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1734006044

Doc# 1734006044 Fee \$112.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 12/06/2017 11:14 AM PG: 1 OF 38

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN:** 09-28-300-038-0000

Address:

Street: 1796 SHERWIN AVENUE

Street line 2:

City: DES PLAINES

State: IL

ZIP Code: 60018

Lender: SPECIAL SITUATIONS INVESTING GROUP II, LLC

Borrower: PLYMOUTH MWG 1796 SHERWIN LLC

Loan / Mortgage Amount: \$79,800,000.00

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

8982227 CB 2/4

Certificate number: 2AB36810-7C45-4B67-A124-537C762FDC6E

Execution date: 11/29/2017

Handwritten initials

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THIS INSTRUMENT WAS
PREPARED BY AND UPON
RECORDING SHOULD BE
RETURNED TO:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Benjamin R. Weber, Esq.

PIN(s): 09-23-300-038-0000

PLYMOUTH MWG 1796 SHERWIN LLC,
a Delaware limited liability company, as the Borrower

(Borrower)

to

SPECIAL SITUATIONS INVESTING GROUP II, LLC,
as administrative agent for the Lender

(Agent)

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

Dated: As of November 30, 2017

Location: 1796 Sherwin Avenue, Des Plaines, IL 60018

County: Cook

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MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "**Mortgage**") is made as of November 30, 2017, by PLYMOUTH MWG 1796 SHERWIN LLC, a Delaware limited liability company, having an address at c/o Plymouth Industrial REIT, Inc., 260 Franklin Street, 6th Floor, Boston, Massachusetts 02110, as borrower (the "**Borrower**"), for the benefit of SPECIAL SITUATIONS INVESTING GROUP II, LLC, a Delaware limited liability company, having an address at 6011 Connection Drive, Irving, Texas 75039, as administrative agent for the Lender (as defined in the Loan Agreement (as hereinafter defined)) (together with its successors and assigns, the "**Agent**").

WITNESSETH:

A. This Mortgage is given to secure a loan (the "**Loan**") in the principal amount of Seventy-Nine Million Eight-Hundred Thousand Dollars And Zero Cents (\$79,800,000.00) that was advanced to **THOSE PERSONS LISTED ON SCHEDULE 1 HERETO**, each a Delaware limited liability company, having an address at c/o Plymouth Industrial REIT, Inc., 260 Franklin Street, 6th Floor, Boston, Massachusetts 02110 (the "**Borrower Group**") pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, restated, replaced, supplemented, extended, renewed or otherwise modified from time to time, the "**Loan Agreement**"), made by and among the Borrower Group, the Lender, and the Agent and evidenced by that certain Promissory Note, of even date herewith, in the stated principal amount of Seventy-Nine Million Eight-Hundred Thousand Dollars And Zero Cents (\$79,800,000.00) (as the same may hereafter be amended, supplemented, restated, increased, extended or consolidated from time to time, the "**Note**") made and given by the Borrower Group. Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.

B. The Borrower Group desires to secure the payment of the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon and all other sums due to the Lender in respect of the Loan and the Loan Documents (the "**Debt**") and the performance of all of its other obligations under the Note, the Loan Agreement, and the other Loan Documents.

C. This Mortgage is given pursuant to the Loan Agreement, and payment, fulfillment and performance by the Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents, of even date herewith, made by the Borrower in favor of the Agent delivered in connection with this Mortgage (as the same may be amended, restated, replaced, supplemented, extended, renewed or otherwise modified from time to time, the "**Assignment of Leases**"), including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, is hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Mortgage.

NOW THEREFORE, in consideration of the making of the Loan by the Lender and the covenants, agreements, representations and warranties set forth in this Mortgage:

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ARTICLE I.

GRANTS OF SECURITY

Section 1.01 Property Mortgaged. The Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to the Agent and its successors and assigns, and creates a security interest in, all right, title, interest and estate of the Borrower now owned, or hereafter acquired, in and to the following (collectively, the “**Property**”):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the “**Land**”);

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by the Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage, deed of trust or otherwise be expressly made subject to the lien of this Mortgage;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the “**Improvements**”);

(d) Appurtenances. (i) All air, light lateral support and development now or hereafter pertaining to or used in connection with the Land, (ii) all and singular, the tenements, hereditaments, rights of way, easements, appendages and appurtenances and property now or hereafter belonging or in any way appertaining to the Land and (iii) all estate, right, title, claim or demand whatsoever, either at law or in equity, in possession or expectancy, of, in and to the Land (collectively, the “**Appurtenances**”);

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

(f) Equipment. All “equipment,” as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by the Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, appliances, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by the Borrower and any and all additions, substitutions and replacements of any of the

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foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “**Equipment**”). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants under Leases except to the extent that the Borrower shall have any right or interest therein;

(g) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by the Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property for construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, lighting, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of the Borrower’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the “**Fixtures**”).

(h) Personal Property. All furniture, fixtures (other than Fixtures), furnishings, objects of art, machinery, inventory, goods, tools, supplies, appliances, general intangibles, contract rights (including without limitation Material Contracts), accounts, accounts receivable, franchises, licenses, bonds, certificates and permits, and all other personal property of any kind or character whatsoever (as such terms are defined in, and subject to the provisions of the Uniform Commercial Code, as applicable), whether tangible or intangible (including, but not limited to: all spare parts inventories, uniforms, other inventory and similar items, chairs, desks, lamps, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, blinds, screens, paintings, hangings, pictures, divans, couches, stools, sofas, dry cleaning facilities, keys or other entry systems, radios, television sets, customary personal property associated with the ownership and operation of an industrial property, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, fittings, heating fixtures, lighting fixtures, plumbing fixtures, fire prevention and extinguishing equipment and materials and all other apparatuses, stoves, ranges, refrigerators, laundry machines, machinery, boilers, incinerators, switchboards, conduits, compressors, elevators, escalators, air conditioning and communication plants or systems with appurtenant fixtures, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers, computer equipment, calculators, adding machines, any other electronic equipment of every nature, and all other equipment, manual, mechanical or motorized for the construction, maintenance, repair and cleaning of, parking areas, walks, underground ways, truckways, driveways and common areas), other than Fixtures, which are now or hereafter

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owned by the Borrower and which are now or hereafter located within or about the Land and the Improvements, or useable in connection with the present and future operations and occupancy of the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of the Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Personal Property is located (as amended from time to time, the "**Uniform Commercial Code**"), superior in lien to the lien of this Mortgage and all proceeds and products of any of the above;

(i) Intentionally Omitted;

(j) Leases and Rents.

