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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

89845192K ①/3

Report Mortgage Fraud
800-532-8785



Doc# 1714504044 Fee \$108.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 05/25/2017 11:57 AM PG: 1 OF 36

The property identified as: PIN: 17-15-306-032-0000

Address:

Street: 1021 S. State Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60605

Lender: Southern Farm Bureau Life Insurance Company

Borrower: Fox 1021 State, LLC

Loan / Mortgage Amount: \$3,700,000.00

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

S
P 36
S N
SC X
INT [Signature]

Certificate number: F70D01BB-BD40-4DDC-8D15-C9BA809877B1

Execution date: 5/18/2017

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This Mortgage Prepared By and
after recording should be returned to:

Wesley W. Broquard
Barnes & Thornburg LLP
4400 UBS Tower
One North Wacker Drive
Chicago, Illinois 60606

**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF LEASES**

MORTGAGOR:

Fox 1021 State, LLC,
an Illinois limited liability company

and

MORTGAGEE:

Southern Farm Bureau Life Insurance Company,
a Mississippi corporation

DATE: May 18, 2017

Mortgagee's Address is:
1401 Livingston Lane
Jackson, Mississippi 39213
Attention: Mortgage Loan Administration Department

Mortgagor's Address is:

Fox 1021 State, LLC
1200 N. Franklin Avenue
River Forest, Illinois 60305
Attn: Kevin Fox

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MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES (the "Mortgage") is made as of May 18, 2017, by Fox 1021 State, LLC, an Illinois limited liability company, whose address is 1200 N. Franklin Avenue, River Forest, Illinois 60305 (the "Mortgagor"), in favor of Southern Farm Bureau Life Insurance Company, a Mississippi corporation (the "Mortgagee"), having an address of 1401 Livingston Lane, Jackson, Mississippi 39213.

WITNESSETH:

WHEREAS, Mortgagor is justly and lawfully indebted to Mortgagee for a loan of money (the "Loan") in the amount of Three Million Seven Hundred Thousand Dollars (\$3,700,000), as evidenced by that certain Promissory Note of even date herewith given by Mortgagor in favor of Mortgagee, as the same may hereafter be amended, modified, consolidated, extended, renewed or replaced (the "Note"), such Note having a stated maturity date of June 1, 2027; and

WHEREAS, the obligations secured by this Mortgage (the "Obligations") are: (i) payment and performance of all covenants, conditions, liabilities and obligations contained in, and payment of the indebtedness evidenced by the Note, together with interest and any other amounts payable thereunder; (ii) payment and performance of all covenants, conditions, liabilities and obligations of Mortgagor contained in this Mortgage and in all other documents now or hereafter executed by Mortgagor or any other Obligor relating to the Loan or held by Mortgagee relating to the Loan, as now existing or hereafter amended (collectively, the "Loan Documents"); (iii) all expenses and charges, including attorneys' fees, incurred by Mortgagee in collecting or enforcing any of the Obligations secured hereby; and (iv) all other indebtedness, obligations and liabilities of Mortgagor to Mortgagee of every kind and description owing or which may become owing by Mortgagor to Mortgagee, howsoever evidenced, now or hereafter existing in favor of Mortgagee, whether direct or indirect, primary or secondary, joint or several, fixed or contingent, secured or unsecured (collectively, the "Other Indebtedness"); and

WHEREAS, Mortgagor and all makers, endorsers, sureties, guarantors, accommodation parties and all parties liable or to become liable with respect to the Obligations are each referred to herein as an "Obligor";

NOW, THEREFORE, to secure the payment of the Obligations and the full and faithful performance of the covenants and agreements contained in this Mortgage and the other Loan Documents, Mortgagor hereby grants, bargains, sells, conveys, assigns, transfers, mortgages, pledges, delivers, sets over, warrants and confirms to Mortgagee, and grants Mortgagee a security interest in:

All those certain lots, pieces, or parcels of land lying and being in Cook County, State of Illinois, being legally described in Exhibit A attached hereto and made a part hereof, (the "Land");

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TOGETHER WITH the buildings and improvements now or hereafter situated thereon (the "Improvements");

TOGETHER WITH all and singular the tenements, hereditaments, easements, rights-of-way, riparian rights and other rights now or hereafter belonging or appurtenant to the Land, and the rights (if any) in all adjacent roads, ways, streams, alleys, strips and gores, and the reversion or reversions, remainder and remainders, rents, royalties, income, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of Mortgagor of, in and to the same and every part and parcel thereof, whether now owned or hereafter acquired by Mortgagor (the "Rights");

TOGETHER WITH any and all tangible property now or hereafter owned by Mortgagor and now or hereafter located at, affixed to, placed upon or used in connection with the Land or the Improvements, or any present or future improvements thereon, including without limitation: all machinery, equipment, appliances, fixtures, conduits and systems for generating or distributing air, water, heat, air conditioning, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse, sewage or garbage, or for fire prevention or extinguishing; all elevators, escalators, lifts and dumbwaiters; all motors, engines, generators, compressors, pumps, lift stations, tanks, boilers, water heaters, furnaces and incinerators; all furniture, furnishings, fixtures, appliances, installations, partitions, shelving, cabinets, lockers, vaults and wall safes; all carpets, carpeting, rugs, underpadding, linoleum, tiles, mirrors, wall coverings, windows, storm doors, awnings, canopies, shades, screens, blinds, draperies and related hardware, chandeliers and light fixtures; all plumbing, sinks, basins, toilets, faucets, pipes, sprinklers, disposals, laundry appliances and equipment, and kitchen appliances and equipment; all alarm, safety, electronic, telephone, music, entertainment and communications equipment and systems; all janitorial, maintenance, cleaning, window washing, vacuuming, landscaping, pool and recreational equipment and supplies; all books, records, and software; and any other items of property, wherever kept or stored, if acquired by Mortgagor with the intent of incorporating them in and/or using them in connection with the Land or the Improvements; together also with all additions thereto and replacements and proceeds thereof; all of which foregoing items described in this paragraph are hereby declared to be part of the real estate and encumbered by this Mortgage (the "Tangible Property"); and

TOGETHER WITH: (a) any and all awards or payments, including interest thereon and the right to receive the same, growing out of or resulting from any exercise of the power of eminent domain (including the taking of all or any part of the Land or the Improvements), or any alteration of the grade of any street upon which the Land abuts, or any other injury to, taking of, or decrease in the value of the Land or the Improvements or any part thereof; (b) all rights of Mortgagor in and to any hazard, casualty, liability, or other insurance policy carried for the benefit of Mortgagor and/or Mortgagee with respect to the Improvements or the Tangible Property, including without limitation any unearned premiums and all insurance proceeds or sums payable in lieu of or as compensation for any loss of or damage to all or any portion of the Improvements or the Tangible Property; (c) all rights of Mortgagor in and to all supplies and building materials, wherever located, for the construction or refurbishing of the Improvements, and any bill of lading, warehouse receipt or other document of title pertaining to any such supplies and materials; and (d) all rights of Mortgagor in, to, under, by virtue of, arising from or growing out of any and all present or future contracts, instruments, accounts, insurance policies,

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permits, licenses, trade names, plans, appraisals, reports, prepaid fees, choses-in-action, subdivision restrictions or declarations or other general intangibles whatsoever now or hereafter dealing with, affecting or concerning the Land or the Improvements or any portion thereof or interest therein, including but not limited to: (i) all contracts, plans and permits for or related to the Land or its development or the construction or refurbishing of the Improvements; (ii) any agreements for the provision of utilities to the Land or the Improvements; (iii) all payment, performance and/or other bonds; (iv) any contracts now existing or hereafter made for the sale by Mortgagor of all or any portion of the Land or the Improvements, including any security and other deposits paid by any purchasers or lessees (howsoever such deposits may be held) and any proceeds of such sales contracts and lease contracts, including any purchase-money notes and mortgages made by such purchasers; (v) any other contracts and agreements related to or for the benefit of the Land, Rights, Tangible Property and/or Improvements, including leases, repair and maintenance contracts and/or management agreements; (vi) all funds, accounts, instruments, documents, accounts receivable, general intangibles, notes, and chattel paper arising from or by virtue of transactions related to the Land and Improvements; (vii) without limiting the foregoing, the following now-existing or hereafter-acquired types of collateral of every kind and nature that are owned by Mortgagor in connection with Mortgagor's business (as such terms may be defined in the Illinois Uniform Commercial Code as codified at 810 ILCS 5/1-101 *et seq.* (the "Uniform Commercial Code")): Accounts (including health-care insurance receivables), Chattel Paper (including Electronic Chattel Paper), Inventory, Instruments (including Promissory Notes), Investment Property, Documents, Deposit Accounts, Letter-of-Credit Rights, General Intangibles (including Payment Intangibles), Software, Supporting Obligations, and to the extent not listed above as original collateral, the Proceeds of the foregoing; and (viii) any declaration of condominium, restrictions, covenants, easements or similar documents now or hereafter recorded against the title to all or any portion of the Land (collectively, the "Intangibles");

TO HAVE AND TO HOLD the above-described and granted Land, Improvements, Rights, Tangible Property and Intangibles (collectively referred to in this Mortgage as the "Security Property") unto Mortgagee in fee simple forever.

PROVIDED, HOWEVER, that these presents are upon the condition that if Mortgagor (a) shall pay or cause to be paid to Mortgagee the principal and all interest payable in respect of the Obligations at the time and in the manner stipulated in the Loan Documents, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, (b) shall punctually perform, keep and observe all and singular the covenants and promises in the Loan Documents to be performed, kept and observed by and on the part of Mortgagor, and (c) shall not permit or suffer to occur any default under this Mortgage or any other Loan Document, then this Mortgage and all the interests and rights hereby granted, bargained, sold, conveyed, assigned, transferred, mortgaged, pledged, delivered, set over, warranted and confirmed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

To secure payment of the Obligations and the full and faithful performance of the covenants and agreements in this Mortgage and the other Loan Documents, Mortgagor hereby grants, bargains, sells, conveys, assigns, transfers, pledges, sets over, warrants and confirms to Mortgagee a security interest in the Tangible Property and the Intangibles.

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Mortgagor covenants with and warrants to Mortgagee: (a) that Mortgagor has good and marketable title to the Security Property, is lawfully seized and possessed of the Land and Improvements in fee simple and has good right and authority to grant, sell, assign, mortgage and convey the same and to grant a security interest therein as provided herein, fully and absolutely waiving and releasing all rights and claims it may have in or to the Security Property as a homestead exemption or any federal, state or local law now or hereafter in effect; (b) that the Security Property is unencumbered and free and clear of all liens and security interests and title matters whatsoever except for any easements, restrictions or other title exceptions listed on Exhibit B (the "Permitted Exceptions"); (c) that Mortgagor is now in a solvent condition and no bankruptcy or insolvency proceedings are pending or contemplated by Mortgagor or against Mortgagor; and (d) that Mortgagor shall forever warrant and defend the title and quiet possession of the Security Property unto Mortgagee, and the validity and priority of the lien of this Mortgage, against the lawful claims and demands of all persons whomsoever. This warranty of title shall survive the foreclosure of this Mortgage and inure to the benefit of and be enforceable by any person who may acquire the Security Property pursuant to foreclosure.

