

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1724144020

Doc# 1724144020 Fee \$90.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 08/29/2017 12:05 PM PG: 1 OF 27

The property identified as: PIN: 14-28-111-047-0000

Address:

Street: 2935 N. Clark

Street line 2:

City: Chicago

State: IL

ZIP Code: 60657

Lender: JM Clark LLC

Borrower: Saxony Clark LLC

Loan / Mortgage Amount: \$1,575,000.00

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

Certificate number: 64A53B9E-4EA3-4A71-AD7B-470EAE639148

Execution date: 8/28/2017

27

UNOFFICIAL COPY

THIS DOCUMENT HAS BEEN
PREPARED BY, AND AFTER
RECORDATION SHOULD BE
RETURNED TO:

Arnstein & Lehr LLP
161 N. Clark St.
Suite 4200
Chicago, Illinois 60601
Attention: Roy L. Bernstein

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage"), made as of the 28th day of August, 2017 by **SAXONY CLARK, LLC**, an Illinois limited liability company, with a mailing address at 1660 Ryder's Lane, Highland Park, Illinois 60035 ("Mortgagor"), to **JM CLARK LLC**, an Illinois limited liability company, having its principal place of business at 853 North Elston, Chicago, Illinois 60642 ("Mortgagee").

WITNESSETH:

To secure the payment of an indebtedness in the principal sum of One Million Five Hundred Seventy Five Thousand and No/100 Dollars (\$1,575,000.00), lawful money of the United States of America, to be paid with interest according to that certain Mortgage Note dated of even date herewith made by Mortgagor to Mortgagee (the note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Note") (said indebtedness, interest and all other sums due hereunder and under the Note being collectively called the "Debt"), Mortgagor has mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated and by these presents does mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate unto

UNOFFICIAL COPY

Mortgagee the real property described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates, including without limitation, all plans, specifications, permits, entitlements, licenses, approvals, zoning approvals and contracts (the Premises, the Improvements together with the following property, rights, interests and estates being hereinafter collectively referred to as the "Mortgaged Property"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), and the right, title and interest of Mortgagor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Mortgaged Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said right), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;

UNOFFICIAL COPY

(d) all leases and other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property heretofore or hereafter entered into (the "Leases") and all income, rents, issues, profits, license fees, revenues, charges, accounts and general intangibles (including all oil and gas or other mineral royalties and bonuses) arising from the use, enjoyment and occupancy of the Mortgaged Property, or relating to any business conducted by the Mortgagor on it, under the Leases and renewals thereof, which are specifically assigned and transferred to the Mortgagee and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(f) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee, and the successors and assigns of Mortgagee, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Mortgagor will pay the Debt at the time and in the manner provided in the Note and in this Mortgage. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Mortgage previously, now or hereafter executed by Mortgagor and/or others and by or in favor of Mortgagee, which now or in the future wholly or partially secure or guaranty payment of the Note (the "Other Security Documents"), are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

2. Warranty of Title. Mortgagor warrants that Mortgagor has good title to the Mortgaged Property and has the right to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those

UNOFFICIAL COPY

exceptions shown on Exhibit B ("Permitted Encumbrances"). Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Insurance. (a) Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured, pursuant to an all risk policy of insurance (the "Policies") issued by a company rated A-13 or better by Best among property and casualty insurers, or such other rating as approved by Mortgagee, against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including without limitation: (i) fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises; (ii) rent or business loss insurance for the same perils described in (i) above, payable at the rate per month specified from time to time by Mortgagee and for a period of one year; (iii) boiler and sprinkler damage insurance in an amount satisfactory to Mortgagee, if and so long as the Premises shall contain a boiler and sprinkler system, respectively; (iv) if the Premises are located in a flood hazard district, flood insurance whenever in the opinion of Mortgagee such protection is necessary and is available; (v) the standard New York mortgagee non-contribution clause naming Mortgagee as the person to which all payments made by such insurance company shall be paid; and (vi) such other insurance as Mortgagee may from time to time reasonably require. Mortgagor also shall at all times maintain comprehensive public liability, property damage and workers' compensation insurance covering the Premises and any employees thereon, with such limits for personal injury, death and property damage as Mortgagee may require. All policies of insurance to be furnished hereunder shall be in forms, amounts and deductibles, and from companies, satisfactory to Mortgagee, with mortgage clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee. Mortgagor shall assign and deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgage clause acceptable to Mortgagee. Mortgagor immediately shall notify Mortgagee whenever any such separate insurance is taken out and promptly shall deliver to Mortgagee the policy or policies of such insurance.

