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Doc#: 1810946072 Fee: \$84.00

Karen A. Yarbrough

Cook County Recorder of Deeds

Date: 04/19/2018 11:39 AM Pg: 1 of 19

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as:

PIN: 17-03-207-068-1162

Address:

Street: 950 N MICHIGAN AVENUE #2604

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60611

Lender: Center Street Lending Fund IV SPE, LLC

Borrower: Lorenzo & Tonya Esparza

Loan / Mortgage Amount: \$450,000.00

This property is located within the program area and the transaction is exempt from the requirements of 705 ILCS 77/70 et seq. because the application was taken by an exempt entity.

Certificate number: EA611FF8-EC86-4360-9855-258B22C3048E

Execution date: 4/12/2018

RECORDING REQUESTED BY
FIRST AMERICAN TITLE

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This Instrument Prepared By:
Marcus Farley
Center Street Lending Corporation
18301 Von Karman, Ste 330
Irvine, CA 92612

After Recording Return To:
Center Street Lending Fund IV SPE, LLC
Its successors and or assigns, as their interest may appear
18301 Von Karman Avenue, Suite 330
Irvine, CA 92612
Loan Number: 50773
APN: 17-03-207-068-1162

Above Space for Recorder's Use

282292

MORTGAGE AND SECURITY AGREEMENT

Loan Number: 50773, in the amount of \$450,000.00 dated April 12, 2018
Property Address: 950 N Michigan Ave #2604 Chicago, IL 60611

THIS MORTGAGE AND SECURITY AGREEMENT executed April 12, 2018, by and between Esparza Living Trust, Dated February 4, 2014, whose address is 376 Via Almar, Palos Verdes, CA 90274 (hereinafter referred to as the "**Mortgagor**"), and Center Street Lending Fund IV SPE, LLC, a Delaware limited liability company, whose address for notice under this Mortgage is 18301 Von Karman Avenue, Suite 330, Irvine, CA 92612, (hereinafter referred to together with any subsequent holder of the Note as "**Mortgagee**").

WITNESSETH:

That for good and valuable considerations and to secure the payment of an indebtedness in the principal sum of FOUR HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$450,000.00), or so much thereof as may be advanced, to be paid in accordance with a note of even date herewith (hereinafter referred to as the "**Note**"), together with interest thereon and any and all sums due or which may become due from the Mortgagor on the Note, to the Mortgagee, the Mortgagor does warrant, grant, bargain, sell, alien, revise, release, convey and confirm unto the Mortgagee its successors and assigns, in fee simple, all of that certain tract of land of which the Mortgagor is now seized and possessed and in actual possession, situate in the County of Cook, State of Illinois, which is more fully described in Exhibit "A" attached hereto and made a part hereof, together with the buildings and improvements thereon erected or to be erected (hereinafter referred to as the "**Premises**");

TOGETHER with:

1. all leasehold estate, and all right, title and interest of Mortgagor in and to all leases or subleases covering the Premises or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Mortgagor thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;
 - a. all right, title and interest of Mortgagor in and to all options to purchase or lease the Premises or any portion thereof or interest therein, and any greater estate in the Premises owned or hereafter acquired;
 - b. all easements, streets, ways, alleys, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights;
 - c. any and all buildings, structures and improvements now or hereafter erected thereon, including, but not limited to the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings, structures and improvements (sometimes hereinafter referred to as the "**Improvements**");
 - d. all fixtures, appliances, machinery, equipment, furniture, furnishings and articles of personal property now or hereafter affixed to, placed upon or used in connection with the operation of any of said properties, all gas, steam, electric, water and other heating, cooking, refrigeration, lighting,

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plumbing, ventilating, irrigating and power systems machines, computer hardware or software, appliances, fixtures, and appurtenances which are now or may hereafter pertain or be used with, in or on said premises, even though they may be detached or detachable and all building improvement and construction materials, supplies and equipment hereafter delivered to said land contemplating installation or use in the constructions thereon and all rights and interests of Mortgagor in any water and sewer capacity, reservations and hook-ups, impact fee credits, building permits and architectural plans and specifications relating to contemplated constructions or Improvements on said Premises and all rights and interests of Mortgagor in present or future mortgage loan commitments pertaining to any of said Premises or Improvements thereon;

- e. all awards and proceeds of condemnation for the Premises or any part thereof to which Mortgagor is entitled for any taking of all or any part of the Premises by condemnation or exercise of the right of eminent domain. All such awards and condemnation proceeds are hereby assigned to Mortgagee and the Mortgagee is hereby authorized, subject to the provisions contained in this Mortgage, to apply such awards and condemnation proceeds or any part thereof, after deducting therefrom any expenses incurred by the Mortgagee in the collection or handling thereof, toward the payment, in full or in part, of the Note, notwithstanding the fact that the amount owing thereon may not then be due and payable;
- f. all rents, issues and profits of the Premises and all the estate, right, title and interest of every nature whatsoever of the Mortgagor in and to the same;
- g. all accounts, contract rights, franchises, licenses, water and sewer capacity, accounts receivable, bills of sale, leases, conditional sales contracts and general intangibles pertaining to or arising from or in connection with all or any part of the Mortgaged Property, as hereinafter defined, including without limitation, all proceeds and choses in action arising under any insurance policies maintained with respect to all or any part of the Mortgaged Property; and,
- h. all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing items.

All of the items set forth in subparagraphs (v), (vi), (vii), (viii) and (ix) above that constitute personal property and not real property are hereinafter sometimes collectively referred to as the "**Personal Property**." All of the foregoing real and personal property, including, without limitation, the Premises, Improvements and Personal Property; and all rights, privileges and franchises are collectively referred to as the "**Mortgaged Property**."