Mortgagor further covenants and agrees with Mortgagee as follows:

1. **Payment and Performance.** Mortgagor shall pay all sums due Mortgagee at the time and in the manner provided in the Loan Documents, and Mortgagor shall otherwise perform, comply with and abide by each and every one of the stipulations, agreements, conditions and covenants contained in the Loan Documents.

2. **Taxes, Assessments and Charges.** Mortgagor shall pay all taxes, assessments (whether general or special) and other charges whatsoever levied, assessed, placed or made against all or any part of the Security Property or any interest of Mortgagee therein, or against any Loan Document or any obligation thereunder; provided, Mortgagor may contest taxes and assessments as permitted by law so long as Mortgagor provides a bond, title insurance insuring over such taxes and assessments or other adequate security to assure the payment of all taxes and assessments when finally determined. Mortgagor shall make such payment in full (and shall deliver to Mortgagee the paid receipts) not later than thirty (30) days before the last day upon which the same may be paid without the imposition of interest (except interest on special assessments payable by law in installments, in which case Mortgagor shall pay each such installment when due) or other late charge or penalty. If Mortgagor shall fail, neglect or refuse to pay any such taxes, assessments or other charges as aforesaid, then Mortgagee at its option may pay the same, and any funds so advanced by Mortgagee shall bear interest, shall be paid and shall be secured as provided in Section 14.

3. **Insurance.**

(a) Mortgagor shall maintain property insurance with a reputable insurance company or companies with a Best's rating of A/VIII or better, licensed in the state in which the Security Property is located and acceptable to Mortgagee, covering all the Improvements and the Tangible Property encumbered by this Mortgage, for an amount not less than their full insurable value on a replacement cost basis, for the benefit of Mortgagor and Mortgagee as their interests may appear, by policies on such terms, in such form and for such periods as Mortgagee shall require or approve from time to time, insuring with all risk or special form coverage and insuring

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against loss of rents and other income (for no less than twelve (12) full months) and when and to the extent required by Mortgagee, against any other risks. Regardless of the types or amounts of insurance required and approved by Mortgagee, Mortgagor shall assign and deliver to Mortgagee all policies of insurance which insure against any loss or damage to the Security Property or any part thereof, as Tangible Property and further security for the payment of the Obligations, with loss payable to Mortgagee pursuant to a standard mortgagee clause acceptable to Mortgagee. Mortgagee is hereby authorized at its option to settle and adjust any claims arising out of any insurance coverage so maintained by Mortgagor. Any expense incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be reimbursed to Mortgagee first out of any insurance proceeds.

(b) If Mortgagor fails to maintain such insurance in force, then Mortgagee at its option may effect such insurance from year to year and pay the premiums therefor, and any such sums advanced by Mortgagee shall bear interest, shall be paid and shall be secured as provided in Section 14.

(c) If any insurance proceeds are received for loss or damage to the Improvements or the Tangible Property, then Mortgagee at its option may retain such proceeds and apply them toward the payment of the Obligations (in any order of priority Mortgagee may deem appropriate in its sole discretion), or Mortgagee may disburse them to Mortgagor for the repair or restoration of the damaged Improvements or Tangible Property in the same manner as disbursements under a construction loan; Mortgagee shall not be obligated to see to the proper application by Mortgagor of any such disbursement.

(d) Mortgagor shall obtain and carry commercial general liability insurance with a reputable insurance company or companies with a Best's rating of A/VIII or better, licensed in the state in which the Security Property is located, and acceptable to Mortgagee, which policy shall name Mortgagor as insured and Mortgagee as additional insured, with initial limits of not less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) annual aggregate (or such greater or different limits which Mortgagee may require from time to time) and on such terms, in such form and for such periods as Mortgagee shall approve from time to time.

(e) In the event of a foreclosure of this Mortgage, the purchaser of the Security Property shall succeed to all the rights of Mortgagor in and to all policies of insurance required under this Mortgage, including any right to unearned premiums.

(f) Not less than thirty (30) days prior to the expiration date of each policy required under this Mortgage, Mortgagor shall deliver to Mortgagee a renewal policy or policies either marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee in its sole discretion based upon commercially reasonable criteria.

(g) Each policy of insurance required under this Mortgage shall be non-cancelable without at least thirty (30) days' advance written notice to Mortgagee.

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4. Escrow Account.

(a) At Mortgagee's option, Mortgagor shall pay to Mortgagee, together with and in addition to each regular installment of principal and/or interest payable under the Loan Documents, an amount deemed sufficient by Mortgagee to provide Mortgagee with funds in an escrow account sufficient to pay the taxes, assessments, insurance premiums and other charges next due at least thirty (30) days before the date the same are due. In no event shall Mortgagee be liable for any interest on any such funds held in the escrow account. At least thirty (30) days before the date the same are due, Mortgagor shall furnish to Mortgagee an official statement of the amount of said taxes, assessments, insurance premiums and other charges, and Mortgagee shall pay the same, but only if sufficient funds remain in the escrow account. In the event of any deficiency in the escrow account, Mortgagor shall upon notice from Mortgagee immediately deposit with Mortgagee such additional funds as Mortgagee may deem necessary to cure the deficiency, in its sole discretion. If Mortgagee elects to pay any such taxes, assessments, insurance premiums or other charges notwithstanding the escrow account deficiency, then all sums advanced by Mortgagee in excess of the escrow account balance shall bear interest, shall be paid and shall be secured as provided in Section 14. An official receipt for such sums shall be conclusive evidence of Mortgagee's payment and of the validity of the tax, assessment, insurance premium or other charge so paid. In the event of any default under this Mortgage or any other Loan Document, Mortgagee at its option may apply any or all funds in the escrow account against the Obligations or any other sums secured by this Mortgage, in any order of priority Mortgagee may deem appropriate in its sole discretion. At the time of any permitted transfer of the title to all of the Security Property then encumbered by this Mortgage, the balance in the escrow account shall inure to the benefit of such transferee without any specific assignment of such funds. Upon payment in full of the Obligations, the funds remaining in the escrow account (if any) shall be paid over to the record owner of the Security Property encumbered by this Mortgage as of the date of such full payment.

(b) Notwithstanding the foregoing, Mortgagee agrees not to exercise its right to collect escrows for insurance so long as (i) no Event of Default has occurred and is continuing; (ii) Mortgagor has obtained insurance coverage by a so-called "blanket policy"; and (iii) all such insurance premiums are paid in a timely manner as and when due, and evidence of such payment is provided to Mortgagee no less than ten (10) days prior to any such payment being delinquent or overdue or beyond any deadline for maximum discounts, as determined by Mortgagee in Mortgagee's sole discretion; provided however, that Mortgagee shall have the right to immediately reinstate its right to collect escrows for insurance in the event that the conditions in (i), (ii), or (iii) above are not met.

5. Improvements and Development. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion based upon commercially reasonable criteria, none of the Improvements covered by the lien of this Mortgage shall be removed, demolished or materially altered or enlarged (except as required in the event of fire, other casualty or condemnation). Notwithstanding the foregoing, Mortgagor shall have the right to remove and dispose of, free from the lien of this Mortgage, such Tangible Property as from time to time may become worn out or obsolete, provided that, simultaneously with or prior to such removal, Mortgagor shall have replaced any such Tangible Property with new Tangible Property (of at least the same quality as that of the replaced Tangible Property when it was new)

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that shall be free from any title retention or other security agreement or other encumbrance, and, by such removal and replacement, Mortgagor shall be deemed to have subjected such new Tangible Property to the lien of this Mortgage. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion, Mortgagor shall not undertake any development of the Land, nor construct any new Improvements thereon, nor initiate or join in or consent to any new (or any change in any existing) private restrictive covenant, zoning ordinance, master plan, site plan, easement, or other public or private restrictions limiting or defining the uses which may be made of the Security Property or any part thereof. Mortgagor shall complete and pay for any permitted development and/or improvements undertaken on the Land within a reasonable time after commencing the same.

6. **Maintenance and Repair.** Mortgagor shall use commercially reasonable efforts to maintain the Security Property in good condition and repair, shall operate the Security Property in a first-class manner, shall not commit or suffer any waste, impairment, abandonment or deterioration of the Security Property, shall promptly pay all utility fees for services provided to the Security Property, and shall comply with (or cause compliance with) all applicable restrictive covenants and all statutes, ordinances and requirements of any governmental authorities having jurisdiction over the Security Property or the use thereof. In the event of any fire or other casualty loss or damage to all or any part of the Security Property, Mortgagor shall notify Mortgagee within two (2) business days of such occurrence. Mortgagor shall promptly repair, restore, replace or rebuild any part of the Security Property which may be damaged or destroyed by any casualty whatsoever or which may be affected by any condemnation, alteration of grade, or other public or quasi-public taking or injury, except to the extent precluded by Mortgagee's retention and application of the insurance or condemnation proceeds against the Obligations. If Mortgagor shall fail, neglect or refuse to repair or maintain the Security Property as aforesaid, then Mortgagee may at its option undertake such repairs or maintenance, and any funds advanced therefor by Mortgagee shall bear interest shall be paid and shall be secured as provided in Section 14.

7. **Assignment of Leases and Rents and Management Agreements.**

(a) As further consideration for the making of the Loan evidenced by the Note, Mortgagor hereby absolutely, presently and unconditionally assigns and transfers to Mortgagee all rents, income, issues and profits of the Security Property and all right, title and interest of Mortgagor in and under all leases, tenancies and occupancy agreements of any nature whatsoever (and any extensions and renewals thereof) now or hereafter affecting the Security Property (the "Leases"), together with any guaranties thereof and any security deposits or prepaid rent or other deposits or advances thereunder to be applied by Mortgagee in payment of the Obligations, subject to the license granted to Mortgagor pursuant to this Section 7. As further security for the repayment of the Obligations, Mortgagor hereby assigns and transfers to Mortgagee all right, title and interest of Mortgagor in and under all management agreements of any nature whatsoever (and any extensions and renewals thereof) now or hereafter affecting the Security Property (the "Management Agreements").