(b) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt notice thereof to Mortgagee, who shall have the right, but not the obligation, to make proof of loss. Sums paid to Mortgagee by any insurer may be retained and applied by Mortgagee, after deduction of Mortgagee's reasonable costs and expenses of collection, toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper or, at the discretion of Mortgagee, either in whole or in part, to Mortgagor for such purposes as Mortgagee shall designate.

UNOFFICIAL COPY

4. Payment of Taxes, etc. Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") as same become due and payable. Mortgagor will deliver to Mortgagee, promptly upon Mortgagee's request, evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property. Mortgagor shall furnish to Mortgagee receipts for the payment of the Taxes, Other Charges and said utility services prior to the date the same shall become delinquent

5. Escrow Fund. Mortgagor shall pay to Mortgagee on the first day of each calendar month (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Mortgagee to be payable, during the next ensuing twelve (12) months and Interest, if applicable, in accordance with the Note (said amounts above hereinafter called the "Escrow Fund"). The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. Mortgagee will apply the Escrow Fund to payments of Taxes required to be made by Mortgagor pursuant to paragraphs 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes pursuant to paragraph 4 hereof, Mortgagee shall, in its discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the items set forth above, Mortgagor shall promptly pay to Mortgagee, upon demand, an amount which Mortgagee shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default Mortgagee may apply any sums then present in the Escrow Fund to the payment of the following items in any order in its uncontrolled discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;
and
- (v) All other sums payable and any other obligations of Mortgagor pursuant to the Note, this Mortgage and the Other Security Documents, including without limitation advances made by Mortgagee pursuant to the terms of this Mortgage.

UNOFFICIAL COPY

Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional security for the Debt. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. No earnings or interest on the Escrow Fund shall be payable to Mortgagor.

6. Condemnation. Mortgagor shall promptly give Mortgagee notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Mortgage and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Mortgagee after the deduction of expenses of collection, to the reduction or discharge of the Debt. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein and in the Note. Mortgagee may apply any such award or payment to the reduction or discharge of the Debt whether or not then due and payable. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment, or a portion thereof sufficient to pay the Debt.

7. Leases and Rents. (a) Mortgagee is hereby granted and assigned by Mortgagor the right to enter the Mortgaged Property for the purpose of enforcing its interest in the Leases and the Rents, this Mortgage constituting a present, absolute assignment of the Leases and the Rents. Nevertheless, subject to the terms of this paragraph 7, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums. Upon or at any time after an Event of Default, the license granted to Mortgagor herein may be revoked by Mortgagee, and Mortgagee may enter upon the Mortgaged Property and collect, retain and apply the Rents toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

(b) Mortgagor may not enter into any lease without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed. No material changes may be made to the Mortgagee-approved lease or in any future leases without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed. In addition, all renewals of Leases and all proposed leases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions. All proposed leases, lease renewals, modifications and lease amendments shall be subject to the prior approval of the Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed. All Leases shall provide that they are subordinate to this Mortgage and that the lessee agrees to attorn to Mortgagee. Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit

UNOFFICIAL COPY

to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Mortgagee of all notices of default which Mortgagor shall send or receive thereunder; (iii) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (vi) shall not alter, modify or change the terms of the Leases without the prior written consent of Mortgagee, or cancel or terminate the Leases or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Premises or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; (vii) shall not alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Mortgagee; (viii) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Mortgagee; (ix) shall appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the lessor or of the lessees thereunder; and (x) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require.

Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as lessor under any of the leases assigned to Mortgagee pursuant to the terms hereof, or to pay any sum of money or damages therein provided to be paid by the lessor, each and all of which covenants and payments Mortgagor agrees to perform and pay.

8. Maintenance of Mortgaged Property. Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in paragraph 6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee. Mortgagor shall keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right to contest in good faith and with diligence the validity of any such lien or claim upon: (i) placing a bond with Mortgagee in an amount, form, content and issued by a surety acceptable to Mortgagee for the payment of any such lien, or (ii) obtaining a title indemnity insuring Mortgagee's interest against said lien in an amount, form, content and issued by a title insurance company acceptable

UNOFFICIAL COPY

to Mortgagee, in either case within ten (10) days after the filing of such lien. Mortgagor shall immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to the lien hereof (no such superior or inferior lien to be permitted hereunder), and upon request, exhibit satisfactory evidence of the discharge of any such lien to Mortgagee.

