein, including entry upon the Property to take such actions it reasonably determines appropriate to preserve, protect or restore the Property. Any amounts disbursed pursuant to this Section 6 (including reasonable attorneys' fees, costs and expenses), together with interest thereon at the default rate of interest, if any, specified in the Credit Agreement (the "**Default Rate**") from the date of disbursement, shall become additional indebtedness of Mortgagor secured by the lien of this Mortgage and shall be due and payable on demand. Nothing contained in this Section 6 shall require Mortgagee to incur any expense or take any action hereunder.

7. **Inspection.** Mortgagee and its authorized agents may make or cause to be made reasonable entries upon and inspections of the Property in accordance with the terms and provisions of the Credit Agreement.

8. **Covenants.**

(a) Mortgagor hereby represents and warrants unto each Lender and Mortgagee that, at the time of the execution, delivery and recording of this Mortgage, Mortgagor owns good and marketable title to, that portion of the Property that constitutes real property and has good and marketable title to that portion of the Property that constitutes personal property, in each instance free from all liens, encumbrances, charges and other claims whatsoever, except for Permitted Liens, and that the lien created on the Property by this Mortgage is a first, paramount and prior lien on said real property, subject only to Permitted Liens.

(b) Until full satisfaction or other termination of this Mortgage, Mortgagor shall and will forever warrant and defend its title to the Property against the claims of any and all persons and entities whatsoever, other than the Permitted Liens. Mortgagor shall not do or permit, cause or suffer to be done to, or omit to do, or permit the omission of, in, upon or about said Property, or any part thereof, anything that may in any way impair, the validity, priority and/or enforceability of this Mortgage.

9. **Lease.** Mortgagor absolutely and unconditionally assigns, transfers, pledges and sets over to Mortgagee, for the benefit of itself and the Lenders, all of its right, title and interest

# UNOFFICIAL COPY

in and to all Rents and all of its right, title and interest under or by virtue of any and all Leases. Mortgagee grants to Mortgagor a license to collect, subject to the provisions herein, such Rents, as they respectively become due, but not more than thirty (30) days in advance, and to enforce the agreement of the Leases, and retain the Rents, so long as there shall not have occurred and be continuing an Event of Default, provided, however, that Mortgagor shall use the Rents in a manner not prohibited by the Credit Agreement. This absolute and present assignment shall be fully operative without any further action on the part of Mortgagor, Mortgagee or any Lender.

10. **Transfers of the Property; No Additional Liens.** Except as permitted by the Credit Agreement, Mortgagor agrees that it shall not: (a) transfer, sell or convey all or any portion of the Property; and/or (b) further encumber or pledge all or any portion of the Property.

11. **Uniform Commercial Code Security Agreement.**

(a) This Mortgage shall constitute a security agreement pursuant to the Uniform Commercial Code for any portion of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code (such portion of the Property is hereinafter called the "Personal Property"), and Mortgagor hereby grants to Mortgagee, for the benefit of the Lenders, a security interest in all of Mortgagor's right, title and interest in the Personal Property. Mortgagee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as well as all other rights available at law or in equity. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Mortgagor (i) authorizes Mortgagee to file any financing statements, as well as extensions, renewals and amendments thereof, and (ii) agrees to execute any reproductions of this Mortgage, in each case, in such form as Mortgagee may reasonably require to perfect a security interest with respect to the Personal Property. Mortgagor hereby authorizes and empowers Mortgagee and irrevocably appoints Mortgagee its agent and attorney-in-fact to execute and file, on Mortgagor's behalf, all financing statements and refilings and continuations thereof as Mortgagee deems necessary or advisable to create, preserve and protect such lien. Mortgagor shall pay all reasonable and actual out-of-pocket costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements as Mortgagee may reasonably require. Without limitation of the foregoing, if an Event of Default occurs and is continuing, Mortgagee shall be entitled immediately to exercise all remedies then available to it under the Uniform Commercial Code.

