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Doc# 1714442005 Fee \$64.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 05/24/2017 09:30 AM PG: 1 OF 14 *s use Only*

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## SECOND MODIFICATION OF LOAN DOCUMENTS

**THIS SECOND MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made effective as of the 9th day of April, 2017, by and among **TORBURN NORTH CAMPUS, LLC**, an limited liability company ("Borrower"), **MICHAEL K. BURNS**, personally ("Guarantor") and **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois state chartered bank, its successors and assigns, as administrative agent ("Agent") for the Lenders (as defined below).

### RECITALS:

A. Pursuant to the terms of that certain Construction Loan Agreement dated October 9, 2015 (as amended, modified or restated from time to time, the "Loan Agreement") by and among Borrower, Agent and the financial institutions a party thereto from time to time (the "Lenders"), Lenders have heretofore made a construction loan ("Loan") available to Borrower in the principal amount of Thirty Four Million Eight Hundred Thirty Four Thousand Ninety Five and no/100 Dollars (\$34,834,095.00) as evidenced by certain Syndicated Promissory Notes, in the aggregate principal amount of the Loan made payable by Borrower to the order of Lenders (as amended, modified or restated from time to time, collectively, the "Note"). All capitalized terms not defined herein shall have the meanings ascribed to them in the Loan Agreement.

B. The Loan is secured by a Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated October 9, 2015 from Borrower to Agent recorded with the Cook County, Illinois Recorder's Office (the "Recorder's Office") on October

**This document prepared by and after recording return to:**

**Permanent Index Numbers:**

Michael D. Rothstein, Esq.  
Dykema Gossett PLLC  
10 S. Wacker Drive  
Suite 2300  
Chicago, Illinois 60606

03-07-100-022-0000

**Address of Property:**

1421 and 1501 West Shure Drive  
Arlington Heights, IL

*60004*

*Box 400*

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SC V  
INTAL*

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21, 2015, as Document No. 1529434080 (as amended, modified or restated from time to time, the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A attached hereto ("Property"), (ii) that certain Assignment of Leases and Rents dated October 9, 2015, from Borrower to Agent and recorded in the Recorder's Office on October 21, 2015, as Document No. 1529434081 (as amended, modified or restated from time to time, the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated October 9, 2015 from Borrower and Guarantor to Agent (as amended, modified or restated from time to time, the "Indemnity Agreement"); and (iv) certain other loan documents (the Loan Agreement, the Note, the Deed of Trust, the Assignment of Leases, the Indemnity Agreement, the Guaranty [as defined below], the First Modification [as defined below], the Account Pledge Agreement [as defined below], and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty of Payment and a Guaranty of Completion, each dated October 9, 2015 from Guarantor to Agent (as amended, modified or restated from time to time jointly, the "Guaranty").

D. Borrower, Guarantor and Agent entered into that certain unrecorded of Modification of Loan Documents dated June 21, 2016, whereby certain payment terms set forth in the Loan Agreement were modified (the "First Modification").

E. Borrower desires to further amend the Loan Documents in order to extend the Maturity Date on the terms and conditions set forth herein and make such other modifications as are set forth below.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Agent to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date.** The Initial Maturity Date is hereby extended to January 9, 2018. All references to the Initial Maturity Date or "April 9, 2017" shall be deemed to refer to January 9, 2018. The Extended Maturity Date is hereby modified to be January 9, 2019. All references to the Extended Maturity Date or "April 9, 2018" shall be deemed to refer to January 9, 2019.

2. **Pledged Funds.** No later than June 9, 2017, Borrower shall deposit \$1,250,000.00 (the "Pledged Funds") into a "blocked account" with Agent, which Pledged Funds shall pledged to Agent as additional collateral for the Loan pursuant to the terms of that certain Account Pledge Agreement of even date herewith by and between Borrower and Agent (the "Account Pledge Agreement"). Borrower's failure to deposit the Pledged Funds with Agent by June 9, 2017 shall automatically constitute an Event of Default under the Loan Agreement and other Loan Documents. So long as no Unmatured Default or Event of Default shall have occurred, at such time as (i) HSBC has exercised its expansion option under the HSBC Lease

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and Borrower shall have achieved a Debt Service Coverage Ratio of not less than 1.10 to 1.00 or (ii) if HSBC has not exercised its expansion option under the HSBC Lease, Borrower shall have achieved a Debt Service Coverage Ratio of not less than 1.15 to 1.00, Agent shall release the Pledged Funds to Borrower.

