

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1732529105

Doc# 1732529105 Fee \$102.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 11/21/2017 04:26 PM PG: 1 OF 33

The property identified as: **PIN:** 17-16-121-003-6002

Address:

Street: 300 South Riverside Plaza

Street line 2:

City: Chicago

State: IL

ZIP Code: 60606

Lender: SHBNPP GLOBAL PROFESSIONAL INVESTMENT TYPE PRIVATE REAL ESTATE INVESTMENT

Borrower: SOUTH RIVERSIDE BUILDING LLC

Loan / Mortgage Amount: \$350,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7770 et seq. because it is commercial property.

Certificate number: 2C605967-55B5-4E9F-A95F-847D5363A335

Execution date: 11/20/2017

UNOFFICIAL COPY

Prepared by, and after
Recording, Return to:

Mayer Brown LLP
1221 Avenue of the Americas
New York, New York 10020
Attn: David M. Stewart, Esq.

STATE OF ILLINOIS
COUNTY OF COOK

P.I.N. 17-16-121-003-6002

COLLATERAL IS OR INCLUDES FIXTURES

LEASEHOLD MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS, SECURITY AGREEMENT AND FIXTURE FILING

This Leasehold Mortgage, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing (as amended from time to time, this "Mortgage") is made, and is executed as of November 20, 2017, by SOUTH RIVERSIDE BUILDING LLC, a Delaware limited liability company (together with its permitted successors and permitted assigns, "Mortgagor"), whose address for all purposes hereunder is c/o Third Millennium Group, 7700 Congress Avenue, Suite 3106, Boca Raton, Florida 33487, for the benefit of SHBNPP GLOBAL PROFESSIONAL INVESTMENT TYPE PRIVATE REAL ESTATE INVESTMENT TRUST NO. 10 whose address for all purposes is 18th floor, Shinhan Investment Tower, 70, Yeou-idaero, Yeoungdeungpo-gu, Seoul 07325, Korea and SHBNPP GLOBAL PROFESSIONAL INVESTMENT TYPE PRIVATE REAL ESTATE INVESTMENT TRUST NO. 11 whose address for all purposes hereunder is c/o Shinhan BNP Paribas Asset Management Co., Ltd, 18th floor, Shinhan Investment Tower, 70, Yeou-idaero, Yeoungdeungpo-gu, Seoul 07325, Korea (collectively, and together with their respective successors and assigns, the "Mortgagee").

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

"Indebtedness": The sum of all principal, interest and other amounts due from Mortgagor under, or secured by, the Loan Documents.

"Loan Agreement": The Loan Agreement, dated as of the date hereof, by and between Mortgagee, as lender, and Mortgagor, as borrower, as the same may be replaced, amended, supplemented, extended or otherwise modified from time to time.

UNOFFICIAL COPY

“Loan Documents”: The (1) Loan Agreement, (2) Promissory Note A and Promissory Note B, each dated as of the date hereof, executed by Mortgagor pursuant to the Loan Agreement, in the aggregate, original principal amount of \$150,000,000.00 (as the same may be amended, restated, componentized, supplemented, modified, assigned in whole or in part, replaced and/or divided into multiple notes from time to time, the “Note” or “Notes”, as applicable), (3) this Mortgage, (4) all other documents now or hereafter executed by Mortgagor or any other person or entity to evidence or secure the payment of the Indebtedness, and (5) all modifications, restatements, extensions, renewals and replacements of the foregoing.

“Obligations”: All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor under the Loan Documents.

“Property”: All of Mortgagor’s right, title and interest in and to each of the following (whether now owned or hereafter acquired):

(1) the leasehold estate, leasehold interest or rights (the “Leasehold Estate”) created pursuant to that certain Amended and Restated Lease dated as of February 10, 2015 made by and between Lionshead 110 Riverside LLC and Lionshead 53 Riverside LLC, each a Delaware limited liability company, as ground lessor (collectively, the “Ground Lessor”), and Mortgagor, a Memorandum of which was recorded February 13, 2015 as Document 1504419068 (the “Ground Lease”) encumbering the real property identified as Parcels 1 and 2 more particularly described on Exhibit A attached hereto and incorporated herein by this reference (said Parcels 1 and 2, together with Parcels 3 and 4 identified in (10) below being herein collectively referred to as the “Land”), and all rights, benefits, privileges and interests of the Mortgagor in the Ground Lease, and all modifications, extensions, renewals and replacements thereof, and all deposits, credits, options, privileges and rights of the Mortgagor as tenant under the Ground Lease,

(2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the “Improvements”); provided, however, Improvements shall not include any personal property belonging to tenants under Leases, except to the extent that Mortgagor shall have any right or interest therein,

(3) all materials, machinery, supplies, equipment, fixtures (including “fixtures” as defined in the UCC), apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, including any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, lighting, communications and elevator fixtures, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery and equipment, disposals, dishwashers, furniture, refrigerators and ranges, security systems, artwork, recreational and pool equipment and facilities of all kinds, water, gas, electrical, storm and sanitary sewer facilities of all kinds, and all other utilities whether or not situated in easements together with all accessions, replacements,

UNOFFICIAL COPY

betterments and substitutions for any of the foregoing (the “Fixtures”); provided, however, that Fixtures shall not include any personal property belonging to tenants that are entitled to remove pursuant to Leases or fixtures owned by utility companies, except to the extent that Mortgagor shall have any right or interest therein,

(4) in and to all goods, accounts, general intangibles, instruments, documents, books and records, accounts receivable, chattel paper, investment property, securities accounts and all other personal property of any kind or character, including such items of “personal property” as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and/or the Improvements or that may be used in or relating to the planning, development, financing or operation of the Land and/or the Improvements, including furniture, furnishings, equipment, machinery, money, insurance proceeds, condemnation awards, accounts, contract rights, causes of action, trademarks, trade names, service marks, logos, copyrights, patents, website domains, goodwill, chattel paper, documents, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs and all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments against the Land and/or Improvements as a result of tax certiorari or any applications or proceedings for reduction (the “Personalty”),

(5) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts (including tenant’s security and cleaning deposits and deposits with respect to utility services) maintained by or on behalf of Mortgagor with respect to the Land and/or Improvements,

(6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the “Plans”),

(7) all leases, subleases, sub-subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect and every modification, amendment or other agreement relating thereto, including every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto) that grant a possessory interest in, or the right to use or occupy, all or any part of the Land and/or Improvements, together with all related security and other deposits (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the “Leases”),

(8) all of the rents, revenues, income, proceeds, issues, profits (including all oil or gas or other mineral royalties and bonuses), security and other types of deposits,

UNOFFICIAL COPY

and other benefits paid or payable and to become due or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, occupying, operating from, residing in, selling or otherwise enjoying any portion or portions of the Land and/or Improvements (the "Rents"),

(9) the Approved Management Agreement and all Material Agreements and other contracts and agreements in any way relating to, executed in connection with, or used in, the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition, management or ownership of the Land and/or Improvements or the sale of goods or services produced in or relating to the Land and/or Improvements (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Property Agreements"), including all right, title and interest of Mortgagor in, to and under (a) all construction contracts, architects' agreements, engineers' contracts, utility contracts, letters of credit, escrow agreements, maintenance agreements, management, leasing and related agreements, parking agreements, equipment leases, service contracts, operating leases, catering and restaurant leases and agreements, agreements for the sale, lease or exchange of goods or other property, agreements for the performance of services, permits, variances, licenses, certificates and entitlements, (b) applicable business licenses, variances, entitlements, certificates, state health department licenses, liquor licenses, food service licenses, licenses to conduct business, certificates of need and all other permits, licenses and rights obtained from any Governmental Authority or private Person, (c) all rights of Mortgagor to receive monies due and to become due under or pursuant to the Property Agreements, (d) all claims of Mortgagor for damages arising out of or for breach of or default under the Property Agreements, (e) all rights of Mortgagor to terminate, amend, supplement, modify or waive performance under the Property Agreements, to compel performance and otherwise to exercise all remedies thereunder, and, with respect to Property Agreements that are letters of credit, to make any draws thereon, and (f) to the extent not included in the foregoing, all cash and non-cash proceeds, products, offspring, rents, revenues, issues, profits, royalties, income, benefits, additions, renewals, extensions, substitutions, replacements and accessions of and to any and all of the foregoing,