TO HAVE AND TO HOLD all and singular the Mortgaged Property hereby conveyed, and the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said Mortgagor in and to the same and every part and parcel thereof unto the said Mortgagee in fee simple.

PROVIDED ALWAYS that if the Mortgagor shall pay to the Mortgagee any and all indebtedness due by Mortgagor to Mortgagee (including the indebtedness evidenced by the Note and any and all renewals of the same) and shall perform, comply with and abide by each and every stipulation, agreement, condition, and covenant of the Note and of this Mortgage; then this Mortgage and the estate hereby created shall cease and be null and void. Provided, it is further covenanted and agreed by the parties hereto that this Mortgage also secures the payment of and includes all future or further advances as hereinafter set forth, to the same extent as if such made on the date of the execution of this Mortgage, and any disbursements made for the payment of tax, levies or insurance on the Mortgaged Property, with interest on such disbursements at the Default Rate as defined in the Note.

To protect the security of this Mortgage, the Mortgagor further covenants, warrants and agrees with the Mortgagee as follows:

ARTICLE I

COVENANTS AND AGREEMENTS OF MORTGAGOR

1. **Payment of Secured Obligations.** Mortgagor shall pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, and the charges, fees and the principal of, and interest on, any future advances secured by this Mortgage and shall otherwise comply with all the terms of the Note, this Mortgage and all other documents executed by Mortgagor in connection with the loan secured by this Mortgage (collectively the "**Loan Documents**").
2. **Warranties and Representations.** Mortgagor hereby covenants with Mortgagee that Mortgagor is indefeasibly seized of the Mortgaged Property in fee simple; that the Mortgagor has full power and lawful

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right to convey the same in fee simple as aforesaid; that it shall be lawful for Mortgagor at all times peaceably and quietly to enter upon, hold, occupy and enjoy said Mortgaged Property and every part thereof; that Mortgagor will make such further assurances to perfect the lien interest in said Mortgaged Property in Mortgagee, as may reasonably be required; and that Mortgagor does hereby fully warrant the title to the Mortgaged Property and every part thereof and will defend the same against the lawful claims of all persons whomever.

Mortgagor further represents and warrants to Mortgagee that all information, reports, paper, and data given to Mortgagee with respect to Mortgagor, and to the loan evidenced by the Note and Mortgage are accurate and correct in all material respects and complete insofar as may be necessary to give Mortgagee accurate knowledge of the subject matter.

3. **Ground Leases, Leases, Subleases and Easements.** Mortgagor, at Mortgagor's sole cost and expense, shall maintain and cause to be performed all of the covenants, agreements, terms, conditions and provisions on its part to be kept, observed and performed under any ground lease, lease, sublease or easements which may constitute a portion of or an interest in the Premises, shall require its tenants or subtenants to keep, observe and perform all the covenants, agreements, terms, conditions and provisions on their part to be kept, observed or performed under any and all ground leases, leases, subleases or easements; and shall not suffer or permit any breach or default to occur with respect to the foregoing; and in default thereof the Mortgagee shall have the right to perform or to require through a Mortgagee appointed property manager or other agent performance of any such covenants, agreements, terms, conditions or provisions of any such ground lease, lease, sublease or easements and to add any expense incurred in connection therewith to the debt secured hereby, which such expense shall bear interest from the date of payment to the date of recovery by the Mortgagee at the Default Rate as hereinafter defined. Any such payment by the Mortgagee with interest thereon shall be immediately due and payable. The Mortgagor shall not, without the consent of the Mortgagee, consent to the modification, amendment, cancellation, termination or surrender of any such ground lease, lease, sublease, or easement. No release or forbearance of any of Mortgagor's obligation under any such ground lease, lease, or sublease, shall release Mortgagor from any of its obligations under this Mortgage.
4. **Required Insurance.** Mortgagor will, at Mortgagor's sole cost and expense, maintain or cause to be maintained with respect to the Mortgaged Property, and each part thereof, the following insurance:
 - a. Mortgagor agrees to provide, maintain and deliver to Mortgagee at Mortgagor's expense, fire, casualty and extended coverage insurance in an amount of not less than the full replacement value of any building which may exist on the subject property, with loss payable to Mortgagee. Mortgagor shall provide fire insurance protection on Mortgagor's furniture, fixtures and personal property on the subject real property in an amount equal to the full replacement value thereof, and promises that any insurance coverage in this regard will contain a waiver of the insurers' right of subrogation against Mortgagee. In addition, Mortgagor shall, at Mortgagor's expense, maintain in full force policies of liability insurance and, if applicable, flood insurance, with Mortgagee as an additional insured thereunder on a primary non-contributing basis, insuring Mortgagor against all claims resulting from the injury to or the death of any person or the damage to or the destruction of any property belonging to any person by reason of Beneficiary's interest hereunder or the use and occupancy of the subject real property by Mortgagor. Such insurance shall be in the following amounts: (1) \$450,000.00 combined single limit liability insurance covering property damage and bodily injury; (2) flood insurance equal to the replacement cost of the subject real property, or up to \$450,000.00, whichever is less, is required if the collateral is located in a flood zone. The amount collected under any fire or other insurance policy may be applied by Mortgagee upon any indebtedness secured hereby and in such order as Mortgagee may determine, or at the option of Mortgagee the entire amount so collected or any part thereof may be released to Mortgagor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Mortgagor shall not do or omit to do any act which will in any way impair or invalidate any insurance policy required by this Mortgage. All insurance policies shall contain a written obligation of the insurer to notify Mortgagee in writing at least ten (10) days prior to any cancellation thereof;
 - b. in the event that improvements requiring a certificate of occupancy in order to be lawfully occupied are either presently located or contemplated to be constructed, on the Land, then, an "all perils" policy of "extended" or "Broad form" casualty insurance, insuring said improvements against