(b) Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Mortgagee without the necessity of any further notice or action by Mortgagor. Mortgagee shall not by reason of this Mortgage or the exercise of any right granted hereby be obligated to perform any obligation of Mortgagor with respect to any portion of the Personal Property nor shall Mortgagee be responsible for any act committed by Mortgagor, or any breach or failure to perform by Mortgagor with respect to any portion of the Personal Property.

(c) To the extent permitted by law, Mortgagor and Mortgagee agree that with respect to all items of Personal Property which are or will become fixtures on the Land, this Mortgage, upon recording or registration in the real estate records of the proper office, shall



# UNOFFICIAL COPY

constitute a “fixture filing” within the meaning of the Uniform Commercial Code and this Mortgage, upon being recorded in the real property records of the county wherein such fixtures are situated, shall also operate as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. Mortgagor is the record owner of the Land, and the exact legal name of Mortgagor and Mortgagee, Mortgagor’s jurisdiction of incorporation, the proper address of Mortgagor and an address of Mortgagee from which information concerning the security interests granted hereby may be obtained, are each stated in the preamble to this Mortgage. A statement containing the types or describing the items of collateral is set forth above in this Mortgage. The collateral includes goods that are or are to become fixtures. The Mortgagor is a Delaware corporation with an organizational identification number of 6151544.

## 12. Events of Default; Acceleration of Indebtedness.

(a) The occurrence of an Event of Default under the Credit Agreement shall constitute an “Event of Default” under this Mortgage.

(b) Subject to the terms of the Credit Agreement, upon the occurrence and during the continuance of an Event of Default, at the option of Mortgagee, the Obligations shall become immediately due and payable without notice to Mortgagor and Mortgagee shall be entitled to all of the rights and remedies provided in the Loan Documents or at law or in equity. Each remedy provided in the Loan Documents is distinct and cumulative to all other rights or remedies under the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

(c) It is specifically covenanted and agreed that, upon the occurrence and during the continuance of an Event of Default, Mortgagee may proceed, at the same or different times, to foreclose this Mortgage or any of the other security documents as shall have been executed and delivered in connection with the extension of the Loans to Mortgagor (the “**Other Security Documents**”) or resort to any of its other remedies thereunder, by any proceedings appropriate in the state where any of the Land lies, and that no event of enforcement taking place in any state, including, without limiting the generality of the foregoing, any pending foreclosure, judgment or decree of foreclosure, foreclosure sale, rents received, possession taken, deficiency judgment or decrees, or judgment taken on any of the Notes or the other Loan Documents, shall in any way stay, preclude or bar enforcement of this Mortgage or any of the Other Security Documents or any of them in any other state, and that Mortgagee may pursue any or all of its remedies to the maximum extent permitted by state law until all Obligations have been paid or discharged in full.

## 13. Entry; Foreclosure.

(a) Upon the occurrence and during the continuance of an Event of Default, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Property, or to the extent permitted by law, Mortgagee or their officers or agents or a receiver appointed by a court of competent jurisdiction, may enter and take possession of all or any part of the Property, and may exclude Mortgagor and its agents and employees wholly therefrom. If Mortgagor shall for any reason fail to surrender or deliver the

# UNOFFICIAL COPY

Property or any part thereof after such demand by Mortgagee, Mortgagee or such receiver may obtain a judgment or decree conferring on Mortgagee or such receiver, the right to immediate possession of the Property or requiring the delivery of the Property to Mortgagee or such receiver, and Mortgagor specifically consents to the entry of such judgment or decree. Upon every such entering upon or taking of possession, Mortgagee or such receiver may hold, store, use, operate, manage and control the Property and conduct the business thereof, and Mortgagee or such receiver may take any action required by applicable law or which Mortgagee or such receiver reasonably believes necessary to enforce compliance with applicable law. Mortgagee and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.

(b) Upon the occurrence and during the continuance of an Event of Default, , Mortgagee may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to: (i) enforce payment of the Loans or the performance of any term, covenant, condition or agreement of Mortgagor under any of the Loan Documents; (ii) foreclose the lien hereof for the Obligations or part thereof by power of sale, judicial action or otherwise, and sell the Property as an entirety or otherwise, as Mortgagee may determine; and/or (iii) pursue any other right or remedy available to it under or by the law and decisions of the state in which the Land is located. Notwithstanding any statute or rule of law to the contrary, the failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect (x) the indebtedness secured hereby, or any part thereof or (y) any deficiency remaining unpaid after foreclosure and sale of the Property.