(10) all rights, privileges, titles, interests, liberties, tenements, hereditaments, rights-of-way, easements, including without limitation, that certain Easement and Operating Agreement dated as of May 29, 2001, recorded as Document No. 0010466784 and identified as Parcel 3 on Exhibit A and that certain Deed of Easement dated as of January 16, 1990, recorded as Document No. 90047309, as amended by First Amendment to Deed of Easement recorded as Document No. 90491486, and identified as Parcel 4 on Exhibit A, sewer rights, water, water courses, water rights and powers, air rights and development rights, licenses, permits and construction and equipment warranties, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, underground vaults, passages, strips or gores of land adjoining the Land or any part thereof,

(11) all accessions, replacements, renewals, additions and substitutions for any of the foregoing and all proceeds thereof,

UNOFFICIAL COPY

(12) subject to the rights of Mortgagor hereunder or under the Loan Agreement, all insurance policies, unearned premiums therefor and proceeds from such policies, including the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, covering any of the above property now or hereafter acquired by Mortgagor,

(13) all minerals and mineral rights and, without limiting the foregoing, all oil, coal, gas and coal bed methane and all related rights, and all riparian, littoral and water rights, in each case now owned or hereafter acquired and relating to all or any part of the Land and/or Improvements

(14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures or Personalty, and

(15) all after acquired title to or remainder or reversion in any of the property (or any portion thereof) described herein.

“UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in the jurisdiction in which the Land is located.

Capitalized terms used herein but not otherwise defined shall have the respective meanings ascribed to such terms in the Loan Agreement.

ARTICLE 2 HABENDUM

Section 2.1 Grant. To secure in part the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor HAS MORTGAGED, GIVEN, GRANTED, BARGAINED, SOLD, TRANSFERRED, WARRANTED, PLEDGED, ASSIGNED and CONVEYED, and does hereby MORTGAGE, GIVE, GRANT, BARGAIN, SELL, TRANSFER, WARRANT, PLEDGE, ASSIGN and CONVEY to Mortgagee, its heirs, successors and assigns, with power of trust, the Property, TO HAVE AND TO HOLD all of the Property unto and, for the use and benefit of Mortgagee, its heirs, successors and assigns in fee simple forever, and Mortgagor does hereby bind itself, its heirs, successors and assigns to WARRANT AND FOREVER DEFEND (i) the title to the Property unto Mortgagee and its heirs, successors and assigns, subject only to Permitted Encumbrances and (ii) the validity and priority of the Liens of this Mortgage, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever.

ARTICLE 3 DEFAULT AND FORECLOSURE

Section 3.1 Remedies. If an Event of Default is continuing, Mortgagee may, at Mortgagee’s election, take such action permitted at law or in equity, without notice or demand (except as explicitly provided in the Loan Agreement), as it deems advisable to protect and enforce its rights against Mortgagor and to the Property, including but not limited to, any or all of the following rights, remedies and recourses each of which may be pursued concurrently or

UNOFFICIAL COPY

otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(a) Acceleration. Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor (except as provided in the Loan Agreement)), whereupon the same shall become immediately due and payable.

(b) Entry on Property. Enter the Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Property after the occurrence and during the continuance of an Event of Default, then, without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) Operation of Property. Whether or not a receiver has been appointed pursuant to Section 3.1(e) hereof, hold, lease, develop, manage, operate, control and otherwise use the Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems reasonably necessary or desirable), exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents, and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 3.7 hereof.

(d) Foreclosure and Sale. Institute proceedings for the complete foreclosure of this Mortgage, either by judicial action or by exercise of the STATUTORY POWER OF SALE or otherwise, in which case the Property may be sold for cash or credit in one or more parcels or in several interests or portions and in any order or manner in accordance with applicable law governing foreclosures. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse including power of sale, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash. With respect to any notices required or permitted under the UCC, Mortgagor agrees that no less than ten (10) Business Days' prior written notice shall be deemed commercially reasonable.

(e) Receiver. Prior to, concurrently with, or subsequent to the institution of foreclosure proceedings, make application to a court of competent jurisdiction for, and (to the extent permitted by applicable law) obtain from such court as a matter of strict right and without notice to Mortgagor or anyone claiming under Mortgagor or regard to the value of the Property

UNOFFICIAL COPY

or the solvency or insolvency of Mortgagor or the adequacy of any collateral for the repayment of the Indebtedness or the interest of Mortgagor therein, the appointment of a receiver or receivers of the Property, and Mortgagor irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 3.7 hereof.

(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Notes either before, during or after any proceeding to enforce this Mortgage).

Section 3.2 Separate Sales. In connection with the exercise by Mortgagee of its rights and remedies hereunder, the Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect, subject to applicable law; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 3.3 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent and shall be in addition to every other remedy so provided or permitted, (b) may be pursued separately, successively or concurrently against Mortgagor, or against the Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 3.4 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Property, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 3.5 Waiver of Redemption, Notice and Marshaling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or "moratorium law" or other law or judicial decision exempting the Property or any part thereof, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption reinstatement (to the extent permitted by law) or extension of time for payment, (b) any right to a marshaling of assets or a sale in inverse

UNOFFICIAL COPY

order of alienation, and (c) any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure.

Section 3.6 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default that may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 3.7 Application of Proceeds. Except as otherwise provided in the Loan Documents and unless otherwise required by applicable law, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order or in such other order as Mortgagee shall determine in its sole discretion:

(a) to the payment of the reasonable costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys', accountants', appraisers', environmental consultants', engineers' and other experts' fees and expenses, (4) costs of advertisement, (5) costs of procuring title searches, title policies and similar data and assurance with respect to title, (6) the payment of all applicable transfer taxes and mortgage recording taxes, and (7) the payment of all ground rent, real estate taxes and assessments;

(b) to the payment of all amounts, other than the unpaid principal balance of the Notes and accrued but unpaid interest, which may be due under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(d) the balance, if any, to the payment of the Persons legally entitled thereto.

If Mortgagee shall be ordered, in connection with any bankruptcy, insolvency or reorganization of Mortgagor, to restore or repay to or for the account of Mortgagor or its creditors any amount theretofore received under this Section, the amount of such restoration or repayment shall be deemed to be a part of the Indebtedness so as to place Mortgagee in the same position it would have been in had such amount never been received by Mortgagee.

Section 3.8 Occupancy After Foreclosure. The purchaser at any foreclosure sale pursuant to Section 3.1(d) shall become the legal owner of the Property. All occupants of the Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the

UNOFFICIAL COPY

Property other than the statutory action of forcible detainer in any court having jurisdiction over the Property.

Section 3.9 Additional Advances and Disbursements; Costs of Enforcement.

If any Event of Default is continuing, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and actual expenses incurred at any time by Mortgagee under this Section, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense actually incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall constitute additions to the Indebtedness and shall be secured by this Mortgage and Mortgagor covenants and agrees to pay them to the order of Mortgagee promptly upon demand.