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casualty loss in an amount equal to at least one hundred per cent of the full replacement cost of the improvements, existing or contemplated to be constructed on the Land and, in any event, in an amount sufficient to prevent the Mortgagor from becoming a co-insurer with respect to any loss covered by said policy;

- c. in the event that there are permanent improvements constructed upon the Land which improvements lie in a special flood hazard area designated as such, under the National Flood Insurance Program, then (x) a policy of flood insurance insuring said improvements, and (y) proof of payment of the premium due thereunder;
- d. in the event that there are permanent improvements constructed upon the Land which improvements lie in a natural hazard area for earthquakes, designated as such by USGS, or as directed by Mortgagee, then (x) a policy of earthquake insurance insuring said improvements, and (y) proof of payment of the premium due thereunder;
- e. Such other insurance, and in such amounts, as may from time to time be required by Mortgagee against the same or other hazards.

All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against Mortgagor.

Mortgagor may effect for its own account any insurance not required under this Section 1.04, but any such insurance effected by Mortgagor on the Premises, whether or not so required, shall be for the mutual benefit of Mortgagor and Mortgagee and shall be subject to the other provisions of this Mortgage.

- 5. **Delivery of Policies, Payment of Premiums.** The policies of insurance required to be provided and maintained hereunder shall be issued by a company or companies to be approved by the Mortgagee, and the policy or policies to be held by and payable to the Mortgagee; and in the event any sum of money becomes payable under such policy or policies, the Mortgagee shall have the option to receive and apply the same on account of the indebtedness hereby secured or to permit the Mortgagor to receive and use it, or any part thereof, for other purposes, without hereby waiving or impairing any equity, lien or right under or by virtue of this Mortgage. In the event the Mortgagor shall for any reason fail to keep the said premises so insured, or fail to deliver promptly any of the said policies of insurance to the Mortgagee, or fail promptly to pay fully any premium therefore, the Mortgagee may place and pay for such insurance or any part thereof without waiving or affecting the option to foreclose or any right hereunder, and each and every such payment so made by the Mortgagee shall be deemed to have been added to the outstanding principal balance then due under the Note, shall bear interest from the date thereof until paid by the Mortgagor at the Default Rate and shall be secured by the lien of this Mortgage.
- 6. **Insurance Proceeds.** After the happening of any casualty to the Mortgaged Property or any part thereof, Mortgagor shall give prompt written notice thereof to Mortgagee.
 - a. Subject to the provisions of subparagraph (b) below, in the event of any damage to or destruction of the Mortgaged Property, Mortgagee shall have the option in its sole discretion of applying or paying all or part of the insurance proceeds (i) to any indebtedness secured hereby and in such order as Mortgagee may determine, or (ii) to the restoration of the Improvements, or (iii) to Mortgagor.
 - b. Mortgagee agrees to make the net insurance proceeds or other casualty awards received by Mortgagee available to the Mortgagor for the purpose of reconstruction or restoration of the Mortgaged Property, provided that: (i) the estimated cost of restoration, as determined by Mortgagee, will not exceed FOUR HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (“\$450,000.00”); (ii) the net proceeds or awards, together with additional funds provided by the Mortgagor if necessary, are sufficient to reconstruct or restore the Mortgaged Property according to plans and specifications approved by the Mortgagee; (iii) the proceeds or awards disbursed are not more than one hundred percent (100%) of the restoration cost actually incurred; (iv) the proceeds or awards will be disbursed under procedures established by the Mortgagee; (v) the Mortgagor shall be responsible for all of the Mortgagee’s reasonable third party costs, including without limitation, reasonable attorneys’ fees and costs; (vi) at the time such casualty occurs, and at the time of any disbursement of the insurance proceeds or award, no event of default exists under the Note, this Mortgage or any of the Security Documents.
 - c. In the event of such loss or damage, all proceeds of insurance shall be payable to Mortgagee, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such

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proceeds directly to Mortgagee. Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance.

- d. Except to the extent that insurance proceeds are received by Mortgagee and applied to the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Property as provided in this Mortgage or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Mortgagee of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.
7. **Assignment of Policies Upon Foreclosure.** In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of the Mortgagor in and to all policies of insurance required by this Section shall inure to the benefit of and pass to the successor in interest to Mortgagor or the purchaser or grantee of the Mortgaged Property. Mortgagor hereby appoints Mortgagee its attorney-in-fact to endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss thereunder or otherwise.
8. **Taxes, Utilities and Impositions.** Mortgagor will pay, or cause to be paid and discharged, on or before the last day on which they may be paid without penalty or interest, all such duties, taxes, sewer rents, charges for water, or for setting or repairing of meters, and all other utilities on the Mortgaged Property or any part thereof, and any assessments and payments, usual or unusual, extraordinary or ordinary, which shall be imposed upon or become due and payable or become a lien upon the Premises or any part thereof and the sidewalks or streets in front thereof and any vaults therein by virtue of any present or future law of the United States or of the State, County, or City wherein the Premises are located (all of the foregoing being herein collectively called "**Impositions**"). Notwithstanding any other provision of this Mortgage, if the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgage Property or premises, or if the same or any part thereof are or become delinquent, then the Mortgagee, at its option, may at any time pay the same, together with any interest thereon and any accrued delinquency, redemption or other charges, fees, costs or expenses related thereto, and all payments made or costs incurred by the Mortgagee in connection therewith, shall be secured by the lien of this Mortgage and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon from the date of such payment at the maximum rate provided by law, except that Mortgagee may in its sole discretion, permit Mortgagor to make such repayment in monthly installments of principal, together with said interest thereon, over a limited term of months established by Mortgagee (which monthly installments, if established by Mortgagee, may be prepaid by Mortgagor), and except that Mortgagee may in its sole discretion set the interest due on such payment at a rate less than the maximum rate provided by law. Mortgagee shall have no obligation on its part to determine the validity or necessity of any payment of taxes, etc., described herein and any such payment shall not waive or affect any option, remedy, lien, equity or right of Mortgagee under or by virtue of this Mortgage, to include, without limitation, any right or option to foreclose same. Nothing herein shall be construed as requiring Mortgagee to advance or expend monies for any of the purposes mentioned in this paragraph.