(i) All leases, ground leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against the Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") (collectively, the "**Leases**"), and all right, title and interest of the Borrower, its successors and assigns, therein and thereunder, together with all rights, powers, privileges, options and other benefits of the Borrower as lessor under the Leases, and to perform all other necessary or appropriate acts with respect to such Leases as agent and attorney-in-fact for the Borrower, and the right to make all waivers and agreements, to give and receive all notices, consents and releases, to take such action upon the happening of a default under any Lease, including the commencement, conduct and consummation of proceedings at law or in equity as shall be permitted under any provision of any Lease or by any law, and to do any and all other things whatsoever which the Borrower is or may become entitled to do under any such Leases, and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment and performance of the Obligations, including the payment of the Debt; and

(ii) all cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder, expressly subject to the provisions of the applicable Leases, and all rents, rent equivalents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including any utility and security deposits, subject to the terms of the applicable agreement pursuant to which each such deposit is made), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of the Borrower, Manager or their respective agents or employees from any and all sources arising from or attributable to the Land and the Improvements, including all receivables, proceeds from any tax credits earned by the Borrower or relating to the Property, and proceeds, if any, from business interruption or other

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loss of income or insurance but only to the extent the Agent elects to treat such proceeds as business or rental interruption proceeds pursuant to Section 5.4(f) of the Loan Agreement, in all cases whether paid or accruing before or after the filing by or against the Borrower of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”);

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

(l) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Property;

(m) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in Taxes or Other Charges charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction;

(n) Rights. The right, in the name and on behalf of the Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of the Agent in the Property;

(o) Agreements. All agreements, contracts, certificates, instruments, management agreements, franchises, permits, licenses, plans, specifications, all rights of the Borrower as lessee under all personal property leases with respect to the Property and other documents now or hereafter entered into (including, without limitation, any architect, expediter or engineer agreements), and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of the Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to the Borrower thereunder;

(p) Intellectual Property. To the extent assignable, all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, URLs or other online media, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(q) Accounts. All (i) accounts receivable, (ii) credit card receivables and (iii) reserves, escrows and deposit accounts maintained by the Borrower with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Loan Agreement, the Cash Management Agreement, the Deposit Account Control Agreement or any other Loan Document, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

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(r) Uniform Commercial Code Property. All documents, instruments, chattel paper and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, relating to the Property;

(s) Vegetation. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land;

(t) All Other Assets. All other accounts, general intangibles, instruments, investment property, documents, chattel paper, goods, moneys, letters of credit, letter of credit rights, certificates of deposit, deposit accounts, commercial tort claims, oil, gas and minerals, and all other property and interests in property of the Borrower, whether tangible or intangible;

(u) Proceeds. All proceeds of, and the proceeds of any sale of, any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash or in liquidation or other claims, or otherwise;

(v) Lease Guaranties. All of the Borrower's right, title and interest in, and claims under, any and all lease guaranties, letters of credit and any other credit support (individually, a "**Lease Guaranty**", and collectively, the "**Lease Guaranties**") given by any guarantor in connection with any of the Leases or leasing commissions (individually, a "**Lease Guarantor**", and collectively, the "**Lease Guarantors**") to the Borrower; and

(w) Other Rights. Any and all other rights of the Borrower in and to the items set forth in Subsections (a) through (v) above.

AND, without limiting any of the other provisions of this Mortgage, to the extent permitted by applicable law, the Borrower expressly grants to the Agent, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Land or not, shall for the purposes of this Mortgage be deemed conclusively to be real estate and mortgaged hereby.

Section 1.02 Assignment of Rents. The Borrower hereby absolutely and unconditionally assigns to the Agent all of the Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by the Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement, the Assignment of Leases, the Cash Management Agreement, each account control agreement to which the Agent and the Borrower may from time to time together be parties and Section 7.01(i) of this Mortgage, Agent grants to the Borrower a revocable license to collect, receive, use and enjoy the Rents. The Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums. The Borrower hereby authorizes and directs the lessees named in the Leases, any other future lessees or occupants of the Property and all Lease Guarantors to pay over to the Agent or to such other party as the Agent directs all Rents and all sums due under any Lease Guaranties, upon receipt from the Agent of written notice to the effect that the Agent

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is then the holder of this assignment and that an Event of Default has occurred; provided, however, Agent may only send such notices, and take such actions relative to such Rents and sums due under any Lease Guaranties, as are expressly permitted relative thereto pursuant to the terms of the Loan Agreement and the Cash Management Agreement.

Section 1.03 Security Agreement. This Mortgage is both a real property mortgage and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of the Borrower in the Property. By executing and delivering this Mortgage, the Borrower hereby grants to the Agent, as security for the Obligations, a security interest in the Fixtures, the Equipment, the Personal Property and the other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “Collateral”). The foregoing sentence is intended to grant in favor of the Agent a first priority continuing lien and security interest in all of the Borrower’s personal property. The Borrower authorizes the Agent and its counsel to file UCC financing statements in form and substance satisfactory to the Agent, describing the collateral as all assets and personal property of the Borrower, whether now owned or existing or hereafter acquired or arising and wherever located, including all accessions thereto and products and proceeds thereof, including, without limitation, all fixtures on the Land, or using words with similar effect. If an Event of Default shall occur, the Agent, in addition to any other rights and remedies which it may or shall have, may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as the Agent may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of the Agent following the occurrence of an Event of Default, the Borrower shall, at its expense, assemble the Collateral and make it available to the Agent at a convenient place (at the Land if tangible property) reasonably acceptable to the Agent. The Borrower shall pay to the Agent on demand any and all actual out-of-pocket expenses, including attorneys’ fees and costs, incurred or paid by the Agent in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence of an Event of Default. Any notice of sale, disposition or other intended action by the Agent with respect to the Collateral sent to the Borrower in accordance with the provisions hereof at least five (5) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to the Borrower. The proceeds of any disposition of the Collateral by or on behalf of the Agent, or any part thereof, may, except as otherwise required by applicable law, be applied by the Agent to the payment of the Debt in such priority and proportions as the Agent in its discretion shall deem proper. The principal place of business of the Borrower (Debtor) is as set forth on page one hereof and the address of the Agent (Secured Party) is as set forth on page one hereof.

Section 1.04 Fixture Filing. Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Mortgage, and this Mortgage, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement naming the Borrower as the Debtor and the Agent as the Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the

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Property that is or may become fixtures. As to all of the above described Property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing under the Uniform Commercial Code. This Mortgage creates a security interest in the Collateral, and, to the extent the Collateral is not real property, this Mortgage constitutes a security agreement from the Borrower to the Agent under the Uniform Commercial Code.

Name of Debtor: Plymouth MWG 1796 Sherwin LLC

Debtor's Address: 260 Franklin Street, 6th Floor, Boston, Massachusetts 02110

Debtor's Jurisdiction of Organization: Delaware

Name of Secured Party: SPECIAL SITUATIONS INVESTING GROUP II, LLC

Secured Party's Address: 6011 Connection Drive, Irving, Texas 75039

Collateral Covered by Financing Statement: As described in Section 1.3

Place of Filing: To be filed with the Cook County, Illinois Recorder of Deeds

Description of Real Property to which Collateral is Related: See attached Exhibit A

Owner of Record of the Real Property is: Debtor

Section 1.05 Pledges of Monies Held. The Borrower hereby pledges to the Agent and grants the Agent (for the benefit of the Lender) a security interest in any and all monies now or hereafter held by or on behalf of the Agent or the Lender in connection with the Loan, including, without limitation, any sums deposited in any account established pursuant to the Loan Agreement and any Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Mortgage and the other Loan Documents.