9. Transfer or Encumbrance of the Mortgaged Property. (a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness of Mortgagor and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the loan secured hereby, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Except for Permitted Exceptions, Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, alien, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof or permit the Mortgaged Property or any part thereof to be sold, conveyed, aliened, mortgaged, encumbered, pledged or otherwise transferred. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the events listed in the preceding sentence shall be deemed to be an unpermitted transfer of title to the Premises and therefore an Event of Default hereunder.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this paragraph 9 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, any Guarantor (hereinafter defined), or any managing member or general partner of Mortgagor or Guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; (iv) if Mortgagor, any Guarantor, and managing member or any general partner of Mortgagor or any Guarantor is a limited liability company or a limited or general partnership or joint venture, the change, removal or resignation of a managing member, general partner or managing partner or the transfer of the membership or partnership interest of any managing member, general partner or managing partner; and (v) the removal or resignation of the managing agent for the Mortgaged Property or the transfer of ownership, management or control of such managing agent to a person or entity other than the general partner or managing partner of Mortgagor.

(c) Mortgagee reserves the right to condition the consent required hereunder upon a modification of the terms hereof and on assumption of this Mortgage as so modified by the proposed transferee, payment of a transfer fee, or such other conditions as

UNOFFICIAL COPY

Mortgagee shall determine in its sole discretion to be in the interest of Mortgagee. Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

10. Estoppel Certificates. (a) After request by Mortgagee, Mortgagor, within seven (7) days, shall furnish Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note and this Mortgage are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Mortgagee, Mortgagor, within ten (10) days, will furnish Mortgagee with estoppel certificates from any lessees under the Leases as required by their respective Leases.

11. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

12. No Credits on Account of the Debt. Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

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

14. Usury Laws. This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of

UNOFFICIAL COPY

being in excess of the maximum interest rate which Mortgagor is permitted by applicable law to contract or agree to pay. If by the terms of this Mortgage or the Note, Mortgagor is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

15. **Books and Records.** Mortgagor and Guarantors, shall keep adequate books and records of account in accordance with generally accepted accounting practices consistently applied and furnish to Mortgagee, monthly operating statements of the Mortgaged Property and within thirty (30) days prior to each yearly anniversary hereof during the term of this Mortgage: (a) an annual certified rent roll signed and dated by Mortgagor detailing the names of all tenants of the Improvements, the portion of the Improvements occupied by each tenant, the rent and any other charges payable under each lease, and the term of each lease; (b) an annual operating statement of the Mortgaged Property detailing the total revenues received and total expenses incurred to be prepared and certified by Mortgagor; (c) an annual balance sheet and profit and loss statement of Mortgagor, and of any Guarantor, prepared by or, if required by Mortgagee, audited and certified by a certified public accountant acceptable to Mortgagee within ninety (90) days after the close of each fiscal year; and (d) such annual balance sheets and profit and loss statements and other financial statements as may, from time to time, be required by Mortgagee, certified to be true, complete and correct by Mortgagor.

16. **Performance of Other Agreements.** Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

17. **Further Acts, etc.** Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including without limitation such rights and remedies available to Mortgagee pursuant to this paragraph 17.

18. **Recording of Mortgage, etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and

UNOFFICIAL COPY

any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

19. **Prepayment.** If permitted by the Note, the Debt may be prepaid in accordance with the terms thereof.

20. **Events of Default.** The Debt shall become immediately due and payable at the option of Mortgagee upon any one or more of the following events ("Event of Default"):

- (a) if any portion of the Debt is not paid within five (5) days of when due;
- (b) if any of the Taxes or Other Charges is not paid within five (5) days of when the same is due and payable;
- (c) if the Policies are not kept in full force and effect, or if the Policies are not assigned and delivered to Mortgagee upon request;
- (d) if Mortgagor violates or does not comply with any of the provisions of the Loan Documents, including but not limited to paragraphs 7, 8, 33, 34 or 35 hereof;
- (e) if any representation or warranty of Mortgagor, or of any person guaranteeing payment of the Debt or any portion thereof or performance by Mortgagor of any of the terms of this Mortgage (a "Guarantor"), made herein or in any such guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;
- (f) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying its debts as they become due;
- (g) if a receiver, liquidator or trustee of Mortgagor or of any Guarantor shall be appointed or if Mortgagor or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or