(c) Mortgagee shall have all of the rights and remedies provided in the Uniform Commercial Code including the right to proceed under the Uniform Commercial Code provisions governing default as to any personal property separately from the real estate included within the Property, or to proceed as to all of the Property in accordance with its rights and remedies in respect thereof. If Mortgagee should elect to proceed separately as to such personal property, Mortgagor agrees to make such personal property available to Mortgagee at a place or places acceptable to Mortgagee, and if any notification of intended disposition of any such personal property is required by law, such notification shall be deemed reasonably and properly given if given at least ten (10) days before such disposition in the manner herein provided.

(d) Upon any foreclosure sale, Mortgagee and any Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Obligations owing to it as a credit to the purchase price.

(e) Rights and Remedies Cumulative. Mortgagee shall have all powers, rights and remedies under applicable law whether or not specifically or generally granted or described in this Mortgage. Nothing contained herein shall be construed to impair or to restrict such powers, rights and remedies or to preclude any procedures or process otherwise available to mortgagees in the state in which the Land is located. Mortgagee shall be entitled to enforce the payment and performance of the Obligations and to exercise all rights and powers under this Mortgage or under any other Loan Document or other agreement of any laws now or hereafter in force, notwithstanding the fact that some or all of the Obligations may now or hereafter be

# UNOFFICIAL COPY

otherwise secured, whether by mortgage, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained herein, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other rights or security now or hereafter held by Mortgagee. Mortgagee shall be entitled to enforce this Mortgage and any other rights or security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy contained herein or by law provided or permitted, but each shall to the extent permitted by law be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Every power or remedy given by any of the Loan Documents to Mortgagee, or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies. By exercising or by failing to exercise any right, option or election hereunder, Mortgagee shall not be deemed to have waived any provision hereof or to have released Mortgagor from any of the obligations secured hereby unless such waiver or release is in writing and signed by Mortgagee and, if necessary, the Required Lenders. The waiver by Mortgagee of Mortgagor's failure to perform or observe any term, covenant or condition referred to or contained herein to be performed or observed by Mortgagor shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent failure of Mortgagor to perform or observe the same or any other such term, covenant or condition referred to or contained herein, and no custom or practice which may develop between Mortgagor, Mortgagee and any Lender during the term hereof shall be deemed a waiver of or in any way affect the right of Mortgagee to insist upon the performance by Mortgagor of the obligations secured hereby in strict accordance with the terms hereof or of any other Loan Document.

#### 14. Expenditures and Expenses.

(a) In any action to foreclose the Lien hereof or otherwise enforce Mortgagee's rights and remedies hereunder, there shall be allowed and included as additional indebtedness secured hereby all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee, including reasonable repair costs, payments to remove or protect against liens, attorneys' fees, costs and expenses, receivers' fees, costs and expenses, appraisers' fees, engineers' fees, accountants' fees, fees, costs and expenses in connection with any environmental matters concerning the Property, outlays for documentary and expert evidence, stenographers' charges, stamp taxes, publication costs, and costs (which may be estimates as to items to be expended after entry of an order or judgment) for procuring all such abstracts of title, title searches and examination, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute any action or to evidence to bidders at any sale which may be had pursuant to an order or judgment the true condition of the title to, or the value of, the Property. All expenditures and expenses of the nature mentioned in this Section 14 and such reasonable costs, expenses and fees as may be incurred or as may be owing to Mortgagee in the protection of the Property and the maintenance of the lien of this Mortgage, including the fees, costs and expenses of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the other Loan Documents to which Mortgagor is a party or the Property, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or

# UNOFFICIAL COPY

proceeding or threatened action or proceeding, including costs and expenses in connection with obtaining any court order or the appointment of a receiver, shall be immediately due and payable to Mortgagee, with interest thereon at the Default Rate, and shall be secured by this Mortgage. In addition to the foregoing award of attorneys' fees and costs, Mortgagee shall be entitled to its reasonable attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment or order relating to this Mortgage, or the other Loan Documents to which Mortgagor is a party. This provision is separate and several and shall survive the merger of this provision into any judgment.