Section 1.06 Grants to the Agent. This Mortgage and the grants, assignments and transfers made to the Agent in this Article 1 shall inure to the Agent.

CONDITIONS TO GRANT

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

PROVIDED, HOWEVER, that these presents are upon the express condition that, if the Borrower shall pay and perform all the Debt and all Other Obligations at the time and in the manner provided in this Mortgage, the Note, the Loan Agreement and the other Loan Documents, and shall well and truly abide by and comply with each and every covenant and condition set forth in this Mortgage, the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that the Borrower's obligation to indemnify and hold harmless the Agent pursuant to the provisions hereof and in the other Loan Documents shall survive any such payment or termination.

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ARTICLE II.

DEBT AND OBLIGATIONS SECURED

Section 2.01 Obligations. This Mortgage and the grants, assignments and transfers made in Article I are given for the purpose of securing the Debt.

Section 2.02 Other Obligations. This Mortgage and the grants, assignments and transfers made in Article I are also given for the purpose of securing the following (collectively, the “**Other Obligations**”):

- (a) the performance of all other obligations of the Borrower contained herein;
- (b) the performance of each obligation of the Borrower contained in the Loan Agreement and in each other Loan Document; and
- (c) the performance of each obligation of the Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

Section 2.03 Debt and Other Obligations. The Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations are referred to herein collectively as the “**Obligations.**”

Section 2.04 Loan Repayment. Provided no Event of Default has occurred, this Mortgage will be satisfied and discharged of record by the Agent prior to the Maturity Date only in accordance with the terms and provisions set forth herein and in the Loan Agreement.

Section 2.05 Other Mortgages; No Election of Remedies.

(a) The Debt is now or may hereafter be secured by one or more other mortgages, deeds of trust and other security agreements (as the same may be amended, restated, replaced, supplemented, extended, renewed or otherwise modified and in effect from time to time, are herein collectively called the “**Other Mortgages**”), which cover or will hereafter cover other properties that are or may be located in various states or counties (collectively, the “**Other Collateral**”). The Other Mortgages will secure the Debt and the performance of the other covenants and agreements of the Borrower set forth in the Loan Documents. Upon the occurrence of an Event of Default, the Agent may proceed under this Mortgage and/or any or all the Other Mortgages against the Property and/or any or all of the Other Collateral in one or more parcels and in such manner and order as the Agent shall elect. The Borrower hereby irrevocably waives and releases, to the extent permitted by law, and whether now or hereafter in force, any right to have the Property and/or the Other Collateral marshaled upon any foreclosure of this Mortgage or any Other Mortgage.

(b) Without limiting the generality of the foregoing, and without limitation as to any other right or remedy provided to the Agent in this Mortgage or the other Loan Documents, in the case of an Event of Default (i) the Agent shall have the right to pursue any or all of its rights and remedies under this Mortgage and the Loan Documents, at law and/or in

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equity, in one proceeding, or separately and independently in separate proceedings from time to time, as the Agent, in its sole and absolute discretion, shall determine from time to time, (ii) the Agent shall not be required to marshal assets or to sell the Property and/or any Other Collateral in any particular order of alienation (and may sell the same simultaneously and together or separately), and also shall not be subject to any "one action" or "election of remedies" law or rule with respect to the Property and/or any Other Collateral or any other assets serving as collateral for the Obligations, (iii) the exercise by the Agent of any remedies against any one item of Property and/or any Other Collateral or in respect of any other collateral will not impede the Agent from subsequently or simultaneously exercising remedies against any other item of Property and/or Other Collateral, (iv) all liens and other rights, remedies or privileges provided to the Agent herein shall remain in full force and effect until the Agent has exhausted all of its remedies against the Property and all Property has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt, and (v) the Agent may resort for the payment of the Debt to any security held by the Agent in such order and manner as the Agent, in its discretion, may elect and the Agent may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of the Agent thereafter to foreclose this Mortgage.

(c) Without notice to or consent of the Borrower and without impairment of the lien and rights created by this Mortgage, except as may otherwise be expressly provided in the Loan Documents, the Agent may, at any time (in its sole and absolute discretion, but the Agent shall have no obligation to), execute and deliver to the Borrower a written instrument releasing all or a portion of the lien of this Mortgage as security for any or all of the obligations of the Borrower now existing or hereafter arising under or in respect of the Note, the Loan Agreement and each of the other Loan Documents, whereupon, following the execution and delivery by the Agent to the Borrower of any such written instrument of release, this Mortgage shall no longer secure such obligations of the Borrower so released.

ARTICLE III.

BORROWER COVENANTS

The Borrower covenants and agrees that throughout the term of the Loan:

Section 3.01 Payment of Debt. The Borrower will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note, this Mortgage and the other Loan Documents.

Section 3.02 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note, and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. In the event of any conflict or other inconsistency between the provisions of the Loan Agreement and the provisions of this Mortgage, the provisions of the Loan Agreement shall control. Without limiting the generality of the foregoing, the Borrower (i) agrees to insure, repair, maintain and restore damage to the Property, pay Taxes and Other Charges, and comply with Legal Requirements, in accordance with the Loan Agreement, and

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(ii) agrees that the Insurance Proceeds and Awards shall be settled, held, applied and/or disbursed in accordance with the Loan Agreement.

Section 3.03 Insurance. The Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to the Borrower and the Property as required pursuant to the Loan Agreement.

Section 3.04 Maintenance of Property. The Borrower shall cause the Property to be maintained in a good and safe condition and repair, reasonable wear and tear excepted and provided that maintenance following a casualty or condemnation shall be as provided in the Loan Agreement. The Improvements, the Fixtures, the Equipment and the Personal Property, once installed, shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of the Agent or as otherwise may be expressly permitted under the Loan Agreement. The Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty, or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

Section 3.05 Waste. The Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, take any action that might invalidate or allow the cancellation of any Policy, do or permit to be done thereon anything that may in any way materially impair the value, use or utility of the Property or the security of this Mortgage. The Borrower will not, without the prior written consent of the Agent, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.06 Payment for Labor and Materials. Subject to the contest rights expressly permitted under the Loan Agreement and solely to the extent the same are pursued in accordance thereunder, the Borrower shall (i) promptly pay when due all bills and costs for labor, services, equipment, work, supplies, and materials, including specifically fabricated materials, and other items that may, if unpaid, become a Lien under applicable laws ("**Labor and Material Costs**") incurred by or on behalf of the Borrower in connection with the Property, (ii) never permit to exist beyond the due date thereof in respect of the Property, or any part thereof, any Lien or security interest, even though inferior to the Liens and security interests created hereby and by the other Loan Documents, and (iii) never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest in each case except for Permitted Encumbrances and such other Liens or security interests, if any, as are expressly permitted by the terms of the Loan Agreement.