UNOFFICIAL COPY

any Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or such Guarantor, upon the same not being discharged, stayed or dismissed within thirty (30) days;

(h) if Mortgagor shall be in default beyond any applicable notice and cure period under any other mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage;

(i) if the Mortgaged Property becomes subject to any mechanic's, materialman's, lis pendens or any type or kind of lien other than a lien for local real estate taxes and assessments not then due and payable and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

(j) if Mortgagor fails to cure promptly any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property;

(k) if for more than fifteen (15) days after notice from Mortgagee, Mortgagor shall continue to be in default under any other term, covenant or condition of the Note, this Mortgage or the Other Security Documents;

(l) The dissolution or liquidation of Mortgagor or the death, mental incompetency or permanent disability of any Guarantor;

(m) if Mortgagor attempts to change any existing zoning classifications or entitlements with respect to the Premises without Mortgagee's prior written consent; or

(n) if any subordinate financing is placed on the Mortgaged Property that has not been given prior written approval by Mortgagee in its sole discretion;

21. Remedies of Mortgagee. Upon the occurrence of any Event of Default,

(a) Mortgagor will pay, from the date of an Event of Default, interest on the unpaid principal balance of the Note at the Default Rate of interest set forth in the Note, or at the maximum interest rate which Mortgagor may by law pay, whichever is lower, (the "Default Rate"); (b) Mortgagee shall have the right to commence foreclosure proceedings against the Mortgaged Property through judicial proceedings or by advertisement, at the option of Mortgagee, pursuant to applicable law and (c) Mortgagee shall have the right to exercise any and all other rights and remedies available at law and in equity.

22. Sale of Mortgaged Property, Expense of Litigation. If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may at the discretion of Mortgagee, be sold in one or more parcels or in several interests or portions and in any order or manner. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees (including, but not limited to all appellate level and post-judgement proceedings) outlays for documentary and

UNOFFICIAL COPY

expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Paragraph mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or other proceeding affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any litigation or other proceeding or threatened litigation or other proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate, and shall be secured by this Mortgage.

23. Right to Cure Defaults. Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this paragraph 23, shall constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the Other Security Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

24. Late Payment Charge. If any portion of the Debt is not paid within five (5) business days after the date on which it is due, Mortgagor shall pay to Mortgagee upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the Debt or the maximum amount permitted by applicable law, to defray the expense incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be secured by this Mortgage and the Other Security Documents.

25. Future Advances. This Mortgage secures not only the proceeds of the loan evidenced by the Note, but all advances hereafter made by Mortgagee to or for the benefit of Mortgagor (the "Future Advances"), whether such advances are obligatory or are to be made at the option of Lender, or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The maximum principal amount of unpaid Liabilities in

UNOFFICIAL COPY

respect of the loan evidenced by the Note, exclusive of interest thereof, which may be outstanding at any time, is Three Million One Hundred Fifty Thousand and No/100 Dollars (\$3,150,000.00).

26. **Right of Entry.** Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

27. **Appointment of Receiver.** The holder of this Mortgage, upon the occurrence of an Event of Default or in any action to foreclose this Mortgage or upon the actual or threatened waste to any part of the Mortgaged Property, shall be entitled to the appointment of a receiver without notice and without regard to the value of the Mortgaged Property as security for the Debt, or the solvency or insolvency of any person liable for the payment of the Debt. The failure of Mortgagor to pay any Taxes assessed against the Mortgaged Property, or any installment of them, or any premiums payable with respect to any insurance policy covering the Mortgaged Property, shall constitute waste (although the meaning of "waste" shall not be limited to this nonpayment).

28. **Reasonable Use and Occupancy.** In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be occupied by Mortgagor or may require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise.

29. **Security Agreement.** This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph 29 the "Collateral"). If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part

UNOFFICIAL COPY

thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

30. **Actions and Proceedings.** Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

31. **Waiver of Counterclaim.** Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee, and waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Mortgagee against Mortgagor, or in any matters whatsoever arising out of or in any way connected with this Mortgage, the Note, any of the Other Security Documents or the Debt.