If at any time there shall be assessed or imposed (i) a tax or assessment on the Premises in lieu of or in addition to the Impositions payable by Mortgagor pursuant to this Section or (ii) a license fee, tax or assessment imposed on Mortgagee and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "**Impositions**" as defined in this Section, and Mortgagor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, at the option of Mortgagee, all obligations secured hereby, together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Mortgagor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Mortgagee or on the obligations secured hereby.

Mortgagor will pay all mortgage recording taxes and fees payable with respect to this Mortgage or other mortgage or transfer taxes due on account of this Mortgage or the Note secured hereby.

Mortgagor will exhibit to Mortgagee the original receipts or other reasonably satisfactory proof of the payment of all Impositions which may affect the Mortgaged Property or any part thereof or the lien of the Mortgage promptly following the last day on which each Imposition is payable hereunder.

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Notwithstanding the foregoing, Mortgagor shall have the right, after prior written notice to Mortgagee, to contest at its own expense the amount and validity of any Imposition affecting the Mortgaged Property by appropriate proceedings conducted in good faith and with due diligence and to postpone or defer payment thereof, if and so long as:

- (i) Such proceedings shall operate to suspend the collection of such Imposition from Mortgagor or the Mortgaged Property; or
- (ii) Neither the Mortgaged Property nor any part thereof would be in immediate danger of being forfeited or lost by reason of such proceedings, postponement or deferment; and
- (iii) In the case of any Imposition affecting the Mortgaged Property which might be or become a lien, encumbrance or charge upon or result in any forfeiture or loss of the Mortgaged Property or any part thereof, or which might result in loss or damage to Mortgagor or Mortgagee, Mortgagor, prior to the day such Imposition would become delinquent, shall have furnished Mortgagee with security satisfactory to Mortgagee, and, in the event that such security is furnished, Mortgagee shall not have the right during the period of the contest to pay, remove or discharge the Imposition.

9. **Maintenance, Repairs, Alterations.** Mortgagor shall keep the Mortgaged Property, or cause the same to be kept, in good condition and repair and fully protected from the elements to the satisfaction of Mortgagee; Mortgagor shall comply in all material respects with all applicable governmental regulations, zoning and building laws; Mortgagor shall keep all material licenses, permits and applicable governmental authorizations necessary for its operation of the Property in full force and effect; Mortgagor shall not commit nor permit to be committed waste thereon and shall not do nor permit to be done any act by which the Mortgaged Property shall become less valuable; Mortgagor will not remove, demolish or structurally alter any of the Improvements (except such alterations as may be required by laws, ordinances or regulations or as part of Mortgagor's refurbishment of the Improvements) without the prior written permission of the Mortgagee; Mortgagor shall complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Premises and promptly restore in like manner any Improvements which may be damaged or destroyed thereon and will pay when due all claims for labor performed and materials furnished therefore; Mortgagor shall use and operate, and shall require its lessees or licensees to use or operate, the Mortgaged Property in compliance with all applicable laws, ordinances, regulations, covenants, conditions and restrictions, and with all applicable requirements of any ground lease, lease or sublease now or hereafter affecting the Premises or any part thereof. Unless required by law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the stated use of Mortgaged Property from that which was disclosed to Mortgagee at the time of execution hereof. Mortgagor shall not initiate or acquiesce to a zoning change of the Mortgaged Property without the prior notice and consent of Mortgagee. Mortgagee and its representatives shall have access to the Premises at all reasonable times to determine whether Mortgagor is complying with its obligations under this Mortgage, including, but not limited to, those set out in this Section.
10. **Eminent Domain.** Should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public use or improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Mortgagor receive any notice or other information regarding a potential Condemnation, Mortgagor shall give prompt written notice thereof to Mortgagee.
- a. Mortgagee shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation, and shall be entitled, at its option, to commence, appear in and prosecute in its own name any action or proceedings relating thereto. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Mortgagor (the "Proceeds") are hereby assigned to Mortgagee and Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee may require.
 - b. In the event any portion of the Mortgaged Property is so taken or damaged, Mortgagee shall have the option in its sole and absolute discretion, to apply all such Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' and paralegals' fees and costs, incurred by it in connection with such Proceeds, upon any indebtedness secured hereby, or to apply all such Proceeds, after such deductions, to the restoration of the Mortgaged Property upon such conditions as Mortgagee may determine. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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- c. In the event of such loss or damage, all proceeds of insurance shall be payable to Mortgagee, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Mortgagee. Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance.
- d. Any amounts received by Mortgagee hereunder (after payment of any costs in connection with obtaining same), shall, if retained by Mortgagee, be applied in payment of any accrued interest and then in reduction of the then outstanding principal sum of the Note, notwithstanding that the same may not then be due and payable. Any amount so applied to principal shall be applied to the payment of installments of principal on the Note in inverse order of their due dates.
11. **Actions by Mortgagee to Preserve the Security of this Mortgage.** If the Mortgagor fails to make any payment or to do any act as and in the manner provided for in this Mortgage or the Note, the Mortgagee, in its own discretion, without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as the Mortgagee may deem necessary to protect the security hereof. Mortgagor will pay upon demand all expenses incurred or paid by Mortgagee (including, but not limited to, attorneys' and paralegals' fees and costs and court costs including those of appellate and bankruptcy proceedings) on account of the exercise of any of the aforesaid rights or privileges or on account of any litigation which may arise in connection with this Mortgage or the Note or on account of any attempt, without litigation, to enforce the terms of this Mortgage or said Note. In case the Mortgaged Property or any part thereof shall be advertised for foreclosure sale and not sold, Mortgagor shall pay all costs in connection therewith.