Section 3.07 Performance of Other Agreements. The Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by the Borrower pursuant to the Loan Agreement, each other Loan Document and each other agreement or recorded instrument affecting or pertaining to the Property, and any amendments, modifications or changes thereto.

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Section 3.08 Change of Name, Identity or Structure. The Borrower shall not change its name, identity (including its trade name or names) or, if not an individual, its own corporate, limited liability company, partnership or other structure without notifying the Agent of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in its structure, without first obtaining the prior written consent of the Agent, except as may otherwise be permitted pursuant to Section 5.2.10 of the Loan Agreement. The Borrower shall execute and deliver to the Agent, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by the Agent to establish or maintain the validity, perfection and priority of the security interests granted herein. At the request of the Agent to the Borrower from time to time, the Borrower shall execute a certificate in form reasonably satisfactory to the Agent listing the trade names under which the Borrower is operating or intends to operate the Property, and representing and warranting that the Borrower does business under no other trade name with respect to the Property.

Section 3.09 Title. The Borrower represents and warrants to the Agent that (i) the Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of such Property, free and clear of all Liens whatsoever except the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents; (ii) this Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority Lien on the Property, subject only to the Permitted Encumbrances and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty for which perfection may be achieved by the filing of such financing statement, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents; and (iii) to Borrower's knowledge, there are currently no claims for payment for Labor and Material Costs affecting the Property which are past due and are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents. The foregoing representations and warranties shall remain true and correct throughout the term of the Loan.

ARTICLE IV.

OBLIGATIONS AND RELIANCES

Section 4.01 Relationship of the Borrower and the Agent. The relationship between the Borrower, on the one hand, and the Lender and/or the Agent, on the other hand, is solely that of debtor and creditor, and the Lender and the Agent have no fiduciary or other special relationship with the Borrower, and no term or condition of any of the Loan Agreement, the Note, this Mortgage or the other Loan Documents shall be construed so as to deem the relationship between the Borrower and the Agent or the Borrower and any Lender to be other than that of debtor and creditor.

Section 4.02 No Reliance on the Agent. The general partners, members, principals and (if the Borrower is a trust) beneficial owners of the Borrower, as applicable, are experienced in

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the ownership and operation of properties similar to the Property, and the Borrower and the Agent are relying solely upon such expertise and business acumen in connection with the ownership and operation of the Property. The Borrower is not relying on the Agent's expertise, business acumen or advice in connection with the Property.

Section 4.03 No Agent Obligations.

(a) Notwithstanding the provisions of Subsections 1.01(i) and (n) or Section 1.02, the Agent is not undertaking the performance of (i) any obligations under the Leases, or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to the Agent pursuant to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, the Agent shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by the Agent.

Section 4.04 Reliance. The Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Mortgage and the other Loan Documents, the Agent is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 4 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by the Agent; that such reliance existed on the part of the Agent prior to the date hereof; that the warranties and representations are a material inducement to the Agent in making the Loan; and that the Agent would not be willing to make the Loan and accept this Mortgage in the absence of the warranties and representations as set forth in Article 4 of the Loan Agreement.

ARTICLE V.

FURTHER ASSURANCES

Section 5.01 Recording of Mortgage, Etc. The Borrower forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of the Agent in, the Property. The Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Mortgage, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any

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deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do.

Section 5.02 Further Acts. Etc. The Borrower will, at the cost of the Borrower, and without expense to the Agent or the Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as the Agent shall, from time to time, reasonably request for the better assuring, conveying, assigning, transferring, and confirming unto the Agent the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which the Borrower may be or may hereafter become bound to convey or assign to the Agent, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, or for complying with all Legal Requirements. The Borrower, on written demand by the Agent, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes the Agent to execute in the name of the Borrower or without the signature of the Borrower to the extent the Agent may lawfully do so, one or more financing statements to evidence more effectively the security interest of the Agent in the Property. The Borrower grants to the Agent an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to the Agent at law and in equity, including, without limitation, such rights and remedies available to the Agent pursuant to this Section 5.02.

Section 5.03 Changes in Tax, Debt, Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or the Agent's interest in the Property, the Borrower will pay the tax, with interest and penalties thereon, if any. If the Agent is advised by counsel chosen by it that the payment of tax by the Borrower would be unlawful or taxable to the Agent and/or the Lender or unenforceable or provide the basis for a defense of usury, then the Agent shall have the option to declare the Debt immediately due and payable.

(b) The Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, the Agent shall have the option to declare the Debt immediately due and payable.

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

Section 5.04 Splitting of the Mortgage. Subject to the terms and conditions contained in the Loan Agreement, this Mortgage and the Note may, at any time until the same shall be fully

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paid and satisfied, at the sole election of the Agent, be split or divided into two or more notes and two or more mortgages, in such denominations as the Agent shall determine in its sole discretion (subject to the following sentence), each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, subject to the terms and conditions contained in the Loan Agreement, the Borrower, upon written request of the Agent, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to the Agent, the Lender and/or their designee or designees, substitute notes and mortgages in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses substantively similar to those contained herein and in the Note, and such other documents and instruments as may be required by the Agent.

Section 5.05 Replacement Documents. Upon receipt of an affidavit of an officer of the Agent as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of the Note or a replacement of such other Loan Document, the Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

ARTICLE VI.

DUE ON SALE/ENCUMBRANCE

Section 6.01 Agent Reliance. The Borrower acknowledges that the Agent has examined and relied on the experience of the Borrower and its general partners, members, principals and (if the Borrower is a trust) beneficial owners in owning and operating properties such as the Property and other Borrower Related Parties in agreeing to make the Loan, and will continue to rely on the Borrower's ownership of the Property as a means of maintaining the value of the Property as security for the payment and performance of the Obligations, including the repayment of the Debt. The Borrower acknowledges that the Agent has a valid interest in maintaining the value of the Property so as to ensure that, should the Borrower default in the payment and/or performance of the Obligations, including the repayment of the Debt, the Agent can recover the Debt by a sale of the Property.

Section 6.02 No Transfer. The Borrower shall not cause, permit or suffer any Transfer to occur except in accordance with the terms of the Loan Agreement.

ARTICLE VII.