(b) Mortgagor hereby empowers Mortgagee, its agents or attorneys, to demand, collect, sue for, receive, settle, compromise and give acquittances for all of the rents that may become due under the Leases and to avail itself of and pursue all remedies for the

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enforcement of the Leases and Mortgagor's rights thereunder that Mortgagor could have pursued but for this assignment. Mortgagee is hereby vested with full power and authority to use all measures, legal and equitable, deemed necessary or proper by Mortgagee to enforce this assignment, to collect the rents so assigned, and/or to cure any default and perform any covenant of Mortgagor as the landlord under any of the Leases, including without limitation the right to enter upon all or any part of the Security Property and to take possession thereof to the extent necessary to exercise such powers. Mortgagee shall have the right (but not the obligation) to advance any sums necessary to exercise such powers, which sums shall bear interest, shall be paid and shall be secured as provided in Section 14. Mortgagor hereby empowers Mortgagee to use and apply all such rents and other income of the Security Property to the payment of the Obligations and all interest thereon and on any other indebtedness or liability of Mortgagor to Mortgagee, and to the payment of the costs of managing and operating the Security Property, including without limitation: (i) taxes, special assessments, insurance premiums, damage claims, and the costs of maintaining, repairing, rebuilding, restoring and making rentable the Improvements; (ii) all sums advanced by Mortgagee (with interest thereon) for the payment of such costs or for any other reason permitted by this Mortgage or any other Loan Document; and (iii) all costs, expenses and attorney's fees incurred by Mortgagee in connection with the enforcement of this Mortgage and/or any Lease; all in such order of priority as Mortgagee may deem appropriate in its sole discretion.

(c) Mortgagee shall not be obliged to press any of the rights or claims of Mortgagor assigned hereby, nor to perform or carry out any of the obligations of the landlord under any Lease, and Mortgagee assumes no duty or liability whatsoever in connection with or arising from or growing out of the covenants of Mortgagor in any Lease. This Mortgage shall not operate to make Mortgagee responsible for the control, care, management or repair of all or any part of the Security Property, nor shall it operate to make Mortgagee liable for (i) the performance or carrying out of any of the terms or conditions of any Lease, (ii) any waste of the Security Property by any tenant or any other person, (iii) any dangerous or defective condition of the Security Property, nor (iv) any negligence in the management, upkeep, repair or control of all or any part of the Security Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Mortgagor hereby indemnifies and holds Mortgagee harmless against any and all liability, loss, claim, damage, costs and attorney's fees whatsoever which Mortgagee may or might incur under any Lease or by reason of this assignment, and against any and all claims or demands whatsoever (and any related costs and attorney's fees) which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease. Nothing herein contained shall be construed as constituting Mortgagee a trustee or mortgagee in possession.

(d) Mortgagor hereby represents and warrants to Mortgagee (and shall be deemed to have represented and warranted to Mortgagee upon and as of the date of delivering to Mortgagee a copy of each Lease), except as previously or concurrently disclosed to and approved by Mortgagee in writing: (i) that each such copy delivered (or to be delivered) to Mortgagee is true, correct and complete; (ii) that Mortgagor is the sole owner of the entire landlord's interest in each Lease and each Lease is not currently assigned or pledged or any interest therein to any person other than Mortgagee; (iii) that all the Leases are in full force and effect and, except as disclosed to Mortgagee, have not been altered, modified or amended in any manner whatsoever; (iv) that each tenant thereunder has accepted that tenant's respective

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premises and is paying rent on a current basis; (v) that no default exists on the part of such tenants or on the part of Mortgagor as landlord in their respective performances of the terms, covenants, provisions and agreements contained in the Leases; (vi) that no rent has been paid by any of the tenants for more than one (1) month in advance; (vii) that Mortgagor is not indebted to any tenant in any manner whatsoever so as to give rise to any right of set-off against or reduction of the rents payable under any Lease; and (viii) that no payment of rents to accrue under any Lease has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor directly or indirectly, whether by assuming any tenant's obligations with respect to other premises or otherwise.

(e) Mortgagor covenants and agrees with Mortgagee that each Lease shall remain in full force and effect irrespective of any merger of the interests of the landlord and tenant thereunder.

(f) Mortgagor may enter into a proposed Lease (including the renewal or extension of an existing Lease (a "Renewal Lease")) without the prior written consent of Mortgagee, provided that (i) no Event of Default shall exist under this Mortgage and no default or event of default shall exist under any other Loan Document, and (ii) such proposed Lease or Renewal Lease (A) provides for rental rates and terms comparable to existing local market rates and terms (taking into account the type and quality of the tenant) as of the date such Lease is executed by Mortgagor (unless, in the case of a Renewal Lease, the rent payable during such renewal, or a formula or other method to compute such rent, is provided for in the original Lease), (B) is an arms-length transaction with a bona fide, independent third party tenant, (C) does not have a materially adverse effect on the value of the Security Property taken as a whole, (D) is subject and subordinate to this Mortgage and the lessee thereunder agrees to attorn to Mortgagee, and (E) is written on the standard form of lease approved by Mortgagee, in its sole discretion based upon commercially reasonable criteria. Mortgagee acknowledges that a Lease or Renewal Lease based on the commercial and residential leases provided prior to the date hereof are acceptable forms, provided the Lease or Renewal Lease complies with the other requirements set forth above in this Paragraph. All proposed Leases that do not satisfy the requirements set forth in this Subsection 7(f) shall be subject to the prior approval of Mortgagee and its counsel, at Mortgagor's expense. Mortgagor shall promptly deliver to Mortgagee copies of all Leases that are entered into pursuant to this Subsection together with Mortgagor's certification that it has satisfied all of the conditions of the Subsection.

(g) Mortgagor (i) shall observe and perform all the obligations imposed upon the landlord under the Leases and shall not do or permit to be done anything to impair the value of any of the Leases as security for the Obligations; (ii) upon request, shall promptly send copies to Mortgagee of all notices of default which Mortgagor shall send or receive thereunder; (iii) shall enforce all of the material terms, covenants and conditions contained in the Leases upon the part of the tenant thereunder to be observed or performed; (iv) shall not collect any of the Rents more than one (1) month in advance (except security deposits shall not be deemed Rents collected in advance); (v) shall not execute any other assignment of the lessor's interest in any of the Leases or the rents; and (vi) shall not consent to any assignment of or subletting under any Leases without the prior written consent (such consent shall not be withheld, conditioned or delayed unless based upon commercially reasonable criteria) of Mortgagee (except where

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required by the terms of such Lease); provided, Mortgagee's consent shall not be required if the tenant assignee meets the criteria set forth in subsection (f) above..

(h) Mortgagor may, without the consent of Mortgagee, amend, modify or waive the provisions of any Lease or terminate, reduce rents under, accept a surrender of space under, or shorten the term of, any Leases (including any guaranty, letter of credit or other credit support with respect thereto) provided that such action (taking into account, in the case of a termination, reduction in rent, surrender of space or shortening of term, the planned alternative use of the affected space) does not have a materially adverse effect on the value of the Security Property taken as a whole, and provided that such Lease, as amended, modified or waived, is otherwise in compliance with the requirements of this Mortgage and any subordination agreement binding upon Mortgagee with respect to such Lease. A termination of a Lease with a tenant who is in default beyond applicable notice and grace periods, or who is paying below market rent, shall not be considered an action which has a materially adverse effect on the value of the Security Property taken as a whole. Any amendment, modification, waiver, termination, rent reduction, space surrender or term shortening that does not satisfy the requirements set forth in this Subsection shall be subject to the prior approval of Mortgagee and its counsel, at Mortgagor's expense. Mortgagor shall promptly deliver to Mortgagee copies of amendments, modification and waivers that are entered into pursuant to this Subsection together with Mortgagor's certification that it has satisfied all of the conditions of this Subsection.

(i) Notwithstanding anything contained herein to the contrary, Mortgagor shall not, without the prior written consent of Mortgagee enter into, renew, extend, amend, modify, waive any provisions of, terminate, reduce rents under, accept a surrender of space under, or shorten the term of, any Major Lease, or modify any instrument guaranteeing or providing credit support therefor. The term "Major Lease" shall mean any Lease that (i) provides for rental income representing twenty percent (20%) or more of the total rental income for the Security Property; (ii) covers twenty percent (20%) or more of the total space at the Security Property, in the aggregate; or (iii) provides for a lease term of longer than six (6) years (including options to renew).

(j) Although Mortgagor and Mortgagee intend that this instrument shall be a present, absolute and unconditional assignment of the Leases and the rents, income, issues and profits of the Security Property, it is expressly understood and agreed that so long as no Event of Default shall exist under this Mortgage and no default or event of default shall exist under any other Loan Document, Mortgagor may collect, and is hereby granted a license to collect, assigned rents, income, issues, and profits for not more than one (1) month in advance of the accrual thereof, but upon the occurrence of any such Event of Default under this Mortgage or the occurrence of any default or event of default under any other Loan Document, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked and Mortgagee shall be immediately entitled to possession of the rents, income, issues and profits, whether or not Mortgagee enters upon or takes control of the Security Property. Mortgagee may apply all rents collected to the Obligations in such order and priority as Mortgagee so elects in its sole discretion based upon commercially reasonable criteria. The tenants under all the Leases are hereby irrevocably authorized to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may be or thereafter become due under the Leases, or for the performance of

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any of the tenants' undertakings under the Leases, and none of them shall have any right or duty to inquire as to whether any default hereunder or under any other Loan Document shall have actually occurred or is then existing.

(k) Mortgagor has conditionally assigned to Mortgagee by separate agreement of even date herewith all Leases and rents with respect to the Security Property, which assignment is in addition to, and cumulative with, the assignment and rights granted to Mortgagee herein. Mortgagee shall have the right to approve any Management Agreement with respect to the Security Property hereafter entered into by Mortgagor, provided such approval shall not be withheld, conditioned or delayed unless based upon commercially reasonable criteria, and all managers and management companies thereby selected by Mortgagor and, upon the occurrence of an Event of Default under this Mortgage or the occurrence of a default or event of default under any other Loan Document or under the Management Agreement, such Management Agreement may be terminated by Mortgagee at no cost to Mortgagee upon prior written notice to the manager under the Management Agreement. The manager under each existing Management Agreement has agreed to the foregoing and that its Management Agreement is subject and subordinate in all respects to this Mortgage. Any Management Agreement hereafter entered into by Mortgagor shall expressly provide that such Management Agreement may be terminated by Mortgagee at no cost to Mortgagee upon prior written notice to the manager under the Management Agreement and that the Management Agreement is subject and subordinate in all respects to this Mortgage. Mortgagor has heretofore delivered to Mortgagee a true and complete copy of any Management Agreements affecting the Security Property and any and all amendments or modifications thereof. Mortgagor agrees that it will not modify or amend any Management Agreement without Mortgagee's prior written consent, provided such consent shall not be withheld, conditioned or delayed unless based upon commercially reasonable criteria.