Section 3.10 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 3, the assignment of the Rents and Leases under Article 4, the collateral assignment of the Property Agreements under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Mortgagee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages that may or might be asserted against or incurred by Mortgagee, as the case may be, solely by reason of Mortgagee's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent of Mortgagee's gross negligence or willful misconduct. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Mortgagor shall reimburse Mortgagee, as the case may be, therefor immediately upon demand. Notwithstanding anything to the contrary, Mortgagor shall not be responsible for any acts committed by Mortgagee occurring from and after the date Mortgagee actually takes possession and control of the Property following the foreclosure of the Property or Mortgagee's acceptance of a deed in lieu of foreclosure, pursuant to which Mortgagor no longer has possession or control of the Property.

ARTICLE 4 ASSIGNMENT OF RENTS AND LEASES

Section 4.1 Assignment. Mortgagor does hereby presently, absolutely and unconditionally assign to Mortgagee, Mortgagor's right, title and interest in all current and future Leases and the absolute, unconditional and continuing right to receive and collect all Rents, it being intended by Mortgagor that this assignment constitutes a present, outright, immediate, continuing and absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Mortgagee. Mortgagee shall have no responsibility on account of this assignment for the control, care, maintenance, management or repair of the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property, but excluding any claim to the extent caused by

UNOFFICIAL COPY

Mortgagee's gross negligence or willful misconduct. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance reasonably satisfactory to Mortgagee, as may hereafter be reasonably requested, in writing, by Mortgagee to further evidence and confirm such assignment.

Section 4.2 License. Notwithstanding that Mortgagor hereby presently grants to Mortgagee an outright, immediate, continuing and absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in, the Rents and Leases, Mortgagee hereby grants to Mortgagor and its successors and not to any tenant or any other person, a revocable license to collect and receive the Rents and to retain, use and enjoy the same and otherwise exercise all rights as landlord under any Lease, in each case subject to the terms hereof and of the Loan Agreement. Upon the occurrence and during the continuance of any Event of Default, (i) the license granted herein to Mortgagor shall immediately and automatically cease and terminate and shall be void and of no further force or effect, (ii) Mortgagee shall immediately be entitled to possession of all Rents (whether or not Mortgagee enters upon or takes control of the Property) and (iii) at the written request of Mortgagee, Mortgagor shall notify in writing all tenants and subtenants under any of the Leases that all Rent due thereunder should be paid to Mortgagee at its address set forth in the Loan Agreement, or at such other place as Mortgagee shall notify Mortgagor in writing; provided that, if such Event of Default ceases to exist, the license described in the foregoing clause (i) shall automatically be reinstated. Notwithstanding said license, Mortgagor agrees that Mortgagee, and not Mortgagor, shall be deemed to be the creditor of each tenant or subtenant under any Lease in respect to assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such tenant or subtenant (without obligation on the part of Mortgagee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditors' rights therein), with an option to apply in accordance with the Loan Documents any money received from such tenant or subtenant in reduction of any amounts due under the Loan Documents. Upon the occurrence and during the continuance of an Event of Default, any portion of the Rents held by Mortgagor shall be held in trust for the benefit of Mortgagee for use in the payment of the Indebtedness.

Section 4.3 Certain Rights of Mortgagee. Subject to the revocable license granted above, upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the immediate and continuing right, power and authority, either in person or by agent, without bringing any action or proceeding, or by a receiver appointed by a court, without the necessity of taking possession of the Property in its own name, and without the need for any other authorization or action by Mortgagor or Mortgagee, in addition to and without limiting any of Mortgagee's rights and remedies hereunder, under the Loan Agreement and any other Loan Documents and as otherwise available at law or in equity, (a) to notify any tenant or other person that the Leases have been assigned to Mortgagee and that all Rents are to be paid directly to Mortgagee, whether or not Mortgagee has commenced or completed foreclosure or taken possession of the Property; (b) to settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations in, to and under the Leases; (c) to demand, sue for, collect, receive and enforce payment of Rents, including those past-due and unpaid and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to the Rents and Leases; (d) to enter upon, take possession of and operate the Property whether or not foreclosure under this Mortgage has

UNOFFICIAL COPY

been instituted and without applying for a receiver; (e) to lease all or any part of the Property; and/or (f) to perform any and all obligations of Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder.

Section 4.4 Irrevocable Instructions to Tenants. At Mortgagee's request, Mortgagor shall deliver a copy of this Mortgage to each tenant under a Lease and to each manager and managing agent or operator of the Property, and Mortgagee shall have the continuing right to do so. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Mortgagor, to comply with all demands of Mortgagee under this Article 4 and to turn over to Mortgagee on demand all Rents that it receives. Mortgagor hereby acknowledges and agrees that payment of any Rents by a person to Mortgagee as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such Rents had been paid to Mortgagor.

Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, upon an Event of Default that is continuing, to enter upon the Property in person or by agent without bringing any action or proceeding, or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license shall be applied in accordance with the provisions of the Loan Agreement. Neither the enforcement of any of the remedies under this Article 4 nor any other remedies or security interests afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Mortgagee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages that may or might be asserted against or incurred by Mortgagee solely by reason of Mortgagee's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent caused by Mortgagee's gross negligence or willful misconduct. Should Mortgagee incur any such actual claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Mortgagor shall reimburse Mortgagee therefor within 10 Business Days after demand.

Section 4.5 Unilateral Subordination. Mortgagee may, at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Mortgage to any Lease.

ARTICLE 5 COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS

Section 5.1 Collateral Assignment. Mortgagor does hereby collaterally assign and pledge to Mortgagee, Mortgagor's right, title and interest in, to and under all current and future Property Agreements, to the extent such right, title and interest is assignable pursuant to

UNOFFICIAL COPY

the respective terms and conditions of each such Property Agreement. Such collateral assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Property Agreement or otherwise impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance reasonably satisfactory to Mortgagee, as may hereafter be reasonably requested by Mortgagee to further evidence and confirm such collateral assignment.

Section 5.2 Retained Rights of Mortgagor. Subject to the other provisions of this Article 5 and the provisions of the other Loan Documents, for so long as no Event of Default shall have occurred and be continuing, Mortgagor may exercise all of its rights and privileges under the Property Agreements and shall have the exclusive right and authority to deal with, enjoy the benefit under, grant any consents and approvals under, and amend, modify or terminate, such Property Agreements, collect, receive and retain for its own benefit all monies due or to become due under such Property Agreements, sue and enforce all claims of Mortgagor¹ for damages arising under such Property Agreements, and retain for its own benefit all items described in clause (d) of paragraph (9) of the definition of "Property" above, if and to the extent not prohibited by the Loan Agreement or the other Loan Documents. Upon the occurrence and during the continuance of any Event of Default, the rights of Mortgagor described in this Section shall immediately and automatically cease and terminate and shall be void and of no further force or effect, provided that if such Event of Default ceases to exist, the rights of Mortgagor described in this Section shall automatically be reinstated. Upon the occurrence and during the continuance of an Event of Default, any amounts held by Mortgagor as a party to the Property Agreements shall be held in trust for the benefit of Mortgagee for use in the payment of the Indebtedness.