(b) Without limiting Mortgagee's rights and remedies set forth in Section 14(a) above following the occurrence and during the continuance of an Event of Default, Mortgagee, both before and after acceleration of the Obligations or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to do any one or more of the following: (i) make any payment or perform any act herein, or in the Credit Agreement, the Notes, any of the other Loan Documents or any document or instrument related thereto which is required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any form and manner deemed expedient to Mortgagee; (ii) make full or partial payments of principal or interest on any permitted prior mortgage, this Mortgage or any encumbrances, (iii) purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, (iv) redeem from any tax sale or forfeiture affecting the Land, (v) contest any impositions, or (vi) complete construction, furnishing and equipping of the improvements upon the Land and rent, operate and manage the Property and such improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Property and its improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees and any other monies advanced by Mortgagee to protect the Property and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Property and its improvements or to pay any such operating costs and expenses thereof or to keep the Property and its improvements operational and usable for their intended purposes, shall constitute a part of the Obligations, whether or not they exceed the Maximum Amount, and shall become due and payable upon demand. Mortgagee, in making any payment hereby authorized: (x) for the payment of impositions, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (y) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim or lien which may be asserted; or (z) for the completion of construction, furnishing or equipping of the Property and its improvements or the rental, operation or management of the Property and its improvements or the payment of operating cost and expenses thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

15. **Application of Proceeds of Foreclosure Sale.** After deducting all reasonable costs, fees and expenses of Mortgagee, including, but not limited to, costs of evidence of title and actual and customary attorneys' fees of Mortgagee in connection with a sale as provided in Section 13 above, the proceeds of any foreclosure sale of the Property shall be distributed and applied in the order of priority set forth in the Credit Agreement with the excess, if any, being



# UNOFFICIAL COPY

applied, to be distributed to the Person or Persons legally entitled thereto.

16. **Appointment of Receiver or Mortgagee in Possession.** If an Event of Default has occurred and is continuing or if Mortgagee shall have accelerated the indebtedness secured hereby, Mortgagee, upon application to a court of competent jurisdiction, whether in conjunction with Mortgagee's commencement of judicial proceedings to foreclose the lien hereof, or pursuant to other proceedings, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of the Property or any other security for the indebtedness or the insolvency of any party bound for its payment, in each of the foregoing instances, to the extent permitted by applicable law, to the appointment of a receiver to take possession of and to operate the Property, or any portion thereof, and to collect and apply the Rents and Mortgagee hereby irrevocably consents to such appointment and waives notice of any application therefor. The receiver, out of the rents, when collected, may pay costs incurred in the management and operation of the Property, prior and subordinate liens, if any, and taxes, assessments, water and other utilities and insurance, then due or thereafter accruing, and may make and pay for any necessary repairs to the Property, and may pay all or any part of the Obligations or other sums secured hereby or any deficiency decree entered in such foreclosure proceedings. Upon or at any time after the filing of a suit to foreclose this Mortgage, the court in which such suit is filed shall have full power to enter an order placing Mortgagee in possession of the Property with the same power granted to a receiver pursuant to this subsection and with all other rights and privileges of a mortgagee in possession under applicable law. Such receiver shall have all powers and duties prescribed by applicable law, including the power to make leases to be binding upon all parties, including Mortgagor after redemption, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Mortgage real estate after entry of a judgment of foreclosure. In addition, such receiver shall also have the following powers: (a) to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Obligations and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the Mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his or its hands in payment in whole or in part of: (i) the Obligations, or any amounts included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a protective advance, and (ii) the deficiency in case of a sale and deficiency

17. **After - Acquired Property.** To the extent permitted by, and subject to, applicable law, the lien of this Mortgage, including without limitation the security interest created under the granting clauses of this Mortgage, shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Property or any part thereof.