8. Further Encumbrances.

(a) Mortgagor shall not grant any other lien, security interest, pledge, deed of trust, assignment, mortgage or other hypothecation on all or any part of the Security Property or any interest therein nor make any further assignment of the Leases and rentals of the Security Property without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion; in the event of any such unpermitted hypothecation, being herein called an "Encumbrance," Mortgagee shall be entitled, in addition to any other remedy available to it, to declare the Obligations immediately due and payable and to foreclose this Mortgage. Without intending to waive the right to consent granted to Mortgagee herein, any such other Encumbrance shall be junior to this Mortgage and to all permitted tenancies now or hereafter affecting the Security Property or any portion thereof and shall be subject to all renewals, extensions, modifications, releases, interest rate increases, future advances, changes or exchanges permitted by this Mortgage, all without the joinder or consent of such junior lienholder, secured party, pledgee, or mortgagee or assignee and without any obligation on Mortgagee's part to give notice of any kind thereto. Mortgagor shall maintain in good standing any other Encumbrance to secure debt affecting any part of the Security Property from time to time and shall not commit or permit or suffer to occur any default thereunder, nor shall Mortgagor accept any future advance under or modify the terms of any such Encumbrance which may then be superior to the lien of this Mortgage. Except for encumbrances permitted by

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Mortgagee, and except for the lien of real estate taxes not then due and payable, Mortgagor shall not commit or permit or suffer to occur any act or omission whereby any of the security represented by this Mortgage shall be impaired or threatened, or whereby any of the Security Property or any interest therein shall become subject to any attachment, judgment, lien, charge or other encumbrance whatsoever, and Mortgagor shall immediately cause any such attachment, judgment, lien, charge or other encumbrance to be discharged, bonded, insured over by Mortgagee's title insurer, or transferred to other security. Mortgagor shall not directly or indirectly do anything or take any action which might prejudice any of the right, title or interest of Mortgagee in or to any of the Security Property or impose or create any direct or indirect obligation or liability on the part of Mortgagee with respect to any of the Security Property. Notwithstanding the foregoing, should any mechanics' lien be filed against the Security Property, Mortgagor shall have the right to bond or insure over such lien, in a manner satisfactory to Mortgagee (in its sole discretion based upon commercially reasonable criteria), while Mortgagor diligently contests the validity or amount of such lien.

(b) Mortgagor will comply with and will punctually perform all of the covenants, agreements and obligations imposed upon it or the Security Property under the Permitted Exceptions in accordance with the terms, provisions and conditions contained therein, including, without limitation, Mortgagor's obligation to pay all amounts secured, evidenced or required thereby. Mortgagor will not modify or permit any modification of any of the Permitted Exceptions without the prior written consent of Mortgagee, provided such consent shall not be withheld, conditioned or delayed unless based upon commercially reasonable criteria.

9. Prohibited Transfers. Mortgagor shall not cause or permit or suffer to occur any of the following events (a "Disposition") without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion based upon commercially reasonable criteria, and if any of the same shall occur without such consent, then Mortgagee shall have the right, in addition to any other remedies available to it, to declare the Obligations immediately due and payable and to foreclose this Mortgage: (a) if all or any portion of the legal or equitable or beneficial title to all or any portion of the Security Property or any interest therein shall in any manner whatsoever be sold, conveyed or transferred, either voluntarily or by operation of law; or (b) in the case of any portion of the Security Property directly or indirectly owned by a corporation (or a partnership or joint venture or limited liability company or trust or other business entity), if any stock or partnership interest or joint venture interest or member interest or beneficial interest in such owner shall be transferred (whether among the then existing partners, stockholders, members or other beneficial owners, or otherwise), or if such stock or partnership interest, joint venture interest, member interest, or beneficial interest shall be assigned, pledged, hypothecated, mortgaged or otherwise encumbered.

Mortgagor agrees to provide to Mortgagee its written request for Mortgagee's consent to any Disposition or Encumbrance at least sixty (60) days prior to such proposed Disposition or Encumbrance. If a proposed Disposition entails an assumption of the Loan, then the sixty (60) day period will commence upon Mortgagee's receipt of its completed Mortgage Loan Assumption Application with all required items. It is expressly agreed that, in connection with determining whether to grant or withhold consent to any Disposition or Encumbrance, the determination made by Mortgagee shall be conclusive and Mortgagee may require as conditions to granting such consent (1) an increase in the rate of interest payable under the Note, (2)

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payment to Mortgagee of a transfer fee, (3) payment of Mortgagee's reasonable attorneys' fees in connection with such Disposition or Encumbrance, and/or (4) the express assumption of the payment of the indebtedness and performance of the Obligations by the party to whom such Disposition will be made (with or without, in Mortgagee's sole discretion, the release of Mortgagor from liability for such Obligations).

The following transfers shall not be in violation of this Section 9: (i) a transfer as the result of the death of an Obligor who is a natural person, provided that a transferee acceptable to Mortgagee assumes the liability of the decedent with respect to the Loan within 90 days of the person's death; (ii) involuntary conveyances that are removed or reconveyed within 90 days; and (iii) public utility easements for the benefit of the Security Property.

Notwithstanding the foregoing, if there is not then existing an Event of Default under this Mortgage and there are no conditions existing which but for the passage of time and/or the giving of notice would constitute an Event of Default, Mortgagee agrees to provide its written consent to the transfer of a membership interest in Mortgagor to a Family Member (defined as a member's parents, spouse, siblings, children and grandchildren) or to a trust for the benefit of a Family Member, provided that (i) if the transfer is to a trust, the Trustee must be a Family Member without a legal disability or a national bank with trust powers; (ii) there is no change in management; (iii) none of the existing Obligor's under the Loan Documents is released from liability; (iv) any individual transferee is not under a legal disability and is determined by Mortgagee based upon commercially reasonable criteria to be financially capable; (v) prior to the transfer, Mortgagee is furnished such documentation as is reasonably required by Mortgagee to evidence that such transfer is permitted hereunder; and (vi) Mortgagor pays to Mortgagee a reasonable review fee, not to exceed \$2,500.00, and all expenses related to the transfer, including but not by way of limitation, the fees and expenses of Mortgagee's attorneys.

Notwithstanding the foregoing, transfers of membership interests in Mortgagor or ownership interests in an entity partner of Mortgagor will be permitted; provided that: (i) the Obligations are current and not in default of any kind at the time of the transfer, (ii) the transfer does not in any manner constitute or result in a conveyance or other disposition of an interest in the Security Property, (iii) none of the existing Obligors under the loan documents are released from liability under their respective guaranty or indemnity obligations unless specifically granted by the Mortgagee in its sole discretion based upon commercially reasonable criteria, (iv) any individual transferee is not under a legal disability, (v) thirty (30) days prior to consummation of the transfer Mortgagee is furnished with documentation acceptable to Mortgagee evidencing the transfer, (vi) following the transfer Kevin Fox continues to own, either directly or indirectly through intermediaries, a controlling interest in Mortgagor, (vii) following the transfer Kevin Fox controls the management of Mortgagor and any managing entity partner of Mortgagor, and (viii) Mortgagee will be paid a review fee of not more than \$2,500.000, as well as reasonable attorney's fees and costs.

Notwithstanding the foregoing, Mortgagee will allow a one-time transfer of the Security Property with all terms of the Note otherwise remaining the same, if the following conditions are satisfied: (1) the Obligations are current and not in default of any kind at the time of transfer; (2) Mortgagee receives at least sixty (60) days prior written notice of such transfer, which sixty (60) day period will commence upon Mortgagee's receipt of its completed Mortgage Loan

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Assumption Application with all required items; (3) the transferee demonstrates financial credentials, creditworthiness, and management ability acceptable to Mortgagee in its sole discretion; (4) Mortgagee receives a transfer fee equal to one percent of the outstanding balance of the Obligations; (5) the structure of the transaction, including the form of purchasing transferee entity, secondary financing (if any), third party guarantees and indemnifications and other fundamental matters, is acceptable to Mortgagee in its sole discretion; (6) the transferee executes an environmental certificate and indemnity agreement in form and content satisfactory to Mortgagee; (7) the transferee executes an assumption agreement and such other documentation reasonably requested by Mortgagee to evidence such transfer and to preserve and continue the security interests of Mortgagee in the Security Property and other collateral for the Obligations in form and substance satisfactory to Mortgagee in Mortgagee's sole discretion; (8) the transferee executes an indemnity agreement protecting Mortgagee against loss or damage because of the Security Property's failure to comply with applicable laws and governmental regulations, including those pertaining to access of handicapped or disabled persons; and (9) Mortgagee receives payment of all taxes, costs and expenses incurred in connection therewith, including Mortgagee's attorneys' fees.

10. **Further Assurances.** From time to time and on demand, Mortgagor shall execute and deliver to Mortgagee (and pay the costs of preparing and recording) any further instruments required by Mortgagee based upon commercially reasonable criteria to reaffirm, correct or perfect the evidence of the Obligations secured hereby and the lien and security interest of Mortgagee in all the Security Property and all additions, replacements and proceeds, including but not limited to mortgages, security agreements, financing statements, assignments and renewal and substitution notes.

11. **Estoppel Letters and Information.** Within ten (10) business days after request in person or within five (5) days after request by mail, Mortgagor shall furnish to Mortgagee a written statement, duly acknowledged, of the amount of principal and interest and other sums then owing on the Obligations and whether any offsets, counterclaims or defenses exist against the Obligations. Mortgagor shall promptly furnish to Mortgagee any financial or other information regarding Mortgagor or the Security Property required by any Loan Document or which Mortgagee may reasonably request from time to time.

12. **Notices.** Whenever Mortgagor or Mortgagee is obliged to give notice to the other, such notice shall be in writing and shall be given personally, by an overnight courier which provides for a return receipt or by prepaid certified mail (return receipt requested), in which latter case notice shall be deemed effectively made when the receipt is signed or when the attempted initial delivery is refused or cannot be made because of a change of address of which the sending party has not been notified. Any notice to Mortgagee shall be addressed to the attention of a Vice President or higher officer. Until the designated addresses are changed by notice given in accordance with this Section, notice to either party shall be sent to the respective address set forth on the first page of this Mortgage.