3. **Loan Agreement.** The Loan Agreement is hereby modified as follows:

(a) Section 2.45 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

“Gross Revenues” shall mean, (a) for the immediately preceding three (3) month period prior to such calculation, on an annualized basis, all revenues of Borrower, determined on a cash basis, derived from the ownership, operation, use, leasing and occupancy of solely 1421 Shure, collected from tenants in occupancy at 1421 Shure excluding any revenue derived from New Leases plus (b) revenue from New Leases anticipated by Administrative Agent to be received by Borrower during the immediately succeeding three (3) month period following such calculation, on an annualized basis, it being agreed and acknowledged that for purposes of calculating revenue from New Leases pursuant to this subsection “(b)”, such calculation shall include “free rent” or “rental abatement” during such three (3) month period as though such rent will actually be collected by Borrower pursuant to such New Lease at the rental rate applicable during such calculation period; provided, however, in no event shall Gross Revenues include (i) any loan proceeds, (ii) proceeds or payments under insurance policies (except proceeds of business interruption insurance), (iii) condemnation awards and proceeds, (iv) any security deposits received from Tenants of 1421 Shure, (v) income from any Lease in which a Tenant of 1421 Shure is more than thirty (30) days in arrears or otherwise in default under such Lease, (vi) any other extraordinary items of income or (vii) income from any Lease in which a Tenant of 1421 is subject to a Bankruptcy Proceeding. “New Lease” shall mean any lease or occupancy agreement (or amendment, expansion or renewal of an existing lease) for space at 1421 Shure which (a) is executed since the most recent calculation of Gross Revenue and (b) has been approved by Administrative Agent.”

(b) Section 2.80 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

“2.80 “Operating Cash Flow” shall mean, all Gross Revenues assuming a vacancy equal to the greater of (a) the actual vacancy of such 1421 Shure or (b) ten percent (10%) of the leasable space of 1421 Shure, less the sum of the greater of (i) of all costs, taxes, expenses and disbursements of every kind, nature or description actually paid or due and payable in connection with the leasing, management, operation, maintenance and repair of 1421 Shure and of the Personal Property, and fixtures located therein or used in connection therewith (collectively, the “Operating Expenses”) during the prior twelve (12) months or (ii) Borrower’s projected Operating Expenses for the following twelve (12) month period (subject to Administrative Agent’s reasonable approval), each including a

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structural reserve of \$0.20 per square foot and management fees equal to the greater of (x) the actual management fee or (y) three percent (3%) of all Gross Revenue, but excluding (i) non-cash expenses, such as depreciation and amortization costs, (ii) state and federal income taxes, (iii) the non-current portion of capital expenditures determined in accordance with generally accepted accounting principles, and (iv) debt service payable on the Loan or any other debt expressly approved by Administrative Agent (other than trade payables). In determining Operating Cash Flow, (a) extraordinary items of income, such as those resulting from casualty or condemnation or lease termination payments of Tenants of 1421 Shure, shall not be included in income and (b) Taxes and Insurance Premiums with respect to 1421 Shure shall be amortized monthly over a straight-line basis without interest over a twelve (12) month period and the monthly amount shall be deducted from Operating Cash Flow. Operating Cash Flow and Debt Service shall be calculated by the Borrower and independently verified by the Administrative Agent and Administrative Agent's verification shall be final and binding upon the Borrower and the Lenders."

(c) Section 3.5(b) of the Loan Agreement is hereby deleted in its entirety and replaced with the following

"(b) Principal Payments. If the Initial Maturity Date is extended pursuant to the terms of this Agreement, commencing on February 1, 2018 and continuing on the first day of each month thereafter through and including the month in which the Extended Maturity Date occurs, Borrower shall make monthly principal payments of \$116,114.00 each plus payments of interest which will be due as provided in this Agreement."