32. **Recovery of sums Required To Be Paid.** Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

33. **Marshalling and Other Matters.** Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

34. **Hazardous Materials.** Mortgagor represents and warrants to the best of Mortgagor's knowledge and except as disclosed in any environmental reports delivered to Mortgagee (a) there are no Hazardous Materials (hereinafter defined) on the Mortgaged Property, except those in compliance with all applicable federal, state and local laws, ordinances, rules and regulations, and (b) no owner or occupant nor any prior owner or occupant of the Mortgaged Property has received any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or affecting the Mortgaged Property. Mortgagor covenants that the Mortgaged Property shall be kept free of Hazardous Materials, and neither Mortgagor nor any occupant of the Mortgaged Property shall use, transport, store, dispose of or in any manner deal with Hazardous Materials on the Mortgaged Property, except in compliance with all applicable federal, state, and local laws, ordinances, rules and regulations. Mortgagor shall comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and

UNOFFICIAL COPY

regulations, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or affecting the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. Mortgagor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial actions necessary to clean up and remove all Hazardous Materials from the Mortgaged Property in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations. The term "Hazardous Materials" as used in this Mortgage shall include, without limitation, gasoline, petroleum products, explosives, radioactive materials, mold or mold conditions, meaning any surficial or airborne microbial constituents, regardless of genus, species, or whether commonly referred to as mildew, mold, mold spores, fungi, bacteria or similar description or the growth or existence of mold, polychlorinated biphenyls or related or similar materials, or any other substance or material defined as a hazardous or toxic substance or material by any federal, state or local law, ordinance, rule, or regulation, but excluding Asbestos, as defined in paragraph 35 hereof. The obligations and liabilities of Mortgagor under this paragraph 34 shall survive any entry of a judgment of foreclosure or the delivery of a deed in lieu of foreclosure of this Mortgage. Further Mortgagor represents to Mortgagee that no portion of the Mortgaged Property is a protected wetland.

35. Asbestos. Mortgagor represents and warrants that to the best of Mortgagor's knowledge and except as disclosed in any environmental reports delivered to Mortgagee that there is no asbestos or material containing asbestos ("Asbestos") on the Mortgaged Property, and that no owner or occupant nor any prior owner or occupant of the Mortgaged Property has received any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property. Mortgagor covenants that the Mortgaged Property shall be kept free of Asbestos, and neither Mortgagor nor any occupant of the Mortgaged Property shall install, or permit to be installed, Asbestos on the Mortgaged Property. Mortgagor shall comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. Mortgagor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial actions necessary to clean up and remove all Asbestos from the Mortgaged Property in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The obligations and liabilities of Mortgagor under this paragraph 35 shall survive any entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Mortgage.

36. Indemnification. Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring

UNOFFICIAL COPY

in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with the Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Mortgage is made; (g) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials on, from, or affecting the Mortgaged Property or any other property or the presence of Asbestos on the Mortgaged Property; (h) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials or Asbestos; (i) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials or Asbestos; (j) any violation of laws, orders, regulations, requirements, or demands of government authorities, which are based upon or in any way related to such Hazardous Materials or Asbestos including, without limitation, the costs and expenses of any remedial action, attorney fees, consultant fees, investigation and laboratory fees, court costs, and litigation expenses; (k) the making of the loan evidenced by the Note and secured by this Mortgage; or (l) any suit or other proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as a plaintiff or as a defendant, by reason of this Mortgage, or for the purpose of protecting the lien of this Mortgage; and/or the ownership, use, operation and/or maintenance of the Premises. Amounts payable to Mortgagee by reason of the application of this paragraph 36 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this paragraph 36 shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Mortgage.

37. **Notices.** Any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied or sent by overnight courier or U.S. Mail and shall be deemed given: (a) if served in person, when served; (b) if telecopied, on the date of transmission if before 3:00 p.m. (Chicago time) on a business day; provided that a hard copy of such notice is also sent pursuant to (c) or (d) below; (c) if by overnight courier, on the first business day after delivery to the courier; or (d) if by U.S. Mail, certified or registered mail, return receipt requested on the fifth (5th) day after deposit in the mail postage prepaid.