In the event that the Mortgagee is called upon to pay any sums of money to protect this Mortgage and the Note as aforesaid, all monies advanced or due hereunder shall become immediately due and payable, together with interest at the Default Rate, computed from the date of such advance to the date of the actual receipt of payment thereof by the Mortgagee.

12. **Cost of Collection.** In the event this Mortgage is placed in the hands of an attorney for the collection of any sum payable hereunder, the Mortgagor agrees to pay all costs of collection, including reasonable attorneys' and paralegals' fees and costs including those in all appellate and bankruptcy proceedings, incurred by the Mortgagee, either with or without the institution of any action or proceeding, and in addition to all costs, disbursements and allowances provided by law. All such costs so incurred shall be deemed to be secured by this Mortgage.
13. **Survival of Warranties.** All representations, warranties and covenants of Mortgagor contained herein or incorporated by reference shall survive funding of the loan evidenced by the Note and shall remain continuing obligations, warranties and representations of Mortgagor during any time when any portion of the obligations secured by this Mortgage remain outstanding.
14. **Additional Security.** In the event Mortgagee at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.
15. **Inspections.** Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or on any part of the Premises for the purpose of inspection the same, and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage.
16. **Liens.** Mortgagor shall pay and promptly discharge, at Mortgagor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property or any part thereof or interest therein. Mortgagor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Mortgagor shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amounts as Mortgagee shall reasonably require, and provided further that Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy, Mortgagee, may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. Any amount so paid by the Mortgagee shall, at Mortgagee's option, become immediately due and payable with interest at the Default Rate, and shall be deemed part of the indebtedness secured by this Mortgage.
17. **Future Advances.** This Mortgage is given to secure not only existing indebtedness, but also future advances, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, as are made

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within twenty (20) years from the date hereof, to the same extent as if such future advances are made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease to a zero amount from time to time, or may increase from time to time, but the total unpaid balance so secured at one time shall not exceed five times the face amount of the Note, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Mortgaged Property, with interest on such disbursements at the Default Rate.

18. **Appraisals.** *Mortgagor consents and agrees that Mortgagee may obtain an appraisal of the Mortgaged Property and Mortgagor shall cooperate in all reasonable manners with such appraisal efforts.*

ARTICLE II

ASSIGNMENT OF LEASES, SUBLEASES, FRANCHISES, RENTS, ISSUES AND PROFITS

1. **Assignment of Rents.** *Mortgagor hereby assigns and transfers to Mortgagee all the leases, subleases, franchises, rents, issues and profits of the Mortgaged Property, and hereby gives to and confers upon Mortgagee the right, power and authority to collect such rents, issues and profits as herein set forth. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee, immediately and without further legal action being necessary, to: demand, receive and enforce payment, directly through a Mortgagee appointed property manager or other agent; to give receipts, releases and satisfactions; and to sue, in the name of Mortgagor or Mortgagee, for all such rents, issues and profits and apply the same to the indebtedness secured hereby; provided, however, that Mortgagor shall have the right to collect such rents, issues and profits (but not more than one month in advance) prior to or at any time there is not an event of default under this Mortgage.*
2. **Collection Upon Default.** *Upon any event of default under this Mortgage, Mortgagee may, at any time without notice, either in person, by a lender appointed property manager or other agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name, sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' and paralegals' fees and costs, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Mortgaged Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.*
3. **Restriction on Further Assignments.** *Except as hereinafter specifically provided, Mortgagor shall not, without the prior written consent of the Mortgagee, assign the rents, issues or profits, or any part thereof, from the Mortgaged Property or any part thereof; and shall not consent to the modification, cancellation or surrender of any lease or sublease covering the Mortgaged Property. An action of Mortgagor in violation of the terms of this Section shall be void as against Mortgagee in addition to being a default under this Mortgage.*

The Mortgagor shall not, without the consent of the Mortgagee, consent to the cancellation or surrender or, accept prepayment of rents, issues or profits, other than rent paid at the signing of a lease or sublease under any lease or sublease now or hereafter covering the Mortgaged Property or any part thereof, nor modify any such lease or sublease so as to shorten the term, decrease the rent, accelerate the payment of rent, or change the terms of any renewal option; and any such purported assignment, cancellation, surrender, prepayment or modification made without the written consent of the Mortgagee shall be void as against the Mortgagee. The Mortgagor shall, upon demand of the Mortgagee, enter into an agreement with the Mortgagee with respect to the provisions contained in the preceding provision regarding any lease or sublease covering said Mortgaged Property or any part thereof, and the Mortgagor hereby appoints the Mortgagee attorney-in-fact of the Mortgagor to execute and deliver any such agreement on behalf of the Mortgagor and deliver written notice thereof to the tenant to whose lease such agreement relates.

The Mortgagor agrees to furnish to the Mortgagee a copy of any modification of any lease presently in effect and copies of all future leases affecting the Mortgaged Property covered by this Mortgage, and failure to furnish to the Mortgagee a copy of any modification of a lease or a copy of any future lease affecting said Mortgaged Property, shall be deemed a default under this Mortgage and the Note, for which the holder of this Mortgage may, at its option, declare the entire unpaid balance of the subject Mortgage and Note to be immediately due and payable.