13. **Default.** At Mortgagee's option, all of the principal and interest and other sums secured by this Mortgage shall immediately or at any time thereafter become due and payable without notice to any Obligor (except as otherwise provided herein or in the other Loan Documents), and Mortgagee shall immediately have all the rights accorded Mortgagee by law

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and hereunder to foreclose this Mortgage or otherwise to enforce this Mortgage and the security interests evidenced hereby and any other Loan Document, upon the occurrence of any of the following defaults (an "Event of Default"): (a) failure to pay any sum due under any Loan Document and the expiration of the grace period (if any) provided therein; or (b) failure to pay any tax, assessment, utility charge, or other charge against the Security Property or any part thereof as and when required by this Mortgage; or (c) any waste, impairment, abandonment, deterioration, removal, demolition, material alteration or enlargement of any existing Improvements, or the commencement of construction of any new Improvements, in either case without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion based upon commercially reasonable criteria; or (d) failure to keep in force the policies of insurance required by this Mortgage or any other Loan Document; or (e) Mortgagor's failure or refusal to provide any estoppel certificate within the time required by this Mortgage; or (f) any unpermitted Encumbrance or Disposition (whether voluntary or by operation of law), conveyance or further encumbering of all or any part of the Security Property or any interest therein, or the additional assignment of all or any part of the rents, income or profits arising therefrom; or (g) Mortgagor's failure to remove any involuntary lien on the Security Property or any part thereof within twenty (20) days after its filing (provided Mortgagor shall be permitted to bond or insure over such lien to the satisfaction of Mortgagee (in its sole discretion based upon commercially reasonable criteria), so long as Mortgagor diligently contests the validity or amount of such lien), or the filing of any suit against the Security Property upon any claim or lien other than this Mortgage (whether superior or inferior to this Mortgage); or (h) Mortgagor's failure to comply within ten (10) days with a requirement, order or notice of violation of a law, ordinance, or regulation issued or promulgated by any political subdivision or governmental department claiming jurisdiction over the Security Property or any operation conducted on the Security Property (or, if such order or notice provides a time period for compliance, Mortgagor's failure to comply within such period), or, in the case of a curable noncompliance requiring longer than the applicable time period for its cure, Mortgagor's failure to commence to comply with said order or notice within said period or failure thereafter to pursue such cure diligently to completion; or (i) the issuance of any order by the state in which the Security Property is located, or any subdivision, instrumentality, administrative board or department thereof, declaring unlawful or suspending any operation conducted on the Security Property; or (j) if any representation, warranty, affidavit, certificate or statement made or delivered to Mortgagee by or on behalf of any Obligor from time to time in connection with the Obligations of this Mortgage or any other Loan Document shall prove false, incorrect or misleading in any respect deemed material by Mortgagee in its sole discretion based upon commercially reasonable criteria; or (k) the dissolution or merger or consolidation or termination of existence of any Obligor or the failure or cessation or liquidation of the business of any Obligor, or if the person(s) controlling any Obligor which is a business entity shall take any action authorizing or leading to the same; or (l) any default by any Obligor in the payment of any indebtedness for borrowed money (whether direct or contingent and whether matured or accelerated) to Mortgagee, or if any Obligor shall become insolvent or unable to pay such Obligor's debts as they become due; or (m) the disposition or transfer or exchange of all or substantially all of any Obligor's assets for less than fair market value, or the issuance of any levy, attachment, charging order, garnishment or other process against the Security Property, or the filing of any lien against the Security Property (and the expiration of any grace period provided in any Loan Document for the discharge of such lien); or (n) if any Obligor shall make an assignment for the benefit of creditors, file a petition in

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bankruptcy, apply to or petition any tribunal for the appointment of a custodian, receiver, intervenor or trustee for such Obligor or a substantial part of such Obligor's assets, or if any Obligor shall commence any proceeding under any bankruptcy, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if any Obligor shall by act or omission approve, consent to or acquiesce in the filing of any such petition or application against such Obligor or the appointment of any such custodian, receiver, intervenor or trustee or the commencement of any such proceeding against such Obligor or the entry of an order for relief with respect to such Obligor, or if any such petition or application shall have been filed or proceeding commenced against any Obligor which remains undismissed for thirty (30) days or more or in which an order for relief is entered, or if any Obligor shall suffer any such appointment of a custodian, receiver, intervenor or trustee to continue undischarged for thirty (30) days or more; or (o) if any Obligor while insolvent shall have concealed, transferred, removed, or permitted to be concealed or transferred or removed, any part of such Obligor's property with intent to hinder, delay or defraud any of such Obligor's creditors, or if any Obligor shall have made or suffered a transfer of any of such Obligor's properties which may be invalid under any bankruptcy, fraudulent conveyance, preference or similar law, or if any Obligor while insolvent shall have made any transfer of such Obligor's properties to or for the benefit of any creditor at a time when other creditors similarly situated have not been paid; or (p) Mortgagor's failure to provide the documents required by Section 29 after 15 days' written notice; or (q) the existence of any uncured default under any Encumbrance affecting any part of the Security Property then encumbered by this Mortgage (in the case of a default for which such Encumbrance provides a grace period, if the default remains uncured after the expiration of that grace period), or Mortgagor's acceptance of any future advance under, or modification of the terms of, any such Encumbrance which may then be superior to the lien of this Mortgage; or (r) Mortgagee's election to declare the Obligations due and payable under the provisions of any other Loan Document; or (s) any default in the observance or performance of any other covenant or agreement of any Obligor in this Mortgage or any other Loan Document, the occurrence of any other event prohibited by the terms of this Mortgage or any other Loan Document, or the violation of any other provision of this Mortgage or any other Loan Document; or (t) Mortgagor's recordation of any notice limiting the amount of future advances that may be secured by this Mortgage. Provided that Mortgagee's rights and interests in the Security Property are not in immediate jeopardy and that the Event of Default is reasonably subject to cure and is not willful or intentional, Mortgagor will have a period of 30 days following receipt of written notice by Mortgagee to cure any Event of Default specified in subsections (b), (c), (e), (g), (h), (i), (k), (m), (p), or (s) above. Such period will be extended up to an additional 60 days so long as Mortgagor is diligently pursuing cure. No consent or waiver expressed or implied by Mortgagee with respect to any default under this Mortgage shall be construed as a consent or waiver with respect to any further default of the same or a different nature; and no consent or waiver shall be deemed or construed to exist by reason of any curative action initiated by Mortgagee or any other course of conduct or in any other manner whatsoever except by a writing duly executed by Mortgagee, and then only for the single occasion to which such writing is addressed. In order to declare the Obligations due and payable because of Mortgagor's failure to pay any tax, assessment, insurance premium, charge, liability, obligation or encumbrance upon the Security Property as required by this Mortgage, or because of any other default, Mortgagee shall not be required to pay the same or to advance funds to cure the default, notwithstanding Mortgagee's option under this Mortgage or any other Loan Document to do so; no such payment

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or advance by Mortgagee shall be deemed or construed a waiver of Mortgagee's right to declare the Obligations due and payable on account of such failure or other default.

14. Advances by Mortgagee. In the event of any default in the performance of any of Mortgagor's covenants or agreements contained in this Mortgage or any other Loan Document or the violation of any term thereof, Mortgagee shall have the right (but in no event the obligation) at its option to cure the default or take any other action Mortgagee deems necessary or desirable to protect its security (including without limitation the payment of any taxes, assessments, insurance premiums, charges, liens or encumbrances required of Mortgagor under this Mortgage), without thereby waiving any rights or remedies otherwise available to Mortgagee. If Mortgagee shall elect to advance at any time any sum(s) for the protection of its security or for any other reason permitted or provided by any of the terms of this Mortgage or any other Loan Document, then such sum(s) shall be deemed Obligations, shall be repaid by Mortgagor on demand, shall be secured by this Mortgage and shall bear interest until paid at the lesser of the non-default interest rate provided for in §2 of the Note plus five percent (5%) per annum, or at the highest rate allowed by applicable law, commencing on the date they are advanced by Mortgagee. Mortgagee's lien on the Security Property for such advances shall be superior to any right or title to, interest in, or claim upon all or any portion of the Security Property junior to the lien of this Mortgage.

15. Receiver. In addition to all other remedies herein provided for, Mortgagor agrees that upon the occurrence of an Event of Default, the Mortgagee shall, as a matter of right, be entitled to an ex parte appointment of a receiver or receivers for all or any part of the Security Property without notice and without regard to the value of the Security Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Mortgagor does hereby consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by the Mortgagee, but nothing herein is to be construed to deprive the Mortgagee of any other right, remedy or privilege it may now have under the law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of the Mortgagee to receive payment of the rents and income. Any money advanced by the Mortgagee in connection with any such receivership shall be a demand obligation owing by Mortgagor to the Mortgagee and shall bear interest from the date of making such advancement by the Mortgagee until paid at the Default Rate provided in the Note and shall be a part of the Obligations and shall be secured by this Mortgage and by every other instrument securing the Obligations. The receiver or his agents shall be entitled to enter upon and take possession of any and all of the Security Property. The receiver, personally or through its agents or attorneys, may exclude Mortgagor and its agents, servants and employees wholly from the Security Property and have, hold, use, operate, manage and control the same and each and every part thereof, and keep insured, the properties, equipment and apparatus provided or required for use in connection with the business or businesses operated on the Security Property, and make all such necessary and proper repairs, renewals and replacements and all such useful alterations, additions, betterments and improvements as the receiver may deem judicious. Such receivership shall, at the option of the Mortgagee, continue until full payment of all sums, hereby secured, then due and payable or until title to the Security Property shall have passed by foreclosure sale under this Mortgage and the period of redemption, if any, shall have expired.

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16. Remedies.

(a) Upon the occurrence of an Event of Default, the remedies available to Mortgagee shall include, but not necessarily be limited to, any one or more of the following:

(i) Mortgagee may declare the entire unpaid balance of the Note and all accrued interest thereon, together with the prepayment premium (as defined in the Note), immediately due and payable without further notice;

(ii) Mortgagee may take immediate possession of the Security Property or any part thereof (which Mortgagor agrees to surrender to Mortgagee) and manage, control or lease the same to such person or persons and at such rental as it may deem proper and collect all the rents, issues and profits therefrom, including those past due as well as those thereafter accruing, with the right in the Mortgagee to cancel any lease or sublease for any cause which would entitle Mortgagor to cancel the same; to make such expenditures for maintenance, repairs and costs of operation as it may deem advisable; and after deducting the cost thereof and a commission of five (5%) percent upon the gross amounts of rents collected, to apply the residue to the payment of any sums which are unpaid hereunder or under the Note. The taking of possession under this sub-Section shall not prevent concurrent or later proceedings for the foreclosure sale of the Security Property as provided elsewhere herein;

(iii) Mortgagee shall have the right to foreclose this Mortgage and in case of sale in action or proceeding to foreclose this Mortgage, the Mortgagee shall have the right to sell the Security Property covered hereby in parts or as an entirety. It is intended hereby to give to the Mortgagee the widest possible discretion permitted by law with respect to all aspects of any such sale or sales;

(iv) Without declaring the entire unpaid principal balance due, the Mortgagee may foreclose only as to the sum past due without injury to this Mortgage or the displacement or impairment of the remainder of the lien thereof, and at such foreclosure sale the Security Property shall be sold subject to all remaining items of indebtedness; and Mortgagee may again foreclose, in the same manner, as often as there may be any sum past due;

(v) Mortgagor hereby waives any appraisalment before sale of any portion of the Security Property, commonly known as appraisalment laws, the benefit of any laws now or hereafter enacted which in any way may extend the time for enforcement of the collection of the indebtedness secured hereby or creating or extending any period of redemption from any sale made in collecting said indebtedness, commonly known as stay laws and redemption laws, all rights of marshaling in the event of foreclosure of any lien or security interest created by this Mortgage;

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without limiting the generality of the foregoing, Mortgagor hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption provided in the Illinois Mortgage Foreclosure Law; and

(vi) The Note provides that in the event the Mortgagee accelerates the debt secured hereunder because of Mortgagor's default, including the unauthorized transfer sale or assignment of the Security Property as specified in Section 9 above, Mortgagee shall be entitled to the prepayment premium (as defined in the Note) as agreed liquidated damages to compensate the Mortgagee hereof for its failure to receive the stated interest rate yield for the stated term of the Note.