RIGHTS AND REMEDIES UPON DEFAULT

Section 7.01 Remedies. At any time following the occurrence of an Event of Default, the Borrower agrees that the Agent may, at its option, take such action, without notice or demand, as it deems advisable to protect and enforce its rights against the Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued

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

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete or partial foreclosure of this Mortgage, either by judicial action or by any other means available under applicable law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Mortgage for the balance of the Obligations not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of the Borrower therein and rights of redemption thereof, by judicial action, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof, all as may be required or permitted by law; and, without limiting the foregoing:
 - (i) in connection with any sale or sales hereunder, the Agent shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, the Agent shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;
 - (ii) the Agent shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if the Agent so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by the Agent and the Agent is hereby authorized and empowered to conduct any such sale of any Real Property, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to Real Property;
 - (iii) should the Agent elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Agent has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of the Real Property, the Agent shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property, each as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be

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required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on the Borrower, the Agent at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. The Agent may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale; and

(iv) if the Property consists of several lots, parcels or items of property, the Agent shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner the Agent designates. Any Person, including the Borrower or the Agent, may purchase at any sale hereunder. Should the Agent desire that more than one sale or other disposition of the Property be conducted, the Agent shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as the Agent may designate, and no such sale shall terminate or otherwise affect the Lien of this Mortgage on any part of the Property not sold until all the Obligations have been satisfied in full. In the event the Agent elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, the Borrower agrees to pay the actual out-of-pocket costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, in the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Borrower, any guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof;

(h) the license granted to the Borrower under Section 1.02 hereof shall automatically be revoked and the Agent may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess the Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude the Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and the Borrower agrees to surrender possession of the Property and of such books, records and accounts to the Agent upon demand, and thereupon the Agent may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as the Agent deems advisable; (iii) make any alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of the Borrower with respect to the Property, whether in the name of the Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants and demand, sue for, collect and receive all Rents of the Property and

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every part thereof; (v) require the Borrower to pay monthly in advance to the Agent, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by the Borrower; (vi) require the Borrower to vacate and surrender possession of the Property to the Agent or to such receiver and, in default thereof, the Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment and performance of the Obligations (including, without limitation, the payment of the Debt), in such order, priority and proportions as the Agent shall deem appropriate in its sole discretion after deducting therefrom all expenses (including attorneys' fees and costs) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as reasonable compensation for the services the Agent, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and/or the Personal Property, or any part thereof, and to take such other measures as the Agent may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request the Borrower, at its sole cost and expense, to assemble the Fixtures, the Equipment and/or the Personal Property and make it available to the Agent at a convenient place acceptable to the Agent. Any notice of sale, disposition or other intended action by the Agent with respect to the Fixtures, the Equipment and/or the Personal Property sent to the Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to the Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of the Agent in accordance with the terms of the Loan Agreement, this Mortgage or any other Loan Document to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) amortization of the unpaid principal balance of the Note; and/or

(v) all other sums payable pursuant to the Note, the Loan Agreement, this Mortgage and the other Loan Documents and advances made by the Agent pursuant to the terms of this Mortgage;

(k) pursue such other remedies as may be available at law or in equity; and/or

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as the Agent shall deem to be appropriate in its sole discretion.

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In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a Lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.02 Application of Proceeds. The purchase money proceeds and avails of any disposition of the Property or any part thereof, or any other sums collected by the Agent pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by the Agent to the payment of the Obligations in such priority and proportions as the Agent in its discretion shall deem proper, to the extent consistent with law.

Section 7.03 Right to Cure Defaults. Following the occurrence of any Event of Default or if the Borrower fails to make any payment or to do any act as herein provided, the Agent may, but without any obligation to do so and without notice to or demand on the Borrower and without releasing the Borrower from any obligation hereunder, perform the obligations in Default in such manner and to such extent as the Agent may deem necessary to protect the security hereof. The Agent is authorized to enter upon the Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate, shall constitute a portion of the Debt and shall be due and payable to the Agent upon demand. All such costs and expenses incurred by the Agent or the Lender in remedying any Event of Default or such failed payment or act or in appearing in, defending or bringing any such action or proceeding, as herein provided, shall bear interest at the Default Rate for the period after notice from the Agent that such cost or expense was incurred to the date of payment to the Agent, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to the Agent upon demand.

Section 7.04 Actions and Proceedings. The Agent has the right to appear in and defend any action or proceeding brought with respect to the Property and, if the Borrower should fail to do so after prior written notice from the Agent and the expiration of fifteen (15) Business Days (or such lesser time as may be required to preserve the Agent's rights), to bring any action or proceeding to protect its interests in the Property, in the name and on behalf of the Borrower, which the Agent, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.05 Recovery of Sums Required To Be Paid. The Agent shall have the right, from time to time, to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of the Agent thereafter to bring an action of foreclosure, or any other action, for any Event of Default by the Borrower existing at the time such earlier action was commenced.

Section 7.06 Examination of Books and Records. At reasonable times and upon reasonable prior written notice, the Agent, its agents, accountants and attorneys, shall have the right to examine the records, books and management and other papers of the Borrower which reflect upon their financial condition, either at any Property or at any office regularly maintained by the Borrower where such books and records are located. The Agent shall have the right to

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make copies and extracts from the foregoing records and other papers and to share such information with an assignee (or proposed assignee), participant (or proposed participant), underwriter, investor (or proposed investor), lender (or proposed lender), accountants, and/or attorneys, representatives employees or agents of any of the foregoing, and anyone else permitted to receive such information under the Loan Agreement, provided that the Agent informs any such Person, prior to the disclosure of non-public or confidential information, of the confidentiality of any non-public or confidential information received by it. In addition, at reasonable times and upon reasonable prior written notice the Agent, its agents, accountants and attorneys shall have the right to examine and audit the books and records of the Borrower pertaining to the income, expenses and operation of any Property during reasonable business hours at any office of the Borrower where the books and records are located. This Section 7.06 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred.

Section 7.07 Other Rights, Etc.

(a) The failure of the Agent to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. The Borrower shall not be relieved of the Borrower's obligations hereunder by reason of (i) the failure of the Agent to comply with any request of the Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by the Agent extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on the Borrower, and the Agent shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by the Agent shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in the Agent's possession.

(c) The Agent may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Debt) to any other security held by the Agent in such order and manner as the Agent, in its discretion, may elect. The Agent may take action to recover the Debt, or any portion thereof, or to enforce the Other Obligations or any covenant hereof, without prejudice to the right of the Agent thereafter to foreclose this Mortgage. The rights of the Agent under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of the Agent shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. The Agent shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.08 Right to Release Any Portion of the Property. The Agent may release any portion of the Property for such consideration as the Agent may require without, as to the

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remainder of the Property, in any way impairing or affecting the Lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by the Agent for such release, and the Agent may accept by assignment, pledge or otherwise any other property in place thereof as the Agent may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a Lien and security interest in the remaining portion of the Property.

Section 7.09 Violation of Laws. If any Property is not in compliance with all Legal Requirements, the Agent may impose additional requirements upon the Borrower in connection herewith reasonably necessary to address any noncompliance, including, without limitation, monetary reserves or financial equivalents.