All leases or subleases hereafter entered into by Mortgagor with respect to the Mortgaged Property or any part thereof, shall be subordinate to the lien of this Mortgage.

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4. **Controlling Provisions.** The terms and provisions of this Article II shall be in addition to, and not in substitution or derogation of, the terms and provisions of that certain Collateral Assignment of Leases, Rents and Profits, executed by Mortgagor in favor of Mortgagee, of even date herewith, to be recorded in the Public Records of the County where the Premises are situated. In the event of a conflict between the terms and provisions of Article II of this Mortgage and the terms and provisions of the Collateral Assignment of Leases, Rents and Profits, the terms and provisions of such Collateral Assignment of Leases, Rents and Profits shall control.

ARTICLE III

ENVIRONMENTAL CONDITION OF PREMISES

1. **Environmental Condition of Property.** Mortgagor hereby warrants and represents to Mortgagee after thorough investigation that:
- a. the Premises are now and at all times hereafter will continue to be in full compliance with all Federal, State and local environmental laws and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), Public Law No. 96-510, 94 Stat. 2767, and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99-499, 100 Stat. 1613, and
 - b. (i) as of the date hereof there are no hazardous materials, substances, waste or other environmentally regulated substances (including without limitation, any materials containing asbestos) located on, in or under the Premises or used in connection therewith, or (ii) Mortgagor has fully disclosed to Mortgagee in writing the existence, extent and nature of any such hazardous material, substance, waste or other environmentally regulated substance, currently present or which Mortgagor is legally authorized and empowered to maintain on, in or under the Premises or use in connection therewith, Mortgagor has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is and will remain in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals. Mortgagor further warrants and represents that it will promptly notify Mortgagee of any change in the environmental condition of the Premises or in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Premises or used in connection therewith, and will transmit to Mortgagee copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, waste or other environmentally regulated substance affecting the Premises.

Mortgagor hereby indemnifies and holds harmless Mortgagee from and against any and all damages, penalties, fines, claims, suits, liabilities, costs, judgments and expenses (including attorneys', consultant's or expert's fees) of every kind and nature incurred, suffered by or asserted against Mortgagee as a direct or indirect result of:

- (a) any warranty or representation made by Mortgagor in this paragraph being or becoming false or untrue in any material respect or
- (b) any requirement under the law, regulation or ordinance, local, state or federal, regarding the removal or elimination of any hazardous materials, substances, waste or other environmentally regulated substances.

Mortgagor's obligations hereunder shall not be limited to any extent by the term of the Note, and, as to any act or occurrence prior to payment in full and satisfaction of said Note which gives rise to liability hereunder, shall continue, survive and remain in full force and effect notwithstanding foreclosure of this Mortgage, where Mortgagee is the purchaser at the foreclosure sale, or delivery of a deed in lieu of foreclosure to Mortgagee.

ARTICLE IV

SECURITY AGREEMENT PERSONAL PROPERTY

1. **Creation of Security Interest.** Mortgagor hereby grants to Mortgagee a security interest in any and all Personal Property located on or at the Premises, including without limitation any and all property of similar type or kind hereafter located on or at the Premises for the purposes of securing all obligations of Mortgagor set forth in this Mortgage. This instrument is a self-operative security agreement with respect to the above-described property, but Mortgagor agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as Mortgagee may request.
2. **Warranties, Representations and Covenants of Mortgagor.** Mortgagor hereby warrants, represents and covenants as follows:

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- a. Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Mortgagor shall notify Mortgagee of, and shall defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.
 - b. Mortgagor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Mortgagee.
 - c. The Personal Property is not and shall not be used or bought for personal, family or household purposes.
 - d. The Personal Property shall be kept on or at the Premises and Mortgagor will not remove the Personal Property from the Premises without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor.
 - e. Mortgagor maintains a place of business in the State of Illinois and Mortgagor shall immediately notify Mortgagee in writing of any change in its place of business as set forth in the beginning of this Mortgage.
 - f. At the request of the Mortgagee, Mortgagor shall join Mortgagee in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Illinois in form satisfactory to Mortgagee, and will pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable.
 - g. All covenants and obligations of Mortgagor contained herein relating to the Mortgaged Property shall be deemed to apply to the Personal Property whether or not expressly referred to herein.
 - h. This Mortgage constitutes a Security Agreement as that term is used in the Uniform Commercial Code of Illinois.
3. **Controlling Provisions.** The terms and provisions of this Article IV shall be in addition to, and not in substitution or derogation of, the terms and provisions of that certain Security Agreement, executed by Mortgagor in favor of Mortgagee, of even date herewith. In the event of a conflict between the terms and provisions of Article IV of this Mortgage and the terms and provisions of the Security Agreement, the terms and provisions of such Security Agreement shall control.

ARTICLE V

REMEDIES UPON DEFAULT

1. **Events of Default.** Any one or more of the following shall constitute a default under this Mortgage and the Note hereby secured:
 - a. Failure of Mortgagor to pay any installment of interest and/or principal under the Note or any other amount due under any Loan Document when due and payable whether on maturity, the date stipulated in any Loan Document, by acceleration, or otherwise, without any requirements of notice from the Note Holder of such failure to pay under the Note;
 - b. Failure of Mortgagor to pay the amount of any costs, expenses or fees (including counsel fees) of the Mortgagee, with interest thereon, as required by any provision of this Mortgage.
 - c. Failure to exhibit to the Mortgagee, within ten (10) days after demand, receipts showing payment of real estate taxes and assessments.
 - d. Except as hereinbefore permitted, the actual or threatened alteration, demolition or removal of any building on the Premises without written consent of the Mortgagee.
 - e. Failure to maintain the Improvements on the Premises as herein required, free of any liens placed or threatened during the term hereof.
 - f. Failure to comply with any requirements or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Mortgaged Property within three (3) months from the issuance thereof, or before any such violation becomes a lien against the Mortgaged Property, whichever first occurs.