# UNOFFICIAL COPY

18. **Forbearance by Mortgagee Not a Waiver.** Any forbearance by Mortgagee or any Lender in exercising any right or remedy under any of the Loan Documents, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. Mortgagee's or any Lender's acceptance of payment of any sum secured by any of the Loan Documents after the due date of such payment shall not be a waiver of Mortgagee's or such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured hereby, nor shall Mortgagee's receipt of any awards, proceeds or damages under Section 4 hereof operate to cure or waive Mortgagor's default in payment or sums secured by any of the Loan Documents. With respect to all Loan Documents, only waivers made in writing by Mortgagee and, to the extent required, the Required Lenders shall be effective against Mortgagee and the Lenders.

19. **Waiver of Statute of Limitations.** To the extent permitted by applicable law, Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Credit Agreement, the Notes or any other obligation secured by any of the Loan Documents.

20. **Waivers.** To the extent permitted by applicable law, Mortgagor, on behalf of itself, its successors and assigns, and each and every person it may legally bind acquiring any interest in, or title to, the Property on or subsequent to the date of this Mortgage: (a) does hereby expressly waive any and all rights of appraisal, valuation, stay, extension, reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage; (b) does hereby waive any equitable, statutory or other right available to it, in respect to marshalling of assets hereunder, so as to require the separate sales of interests in the Property before proceeding against any other interest in the Property; (c) does hereby expressly consent to and authorize, at the option of Mortgagee, the sale, either separately or together, of any and all interests in the Property; and (d) does hereby agree that in no event shall Mortgagee or the Lenders be required to allocate any proceeds received from foreclosure sale or otherwise to all or any interest in the Property; and (e) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to the purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor. Subject to the terms of the Credit Agreement, Mortgagee shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagee, any party who consents to this Mortgage, and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby, waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

21. **Governing Law; Severability.** This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois except that the provisions of the laws of the jurisdiction in which the Land is located shall be applicable to the creation, perfection and enforcement of the liens and security interests created by this Mortgage and the

# UNOFFICIAL COPY

exercise of remedies mandatorily governed by the laws of the state in which the Land is located. The invalidity, illegality or unenforceability of any provision of this Mortgage shall not affect or impair the validity, legality or enforceability of the remainder of this Mortgage, and to this end, the provisions of this Mortgage are declared to be severable.

22. **Notice.** Unless otherwise specifically provided herein or required by law, all notices, requests and other communications provided for hereunder shall be in writing (including, by facsimile transmission) and mailed by certified or registered mail, faxed or delivered, to the address or facsimile number specified below or to such other address as shall be designated by such party in a written notice to each of the other parties hereto given in compliance herewith. All such notices, requests and communications shall, when transmitted by overnight delivery, or faxed, be effective when delivered for overnight (next day) delivery, or transmitted by facsimile machine, respectively, or if mailed, upon the third Business Day after the date deposited into the U.S. Mail, certified or registered, or if delivered, upon delivery.

Notices shall be addressed as follows:

Notices to Mortgagor: FFR Properties, LLC  
1600 Birchwood Avenue,  
Des Plaines, Illinois 60018  
Attn: Drew Phillips  
Facsimile: (440) 505-6905

Notices to Mortgagee: Antares Capital LP  
500 West Monroe Street  
Chicago, Illinois 60661  
Attn: FFR Account Officer  
Facsimile: (312) 441-7211

With a copy to: Antares Capital LP  
500 West Monroe Street  
Chicago, Illinois 60661  
Attn: Legal Department  
Facsimile: (312) 441-6876

23. **Successors and Assigns Bound; Joint and Several Liability; Agents; Captions.** The covenants and agreements contained in the Loan Documents shall bind, and the rights thereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor, subject to the provisions of Section 10 hereof. In exercising any rights under the Loan Documents or taking any actions provided for therein, Mortgagee may act through its employees, agents or independent contractors as authorized by Mortgagee. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

24. **Release.** Upon payment in full of all Obligations, Mortgagee shall release this Mortgage. Mortgagor shall pay Mortgagee's reasonable costs incurred in releasing this Mortgage and any financing statements related hereto.

# UNOFFICIAL COPY

25. **Time of Essence.** Time is of the essence of this Mortgage and the performance of each of the covenants and agreement contained herein.