Section 7.10 Recourse and Choice of Remedies. The provisions of Section 9.3 of the Loan Agreement are hereby incorporated by reference as if set forth at length herein. Notwithstanding any other provision of this Mortgage, the Loan Agreement or the other Loan Documents, including, without limitation, Section 9.3 of the Loan Agreement, the Agent and the other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of (i) the Borrower contained in the Loan Documents and (ii) to the extent that the obligation is one which is the responsibility of a guarantor or indemnitor pursuant to any guaranty or indemnity signed by such guarantor or indemnitor, any guarantor or indemnitor with respect to such instrument, in each case without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any Property, through foreclosure, acceptance of a deed in lieu of foreclosure or otherwise, and in the event the Agent or the Lender commences a foreclosure action against any Property, the Agent shall be entitled to pursue a deficiency judgment against (i) the Borrower with respect to the Loan, and (ii) any guarantor or indemnitor with respect to their respective obligations under the Loan Documents (if any), in each case as applicable. The liability of the Borrower with respect to the Obligations is not limited to the aggregate original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent the Agent from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Mortgage and/or the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against the Borrower with respect to the Obligations, whether or not an action is brought against any other Person and whether or not any other Person is joined in such action or actions. In addition, the Agent shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the Environmental Indemnity.

Section 7.11 Right of Entry. To the extent permitted by and in accordance with the Loan Documents and applicable law, the Agent and its agents shall have the right to enter and inspect the Property at all reasonable times upon reasonable advance notice (which may be given verbally and shall not be required in the event of an emergency).

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ARTICLE VIII.

INDEMNIFICATION

Section 8.01 General Indemnification. The provisions of Section 11.7 of the Loan Agreement are hereby incorporated by reference as if set forth at length herein.

Section 8.02 Mortgage and/or Intangible Tax. The Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages (excluding consequential, punitive and special damages), losses, costs, expenses, diminution in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, of whatever kind or nature (including, but not limited, to attorneys' fees and other costs of defense) (collectively, the "Losses") imposed upon, actually incurred by or asserted against any Indemnified Parties to the extent arising out of any tax on the making and/or recording of this Mortgage, but excluding any income, franchise or other similar taxes. For purposes of this Mortgage, the term "Indemnified Parties" means (a) the Agent, the Lender and any Person who is or will have been involved in the origination of the Loan, (b) any Person who is or will have been involved in the servicing of the Loan, (c) any Person in whose name the encumbrance created by this Mortgage is or will have been recorded, (d) Persons who may hold or acquire, or will have held, a full or partial interest in the Loan (including, but not limited to, custodians, trustees and other fiduciaries who hold, have held or may hold a full or partial interest in the Loan for the benefit of third parties), and (e) the respective directors, officers, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, but not limited to, any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and any successors by merger, consolidation or acquisition of all or a substantial portion of Agent's assets and business). Notwithstanding anything to the contrary contained herein, the following Persons shall not be Indemnified Parties and shall not be entitled to any benefit or rights hereunder or under any other Loan Document; (i) any Person who is not affiliated with the Agent who acquires the Property at any time at or following a foreclosure or deed in lieu of foreclosure, or (ii) any Person holding any interest in the Property (as owner, tenant or otherwise) through a Person described in clause (i), above.

Section 8.03 ERISA Indemnification. The Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in the Agent's sole discretion) that the Agent or the Lender may incur, directly or indirectly, as a result of a default under Sections 4.1.9 and 5.2.9 of the Loan Agreement.

Section 8.04 Duty to Defend; Attorneys' Fees and Other Fees and Expenses. Upon written request by any Indemnified Party to any Indemnitor, the Borrower shall defend such

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Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, (a) upon the occurrence of an Event of Default, or (b) if any Indemnified Party determines that (i) the Borrower's attorneys and professionals are not defending any claim or proceeding in a manner acceptable to the Indemnified Parties, or (ii) their interests, in connection with any claims or proceedings, conflict with those of the Borrower, such Indemnified Party may engage its own set of attorneys and other professionals for such claim to defend or assist them, the Borrower's attorneys shall consult in all respects with Indemnified Parties' law firm with respect to such claim or proceeding and no compromise or settlement shall be entered without the Agent's consent, which consent shall not be unreasonably withheld. Upon demand, the Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of the fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

ARTICLE IX.

WAIVERS

Section 9.01 Waiver of Counterclaim. To the extent permitted by applicable law, the Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by the Agent and/or the Lender arising out of or in any way connected with this Mortgage, the Loan Agreement the Note, any of the other Loan Documents or the Obligations.

Section 9.02 Marshalling and Other Matters. To the extent permitted by applicable law, the Borrower hereby waives the benefit of all appraisement, valuation, stay, extension, reinstatement (including, without limitation, any right to reverse any acceleration of the Obligations pursuant to 735 ILCS 5/15-1602) and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder and the benefit of any homestead or other exemptions which it may now or hereafter from time to time have with respect to the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, the Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of the Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Mortgage.

Section 9.03 Waiver of Notice. To the full extent permitted by applicable law, the Borrower shall not be entitled to any notices of any nature whatsoever from the Agent and/or the Lender, except with respect to matters for which this Mortgage or the Loan Documents specifically and expressly provide for the giving of notice by the Agent to the Borrower, and except with respect to matters for which the Agent is required by applicable law to give notice, and the Borrower hereby expressly waives the right to receive any notice from the Agent and/or the Lender with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by the Agent and/or the Lender to the Borrower.

Section 9.04 Waiver of Statute of Limitations. To the extent permitted by applicable law, the Borrower hereby expressly waives and releases its right to plead any statute of

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limitations as a defense to the payment and performance of the Obligations (including, without limitation, the payment of the Debt).

Section 9.05 Waiver of Jury Trial. THE BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE NOTE, THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE BORROWER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF THE AGENT AND THE LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF BY THE BORROWER.

Section 9.06 Survival. The indemnifications made pursuant to Article VIII herein and the representations and warranties, covenants, and other obligations arising under the Environmental Indemnity shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by (a) any satisfaction, release or other termination of this Mortgage or any other Loan Document, (b) any assignment or other transfer of all or any portion of this Mortgage or any other Loan Document or the Agent's interest in the Property (but, in such case, such indemnifications shall benefit both the Indemnified Parties and any such assignee or transferee), (c) any exercise of the Agent's rights and remedies pursuant hereto, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by the Borrower or by the Agent following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), (d) any amendment to this Mortgage, the Loan Agreement, the Note or any other Loan Document, and/or (e) any act or omission that might otherwise be construed as a release or discharge of the Borrower from the Obligations or any portion thereof.

ARTICLE X.

RECOURSE

The Loan shall be fully recourse to the Borrower. The provisions of Section 9.3 of the Loan Agreement are hereby incorporated by reference as if set forth at length herein.

ARTICLE XI.

NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.7 of the Loan Agreement.

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ARTICLE XII.

APPLICABLE LAW

Section 12.01 Governing Law; Jurisdiction; Service of Process.