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- g. Failure of Mortgagor or others to comply with or perform any other warranty, covenant or agreement contained herein, in the Note, or in the Loan Documents.
 - h. Any breach of any covenant or warranty or material untruth of any representation of Mortgagor contained in this Mortgage, or the Note or any guaranty executed in conjunction herewith.
 - i. The institution of any bankruptcy, reorganization or insolvency proceedings against the Mortgagor, the then owner of the Mortgaged Property, or any Guarantor, or the appointment of a receiver or a similar official with respect to all or a substantial part of the properties of the Mortgagor, the then owner of the Mortgaged Property, or any Guarantor and a failure to have such proceedings dismissed or such appointment vacated within a period of thirty (30) days.
 - j. The institution of any voluntary bankruptcy, reorganization or insolvency proceedings by the Mortgagor, the then owner of the Mortgaged Property, or any Guarantor, or the appointment of a receiver or a similar official with respect to all or a substantial part of the properties of the Mortgagor, the then owner of the Mortgaged Property, or any Guarantor at the instance of the Mortgagor, the then owner of the Mortgaged Property or any Guarantor.
 - k. The imposition of any encumbrance, mortgage or security interest, or the assertion or making of any levy, seizure, forfeiture action, mechanic's or materialman's lien or attachment on the Mortgaged Property or any part thereof.
 - l. If an event of default shall occur in any loan now or hereafter in existence between Mortgagee and Mortgagor or any mortgage or other security instrument which the Mortgagor or any Guarantor has given to Mortgagee or Affiliate Lender to secure any debt owing to Mortgagee or any Affiliate Lender, and, conversely, the occurrence of an event of default hereunder shall also constitute an event of default under any such other loan.
 - m. The occurrence of any event of default under the Note, or any Loan Document, whether or not such event is specifically set forth herein.
 - n. (i) Any Mortgagor or Guarantor, or any individual who is a principal of Mortgagor or any Guarantor, or any family member of any such person, occupying the Mortgaged Property as their primary, secondary or other residence or (ii) the use of any portion of the proceeds of the loan for purposes other than business or commercial purposes;
 - o. The failure of Mortgagor to perform any duty required by this Mortgage
 - p. Abandonment of the Mortgaged Property by Mortgagor;
 - q. A determination by Mortgagee that the security of the Mortgage is inadequate or in danger of being impaired or threatened from any cause whatsoever.
 - r. Failure to obtain from appropriate authorities all inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Property and, with respect to the use and occupancy of the same, including but not limited to certificates of occupancy and fire underwriting certificates;
 - s. If the Property constitutes a legal nonconforming use, the inability of the nonconforming use to be rebuilt to current density and used and occupied for such nonconforming purposes if damaged or destroyed.
2. **Default Rate.** The Default Rate shall be the lesser of i) the Default Rate identified in the Note, or ii) the highest rate allowable by law at the time of default, provided, however, that at no time shall any interest or charges in the nature of interest be taken, exacted, received or collected which would exceed the maximum rate permitted by law.
 3. **Judgment Rate.** Any judgment rendered on the Note or this Mortgage shall bear interest at the highest rate of interest permitted pursuant to Illinois Statutes, 735 ILCS 5/2-1303.
 4. **Acceleration Upon Default, Additional Remedies.** In the event that one or more defaults as above provided shall occur, the remedies available to Mortgagee shall include, but not necessarily be limited to, any one or more of the following:
 - a. Mortgagee shall declare the entire unpaid balance of the Note immediately due and payable without notice.

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- b. Mortgagee may take immediate possession of the Mortgaged Property or any part thereof (which Mortgagor agrees to surrender to Mortgagee) and directly or through a Mortgagee appointed property manager or other agent manage, control or lease the same to such person or persons and at such rental as it may deem proper and collect all rents, issues and profits, therefrom, including those past due as well as those thereafter accruing, with the right in the Mortgagee to cancel any lease or sublease for any cause which would entitle Mortgagor to cancel the same; to make such expenditures for maintenance, repairs and costs of operation as it may deem advisable; and after deducting the cost thereof and a commission of five (5%) percent upon the gross amount of rents collected, to apply the residue to the payment of any sums which are unpaid hereunder or under the Note. The taking of possession under this paragraph shall not prevent concurrent or later proceedings for the foreclosure sale of the Mortgaged Property as provided elsewhere herein.
- c. Mortgagee may apply to any court of competent jurisdiction for the appointment of a receiver or similar official to manage and operate the Mortgaged Property, or any part thereof, and to apply the net rents and profits therefrom to the payment of the interest and/or principal of said Note and/or any other obligations of Mortgagor to Mortgagee hereunder. In the event of such application, Mortgagor agrees to consent to the appointment of such receiver or similar official, and agrees that such receiver or similar official may be appointed without notice to Mortgagor, without regard to the adequacy of any security for the debts and without regard to the solvency of Mortgagor or any other person, firm or corporation who or which may be liable for the payment of the Note or any other obligation of Mortgagor hereunder.
- d. Without declaring the entire unpaid principal balance due, the Mortgagee may foreclose only as to the sum past due, without injury to this Mortgage or the displacement or impairment of the remainder of the lien thereon, and at such foreclosure sale the property shall be sold subject to all remaining items of indebtedness; and Mortgagee may again foreclose, in the same manner, as often as there may be any sum past due.
5. **Additional Provisions.** Mortgagor expressly agrees, on behalf of itself, its successors and assigns and any future owner of the Mortgaged Property, or any part thereof or interest therein, as follows:
- a. All remedies available to Mortgagee with respect to this Mortgage shall be cumulative and may be pursued concurrently or successively. No delay by Mortgagee in exercising any such remedy shall operate as a waiver thereof or preclude the exercise thereof during the continuance of that or any subsequent default.
- b. The obtaining of a judgment or decree on the Note, whether in the State of Illinois or elsewhere, shall not in any manner affect the lien of this Mortgage upon the Mortgaged Property covered hereby, and any judgment or decree so obtained shall be secured to the same extent as said Note is now secured. Any judgment entered in connection with the Note shall bear interest on the judgment amount at the highest rate of interest permitted under Illinois Statutes, 725 ILCS 5/2-1303, or any future successor or similar statute.
- c. In the event of any foreclosure sale hereunder, all net proceeds shall be available for application to the indebtedness hereby secured whether or not such proceeds may exceed the value of the Mortgaged Property and for unpaid taxes, liens assessments and any other costs relating to the Mortgaged Property.
- d. The only limitation upon the foregoing agreements as to the exercise of Mortgagee's remedies is that there shall be but one full and complete satisfaction of the indebtedness secured hereby.
- e. The Mortgagor shall duly, promptly and fully perform each and every term and provision of any Loan Document which has been executed and delivered by the parties hereto either simultaneously with the execution and delivery hereof, or at a prior time, the terms of which such Loan Document are incorporated herein by reference. The lien of this Mortgage secures the payment of all sums payable to Mortgagee and the performance of all covenants and agreements of Mortgagor under the terms of any Loan Document.
6. **Remedies Not Exclusive.** Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or the Note or under any other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other