26. **Jury Trial Waiver.** MORTGAGOR AND MORTGAGEE EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS MORTGAGE, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. MORTGAGOR AND MORTGAGEE EACH AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY ARE WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS.

27. **Mortgage Foreclosure Laws.**

(a) In the event that any provision in this Mortgage shall be inconsistent with any applicable provision of the law of the state in which the Land is located governing foreclosure, (herein collectively called the "Laws"), the provisions of the Laws 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 Laws.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Laws in the absence of said provision, Mortgagee shall be vested with the rights granted in the Laws to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the Laws, whether incurred before or after any decree or judgment of foreclosure, and whether or not provided for elsewhere in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

28. **Relationship.** The relationship between each Lender (and Mortgagee) and Mortgagor shall be that of creditor-debtor only. No term in this Mortgage or in any of the other Loan Documents and no course dealing between the parties shall be deemed to create any relationship of agency, partnership or joint venture or any fiduciary duty by Mortgagee or any Lender to Mortgagor or any other party.

29. **Conflict with Credit Agreement.** In the event of any conflict or inconsistency

# UNOFFICIAL COPY

between the terms and provisions of this Mortgage and those of any other Loan Document, the terms and provisions of such other Loan Document shall govern and control, and the Credit Agreement shall govern and control over all other Loan Documents.

### 30. State Specific Provisions.

(a) Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Section 30 and the terms and conditions of this Mortgage, the terms and conditions of this Section 30 shall control and be binding.

(b) Maximum Principal Amount. The maximum indebtedness secured by this Mortgage shall not exceed two hundred percent (200%) of the aggregate, original principal amount of the Term Loan and Revolving Loans plus the total interest which may hereafter accrue on such principal amount.

(c) Use of Proceeds. Mortgagor represents and agrees that the Obligations are exempt from the limitation upon the amount of interest that may be charged under 815 ILCS 205/4 for one or more of the reasons set forth in such statute, and the Obligations constitute a business loan which comes within the purview of 815 ILCS 205/4.

(d) Future Advances. This Mortgage secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of Lender, or otherwise. The amount of indebtedness secured hereby may increase or decrease from time to time, and the rate or rates of interest payable may vary from time to time.

(e) Waiver of Homestead and Redemption. Mortgagor releases and waives all rights under the homestead and exemption laws of the State of Illinois. Mortgagor acknowledges that the Property does not include "agricultural real estate" or "residential real estate" as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b) Mortgagor waives any and all rights of redemption from sale under any order of foreclosure of this Mortgage or other rights of redemption which may run to Mortgagor or any other "Owner of Redemption", as that term is defined in 735 ILCS 5/15-1212. Mortgagor waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by Illinois law.

(f) Illinois Mortgage Foreclosure Law.

- i. In the event that any provisions in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1501 *et seq.*, as the same may be amended from time to time, the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with Act.
- ii. If any provision of this Mortgage shall grant to Lenders any rights or remedies upon the occurrence and during the continuation of an Event of Default of Mortgagor which are more limited than the rights that would

# UNOFFICIAL COPY

otherwise be vested in Lenders under the Act in the absence of said provision, Lenders shall be vested with the rights granted in the Act to the full extent permitted by law.

- iii. Without limiting the generality of the foregoing, all expenses incurred by Lenders to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Obligations.
- iv. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1610(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.
- v. Mortgagor and Lenders 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, Lenders 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.
- vi. Mortgagor agrees, to the fullest extent that Mortgagor may lawfully so agree, that Mortgagor will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Mortgagor, for Mortgagor and all who may claim through or under Mortgagor, so far as Mortgagor or those claiming through or under Mortgagor now or hereafter lawfully may, hereby waives the benefit of all such laws. Mortgagor, to the extent Mortgagor may lawfully do so, hereby waives any and all right to have the Property marshaled upon any foreclosure of this Mortgage, or sold in inverse order of alienation, and agrees that Lenders or any court having jurisdiction to foreclose this Mortgage may sell the Property as an entirety. If any law now or hereafter in force referred to in this Paragraph of which Mortgagor or Mortgagor's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract



# UNOFFICIAL COPY

herein contained or to preclude the operation or application of the provisions of this Paragraph.