(d) The following is hereby inserted as a new subsection 7.8(f) of the Loan Agreement:

"(f) Within ten (10) days of each month end, current leasing reports."

(e) Section 11.6 of the Loan Agreement is hereby modified to provide that copies of notices to the Borrower should be sent to:

The Selig Law Firm P.C.  
150 N. Riverside  
Suite 1810  
Chicago, Illinois 60606  
Attn: Randal J. Selig, Esq.

4. Guaranty. Section 5.1 of each Guaranty is hereby deleted and replaced with following:

"5.1 Financial Covenants. At all times during the term of the Loan, the Guarantor shall (i) maintain Liquid Assets (as hereinafter defined) of not less than \$1,500,000.00,

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(ii) not incur any contingent liabilities (as determined in accordance with generally accepted accounting principles, consistently applied ("GAAP")) in excess of \$23,200,000.00, other than completion guaranties, non-recourse carve-out guaranties and environmental indemnities, (iii) not incur any indebtedness (determined in accordance with GAAP) in excess of \$3,300,000.00 in the aggregate, whether secured or unsecured and (iv) maintain a net worth (determined in accordance with GAAP with real estate adjusted to market value as reasonably approved by Administrative Agent) of not less than \$50,000,000.00. "Liquid Assets" shall mean unrestricted and unencumbered (x) cash and (y) Cash Equivalents owned by Guarantor and Torburn Partners, Inc. ("Torburn Partners"); provided, however, Liquid Assets may only include cash and Cash Equivalents of Torburn Partners so long as Guarantor is the sole shareholder of Torburn Partners. "Cash Equivalents" shall mean (a) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentally thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (b) dollar denominated time and demand deposits and certificates of deposit of (i) any Lender or any of their Affiliates; (ii) any domestic commercial bank having capital and surplus in excess of \$500,000,000 or (iii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof, in each case with maturities of not more than 270 days from the date of acquisition."

5. **Disbursements.** Notwithstanding anything to the contrary set forth in the Loan Agreement or other Loan Documents, no further disbursements of Loan proceeds shall be made available to Borrower until such time as (i) HSBC has exercised its expansion option under the HSBC Lease and Borrower shall have achieved a Debt Service Coverage Ratio of not less than 1.10 to 1.00 or (ii) if HSBC has not exercised its expansion option under the HSBC Lease, Borrower shall have achieved a Debt Service Coverage Ratio of not less than 1.15 to 1.00.

6. **Administration Fee.** Agent hereby confirms it shall no longer charge Borrower the construction administration fee set forth in the Fee Letter and such fee is no longer due and payable.

7. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Agent and Lenders as follows:

(a) The representations and warranties in the Loan Agreement and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default under the Loan Agreement, the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Loan Agreement, the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding



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obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Agent in connection with the Loan from the date of the most recent financial statement received by Agent.

(e) Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

8. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Agent thereunder.

9. **Loan Fee; Expenses.** As a condition precedent to the agreements contained herein, Borrower shall to Agent (i) a Loan extension fee in the amount of \$39,895.00 and (ii) all out-of-pocket costs and expenses incurred by Agent and Lenders in connection with this Agreement, including, without limitation, reasonable attorneys' fees and expenses.

10. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Agent or Lenders than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Agent, it being recognized that Borrower, Guarantor and Lenders have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor, Agent (on behalf of the Lenders) each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they

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intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Agent, the same shall not be deemed to constitute Agent or Lenders a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Agent each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor, Agent and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Loan Agreement" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Loan Agreement as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

11. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Agent hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lenders are required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Lenders to identify Borrower in accordance with the Act. In addition, Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating

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thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

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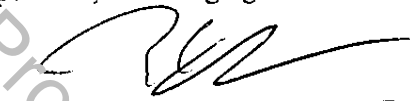
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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