Section 5.3 Exercise of Assigned Rights. Mortgagor hereby irrevocably directs the grantor or licensor of, or the contracting party to, any Property Agreement, upon demand from Mortgagee, to recognize and accept Mortgagee as the party to such Property Agreement for any and all purposes as fully as it would recognize and accept Mortgagor and the performance of Mortgagor thereunder; provided, that Mortgagee hereby covenants to Mortgagor that it will not make such demand except upon the occurrence and during the continuance of an Event of Default. Upon the occurrence, and during the continuance, of an Event of Default, without further notice or demand and at Mortgagor's sole cost and expense, Mortgagee shall be entitled to exercise all rights of Mortgagor arising under the Property Agreements. Mortgagor hereby acknowledges and agrees that payment of any amounts owing under any Property Agreement by a person to Mortgagee as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such amounts had been paid to Mortgagor. Any amounts collected after the occurrence and during the continuance of an Event of Default shall be applied in accordance with the provisions of the Loan Agreement. At Mortgagee's request, Mortgagor shall deliver a copy of this Mortgage to each grantor or licensor of or the contracting party to a Property Agreement, and Mortgagee shall have the continuing right to do so.

Section 5.4 Indemnity. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all actual claims, liability, expenses, losses or damages that may or might be asserted against or incurred by Mortgagee solely by reason of Mortgagee's status as an assignee pursuant to the collateral

UNOFFICIAL COPY

assignment of Property Agreements contained herein, but excluding any claim to the extent caused by Mortgagee's gross negligence or willful misconduct, or any claim arising as a result of an act or omission of Mortgagee after the date on which Mortgagee has taken actual possession of the Property pursuant to an exercise of its rights and remedies hereunder. Should Mortgagee incur any such actual claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Mortgagor shall reimburse Mortgagee therefor within 10 Business Days after demand.

Section 5.5 Property Agreement Covenants. (a) Mortgagor shall perform and observe, in a timely manner, all of the material covenants, conditions, obligations and agreements of Mortgagor under the Property Agreements and shall suffer or permit no delinquency on its part to exist thereunder if such action is prohibited by the Loan Agreement, or would be reasonably likely to have a Material Adverse Effect.

(a) Mortgagor shall not (i) sell, assign, transfer, mortgage or pledge any Property Agreement or any such right or interest under any Property Agreement, or (ii) cancel, terminate, amend, supplement or modify any Property Agreement, in either case, if such action is prohibited by the Loan Agreement or would have a Material Adverse Effect.

(b) Mortgagor shall exercise all reasonable efforts to enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the franchisor, manager, licensor, grantor or other contracting party under the Property Agreements, if the failure to take such action would have a Material Adverse Effect.

ARTICLE 6 SECURITY AGREEMENT

Section 6.1 Security Interest. This Mortgage constitutes both a real property mortgage and a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements (said portion of the Property subject to the UCC, the "Collateral"). The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. Mortgagor, by executing and delivering this Mortgage, hereby grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Property that is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property 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 reasonably 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 the Property. Mortgagor shall pay to Mortgagee on demand any and all expenses, including actual reasonable legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the 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 10 Business 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, shall, except as otherwise required by law, be applied by Mortgagee in accordance with Section 3.7 hereof.

Section 6.2 Further Assurances. Mortgagor shall execute and deliver to Mortgagee and/or file, in form and substance reasonably satisfactory to Mortgagee, such further statements, documents and agreements, financing statements, continuation statements, and such further assurances and instruments, and do such further acts, as Mortgagee may, from time to time, reasonably consider necessary, desirable or proper to create, perfect and preserve Mortgagee's security interest hereunder and to carry out more effectively the purposes of this Mortgage, and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest; provided that such further statements, documents, agreements, assurances, instruments and acts do not increase the liability or obligations or decrease the rights of Mortgagor from those provided for in the Loan Documents. Mortgagor hereby irrevocably authorizes Mortgagee to file UCC financing statements in each jurisdiction that Mortgagee deems necessary or desirable in its sole discretion in order to perfect the security interests in all or any portion of the Collateral. Such financing statements may indicate or describe the Collateral in any manner Mortgagee chooses, including, without limitation, describing such collateral as "all assets of debtor, whether now owned or hereafter acquired," "all personal property of debtor, whether now owned or hereafter acquired" or using words of similar import. As of the date hereof, Mortgagor's chief executive office and principal place of business is at the address set forth in the first paragraph of this Mortgage, and Mortgagor shall promptly notify Mortgagee of any change in such address.

Section 6.3 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC upon all of the Property that is or is to become "fixtures" (as that term is defined in the UCC), upon being filed for record in the real estate records of the county wherein such fixtures are located. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

ARTICLE 7 GROUND LEASE

Section 7.1 Ground Lease.

(a) The provisions contained herein shall be deemed to be obligations of the Mortgagor in addition to the Mortgagor's obligations as tenant with respect to similar matters under the Ground Lease and shall not restrict or limit the Mortgagor's duties and obligations to keep and perform promptly all of its covenants, agreements and obligations as tenant under the Ground Lease.

(b) The Mortgagor shall timely pay all rents, additional rents and other sums required to be paid by the Mortgagor under and pursuant to the provisions of the Ground Lease as and when such amounts are payable, and otherwise fully perform and comply with all agreements, covenants, terms and conditions imposed upon the Mortgagor under the Ground Lease. Immediately upon the Mortgagor's receipt of any notice or other communication that it is in default in the performance or observance of any term, covenant or condition of the Ground

UNOFFICIAL COPY

Lease, the Mortgagor shall deliver a true and correct copy thereof to the Mortgagee who may act in good faith reliance thereon. Upon the occurrence of any default in the performance or observance of any term, covenant or condition of the Ground Lease (beyond any notice and cure periods) (a "Ground Lease Default"), or receipt of notice of a Ground Lease Default (whether or not such Ground Lease Default is contested by the Mortgagor), the Mortgagee may, but shall not be obligated to, take any action it deems necessary or desirable in its sole discretion to prevent or cure any such Ground Lease Default, including, without limitation, performance of any of the Mortgagor's obligations thereunder (a "Cure Action"). The taking of any Cure Action shall not limit the generality of the other provisions of this Mortgage and shall not waive or release the Mortgagor from any of its obligations hereunder or under any of the other Loan Documents. Promptly upon the Mortgagee's request, the Mortgagor shall deliver to the Mortgagee evidence of payment by the Mortgagor of all monetary obligations under the Ground Lease (including, without limitation, rents, taxes, assessments, insurance premiums and operating expenses), in form and substance reasonably satisfactory to the Mortgagee.

(c) The Mortgagor hereby grants to the Mortgagee (or any designee thereof) the absolute and immediate right, with prior written notice to the Mortgagor except in the case of an emergency or similar situation that if not addressed promptly would worsen, to enter upon the Property at any time and from time to time for the purpose of taking any Cure Action. The Mortgagee may pay and expend such sums of money as the Mortgagee in its sole discretion deems necessary for any such purpose, and the Mortgagor hereby agrees to pay to the Mortgagee, immediately upon demand, all such sums so paid and expended by the Mortgagee, together with interest thereon from the date of each such payment at the Default Rate. All sums so paid and expended by the Mortgagee, and the interest thereon, shall be added to the Indebtedness and secured by the lien of this Mortgage. If the Mortgagor or the Ground Lessor shall deliver to the Mortgagee a copy of any notice of default sent by the Ground Lessor to the Mortgagor, as tenant under the Ground Lease, such notice shall constitute full protection to the Mortgagee for any action taken or omitted to be taken by the Mortgagee, in good faith, in reliance thereon.

(d) As promptly as possible, but in no event later than three (3) Business Days after receipt or delivery thereof, the Mortgagor shall give the Mortgagee true and correct copies of all notices (excluding day-to-day communications regarding the operation of the Property in the ordinary course of business), reports required to be produced by any party under the Ground Lease and other similar items of a material nature which the Mortgagor either: (i) delivers to the Ground Lessor under the Ground Lease, or (ii) receives from the Ground Lessor under the Ground Lease. The Mortgagee shall have the right to demand that the Mortgagor request any information, statements, canceled receipts or other documents that the Mortgagor is entitled to receive under the Ground Lease, and the Mortgagor shall promptly demand, obtain, and as promptly as possible, but in no event later than three (3) Business Days from receipt thereof, deliver such information, statements, canceled receipts and other documents upon receipt from the Ground Lessor.