(a) THIS MORTGAGE WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY THE LENDER AND ACCEPTED BY THE BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION RELATED HERETO, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS MORTGAGE, THE NOTE, THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED IN REAL PROPERTY PURSUANT TO ANY OF THE LOAN DOCUMENTS (INCLUDING THE EXERCISE OF ANY PROVISIONAL REMEDIES) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, THE BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS MORTGAGE, THE NOTE, THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND THIS MORTGAGE, THE NOTE, THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST THE AGENT, THE LENDER OR THE BORROWER ARISING OUT OF OR RELATING TO THIS MORTGAGE MAY AT THE AGENT'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, AND PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND THE BORROWER WAIVE ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON

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CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. THE BORROWER AGREES THAT SERVICE OF PROCESS UPON THE BORROWER AT THE ADDRESS FOR THE BORROWER SET FORTH IN THE LOAN AGREEMENT AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO THE BORROWER IN THE MANNER PROVIDED IN THE LOAN AGREEMENT WITH COPIES TO THE BORROWER'S COUNSEL AT THEIR ADDRESS SET FORTH IN THE LOAN AGREEMENT SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON THE BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. THE BORROWER (I) SHALL GIVE PROMPT NOTICE TO THE AGENT OF ANY CHANGE IN THE ADDRESS FOR THE BORROWER SET FORTH IN THE LOAN AGREEMENT, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE AN AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK, AND (III) SHALL PROMPTLY DESIGNATE AN AUTHORIZED AGENT IF THE BORROWER CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF THE AGENT OR THE LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE BORROWER IN ANY OTHER JURISDICTION. THE BORROWER HAS ADVISED THE AGENT AND THE LENDER THAT CERTAIN ACTIONS RELATING TO THE EXERCISE OF RIGHTS HEREUNDER MAY BE SUCH AS CAN ONLY BE INSTITUTED WHERE THE REAL PROPERTY IS LOCATED.

Section 12.02 Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between the Borrower and the Agent are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by the Agent shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of the Borrower to the Agent, and (c) if through any contingency or event, the Agent receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of the Borrower to the Agent, or if there is no such indebtedness, shall immediately be returned to the Borrower.

Section 12.03 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

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ARTICLE XIII.

DEFINITIONS

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in the singular or plural form, the word "include" and its derivatives, whether or not so stated, mean by way of example and not by way of exclusion or limitation and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Agent" shall mean "Agent and any subsequent administrative agent of the Lender with respect to the Loan, or if no administrative agent, then any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre trial, trial and appellate levels, incurred or paid by the Agent and/or the Lender in protecting its interest in the Property, the Leases and/or the Rents and/or in enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

ARTICLE XIV.

MISCELLANEOUS PROVISIONS

Section 14.01 No Oral Change. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of the Borrower or the Agent, but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 14.02 Successors and Assigns.

(a) This Mortgage shall be binding upon and shall inure to the benefit of the Borrower and the Agent and the Lender and their respective successors and permitted assigns forever, as set for in the Loan Agreement. Each of the Agent and the Lender shall have the right to assign or transfer its rights under this Mortgage in connection with any assignment of the Loan and the Loan Documents and any assignee or transferee of the Agent or the Lender (as the case may be) shall be entitled to all the benefits afforded to the Agent or the Lender (as the case may be) under this Mortgage. The Borrower shall not have the right to assign or transfer its rights or obligations under this Assignment except with the prior written consent of the Agent pursuant to the provisions in the Loan Agreement, and any attempted assignment without such prior written consent shall be null and void.

(b) The Agent shall at all times be the same Person that is the Agent under the Loan Agreement. Written notice of resignation by the Agent pursuant to the Loan Agreement shall also constitute notice of resignation as the Agent under this Mortgage. Removal of the Agent pursuant to any provision of the Loan Agreement shall also constitute removal as the

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Agent under this Mortgage. Appointment of a successor Agent pursuant to the Loan Agreement shall also constitute appointment of a successor Agent under this Mortgage. Upon the acceptance of any appointment as the Agent by a successor Agent under the Loan Agreement, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Agent as the Agent under this Mortgage, and the retiring or removed Agent shall promptly (i) assign and transfer to such successor Agent all of its right, title and interest in and to this Mortgage, and (ii) execute and deliver to such successor Agent such assignments and amendments and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Agent of the liens and security interests created hereunder, whereupon such retiring or removed Agent shall be discharged from its duties and obligations under this Mortgage. After any retiring or removed Agent's resignation or removal hereunder as the Agent, the provisions of this Mortgage and the Loan Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was the Agent hereunder.

Section 14.03 Inapplicable Provisions. If any provision of this Mortgage is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Mortgage, such provision shall be fully severable and this Mortgage shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Mortgage, and the remaining provisions of this Mortgage shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Mortgage, unless such continued effectiveness of this Mortgage, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

Section 14.04 Headings, Etc. The headings and captions of the various Sections of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 14.05 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, the Agent shall be subrogated to all of the rights, claims, liens, titles and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles and interests, if any, are not waived, but rather are continued in full force and effect in favor of the Agent and are merged with the Lien and security interest created herein as cumulative security for the payment, performance and discharge of the Obligations (including, but not limited to, the payment of the Debt).

Section 14.06 Entire Agreement. The Note, the Loan Agreement, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between the Borrower, the Lender, and the Agent with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between the Borrower and the Agent with respect thereto. The Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Mortgage and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by the Agent to make, any representations, understandings, stipulations, agreements or promises, oral or written,

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with respect to the transaction which is the subject of the Note, the Loan Agreement, this Mortgage and the other Loan Documents.

Section 14.07 Limitation on Agent's Responsibility. No provision of this Mortgage shall operate to place any obligation or liability for the control, care, management or repair of the Property upon the Agent, nor shall it operate to make the Agent responsible or liable for any waste committed on the Property by the Tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting the Agent a "Agent in possession."

Section 14.08 Recitals. The recitals hereof are a part hereof, form a basis for this Mortgage and shall be considered prima facie evidence of the facts and documents referred to therein.

Section 14.09 Variable Interest Rate. The Loan secured by this Mortgage is a variable interest rate loan, as more particularly set forth in the Loan Agreement.

ARTICLE XV.

STATE-SPECIFIC PROVISIONS

Section 15.01 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article XV and the other terms and conditions of this Mortgage, the terms and conditions of this Article XV shall control and be binding.

Section 15.02 Maturity Date. The initial Maturity Date of the Loan is no later than November 30, 2019, unless accelerated or extended in accordance with the terms of the Loan Agreement.

Section 15.03 Illinois Mortgage Foreclosure Law. The Agent shall be entitled to the following benefits, among others, pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/Art. XV.) (the "Act"):

(i) **Benefits of Act.** The Borrower and the Agent shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Act which is specifically referred to herein may be repealed, the Agent 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.

(ii) **Insurance.**

(a) Wherever provision is made in this Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of the Agent, or to confer authority upon the Agent to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all

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such rights and powers of the Agent shall continue in the Agent as judgment creditor or Agent until confirmation of sale.