**BORROWER:**

**TORBURN NORTH CAMPUS, LLC**, an Illinois limited liability company

By: **TORBURN PARTNERS, INC.**, an Illinois corporation, its managing member

By:   
Michael K. Burns, President

**AGENT:**

**THE PRIVATEBANK AND TRUST COMPANY**, an Illinois state chartered bank

By: \_\_\_\_\_  
Name: Katelyn Brungardt  
Title: Officer

**GUARANTOR:**

  
MICHAEL K. BURNS, personally

Property of Cook County Clerk's Office

**COOK COUNTY  
RECORDER OF DEEDS**

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

**BORROWER:**


**TORBURN NORTH CAMPUS, LLC**, an Illinois limited liability company

By: **TORBURN PARTNERS, INC.**, an Illinois corporation, its managing member

By: \_\_\_\_\_  
Michael K. Burns, President

**AGENT:**

**THE PRIVATEBANK AND TRUST COMPANY**, an Illinois state chartered bank

By:   
Name: Katelyn Brungardt  
Title: Officer

**GUARANTOR:**

\_\_\_\_\_  
MICHAEL K. BURNS, personally

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**COOK COUNTY  
RECORDER OF DEEDS**

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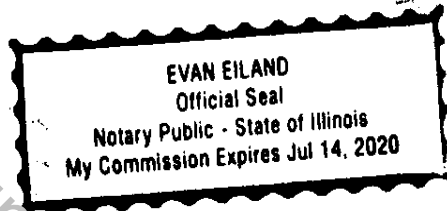
STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL K. BURNS, the President of Torburn Partners, Inc., the managing member of TORBURN NORTH CAMPUS, LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3 day of May, 2017.

*Evan Eiland*  
\_\_\_\_\_  
Notary Public

My Commission Expires: 7-14-20



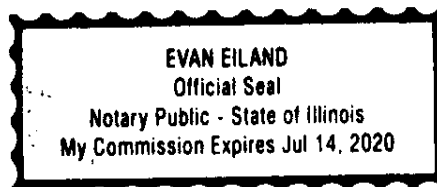
STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL K. BURNS, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3 day of May, 2017.

*Evan Eiland*  
\_\_\_\_\_  
Notary Public

My Commission Expires: 7-14-20





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## EXHIBIT A

### THE PROPERTY

#### PARCEL 1:

LOTS 1 AND 2 IN THE FINAL PLAT OF SUBDIVISION OF NORTHWEST CROSSINGS, BEING A SUBDIVISION IN THE NORTHWEST 1/4 OF SEC 7, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 27, 2016 AS DOCUMENT NUMBER 1602722029 *IN*

*Cook County Illinois*

#### PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS OVER AND UPON ROADWAY SOUTH OF AND ADJOINING SUBJECT LAND FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AND FOR USE OF FIRE PROTECTION SYSTEM, FOR USE OF FIBER LOOP AND FOR STORM WATER DRAINAGE AS CREATED BY RECIPROCAL EASEMENT AGREEMENT RECORDED JULY 10, 2013 AS DOCUMENT NUMBER 1319118008.

#### PARCEL 3:

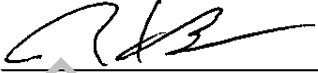
NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY STORM WATER DRAINAGE AND DETENTION EASEMENT AND COST SHARING AGREEMENT DATED AUGUST 13, 2013 AND RECORDED AUGUST 14, 2013 AS DOCUMENT 1322645044, FOR UTILIZING EXISTING STORM WATER DRAINAGE AND DETENTION POND AND THE MAINTENANCE OF SAID FACILITIES LOCATED ON THE SOUTH CAMPUS PARCEL DESCRIBED ON EXHIBIT 'A' ATTACHED THERETO.

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## CONSENT

The undersigned as owner of Lot 1 referenced above (i) has reviewed and approved the foregoing Second Modification of Loan Documents, (ii) hereby acknowledges, consents and agrees to the terms thereof and (iii) acknowledges the same is binding upon the undersigned.

TNC LOT 1, LLC, an Illinois limited liability company

By:   
Michael K. Burns, Authorized Agent

STATE OF ILLINOIS     )  
  ) .ss  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL K. BURNS, the Authorized Agent of TNC LOT 1, LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3 day of may, 2017.

  
Notary Public

My Commission Expires: 7-14-20