(e) The Mortgagor shall not, without the prior written consent of the Mortgagee, which may be granted or withheld in the Mortgagee's sole and absolute discretion: alter, amend, change or modify any provision contained in the Ground Lease if the same shall: (A) shorten the term of the Ground Lease or delete any renewal options of the Mortgagor, as

UNOFFICIAL COPY

tenant thereunder, (B) increase the rents under the Ground Lease, (C) increase any other obligations of the Mortgagor, as tenant, under the Ground Lease, or (D) decrease any of the rights of the Mortgagor, as tenant, under the Ground Lease (and any such modification, change, supplement, alteration or amendment without the prior written consent of the Mortgagee to the extent required shall be void and of no force and effect); waive or consent to a waiver of any of its rights and benefits under the Ground Lease; cancel, release, surrender or terminate the Ground Lease (whether pursuant to any right of election granted under the Ground Lease or otherwise); or (iv) permit a Ground Lease Default to occur.

(f) If there shall be commenced a case by or against the Mortgagor under the Bankruptcy Code, the Mortgagor, or any Chapter 7 or 11 trustee appointed in such proceedings for the Mortgagor's estate (a "Bankruptcy Trustee"), shall as promptly as possible, but in no event later than twenty (20) days after the filing of such petition, notify the Mortgagee in writing of the Mortgagor's or the Bankruptcy Trustee's intent, as applicable, to assume or reject the Ground Lease pursuant to Section 365(a) of the Bankruptcy Code. If the intent of the Mortgagor or the Bankruptcy Trustee, as applicable, is to reject the Ground Lease or to take no action under such Section 365(a), and the Mortgagor or the Bankruptcy Trustee, as applicable, has received notification from the Mortgagee that, if such is the case, the Mortgagee desires an assignment of the Ground Lease (the "Lender Notice"), then the Mortgagor or the Bankruptcy Trustee, as applicable, shall file, prior to the expiration of the period provided in Section 365(d)(4) of the Bankruptcy Code, a motion with the bankruptcy court to assume and assign the Ground Lease to the Mortgagee or its designee, which motion and supporting pleadings shall be in form and substance satisfactory to the Mortgagee. The Mortgagor hereby assigns to the Mortgagee the Mortgagor's right to reject the Ground Lease under Section 365 of the Bankruptcy Code or any or any comparable provisions contained in any present or future Federal, state, local, foreign or other statute, law, rule or regulation ("Comparable Provisions") with respect to any case, proceeding or other action commenced by or against the Mortgagor under the Bankruptcy Code or any Comparable Provisions. So long as any portion of the Loan remains unpaid, the Mortgagor shall not reject or otherwise allow the Ground Lease to be terminated whether under Section 365 of the Bankruptcy Code or any Comparable Provisions, without the prior written consent of the Mortgagee. The Mortgagor hereby assigns to the Mortgagee the Mortgagor's right to seek an extension of the period within which the Mortgagor must accept or reject any Ground Lease under Section 365 of the Bankruptcy Code or any Comparable Provisions with respect to any case, proceeding or other action commenced by or against the Mortgagor, and the Mortgagor shall not oppose, or support any other party in opposing, any application by the Mortgagee for such extension.

(g) If: (i) the Mortgagor or the Bankruptcy Trustee, as applicable, sends written notification of the intent to assume the Ground Lease, or (ii) the Mortgagee serves upon the Mortgagor or the Bankruptcy Trustee, as applicable, the Lender Notice, then the Mortgagor or the Bankruptcy Trustee, as applicable, shall not seek to reject the Ground Lease but shall forthwith (and in all events before the expiration of all applicable time periods for such assumption and assignment) obtain consent from the bankruptcy court to assume the Ground Lease for the purposes of this Section 7.1(g). The Mortgagor agrees that the Mortgagee may at any time apply to the bankruptcy court for an extension of any time period for the assumption of the Ground Lease by the Mortgagor and that the protection of the Mortgagee's security interest in the Ground Lease shall be deemed sufficient cause for such extension. The Mortgagor agrees

UNOFFICIAL COPY

that, if for any reason the Ground Lease is rejected pursuant to the provisions of Section 365 of the Bankruptcy Code or any Comparable Provisions, the Mortgagor will not take the position that such rejection is a termination of the Ground Lease.

(h) No release or forbearance of any of the Mortgagor's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, including without limitation the Mortgagor's obligations with respect to the payment of rent as provided for in the Ground Lease and the performance of any of the terms, provisions, covenants, conditions and agreements contained in the Ground Lease, shall release the Mortgagor from any of the Mortgagor's obligations under this Mortgage or any of the other Loan Documents. The lien of this Mortgage attaches to all of the Mortgagor's rights and remedies at any time arising under or pursuant to Section 365(h) of the Bankruptcy Code or any Comparable Provisions, including, without limitation, all of the Mortgagor's rights to remain in possession of the Property.

(i) If the Ground Lease is rejected in a case of the Ground Lessor pursuant to the Bankruptcy Code or any Comparable Provisions, the Mortgagor agrees that it will not, without the written consent of the Mortgagee, elect to treat the Ground Lease as terminated but will instead elect to remain in possession of the Leasehold Estate to the maximum extent provided in Section 365(h)(1) and (2) of the Bankruptcy Code or any Comparable Provisions. In addition to the Leasehold Estate and all other interests specified herein, the lien of this Mortgage specifically attaches to, and shall encumber, the Mortgagor's right to use and possession of the Property if the Ground Lessor rejects the Ground Lease. To the extent any such claims may exist, the Mortgagor hereby unconditionally assigns, transfers and sets over to the Mortgagee all of the Mortgagor's claims and rights to the payment of damages arising from any rejection of the Ground Lease under the Bankruptcy Code. The Mortgagee shall have the right to proceed in its own name or in the name of the Mortgagor with respect to any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute, to the exclusion of the Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case filed by or against the Ground Lessor. Any amounts received by the Mortgagee as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to all costs and expenses of the Mortgagee (including, without limitation, reasonable attorneys' fees) incurred in connection with the exercise of any of its rights or remedies hereunder and then to reduce the unpaid Indebtedness in such order as the Mortgagee may determine. The Mortgagor shall promptly make, execute, acknowledge and deliver, in form and substance satisfactory to the Mortgagee, all such additional instruments, agreements and other documents, as may at any time hereafter be required by the Mortgagee to effectuate and carry out the assignment made pursuant to this Section 7.1 and the provisions of the other Loan Documents.

(j) If any action, proceeding, motion or case under the Bankruptcy Code or any Comparable Provisions shall be commenced or filed in respect of the Ground Lessor or the Leasehold Estate, the Mortgagee shall have the option, to the exclusion of the Mortgagor, exercisable upon notice from the Mortgagee to the Mortgagor, to conduct and control any such litigation with counsel of the Mortgagee's choice. The Mortgagee may proceed in its own name or in the name of the Mortgagor in connection with any such litigation, and the Mortgagor agrees to execute any and all powers, authorizations, consents or other documents required by the Mortgagee in connection therewith. The Mortgagor shall, upon demand, pay to the Mortgagee

UNOFFICIAL COPY

all costs and expenses (including reasonable attorneys' fees) paid or incurred by the Mortgagee in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by the Mortgagor as aforesaid shall be secured by the lien of this Mortgage and shall be added to the Indebtedness. The Mortgagor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Ground Lease in any such case without the prior written consent of the Mortgagee.