(b) Mortgagor expressly agrees on behalf of itself, its successors and assigns and any future owner of the Security Property, or any part thereof or interest therein as follows:

(i) All remedies available to Mortgagee with respect to this Mortgage shall be cumulative and may be pursued concurrently or successively. No delay by Mortgagee in exercising any such remedy shall operate as a waiver thereof or preclude the exercise thereof during the continuance of that or any subsequent default;

(ii) The obtaining of a judgment or decree on the Note, whether in the State of Illinois or elsewhere, shall not in any manner affect the lien of this Mortgage upon the Security Property covered hereby, and any judgment or decree so obtained shall be secured hereby to the same extent as said Note is now secured;

(iii) In event of any foreclosure sale hereunder, all net proceeds shall be available for application to the indebtedness hereby secured whether or not such proceeds may exceed the value of the Security Property for recordation tax, mortgage tax, insurance or other purposes; and

(iv) The only limitation upon the foregoing statements as to the exercise of Mortgagee's remedies is that there shall be but one full and complete satisfaction of the indebtedness secured hereby.

(c) Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or the Note secured hereby or under any other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, where by mortgage, deed or trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may in its absolute discretion determine. No remedy herein conferred

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upon or reserved by Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given 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 it may pursue inconsistent remedies.

17. **No Jury Trial.** Mortgagee, Mortgagor and each Obligor hereby severally, voluntarily, knowingly and intentionally WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY in any legal action or proceeding arising under or in connection with this Mortgage or any other Loan Document or concerning the Obligations and/or the Security Property or pertaining to any transaction related to or contemplated in this Mortgage, regardless of whether such action or proceeding concerns any contractual or tortious or other claim. Each Obligor severally acknowledges that this waiver of jury trial is a material inducement to Mortgagee in extending the credit described herein, that Mortgagee would not have extended such credit without this jury trial waiver, and that such Obligor has been represented by an attorney or has had an opportunity to consult with an attorney regarding this Mortgage and understands the legal effect of this jury trial waiver.

18. **Fees and Expenses.** Mortgagor shall pay any and all costs, expenses and reasonable attorney's fees incurred by Mortgagee (regardless of whether in connection with any action, proceeding or appeal) to sustain the lien of this Mortgage or its priority, to protect or enforce any of Mortgagee's rights under this Mortgage or under any other Loan Document, to recover any indebtedness secured hereby, to contest or collect any award or payment in connection with the taking or condemnation of all or any part of the Security Property, or for any title examination or abstract preparation or appraisal or title insurance policy relating to the Security Property, and all such sums shall bear interest, shall be paid and shall be secured as provided in Section 14.

19. **Condemnation.** Promptly (not less than 2 business days) upon obtaining knowledge of the institution or pending institution of any proceedings for the condemnation of the Security Property or any portion thereof, Mortgagor shall notify Mortgagee thereof. Mortgagee may participate in any such proceedings and may be represented therein by counsel of its selection, and Mortgagor will deliver to Mortgagee all instruments requested by Mortgagee from time to time to permit or facilitate such participation. In the event of any such condemnation proceedings, the award or compensation payable is hereby assigned to and shall be paid to Mortgagee, and Mortgagee shall not be obligated to question the amount of any such award or compensation. At Mortgagee's option, all or any portion of the award or compensation shall be applied toward payment of the Obligations (in any order of priority Mortgagee may deem appropriate in its sole discretion) or shall be disbursed to Mortgagor from time to time for the restoration of the Security Property in the same manner as disbursements under a construction loan; Mortgagee shall not be obligated to see to the proper application by Mortgagor of any such disbursement. Notwithstanding any such condemnation award or compensation or the rate of interest payable thereon, Mortgagor shall continue to pay interest on the Obligations except to the extent that Mortgagee shall have actually received and applied the award or compensation against the Obligations. If all of the Security Property is so taken but the award or

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compensation is insufficient to pay the Obligations in full, then at Mortgagee's option the unpaid balance shall be immediately due and payable.

20. Documentary Stamps and Intangible Taxes. If at any time the state in which the Security Property is located shall determine that an intangible tax, documentary tax or other similar tax shall be paid in connection with this Mortgage is insufficient or that additional intangible or other tax should be paid, then Mortgagor shall pay for the same, together with any interest or penalties imposed in connection with such determination, and Mortgagor hereby agrees to indemnify and hold Mortgagee harmless therefrom. If any such sums shall be advanced by Mortgagee, they shall bear interest, shall be paid and shall be secured as provided in Section 14.

21. No Shift of Taxes. If any federal, state or local law shall hereafter be enacted which (a) for the purpose of ad valorem taxation shall deduct the amount of any lien from the value of real property or (b) shall impose on Mortgagee the payment of all or any part of the taxes or assessments or charges required to be paid hereunder by Mortgagor, or (c) shall change in any way the laws for the taxation of mortgages, deeds of trust or debts secured thereby or Mortgagee's interest in the Security Property, or shall change the manner of collecting such taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then upon demand Mortgagor shall pay such taxes or assessments or charges imposed on Mortgagee or shall reimburse Mortgagee therefor; provided, however, that if in the opinion of Mortgagee's counsel the requirement that Mortgagor make such payments might be unlawful or might result in the imposition of interest in excess of the maximum lawful rate, then Mortgagee shall have the right to declare the Obligations to be due and payable ninety (90) days after notice thereof to Mortgagor.

22. Uniform Commercial Code. This Mortgage is a "security agreement" and creates a "security interest" in favor of Mortgagee as a "secured party" with respect to all property included in the Security Property which is covered by the Uniform Commercial Code, including but not limited to the Tangible Property and Intangibles. Upon default under this Mortgage or any other Loan Document, Mortgagee may at its option pursue any and all rights and remedies available to a secured party with respect to any portion of the Security Property so covered by the Uniform Commercial Code, or Mortgagee may at its option proceed as to all or any part of the Security Property in accordance with Mortgagee's rights and remedies in respect of real property to the extent permitted by law. Mortgagor and Mortgagee agree that the mention of any portion of the Security Property in a financing statement filed in the records normally pertaining to personal property shall never derogate from or impair in any way their declared intention that all items of Tangible Property described in this Mortgage are part of the real estate encumbered hereby to the fullest extent permitted by law, regardless of whether any such item is physically attached to the Improvements or whether serial numbers are used for the better identification of certain items of Tangible Property. Specifically, the mention in any such financing statement of (a) the rights in or the proceeds of any insurance policy, (b) any award in eminent domain proceedings for a taking or for loss of value, (c) Mortgagor's interest as lessor in any present or future Lease or right to income growing out of the use or occupancy of the Land or Improvements, whether pursuant to Lease or otherwise, or (d) any other item included in the definition of the Security Property shall never be construed to alter any of the rights of Mortgagee as determined by this Mortgage or to impugn the priority of Mortgagee's lien and

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security interest with respect to the Security Property; such mention in a financing statement is declared to be for the protection of Mortgagee in the event any court shall hold that notice of Mortgagee's priority of interest with respect to any such portion of the Security Property must be filed in the Uniform Commercial Code records in order to be effective against or to take priority over any particular class of persons, including but not limited to the federal government and any subdivision or instrumentality of the federal government.

23. Payments to Mortgagee. Any payment made in accordance with the terms of the Loan Documents by any person at any time liable for the payment of the whole or any part of the Obligations, by any subsequent owner of the Security Property, or by any other person whose interest in the Security Property might be prejudiced in the event of a failure to make such payment (or by any partner, stockholder, member, manager, officer or director of any such person), shall be deemed, as between Mortgagee and all such persons who at any time may be so liable or may have an interest in the Security Property, to have been made on behalf of all such persons. Mortgagee's acceptance of any payment which is less than full payment of all amounts then due and payable to Mortgagee, even if made by one other than the person liable therefor, shall not constitute a waiver of any rights or remedies of Mortgagee.

24. Consent to Changes. Mortgagor consents and agrees that, at any time and from time to time without notice, (a) Mortgagee and the owner(s) of any Tangible Property then securing the Obligations may agree to release, increase, subordinate, change, substitute or exchange all or any part of such Tangible Property, and (b) Mortgagee and any person(s) then primarily liable for the Obligations may agree to renew, extend or compromise the Obligations in whole or in part or to modify the terms of the Obligations in any respect whatsoever. Mortgagor agrees that no such release, subordination, increase, change, substitution, exchange, renewal, extension, compromise or modification, no sale of the Security Property or any part thereof, no forbearance on the part of Mortgagee, nor any other indulgence given by Mortgagee (whether with or without consideration) shall relieve or diminish in any manner the liability of any Obligor, nor adversely affect the priority of this Mortgage, nor limit or prejudice or impair any right or remedy of Mortgagee. All Obligors and all those claiming by, through or under any of them hereby jointly and severally waive any and all right to prior notice of, and any and all defenses or claims based upon, any such release, subordination, increase, change, substitution, exchange, renewal, extension, compromise, modification, sale, forbearance or indulgence.

25. Governing Law. This Mortgage shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois, excepting only that federal law shall govern to the extent it may permit Mortgagee to charge, from time to time, interest on the Obligations at a rate higher than may be permissible under applicable law.

26. No Usury. All amounts paid on the Obligations which are deemed interest shall, for the purpose of the calculation provided for herein, be deemed and considered to be spread over the entire period from the date hereof to the date of final payment of the Note. In no event shall any agreed to or actual exaction charged, reserved or taken as an advance or forbearance by Mortgagee as consideration for the Obligations exceed the limits (if any) imposed or provided by the law applicable from time to time to the Obligations for the use or detention of money or for forbearance in seeking its collection; Mortgagee hereby waives any right to demand any such excess. In the event that the interest provisions of the Loan Documents or any exactions required

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thereunder shall result at any time or for any reason in an effective rate of interest that transcends the maximum interest rate permitted by applicable law (if any), then without further agreement or notice the obligation to be fulfilled shall automatically be reduced to such limit and all sums received by Mortgagee in excess of those lawfully collectible as interest shall be applied against the principal of the Obligations immediately upon Mortgagee's receipt thereof, with the same force and effect as though the payor had specifically designated such extra sums to be so applied to principal and Mortgagee had agreed to accept such extra payment(s) as a premium-free prepayment or prepayments.

27. **Severability.** Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

28. **Inspection and Watchmen.** Mortgagee and any persons authorized by Mortgagee shall have the right, from time to time at the discretion of Mortgagee, to enter and inspect the Security Property, provided that Mortgagee will take commercially reasonable steps to not disrupt the conduct of business at the Security Property by tenants under the Leases. At any time after default under the terms of this Mortgage or any other Loan Document, if any of the Improvements or Tangible Property shall be unprotected or unguarded, or if any of the Improvements shall be allowed to remain vacant or deserted, then at its option Mortgagee may employ watchmen for the Security Property and expend any monies deemed necessary by Mortgagee to protect the same from waste, vandalism and other hazards, depredation or injury, and any sums expended by Mortgagee for such purpose shall bear interest, shall be paid and shall be secured as provided in Section 14.