Notices to Mortgagor:

Saxony Clark, LLC
 Attn: Joshua A. Mintzer
 1660 Ryder's Lane
 Highland Park, Illinois 60035
 Telephone: (312) 505-3900
 Facsimile: _____

UNOFFICIAL COPY

With a copy to: Stone Pogrud & Korey LLC
 Attn: Dean J. Lurie
 1 East Wacker Drive, Suite 2610
 Chicago, Illinois 60601
 Telephone: (312) 782-3636
 Facsimile: (312) 893-2092

Notices to Mortgagee: JM Clark LLC
 853 North Elston
 Chicago, Illinois 60642
 Attn: Jeffrey I. Aeder
 Telephone: (312) 782-4550
 Facsimile: (312) 782-4563

With a copy to: Arnstein & Lehr LLP
 161 N. Clark Street
 Suite 4200
 Chicago, Illinois 60601
 Attn: Roy L. Bernstein
 Telephone: (312) 876-7198
 Facsimile: (312) 876-7314

38. Authority. (a) Mortgagor (and the undersigned representative of Mortgagor, if any) has full power, authority and legal right to execute this Mortgage, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed.

(b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

39. Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

40. Remedies of Mortgagor. In the event that a claim or adjudication is made that Mortgagee has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Mortgage or the Other Security Documents, it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Mortgagor's remedies shall be limited to injunctive relief or declaratory judgment.

UNOFFICIAL COPY

41. **Sole Discretion of Mortgagee.** Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

42. **Non-Waiver.** The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or Guarantors to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the Other Security Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

43. **No Oral Change.** This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

44. **Liability.** If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

45. **Inapplicable Provisions.** If any term, covenant or condition of the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Note and this Mortgage shall be construed without such provision.

46. **Headings, etc.** The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

47. **Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

UNOFFICIAL COPY

48. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

49. **Business Purpose.** The proceeds of the loan evidenced by the Note and secured hereby will be used solely for the purposes specified in Illinois Compiled Statutes, Chapter 815 ILCS 205/4, and the principal obligation evidenced by the Note constitutes a "business loan" within the definition and purview of said statute and said loan is an exempted transaction under the Truth In Lending Act, 15 U.S.C. Section 1601, *et. seq.*

50. **Expenses Relating to Note and Mortgage.** Mortgagor will pay all reasonable expenses, charges, costs and fees relating to the loan evidenced by the Note and secured by this Mortgage or necessitated by the terms of the Note, this Mortgage or any of the Other Security Documents securing the Note, including without limitation, Mortgagee's attorneys' and legal fees and costs (including, but not limited to, all appellate level and post-judgment proceedings) in connection with the negotiation, documentation, modification, workout, collection and enforcement of the Note, this Mortgage and the Other Security Documents, all of Mortgagee's inspection costs, fees and expenses with regard to the Premises, all filing and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage, all Federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note or this Mortgage, all reasonable expenditures and reasonable expenses which may be paid or incurred by or on behalf of Mortgagee including payments to remove or protect against liens, receivers' fees, appraisers' fees, engineers' fees, accountants' fees, independent consultants' fees (including environmental consultants), Mortgagee's out-of-pocket costs and expenses related to any audit or inspection of the Property (not to be made more than one time in any twelve (12) month period), and costs for procuring all such abstracts of title, title searches and examination, title insurance policies, surveys and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute any action or to evidence to bidders at any sale of the Collateral the true condition of the title to, or the value of, the Collateral, and after an Event of Default, provided such costs are permitted by any applicable statute, outlays for documentary and expert evidence, stenographers' charges, publication costs. All expenses, charges, costs and fees described in the preceding sentence shall be so much additional indebtedness secured hereby, and if not paid in accordance with the terms of the Note

UNOFFICIAL COPY

and this Mortgage, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with such interest, by Mortgagor forthwith upon demand.

51. Miscellaneous.

(a) Municipal and Zoning Requirements. Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any municipal or governmental requirement. Mortgagor shall not make any changes or revisions to existing zoning approvals or classifications or entitlements with respect to the Premises without the prior written consent of Mortgagee. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Paragraph 51(a) shall be void.

(b) Use of Proceeds. Mortgagor warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation U issued by the Board of Governors of the Federal Reserve System.

(c) Mortgagee in Possession. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

(d) Time of the Essence. Time is of the essence of the payment by Mortgagor and its sole beneficiaries of all amounts due and owing to Mortgagee under the Note and the performance and observance by Mortgagor of all of the terms, conditions, obligations and agreements contained in this Mortgage.