(k) Immediately upon receiving notice that the Ground Lessor intends to offer for sale in connection with any proceeding under the Bankruptcy Code (whether by Section 363, Section 365 or otherwise) or any Comparable Provisions, the fee interest in the Land, free of the interest of the Ground Lease, then the Mortgagor shall give the Mortgagee written notice thereof within three (3) days, but in all events not later than five (5) court days before the deadline for filing an objection to any motion for such sale.

(l) The Mortgagor shall use commercially reasonable efforts to obtain and deliver to the Mortgagee, at the Mortgagor's sole cost and expense, within twenty (20) days after written request by the Mortgagee, an estoppel certificate from the Ground Lessor setting forth (i) the name of the tenant under the Ground Lease, (ii) that the Ground Lease has not been modified and is in full force and effect (or if there have been modifications or some respect in which the same is not in full force and effect, that the same is in full force and effect, as modified or otherwise qualified and stating the modifications and qualifications) and that attached to the estoppel certificate is a complete, true and accurate copy of the Ground Lease and all amendments thereto and that there does not exist any other documents or agreements between Ground Lessor and Mortgagor, (iii) the rent payable under the Ground Lease, (iv) the date to which all rental charges have been paid by tenant under the Ground Lease, (v) whether there are any alleged defaults by tenant under the Ground Lease and, if so, setting forth the nature thereof in reasonable detail, or event which with the giving of notice or the passing of time would constitute a default by Mortgagor under the Ground Lease, and (vi) as to such other matters as the Mortgagee may reasonably request, including without limitation such matters as are set forth in the Ground Lease Estoppel executed by the Ground Lessor on or about the date hereof in connection with the Loan.

(m) Notwithstanding anything to the contrary contained herein or in any other Loan Document, neither this Mortgage nor any other Loan Document shall constitute an assignment of the Ground Lease and the Mortgagee shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage and the other Loan Documents.

(n) The assignments contained in this Section 7.1 are coupled with an interest, are present, irrevocable and unconditional, and shall continue in effect until all of the Indebtedness shall have been satisfied and discharged in full.

(o) If Mortgagor acquires the fee or any other interest in any of Land or Improvements, such acquired interest shall immediately become subject to the lien of this Mortgage as fully and completely, and with the same effect, as if Mortgagor now owned it and as if this Mortgage specifically described it, without need for the delivery and/or recording of a supplement to this Mortgage or any other instrument. In the event of any such acquisition, the fee and leasehold interests in such Land or Improvements, unless Mortgagee elects otherwise in

UNOFFICIAL COPY

writing, remain separate and distinct and shall not merge, notwithstanding any principle of law to the contrary.

(p) If the Ground Lease is for any reason whatsoever terminated before the expiration of its term and, pursuant to any provision of such Ground Lease, Mortgagee or its designee shall acquire from Ground Lessor a new lease of the relevant leased premises, then Mortgagor shall have no right, title or interest in or to such new lease or the estate created thereby.

ARTICLE 8 MISCELLANEOUS

Section 8.1 Notices. Any notice required or permitted to be given under this Mortgage shall be given in the manner described in the Loan Agreement.

Section 8.2 Covenant Running with the Land. All representations, warranties, covenants and Obligations contained in the Loan Agreement are incorporated herein by this reference and, to the extent relating to the Property, are intended by the parties to be, and shall be construed as, covenants running with the land. All persons or entities who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 8.3 Attorney-in-Fact. To the extent permitted by applicable law, Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which appointment is irrevocable and coupled with an interest, after the occurrence and during the continuance of an Event of Default (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within 10 days after receipt of written request by Mortgagee, (b) upon the issuance of a deed or assignment of lease pursuant to the foreclosure of this Mortgage or the delivery of a deed or assignment of lease in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed or the assignee of any such assignment of lease and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Collateral, and (d) to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be included in the Indebtedness and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action that it is empowered to take under this Section.

Section 8.4 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns.

UNOFFICIAL COPY

Section 8.5 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 8.6 Subrogation. To the extent proceeds of the Notes have been used to extinguish, extend or renew any indebtedness against the Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Property and held by the holder of such indebtedness and shall have the benefit of the priority of all of the same, and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

Section 8.7 Loan Agreement. If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern.

Section 8.8 Release. Upon payment in full of the Indebtedness and performance in full of all of the outstanding Obligations, the estate hereby granted shall cease, terminate and be void and Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage or assign this Mortgage, in each case in accordance with the Loan Agreement. If Mortgagee is unable to deliver the original notes in connection with any assignment of the Mortgage and Loan Documents, it shall deliver a lost note affidavit (with customary indemnity) in form and substance reasonably acceptable to Mortgagor, the new lender and the title company issuing any new lender's title policy, but such lost note affidavit shall not include any representations, warranties or covenants on behalf of the Mortgagee.

Section 8.9 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of, and hereby waives, any appraisal, valuation, stay, marshaling of assets, exemption, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

Section 8.10 Waiver of Jury Trial; Consent to Jurisdiction. (a) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR ANY DEALINGS, CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS BY EITHER OF THEM RELATING TO THE SUBJECT MATTER OF THIS MORTGAGE. THE SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS

UNOFFICIAL COPY

MORTGAGE. MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE FURTHER WARRANT AND REPRESENT THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS MORTGAGE, OR ANY OTHER LOAN DOCUMENTS OR AGREEMENTS RELATING TO THIS MORTGAGE. IN THE EVENT OF LITIGATION, THIS MORTGAGE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(b) MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE HEREBY CONSENT FOR THEMSELVES AND MORTGAGOR HEREBY CONSENTS IN RESPECT OF ITS PROPERTIES, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY. MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE FURTHER CONSENT, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE IN WHICH ANY OF THE COLLATERAL IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO SUCH COLLATERAL. MORTGAGOR AND MORTGAGEE FURTHER IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH IN SECTION 10.2 OF THE LOAN AGREEMENT IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE HEREBY IRREVOCABLY WAIVE ANY OBJECTION THAT THEY MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF MORTGAGEE TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST MORTGAGOR IN ANY JURISDICTION.

Section 8.11 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify, limit or define, or be used in construing, the scope, intent or text of such Articles, Sections or Subsections.

UNOFFICIAL COPY

Section 8.12 Governing Law. THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE LAND IS LOCATED. WITH RESPECT TO ANY PERSONAL PROPERTY INCLUDED IN THE "PROPERTY", THE CREATION OF THE SECURITY INTEREST THEREIN SHALL BE GOVERNED BY THE UCC, AND THE PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION AND PRIORITY OF SUCH SECURITY INTEREST SHALL BE GOVERNED IN ACCORDANCE WITH THE MANDATORY CHOICE OF LAW RULES SET FORTH IN THE UCC.

Section 8.13 General Indemnity; Payment of Expenses. Section 10.17 of the Loan Agreement is incorporated by this reference, as if fully set forth herein.

Section 8.14 Entire Agreement. This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor pertaining to the subject matter hereof and thereof and supersede all prior agreements, understandings, representations or other arrangements, whether express or implied, written or oral, between such parties relating to the subject matter hereof and thereof. This Mortgage and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 8.15 Severability. If any provision of this Mortgage is invalid or unenforceable, then such provision shall be given full force and effect to the fullest possible extent, and all of the remaining provisions of this Mortgage shall remain in full force and effect and shall be binding on the parties hereto.

Section 8.16 Reserved.