29. **Operating and Financial Statements.** Mortgagor will keep accurate books and records in accordance with accounting principles consistently applied in which full, true and correct entries shall be promptly made as to all operations on the Security Property. Within 90 days after the end of each fiscal year, Mortgagor will furnish Mortgagee with annual operating statements covering the Security Property, together with a rent roll, all certified by a principal of Mortgagor, and all in form satisfactory to Mortgagee. Notwithstanding the foregoing, if Mortgagee deems it necessary due to circumstances involving the Loan, Mortgagee may require the operating statements more than once a year. In addition, within thirty (30) days of Mortgagee's request, Mortgagor will supply Mortgagee with current financial statements of Mortgagor and/or key principals of Mortgagor and/or guarantors and indemnitors who have executed a guaranty or indemnity agreement in connection with the Loan, for Mortgagee's review; provided Mortgagor shall not request such statements more than twice from any particular party in any twelve (12) month period unless there is an Event of Default. Mortgagor shall be charged a processing fee of Five Hundred Dollars (\$500.00) for the failure to provide any of the foregoing within the prescribed time period; provided, however, that Mortgagee shall give Mortgagor fifteen (15) days' written notice and opportunity to provide the foregoing before imposing such fee. Mortgagor's failure to provide any of the foregoing within the prescribed time period shall constitute an Event of Default under this Mortgage.

30. **Indemnity.** In the event Mortgagee shall be named as a party to any lawsuit brought at any time against Mortgagor or with respect to the Security Property or this Mortgage

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or the Obligations, or if any claim shall be made against Mortgagee in connection with the Security Property, then regardless of the merits of such lawsuit Mortgageor shall defend Mortgagee and indemnify and hold Mortgagee fully harmless from any and all claims, demands, damages, liabilities, judgments, penalties, losses, costs, expenses and attorney's fees arising out of or resulting from any such lawsuit or any appeal in connection therewith.

31. No Partnership. Mortgageor and Mortgagee hereby acknowledge and agree that Mortgagee is not, has never been, and shall not be deemed a partner or joint venturer of Mortgageor or any other Obligor with respect to the Security Property, and that the relationship of Mortgagee to said parties is, has always been, and shall continue to be strictly the role of a lender. Mortgageor hereby (a) waives and relinquishes any and all claims, demands, counterclaims and/or defenses alleging the existence of any partnership, joint venture or other fiduciary or special relationship between any of them and Mortgagee, and (b) agrees to indemnify and hold Mortgagee harmless against any and all losses, damages, penalties, fines, forfeitures, reasonable legal fees and related costs, judgments, and any other fees, costs and expenses that Mortgagee may sustain as the result of any such allegation by any person whomsoever.

32. Environmental Laws, Governmental Requirements. Mortgageor represents and warrants to Mortgagee that Mortgageor has undertaken an appropriate inquiry into the previous ownership and uses of the Security Property consistent with good commercial or customary practice in an effort to minimize liability with respect to any Hazardous Substances (as hereinafter defined). To the best of Mortgageor's knowledge and except as otherwise disclosed to Mortgagee in writing in that certain Phase I environmental site assessment dated February 15, 2017, issued by Partner Engineering and Science, Inc., as project number 17-179423.1, Mortgageor represents and warrants that (i) neither the Security Property nor the operations or activities conducted thereon violate any local, state or federal law, rule or regulation or duty under applicable common law pertaining to human health, safety, protection of the environment, natural resources, conservation, waste management or pollution (the "Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Emergency Planning and Community-Right-to-Know Act (42 U.S.C. §11001 et seq.), the Endangered Species Act (16 U.S.C. §1531 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.), and the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), and regulations promulgated pursuant to said laws, all as amended from time to time; (ii) no hazardous substances, toxic substances or harmful substances, hazardous wastes, hazardous materials, pollutants or contaminants (including, without limitation, asbestos or asbestos-containing materials, lead based paint, polychlorinated biphenyls, petroleum or petroleum products or byproducts, flammable explosives, radioactive materials, or infectious substances) or any other substances or materials which are included under or regulated by the Environmental Laws (collectively, "Hazardous Substances") are located on, in or under or have been handled, generated, stored, processed or disposed of on or released or discharged from the Security Property (including underground contamination), except for those substances used by Mortgageor or any tenant under a Lease in the ordinary course of businesses in compliance with all Environmental Laws and under circumstances where no liability under any Environmental

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Law could reasonably be anticipated; (iii) the Security Property is presently free from contamination by Hazardous Substances and that the Security Property and the activities conducted thereon do not pose any significant hazard to human health or the environment; and (iv) the Security Property complies in all respects with all laws applicable to access to handicapped or disabled persons, including, without limitation, the "Americans with Disabilities Act" and any current governmental law, regulation or ruling applicable to or, if applicable, concerning lead-based paint (the laws, regulations, ordinances and rulings referred to in this Section are collectively referred to as "Governmental Requirements"), and Mortgagor covenants to comply with any future Governmental Requirements. Mortgagor shall not cause or permit the Security Property to be used for the generation, handling, storage, transportation, disposal or release of any Hazardous Substances except as exempted or permitted under applicable Environmental Laws, and Mortgagor shall not cause or permit the Security Property or any activities conducted thereon to be in violation of any applicable Environmental Laws or Governmental Requirements. Mortgagor agrees to indemnify Mortgagee and hold Mortgagee and its directors, officers, employees, successors and assigns harmless from and against any and all claims, losses, damages (including all foreseeable and unforeseeable consequential damages), liabilities, fines, penalties, charges, interest, administrative or judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including without limitation attorneys' fees and expenses), directly or indirectly resulting in whole or in part from the violation of any Environmental Laws or Governmental Requirements applicable to the Security Property or any activity conducted thereon, or from any past, present or future use, generation, handling, storage, transportation, disposal or release of Hazardous Substances at or in connection with the Security Property, or any decontamination, detoxification, closure, cleanup or other remedial measures required with respect to the Security Property under any Environmental Laws. All sums paid and costs incurred by Mortgagee with respect to the foregoing matters shall bear interest, shall be paid and shall be secured as provided in Section 14. This indemnity shall survive the full payment and performance of the Obligations and the satisfaction of this Mortgage, and it shall inure to the benefit of any transferee of title to the Security Property through foreclosure of this Mortgage or through deed in lieu of foreclosure.

33. Subrogation. Mortgagee is hereby subrogated to (a) the lien(s) of each and every Encumbrance on all or any part of the Security Property which is fully or partially paid or satisfied out of the proceeds of the Obligations, and (b) the rights of the owner(s) and holder(s) of any such Encumbrance. The respective rights under and priorities of all such Encumbrances shall be preserved and shall pass to and be held by Mortgagee as security for the Obligations, to the same extent as if they had been duly assigned by separate instrument of assignment and notwithstanding that the same may have been canceled and satisfied of record.

34. Representations and Warranties. In order to induce Mortgagee to extend the credit secured hereby, Mortgagor represents and warrants that: (a) except as previously or concurrently disclosed in writing to Mortgagee, there are no actions, suits or proceedings pending or threatened against or affecting any Obligor or any portion of the Security Property or involving the validity or enforceability of this Mortgage or the priority of its lien, before any court of law or equity or any tribunal, administrative board or governmental authority, and no Obligor is in default under any Other Indebtedness or with respect to any order, writ, injunction, decree, judgment or demand of any court or any governmental authority; (b) the execution and

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delivery of this Mortgage and all other Loan Documents do not and shall not (i) violate any provisions of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award applicable to any Obligor, nor (ii) result in a breach of, or constitute a default under, any indenture, bond, mortgage, lease, instrument, credit agreement, undertaking, contract or other agreement to which any Obligor is a party or by which any of them or their respective properties may be bound or affected; (c) this Mortgage and all other Loan Documents constitute valid and binding obligations of the Obligor(s) executing the same, enforceable against such Obligor(s) in accordance with their respective terms; (d) all financial statements of the Obligors previously delivered to Mortgagee have been prepared in accordance with accounting principles consistently applied and fairly present the correct respective financial conditions of the Obligors as of their respective dates, and the foregoing shall be true with respect to all financial statements of the Obligors delivered to Mortgagee hereafter; (e) there is no fact that the Obligors have not disclosed to Mortgagee in writing that could materially adversely affect their respective properties, businesses or financial conditions or the Security Property or any other Tangible Property for the Obligations; (f) the Obligors have duly obtained all permits, licenses, approvals and consents from, and made all filings with, any governmental authority (and the same have not lapsed nor been rescinded or revoked) which are necessary in connection with the execution or delivery or enforcement of this Mortgage or any other Loan Document or the performance of any Obligor's obligations thereunder; (g) the Land and Improvements fully comply with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, applicable health and environmental laws and regulations and, to the best of Mortgagor's knowledge, all other ordinances, orders and requirements issued by any state, federal or municipal authorities having jurisdiction over the Security Property; (h) the Land is served by electric, gas, sewer, water, telephone and other utilities required for its intended use and final certificates of occupancy have been or prior to occupancy will be issued by such governmental authorities as have jurisdiction over the construction and use of the Security Property; (i) the proceeds of the Obligations are not being used to purchase or carry any "margin stock" within the meaning of Regulation "U" of the Board of Governors of the Federal Reserve System, nor to extend credit to others for that purpose; (j) each extension of credit secured by this Mortgage is exempt from the provisions of the Federal Consumers Credit Protection Act (Truth-in-Lending Act) and Regulation "Z" of the Board of Governors of the Federal Reserve System, because Mortgagor is a person fully excluded therefrom, and/or because said extension of credit is only for business or commercial purposes of Mortgagor and is not being used for personal, family, household or agricultural purposes; (k) except for the security interest granted hereby, Mortgagor is, and as to portions of the Tangible Property and Intangibles to be acquired after the date hereof will be, the sole owner (or lessee in the case of Tangible Property leased by Mortgagor) of the Tangible Property and Intangibles, free from any adverse lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever; (l) the Tangible Property will be kept on or at the Land and Improvements; and (m) Mortgagor has its principal place of business in the State where the Land is located at the address set forth at the beginning of this Mortgage and Mortgagor will immediately notify Mortgagee in writing of any change in its principal place of business as set forth in the beginning of this Mortgage. Mortgagor represents and warrants to Mortgagee that the Security Property does not constitute "agricultural real estate" or "residential real estate," as such terms are defined in the Illinois Mortgage Foreclosure Law.