(e) Illinois Mortgage Foreclosure Law. If any provision of this Mortgage is inconsistent with any applicable provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-101, *et seq.* (the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but the Act shall not invalidate or render unenforceable any other provision of this Mortgage that can be fairly construed in a manner consistent with the Act. Without in any way limiting any of Mortgagee's rights, remedies, powers and authorities provided in this Mortgage or otherwise, and in addition to all of such rights, remedies, powers and authorities, Mortgagee shall also have all rights, remedies, powers and authorities permitted to the holder of a mortgage under the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to Mortgagee any rights, remedies, powers or authorities upon default of Mortgagor which are more limited than what would be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall have such rights, remedies, powers and authorities that would be otherwise vested in it under the Act. Without limitation, all expenses (including attorneys' fees and costs) incurred by Mortgagee to the extent reimbursable under 735 ILCS 5/15-1510 and 5/15-1512, or any other provision of the Act,

UNOFFICIAL COPY

whether incurred before or after any judgment of foreclosure, shall be added to the indebtedness secured by this Mortgage and included in the judgment of foreclosure.

52. Governing Law. This Mortgage shall be governed by the laws of the State of Illinois.

53. Waiver of Right of Redemption. Mortgagor acknowledges, represents and warrants that the Mortgaged Property does not include “agricultural real estate” or “residential real estate” as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b), Mortgagor waives any and all rights of redemption from sale under any order of foreclosure of this Mortgage, or other rights of redemption which may run to Mortgagor or any other “owner of redemption,” as that term is defined in 735 ILCS 5/15-1212. Mortgagor waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by law.

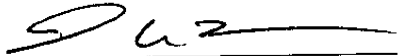
[SIGNATURE ON FOLLOWING PAGE]

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Mortgage and Security Agreement has been executed by Mortgagor the day and year first above written.

MORTGAGOR:

SAXONY CLARK, LLC,
an Illinois limited liability company

By: 
Name: John A. Mintzer
Title: Manager

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF ILLINOIS)
)
COUNTY OF Cook) SS.

I, Dean Lurie, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Tom Weber, the Manager of Saxony Clark, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Tom Weber, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25th day of August, 2017.

[Signature]

Notary Public

My Commission Expires:



UNOFFICIAL COPY

EXHIBIT A Legal Description

LOT 15 AND THAT PART OF LOT 14 DESCRIBED AS BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 14 AND RUNNING THENCE NORTHWESTERLY ALONG THE WESTERLY LINE OF SAID LOT 14 A DISTANCE OF 77/100 FEET; THENCE NORTHEASTERLY A DISTANCE OF 1.33 FEET TO A POINT 1.33 FEET NORTH (MEASURED AT RIGHT ANGLES) OF THE SOUTH LINE OF SAID LOT 14; THENCE SOUTHEASTERLY A DISTANCE OF 53/100 FEET TO A POINT 87/100 FEET NORTH (MEASURED AT RIGHT ANGLES) OF SAID SOUTH LINE; THENCE EASTERLY A DISTANCE OF 66.25 FEET TO A POINT 91/100 FEET NORTH (MEASURED AT RIGHT ANGLES) OF SAID SOUTH LOT LINE; THENCE SOUTH A DISTANCE OF 91/100 FEET TO A POINT ON SAID SOUTH LINE OF LOT 14 WHICH IS 57.73 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT AND THENCE WEST ALONG SAID SOUTH LINE A DISTANCE OF 67.27 FEET TO PLACE OF BEGINNING, BEING IN WILLIAM KNOKE AND OTHERS SUBDIVISION OF PART OF BLOCK 1 IN SUBDIVISION OF THE NORTH 20 ACRES OF THE SOUTH 50 ACRES OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 22, 1904 AS DOCUMENT 3527220 IN BOOK 86, PAGE 35 OF PLATS, IN COOK COUNTY, ILLINOIS.

Commonly known as: 2935 North Clark, Chicago, IL 60657

PIN: 14-28-111-047-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

Permitted Encumbrances

1. General real estate taxes for 2017 and subsequent years, to the extent not yet due and payable.
2. Terms, provisions and limitations contained in Ordinance Number 8 establishing special services in the area recorded December 27, 2011 as Document Number 1136104046.
3. Rights of tenant under existing unrecorded leases as set forth in that certain verified Rent Roll delivered by Mortgagor to Mortgagee.