Section 8.17 Lien Absolute. Mortgagor acknowledges that this Mortgage and a number of other Loan Documents and those documents required by the Loan Documents together secure the Indebtedness. Mortgagor agrees that, to the extent permitted by law, the lien of this Mortgage and all obligations of Mortgagor hereunder shall be absolute and unconditional and shall not in any manner be affected or impaired by:

(a) any lack of validity or enforceability of the Loan Agreement or any other Loan Document, any agreement with respect to any of the Indebtedness or Obligations or any other agreement or instrument relating to any of the foregoing;

(b) any acceptance by Mortgagee of any security for or guarantees of any of the Indebtedness;

(c) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any of the Indebtedness or any of the collateral security therefor, including the Loan Documents, or due to any other circumstance that might otherwise constitute a defense available to, or a discharge of, Mortgagor in respect of the Indebtedness and Obligations hereby secured or any collateral security therefor, including the Loan Documents, or due to any other circumstance that might otherwise constitute a defense available to, or a discharge of, Mortgagor in respect of the Indebtedness or Obligations or this Mortgage (other than the indefeasible payment in full in cash of all the Indebtedness and Obligations hereby secured);

UNOFFICIAL COPY

(d) any change in the time, manner or place of payment of, or in any other term of, all or any of the Indebtedness or Obligations;

(e) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, nonperfection, renewal, extension, indulgence, alteration, exchange, modification or disposition of any of the Indebtedness or Obligations hereby secured or of any of the collateral security therefor;

(f) any amendment or waiver of or any consent to any departure from the Loan Agreement or any other Loan Documents or of any guaranty thereof, if any, and Mortgagee may in its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Loan Documents without first exercising or enforcing any of its rights and remedies hereunder; and

(g) any exercise of the rights or remedies of Mortgagee hereunder or under any or all of the Loan Documents.

Section 8.18 Real Estate Taxes. Mortgagor shall not be entitled to any credit upon the Indebtedness or deduction from the assessed value of the Property by virtue of payment of real estate taxes on the Property. If any law or regulation applicable to Mortgagee, any Note, any of the Property or this Mortgage is enacted that deducts from the value of property for the purpose of taxation any Lien thereon, or imposes upon Mortgagee the payment of the whole or any portion of the taxes or assessments or charges or Liens required by any of the Loan Documents to be paid by Mortgagor, or changes in any way the laws or regulations relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect the Mortgage, the Indebtedness or Mortgagee, then Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or Liens, or reimburse Mortgagee for any amounts paid by Mortgagee, provided that this Section 8.18 shall not apply to any income or similar taxes of Mortgagee. If in the opinion of Mortgagee's counsel it might be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, Mortgagee may elect to declare all of the Indebtedness to be due and payable 90 days from the giving of written notice by Mortgagee to Mortgagor.

Section 8.19 Incorporation by Reference. (a) All obligations of Mortgagor under this Mortgage shall be limited by the provisions of Section 10.19 of the Loan Agreement, the provisions of which are incorporated herein by this reference.

(b) The parties hereby acknowledge that the Loan Agreement, among other things, contains restrictions on the prepayment of the Indebtedness, as well as restrictions on the sale, transfer and encumbrance of the Property and the ownership interests of Mortgagor.

Section 8.20 State Specific Provisions. The provisions of Exhibit B attached hereto are hereby incorporated by reference as though set forth in full herein.

Section 8.21 Last Dollars Secured. The parties agree that any payments or repayments of the Indebtedness shall be and be deemed to be applied first to the portion of the

UNOFFICIAL COPY

Indebtedness that is not secured hereby, if any, it being the parties' intent that the portion of the Indebtedness last remaining unpaid shall be secured hereby.

Section 8.22 Mortgage Recording Taxes. Mortgagor hereby covenants to pay any and all mortgage recording or other taxes or fees due in connection with this Mortgage.

Section 8.23 Multiple Exercise of Remedies. To the extent permitted by law, Mortgagor specifically consents and agrees that Mortgagee may exercise rights and remedies hereunder and under the other Loan Documents separately or concurrently and in any order that Mortgagee may deem appropriate.

Section 8.24 Rules of Construction. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require. All references to sections, schedules and exhibits are to sections, schedules and exhibits in or to this Mortgage unless otherwise specified. Unless otherwise specified: (i) all meanings attributed to defined terms in this Mortgage shall be equally applicable to both the singular and plural forms of the terms so defined, (ii) "including" means "including, but not limited to" and "including, without limitation" and (iii) the words "hereof," "herein," "hereby," "hereunder" and words of similar import when used in this Mortgage shall refer to this Mortgage as a whole and not to any particular provision, article, section or other subdivision of this Mortgage.

Section 8.25 Counterparts; Facsimile Signatures. This Mortgage may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Any counterpart delivered by facsimile, pdf or other electronic means shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Mortgage.

Mortgagor hereby acknowledges receipt of a true copy of the within Mortgage.

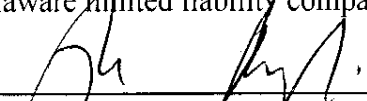
[No further text on this page; Signature page follows]

UNOFFICIAL COPY

EXECUTED as of the date first above written.

MORTGAGOR:

SOUTH RIVERSIDE BUILDING LLC,
a Delaware limited liability company

By: 

Name: Joseph Mizrahi
Title: Managing Member
Authorized Signature

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDER OF DEEDS**

UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF New York)
COUNTY OF New York) SS.

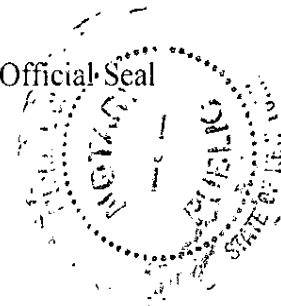
On the 14 day of November in the year 2017, before me, the undersigned, a Notary Public in and for said state, personally appeared Joseph Mirachi, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the person(s), or the entity, in its capacity(ies) above noted, upon behalf of which the person(s) acted, executed the instrument.

Signature: _____

Name: Michael Chan

MICHAEL CHAN
Notary Public, State of New York
No. 01CH6120938
Qualified in New York County
Commission Expires January 3, 2021

Official Seal



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

THE REAL PROPERTY IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT 7 (EXCEPT THE WEST 122.53 FEET THEREOF) IN RAILROAD COMPANIES' RESUBDIVISION OF BLOCKS 62 TO 76, BOTH INCLUSIVE, BLOCK 78, PARTS OF BLOCKS 61 AND 77 AND CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO, A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 29, 1924 IN BOOK 188 ON PAGES 11 TO 28, BOTH INCLUSIVE, AS DOCUMENT NUMBER 8339751 (EXCEPTING THEREFROM THAT PART THEREOF LYING BELOW OR BENEATH THE AIR RIGHTS LIMITING PLANE OR ELEVATION SET FORTH IN APPENDIX "B" TO LEASE RECORDED OCTOBER 2, 1980 AS DOCUMENT 25607453 AND WHICH IS INDICATED IN SAID APPENDIX "B" TO BE 32 FEET 10 INCHES ABOVE CHICAGO CITY DATUM), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