35. Business Entity. If Mortgagor is a corporation, partnership, limited liability company or other business entity, or if Mortgagor consists of more than one person and any such

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person is such a business entity, then each such business entity hereby represents and warrants as to itself, in order to induce Mortgagee to extend the credit secured hereby, that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its creation and the state in which the Security Property is located; (b) it has all requisite power and authority (corporate or otherwise) to conduct its business, to own its properties, to execute and deliver this Mortgage and all other Loan Documents executed by it, and to perform its obligations under the same; (c) its execution, delivery and performance of this Mortgage and all other such Loan Documents have been duly authorized by all necessary actions (corporate or otherwise) and do not require the consent or approval of its stockholders (if a corporation) or of any other person or entity whose consent has not been obtained; and (d) the execution, delivery and performance of this Mortgage and all other Loan Documents do not and shall not conflict with any provision of its by-laws or articles of incorporation (if a corporation), partnership agreement (if a partnership), articles of organization and operating agreement (if a limited liability company) or trust agreement or other document pursuant to which it was created and exists. Ownership of the Security Property shall be and remain in a single asset entity throughout the term of the Loan. Mortgagor covenants and agrees that all of the proceeds of the Loan secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured hereby constitutes: (i) a "business loan," as that term is used in, and for all purposes of, the Illinois Interest Act, 815 ILCS 205/0.01 *et seq.*, including Section 4(1)(c) thereof and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of Section 205/4(1)(l) thereof.

36. Rights Not Impaired. The lien, security interest and other security rights of the Mortgagee hereunder shall not be impaired by any indulgence, moratorium or release granted by the Mortgagee, including, but not limited to: (a) any renewal, extension or modification which the Mortgagee may grant with respect to any of the Obligations; (b) any surrender, compromise, release, renewal, extension, exchange or substitution which the Mortgagee may grant in respect of the Security Property, or any part thereof or any interest therein; or (c) any release or indulgence granted to any endorser, guarantor or surety of any of the Obligations. In the event the ownership of the Security Property or any part thereof becomes vested in a person or entity other than Mortgagor, the Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the indebtedness secured hereby in the same manner as with Mortgagor, without in any way discharging Mortgagor's liability hereunder or for the payment of the indebtedness secured hereby. No sale of the Security Property, no forbearance on the part of the Mortgagee and no extension of the time for the payment of the indebtedness secured hereby given by the Mortgagee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder or for the payment of the indebtedness secured hereby or the liability of any other person hereunder or for the payment of the indebtedness secured hereby, except as agreed to in writing by the Mortgagee.

37. ERISA. Mortgagor covenants and agrees that:

(a) It shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Mortgagee of any of its rights under the Note, this Mortgage and the Loan Documents) to be a non-exempt (under a statutory or

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administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

(b) Mortgagor further covenants and agrees to deliver to Mortgagee such certifications or other evidence from time to time throughout the term of this Mortgage, as requested by Mortgagee in its sole discretion, that (i) Mortgagor is not an “employee benefit plan” as defined in Section 3(32) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(3) of ERISA; (ii) Mortgagor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

(i) Equity interests in Mortgagor are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(ii) Less than 25 percent of each outstanding class of equity interests in Mortgagor are held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

(iii) Mortgagor qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e) or an investment company registered under The Investment Company Act of 1940.

38. Other Indebtedness Secured. In addition to the specific indebtedness identified herein above, the Obligations also include, and this Mortgage also secures, all Other Indebtedness (as defined in the preliminary recitals of this Mortgage), of Mortgagor to Mortgagee whether or not presently contemplated by the parties, direct or indirect, otherwise secured or unsecured, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising, regardless of how the same arise or by what instrument, agreement or book account they may be evidenced or whether evidenced by any instrument, agreement or book account, including without limitation all loans (including any loan by renewal), all indebtedness, all undertakings to take or refrain from taking any action, all indebtedness, liabilities or obligations owing from Mortgagor to others that Mortgagee may have obtained by purchase, negotiation, discount, assignment or otherwise, and all interest, taxes, fees charges, expenses, and reasonable attorney’s fees chargeable to Mortgagor or incurred by Mortgagee hereunder or under any other document or instrument delivered in connection herewith.

39. Interpretation. Whenever the context of any provision of this Mortgage shall so require, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other genders. Captions and headings in this Mortgage are for convenience only and shall not affect its interpretation. All references in this Mortgage to Exhibits, Schedules, paragraphs and subparagraphs refer to the respective subdivisions of this Mortgage, unless the reference expressly identifies another document. Wherever used in this Mortgage, unless the context clearly indicates a contrary intention or unless this Mortgage specifically provides otherwise: (a) the term “Mortgagor” shall include any subsequent owner(s) of the Security Property; (b) the term “Mortgagee” shall include any

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subsequent holder(s) of the Note; (c) the term "Obligors" shall include any permitted successor(s) or permitted assign(s) of any Obligor; (d) the term "Obligations" shall include any modification of any Obligations from time to time and any future advances or other sums payable to Mortgagee under this Mortgage; (e) the term "Loan Documents" shall include any note or other instrument evidencing or pertaining to any future advance hereunder and any renewals, extensions or modifications of any Loan Document; and (f) the term "person" shall mean "an individual, corporation, partnership, limited partnership, limited liability company, unincorporated association, joint stock corporation, joint venture or other legal entity".

40. Subordination of Property Manager's Lien. Any property management agreement for the Security Property entered into hereafter with a property manager shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the Recorder of Deeds of the county where the Land is located. In addition, if the property management agreement in existence as of the date hereof does not contain a "no lien" 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.

41. Maximum Indebtedness. Anything contained herein to the contrary notwithstanding, in no event shall the indebtedness secured by this Mortgage exceed the sum of \$7,400,000.

42. Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, 815 ILCS 180/1 *et seq.*, Mortgagor is hereby notified as follows: Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage or any of the other Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect the interests of Mortgagee in the Security Property. 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 Security Property. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage or any of the other Loan Documents. If Mortgagee purchases insurance for the Security Property, Mortgagor will be responsible for the costs of such insurance, including interest or 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 any such insurance may be added to the Obligations 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.

43. Miscellaneous. Time is of the essence of all provisions of this Mortgage. Mortgagor hereby waives all right of homestead exemption (if any) in the Security Property. If Mortgagor consists of more than one person, the obligations and liabilities of each such person

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hereunder shall be joint and several, and wherever the term "Mortgagor" is used it shall be deemed to refer to such persons jointly and severally. If Mortgagor is a partnership, then all general partners in Mortgagor shall be liable jointly and severally for the covenants, agreements, undertakings and obligations of Mortgagor in connection with the Obligations, notwithstanding any contrary provision of the partnership laws of the state in which the Security Property is located. This Mortgage shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, and it shall inure to the benefit of Mortgagee and its successors and assigns and to the benefit of Mortgagor and Mortgagor's heirs, personal representatives and permitted successors and assigns. This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought. Mortgagor expressly agrees that for purposes of this Mortgage and each and every other Loan Document: (i) this Mortgage and each and every other Loan Document shall be a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1, *et seq.* (the "Credit Agreements Act"), (ii) the Credit Agreements Act applies to this transaction, including, but not limited to, the execution of this Mortgage and each and every other Loan Document; and (iii) any action on or in any way related to this Mortgage and each and every other Loan Document shall be governed by the Credit Agreements Act.

44. Limitation of Liability. Nothing contained in this Mortgage, the Note or in any of the other Loan Documents, shall (a) limit or impair the rights of Mortgagee to proceed against any of the Security Property in accordance with the terms of the Loan Documents, (b) limit or impair the rights of Mortgagee to proceed against any person under any guarantee, indemnity (including but not limited to any indemnity relating to environmental matters and access of handicapped or disabled persons) or any other provision of any of the Loan Documents providing for the personal liability of any such person in accordance with its terms, or to enforce the rights of Mortgagee under any such guaranty, indemnity or other provision in accordance with its terms, or (c) limit or impair the rights of Mortgagee to proceed against Mortgagor or any other person to recover or collect, or limit or restrict the personal liability of Mortgagor or any other person for the payment to Mortgagee for, any of the following, including, without limitation, reasonable attorneys' fees and costs incurred by Mortgagee in connection with any such recovery, collection or payment, all of which Mortgagor hereby indemnifies Mortgagee against and agrees to pay to Mortgagee, to-wit:

- (i) damages suffered by Mortgagee as a result of (1) fraud or misrepresentation by Mortgagor or any other person acting on behalf of or at the direction of Mortgagor in connection with the Loan, (2) intentional waste of any of the Security Property, including the removal of any property or fixtures from the Security Property which are not replaced by similar property or fixtures of equal or greater value, (3) the amendment, modification or termination of any lease of any of the Security Property in violation of any provision of the Loan Documents (normal amendment, modification or termination of apartment leases in the ordinary course of business due to tenant rule violation, delinquent rent, job transfer, job loss, or other customary reasons, is permitted), (4) failure to observe and comply with all laws, ordinances and regulations applicable to any of the Security Property, (5) failure to comply with any of the obligations of Mortgagor under any of the Loan Documents or indemnity agreements

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pertaining to environmental matters or access of handicapped or disabled persons, (6) the sale or further encumbrance of any of the Security Property in violation of any provision of the Loan Documents, (7) failure to insure the Security Property in accordance with the terms of the Loan Documents, (8) failure to pay real estate taxes and assessments and ground lease payments (if applicable) which accrue prior to Mortgagee taking possession of the Security Property or failure to make sufficient funds available through escrow payments to Mortgagee to pay such taxes, assessments, and ground lease payments, or (9) the loss of any of the Security Property because of the forfeiture of same to any governmental agency or third party unrelated or not affiliated with Mortgagee for any reason;

(ii) any rents, issues or profits of any of the Security Property collected by or on behalf of Mortgagor which are not applied to payment of the Obligations or paid to third parties not affiliated with Mortgagor for reasonable operating costs related to the Security Property (including real estate taxes and the establishment of a reasonable reserve for that purpose) after an uncured default or an uncured Event of Default or any event or circumstance that with the passage of time, the giving of notice, or both, could constitute an Event of Default under this Mortgage or any other Loan Document;

(iii) any security deposits or other similar deposits received from tenants or occupants of the Security Property to the extent that funds for such security deposits are not obtained by Mortgagee from Mortgagor after an Event of Default;

(iv) any sums expended by Mortgagee in fulfilling the obligations of Mortgagor, as lessor, under any lease of any of the Security Property, excluding obligations relating to maintenance of the Security Property and liabilities accruing after Mortgagor has given up possession of the Security Property to Mortgagee;

(v) any insurance proceeds, condemnation awards or proceeds resulting from any sale of any of the Security Property which are misapplied or misappropriated by or on behalf of Mortgagor or which, under the terms of the Loan Documents, should have been paid to Mortgagee; and

(vi) the amount of any valid unpaid mechanic's liens, materialmen's liens or other liens, whether or not similar, arising due to work performed or materials furnished in connection with any of the Security Property which could create liens on any portion of the Security Property.

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EXHIBIT "A"

Legal Description

SUB-LOTS 1 AND 2 (EXCEPT THE WEST 27 FEET TAKEN FOR WIDENING OF STATE STREET) OF LOT 10 IN BLOCK 19 OF CANAL TRUSTEE'S SUBDIVISION OF LOTS IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

Common address: 1021 S. State Street, Chicago, Illinois 60605

PIN: 17-15-306-032-0000

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EXHIBIT "B"

Permitted Exceptions

1. General taxes for the year 2016 (second installment) and subsequent years that are not yet due and payable.

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**