(b) As required pursuant to the Collateral Protection Act, 815 ILCS 180/10(3), the Borrower is hereby notified (and the Borrower hereby acknowledges receipt of notice) that in the event the Borrower fails to provide, maintain, keep in force or deliver and furnish to the Agent the policies of insurance required by this Mortgage or evidence of their renewal as required herein, the Agent may, but shall not be obligated to, procure such insurance at the Borrower's expense to protect the Agent's interests in the Property. This insurance may, but need not, protect the Borrower's interests. The coverage the Agent purchases may not pay any claim that the Borrower makes or any claim that is made against the Borrower in connection with the Property. The Borrower may later cancel any insurance purchased by the Agent, but only after providing the Agent with evidence that the Borrower has obtained insurance as required by the terms of this Mortgage. If the Agent purchases insurance for the Property as set forth herein, the Borrower shall pay all amounts advanced by the Agent, together with interest thereon at the rate of additional interest as provided for in the Loan Agreement or in the Note from and after the date advanced by the Agent until actually repaid by the Borrower, promptly upon demand by the Agent. Any amounts so advanced by the Agent, together with interest thereon, shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

(iii) Protective Advances. All advances, disbursements and expenditures made by the Agent on behalf of the Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings authorized by this Mortgage or by the Act (collectively, "**Protective Advances**"), shall have the benefit of all applicable provisions of the Act. All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Note. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(a) determination of the amount of indebtedness secured by this Mortgage at any time;

(b) the indebtedness found due and owing to the Agent on behalf of the Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

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(c) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(d) application of income in the hands of any receiver or the Agent in possession; and

(e) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

(iv) Agent in Possession. In addition to any provision of this Mortgage authorizing the Agent to take or be placed in possession of the Property, or for the appointment of a receiver, the Agent shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or the Agent, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all powers, immunities, and duties as provided for in Sections 5/15-1701, 5/15-1703 and 5/15-1704 of the Act.

Section 15.04 Future Advances. Upon request of the Borrower, the Agent, on behalf of the Lender, at the Agent's sole option within twenty (20) years from the date of this Mortgage, may make future advances to the Borrower ("**Future Advances**"). Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including Protective Advances as above defined, exceed \$159,600,000.00 (two hundred percent (200%) of the original amount of the Note) plus interest thereon and any disbursements made for the payment of taxes, levies or insurance on the property encumbered by this Mortgage with interest thereon; and in no event shall the aggregate amount of the indebtedness secured hereby exceed \$239,400,000.00 (three hundred percent (300%) of the original amount of the Note). All Future Advances made and any reasonable out-of-pocket expenses incurred at any time by Agent or Lender pursuant to the provisions of this Mortgage or the other Loan Documents or under applicable law shall be secured by this Mortgage as part of the Obligations, with equal rank and priority.

Section 15.05 Illinois Statutory Law.

(a) The Borrower acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1) of Section 4 of the Illinois Interest Act (815 ILCS 205/0.01, et seq., including Section 4(1) thereof); (B) the Debt secured hereby has been incurred by the Borrower solely for business purposes of the Borrower and for the Borrower's investment or profit, as contemplated by said Section 4(1); (C) the Debt secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4(1); and (D) the secured Debt is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 et. seq. and has been entered into solely for business purposes of the Borrower and the Borrower's investment or profit, as contemplated by said section.

(b) Without limiting the generality of anything contained herein, the Borrower acknowledges and agrees that the transaction of which this Mortgage is part is a transaction

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which does not include either agricultural real estate (as defined in 15-1201 of the Act) or residential real estate (as defined in 15-1219 of the Act).

Section 15.06 Sealed Instrument. The Borrower intends for this Mortgage to be executed and delivered by the Borrower, and accepted by the Agent, as a sealed instrument.

Section 15.07 Variable Rate. This Mortgage secures the full and timely payment of the Debt, including, among other things, the obligation to pay interest on the unpaid principal balance at a variable rate of interest to the extent provided in the Loan Agreement.

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDER OF DEEDS**

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IN WITNESS WHEREOF, THIS MORTGAGE has been executed by the Borrower as of the day and year first above written.

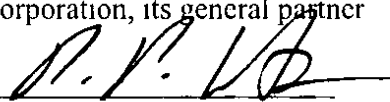
BORROWER:

PLYMOUTH MWG 1796 SHERWIN LLC,
a Delaware limited liability company

By: Plymouth MWG Holdings LLC,
a Delaware limited liability company, its manager

By: Plymouth Industrial OP, LP,
a Delaware limited partnership, its manager

By: Plymouth Industrial REIT, Inc.,
a Maryland corporation, its general partner

By: 
Name: Pendleton P. White, Jr.
Title: President

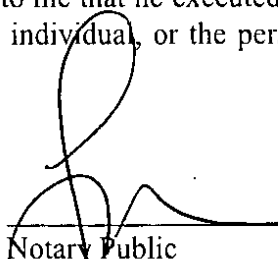
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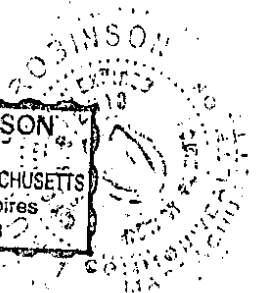
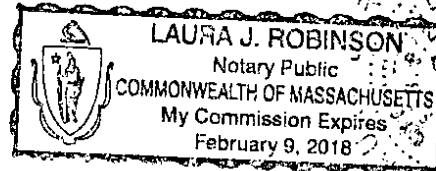
ACKNOWLEDGMENT

STATE OF MA)
COUNTY OF Suffolk) ss:

On the 29th day of November, in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Pendleton P. White, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public



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Schedule 1

Borrower Group

1. Plymouth MWG Holdings LLC
2. Plymouth MWG 11601 South Central LLC
3. Plymouth MWG 13040 South Pulaski LLC
4. Plymouth MWG 28160 North Keith LLC
5. Plymouth MWG 13970 West Laurel LLC
6. Plymouth MWG 1445 Greenleaf LLC
7. Plymouth MWG 1750 South Lincoln LLC
8. Plymouth MWG 3841 Swanson LLC
9. Plymouth MWG 6000 West 73rd LLC
10. Plymouth MWG 6510 West 73rd LLC
11. Plymouth MWG 6558 West 73rd LLC
12. Plymouth MWG 6751 South Sayre LLC
13. Plymouth MWG 7200 South Mason LLC
14. Plymouth MWG 5110 South 6th LLC
15. Plymouth MWG 525 West Marquette LLC
16. Plymouth MWG 1796 Sherwin LLC

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LEGAL DESCRIPTION - 1796 SHERWIN AVENUE, DES PLAINES, ILLINOIS

THE SOUTH 440.018 FEET OF THE NORTH 1636.066 FEET (BOTH AS MEASURED ALONG THE EAST LINE THEREOF) OF THE WEST 1/2 OF THE SOUTH WEST 1/4 OF SECTION 28, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THE WEST 783.21 FEET AND THE EAST 40.0 FEET THEREOF (BOTH AS MEASURED PERPENDICULARLY TO THE WEST LINE AND EAST LINE OF SAID WEST 1/2 RESPECTIVELY), IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office