ALL LAND AND SPACES BELOW THE AIR RIGHTS LIMITING PLANE DESCRIBED IN PARCEL 1 ABOVE AS ARE OCCUPIED BY COLUMNS, TRUSSES, HORIZONTAL STRUCTURAL MEMBERS, INCLUDING THE FINISHED MEZZANINE FLOOR, FOUNDATIONS AND OTHER SUPPORTS FOR THE BUILDING CONTEMPLATED UNDER THE GROUND LEASE AND SMOKE EXHAUST PLENUMS, ELEVATOR PITS, FUEL TANKS, PUMPING STATIONS AND MECHANICAL EQUIPMENT LOCATED BELOW SAID AIR RIGHTS LIMITING PLANE FOR THE PURPOSE OF SAID CONTEMPLATED BUILDING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 ABOVE FOR THE CONSTRUCTION, USE, MAINTENANCE, REPAIR, REPLACEMENT OR RENEWAL FROM TIME TO TIME OF ADEQUATE COLUMNS, TRUSSES, HORIZONTAL STRUCTURAL MEMBERS, INCLUDING THE FINISHED MEZZANINE FLOOR, FOUNDATIONS AND OTHER SUPPORTS FOR THE BUILDING CONTEMPLATED UNDER THE GROUND LEASE AND SMOKE EXHAUST PLENUMS, ELEVATOR PITS, FUEL TANKS, PUMPING STATIONS AND MECHANICAL EQUIPMENT, IN THE LAND AND SPACE BELOW THE AIR RIGHTS LIMITING PLANE DESCRIBED IN PARCEL 1 ABOVE, AS CREATED BY EASEMENT AND OPERATING AGREEMENT RECORDED JUNE 1, 2001 AS DOCUMENT 0010466784 AND CONVEYED IN MEMORANDUM OF LEASE RECORDED FEBRUARY 13, 2015 AS DOCUMENT 1504419068, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY

PARCEL 4:

A NON-EXCLUSIVE APPURTENANT EASEMENT IN FAVOR OF PARCELS 1, 2 AND 3 AS CREATED BY DEED OF EASEMENT RECORDED JANUARY 31, 1990 AS DOCUMENT NO. 90047309 AND AS AMENDED BY FIRST AMENDMENT TO DEED OF EASEMENT RECORDED OCTOBER 9, 1990 AS DOCUMENT NO. 90491486, MADE BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 17, 1983 AND KNOWN AS TRUST NO. 107292 TO GATEWAY IV JOINT VENTURE AND OTHERS, FOR THE USE OF 1,100 PUBLIC PARKING SPACES IN THE GARAGE, AS DEFINED THEREIN, WITH RIGHTS OF INGRESS AND EGRESS AND AN EASEMENT FOR THE PURPOSE OF CONSTRUCTION OF SUCH REPAIRS OR RESTORATION FOR THE PERIOD REQUIRED TO COMPLETE SUCH REPAIRS OR RESTORATION ON, OVER AND ACROSS THE FOLLOWING DESCRIBED LEGAL DESCRIPTION:

LOTS 5, 6, 7 AND 8 (EXCEPT FROM SAID LOTS THAT PART FALLING IN ALLEY) IN BLOCK 49 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

300 South Riverside PLAZA
Ch. cngo, IL 60606

UNOFFICIAL COPY

EXHIBIT B

Special Provisions for the State of Illinois

The following provisions are incorporated by reference into Section 8.20 of the attached Mortgage. If any conflict or inconsistency exists between this Exhibit B and the remainder of the attached Mortgage, this Exhibit B shall govern.

(a) ILLINOIS MORTGAGE FORECLOSURE LAW.

(i) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq. herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(ii) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon the occurrence and during the continuation of an Event of Default of Mortgagor, which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(iii) Without limiting the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, or any other provision of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Indebtedness.

(iv) Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1601(b) and 15-1602 of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

(v) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto that may become effective from time to time after the date hereof. In the event any provision of the Act that is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) WAIVERS.

(i) Mortgagor agrees, to the fullest extent that Mortgagor may lawfully so agree, that Mortgagor will not at any time insist upon or plead or in any manner

UNOFFICIAL COPY

whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Mortgagor and any of Mortgagor's successors or assigns, so long as permitted by law now or hereafter, hereby waive the benefit of all such laws. Mortgagor, to the extent permitted by law, hereby waives any and all right to have the Property marshaled upon any foreclosure of this Mortgage, or sold in inverse order of alienation, and agrees that Mortgagee or any court having jurisdiction to foreclose this Mortgage may sell the Property as an entirety. If any law now or hereafter in force referred to in this Paragraph of which Mortgagor or Mortgagor's successors or assigns might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, and such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this Paragraph.

(ii) In the event of the commencement of judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of Mortgagor, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Property subsequent to the date of this Mortgage: (a) expressly waives any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage; and (b), to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

(c) MAXIMUM AMOUNT SECURED. The maximum principal indebtedness secured by this Mortgage shall not exceed \$350,000,000.00.

(d) 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 required by this Mortgage or any other Loan Document, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property or any other collateral for the indebtedness secured hereby. 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 Property or any other collateral for the indebtedness secured hereby. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required under by this Mortgage or any other Loan Document. If Mortgagee purchases insurance for the Property or any other collateral for the indebtedness secured hereby, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the

UNOFFICIAL COPY

insurance may be added to the Mortgage indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

(e) FIXTURE FILING. This Mortgage shall also constitute a financing statement filed as a “fixture filing” for the purposes of the UCC against all of the Property that is or is to become Fixtures. For purposes of such financing statement, Mortgagor is the “debtor” and Mortgagee is the “secured party” and their respective mailing addresses are those set out forth in the first paragraph of this Mortgage. Mortgagor grants to Mortgagee a security interest in all existing and future goods which are now or in the future become fixtures relating to the Property and the proceeds thereof

(f) FUTURE ADVANCES. This Mortgage secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of execution of this Mortgage, although there may be no advance made at the time of execution hereof, and although there may be no indebtedness outstanding at the time any advance is made. The amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid principal balance of the Indebtedness at any time outstanding shall not exceed the amount referred to in this Mortgage, and the rate or rates of interest payable may vary from time to time.

(g) MATURITY DATE. The maturity date of the Indebtedness secured by this Mortgage, assuming exercise of all extension options under terms of the Loan Agreement, is November 6, 2022.

(h) LOAN MADE FOR BUSINESS PURPOSES. Mortgagor acknowledges and agrees that (a) that the indebtedness secured hereby constitutes a “business loan” within the meaning of Sections 205/4(1)(a) or (c) of Chapter 815 of the Illinois Compiled Statutes, as amended.

(i) INTEREST RATE; ADDITIONAL INTEREST. This Mortgage secures the full and timely payment of the Obligations, including, among other things, the obligation to pay interest on the unpaid principal balance at a the rate of interest provided in the Loan Agreement.

(j) PROTECTIVE ADVANCES. Without limiting any of the other terms or provisions of this Mortgage or any other Loan Documents, all reasonable advances, disbursements and/or expenditures made by Mortgagee from time to time in accordance with the terms of this Mortgage and/or any other Loan Document(s), or otherwise authorized or contemplated by the Act (or other applicable law), whether made before, during or after a foreclosure of this Mortgage, before or after judgment of foreclosure therein, before or after any sale of the Property or before, during or after the pendency of any claims, demands, proceedings, causes of action or suits related to any of the foregoing, together with applicable interest thereon (as provided for in and/or contemplated by this Mortgage, any other Loan Document(s) or applicable law), shall be secured by this Mortgage (and shall constitute part of the Obligations hereunder) and shall have the benefit of all applicable provisions of the Act (or other applicable law, as the case may be). Without in any way limiting the generality of the foregoing, any

UNOFFICIAL COPY

Mortgage reasonable advances, disbursements or expenditures described in Section 15-1302(b) of the Act that are made by Mortgagee from time to time shall have the benefit of the provisions of the Act applicable thereto, and any reasonable advances, disbursements or expenditures in the nature of "future advances", as described or defined in the Act or any other applicable Illinois law, that are made by Mortgagee from time to time shall have the benefit of the provisions of the Act or such other applicable law (as the case may be). Nothing contained in this Section 8.20 shall be deemed or construed to obligate Mortgagee to make any advance, disbursement or expenditure of any kind.

(k) RECEIVER. In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Section 15-1704 of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties and provisions for in Section 15-1704 of the Act.

[NO FURTHER TEXT ON THIS PAGE]