- vii. In the event of the commencement of judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of Mortgagor, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Property subsequent to the date of this Mortgage: (a) expressly waives any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage; and (b), to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.
- b. Collateral Protection Act. Unless Mortgagor provides Lenders with evidence of the insurance required by this Mortgage or any other Loan Document, Lenders may purchase insurance at Mortgagor's expense to protect Lenders' interest in the Property or any other collateral for the Obligations secured hereby. This insurance may, but need not, protect Mortgagor's interests. The coverage Lenders purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property or any other collateral for the Obligations secured hereby. Mortgagor may later cancel any insurance purchased by Lenders, but only after providing Lenders with evidence that Mortgagor has obtained insurance as required under by this Mortgage or any other Loan Document. If Lenders purchase insurance for the Property or any other collateral for the indebtedness secured hereby, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Lenders 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 indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.
- c. No Lien Management Agreements. Mortgagor shall include a "no lien" provision in any property management agreement hereafter entered into by Mortgagor with a property manager for the Property, whereby the property manager waives and releases any and all mechanics' lien rights that the property manager, or anyone claiming through or under the property manager, may have pursuant to 770 ILCS 60/1. Such property management agreement containing such "no lien" provision or a short form thereof shall, at Lenders' request, be recorded with the Recorder of Deeds of Cook County, Illinois, as appropriate.

# UNOFFICIAL COPY

*[Remainder of page intentionally left blank; Signature Page Follows]*

Property of Cook County Clerk's Office

**UNOFFICIAL COPY**

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage or has caused the same to be executed by its duly authorized representatives as of the date first above written.

**MORTGAGOR:**

**FFR Properties, LLC**, a Delaware limited liability company

By: Fasteners for Retail, Inc., an Ohio corporation

By: Andrew Phillips  
 Name: Andrew Phillips  
 Title: Senior Vice President

STATE OF Ohio  
 COUNTY OF Summit

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Andrew Phillips, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be the Senior Vice President of **FFR Properties, LLC**, a Delaware limited liability company, and that he, as such Senior Vice President, being authorized, executed the foregoing instrument for the purposes therein contained, in the name and on behalf of said corporation.

Witness my hand and seal, at office in Twinsburg, Ohio, this the 10 day of February, 2017.

Suzanne M. Jakubec  
 Notary Public

My Commission Expires:

October 11, 2020

**SUZANNE M. JAKUBEC**  
 NOTARY PUBLIC • STATE OF OHIO  
 Recorded in Portage County  
 My commission expires Oct. 11, 2020



# UNOFFICIAL COPY

## EXHIBIT A

### Description of Premises

#### Common Address:

1600 and 1630 Birchwood Avenue  
Des Plaines, Illinois

#### PIN:

09-28-300-008-0000  
09-28-300-009-0000  
09-29-402-025-0000

#### Legal Description:

##### PARCEL 1:

THE WEST 1/2 OF LOT 5 AND THE EAST 69.50 FEET (AS MEASURED ALONG THE NORTH LINE AND THE SOUTH LINE THEREOF) OF LOT 6 IN TOUHY-MANNHEIM INDUSTRIAL SUBDIVISION UNIT NO. 2 BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 28 AND THE SOUTH EAST 1/4 OF SECTION 29 ALL IN TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

##### PARCEL 2:

LOT 6 (EXCEPT THE EAST 69.50 FEET THEREOF) AND THE EAST 151.50 FEET OF LOT 7 (BOTH DISTANCES MEASURED ALONG NORTH LINE AND SOUTH LINE OF SAID LOTS) EXCEPT THEREFROM THAT PART OF THE NORTH 50.0 FEET (AS MEASURED PERPENDICULARLY) OF SAID LOT 7 LYING WEST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 1 ALL IN TOUHY-MANNHEIM INDUSTRIAL SUBDIVISION UNIT NO. 2, BEING A SUBDIVISION IN SOUTHWEST 1/4 OF SECTION 28 AND SOUTH EAST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.