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security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee and it may pursue inconsistent remedies.

7. **Waiver of Automatic Stay.** The Mortgagor hereby agrees that, in consideration of the Mortgagee funding the loan secured by this Mortgage, in the event that the Mortgagor shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the United States Code, as amended ("Title 11"); (ii) be the subject of any order for relief issued under Title 11; (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state act or law relating to insolvency or bankruptcy, or other relief from creditors for debtors; (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservators or liquidator; (v) be the subject of any order, Judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to insolvency or bankruptcy, or other relief from creditors for debtors, the Mortgagee shall thereupon be entitled to relief from any automatic stay imposed by Section 362 of Title 11, or otherwise, on or against the exercise of the rights and remedies otherwise available to the Mortgagee under this Mortgage and the Loan Documents, and as otherwise provided by law.

ARTICLE VI

MISCELLANEOUS

1. **Valid Existence.** So long as the Mortgaged Property shall be owned or held by a corporation, limited liability company or partnership (whether limited or general), such corporation, limited liability company or partnership shall at all times maintain its valid existence and shall be fully authorized to do business in the State of Illinois and shall maintain in the State of Illinois a duly authorized registered agent for the service of process. Failure to comply with such obligations shall be a default under this Mortgage. In the case of a corporation, limited liability company or limited partnership within ninety (90) days after the expiration of the time for filing its annual report and the payment of the appropriate taxes in the State of Illinois, Mortgagor will furnish to Mortgagee a certificate of good standing or other evidence satisfactory to Mortgagee to show compliance with the provisions of this Section.
2. **Statements by Mortgagor.** Mortgagor, within three (3) days after request in person or within ten (10) days after request by mail, will furnish to Mortgagee or any person, firm or corporation designated by Mortgagee, a duly acknowledged affidavit or certificate setting forth: (i) the amount of the debt secured by this Mortgage (including all principal and accrued interest); (ii) that no offsets, defenses or counterclaims exist against such debt, or, if such offsets or defenses are alleged to exist, full information with respect to such alleged offsets and/or defenses; and (iii) that the Mortgagor is not in default under the Note, this Mortgage or the Security Documents, or, if such default is alleged to exist, full information with respect to such alleged default.
3. **Successors and Assigns.** The provisions hereof shall be binding upon and shall inure to the benefit of the Mortgagor, its successors and assigns, including without limitation subsequent owners of the Premises or the leasehold estate of the Premises or any part thereof; shall be binding upon and shall inure to the benefit of Mortgagee, its successors and assigns and any future holder of the Note, and any successors or assigns of any future holder of the Note. In the event the ownership of the Mortgaged Property or any leasehold estate that may be covered by this Mortgage becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this instrument and the Note in the same manner as with the Mortgagor, and may alter the interest rate and/or alter or extend the terms of payment of the Note without notice to Mortgagor hereunder or under the Note hereby secured or the lien or priority of this Mortgage with respect to any part of the Mortgaged Property covered hereby, but nothing herein contained shall serve to relieve Mortgagor of any liability under the Note or this Mortgage (or any other agreement executed in conjunction therewith) unless Mortgagee shall expressly release Mortgagor in writing. Mortgagor and any transferee or assignee shall be jointly and severally liable for any documentary or intangible taxes imposed as a result of any transfer or assumption.
4. **Notices.** All notices, demands and requests given by either party hereto to the other party shall be in writing. All notices, demands and requests by the Mortgagee to the Mortgagor shall be deemed to have been properly

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given if sent by United States registered or certified mail, postage prepaid, addressed to the Mortgagor at the address as the Mortgagor may from time to time designate by written notice to the Mortgagee, given as herein required. All notices, demands and requests by the Mortgagor to the Mortgagee shall be deemed to have been properly given if sent by United States registered or certified mail, postage prepaid, addressed to the Mortgagee, or to such other address as the Mortgagee may from time to time designate by written notice to the Mortgagor given as herein required. Notices, demands and requests given in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be deposited in any post office of branch post office regularly maintained by the United States Government.

The Mortgagor shall deliver to the Mortgagee, promptly upon receipt of same, copies of all notices, certificates, documents and instruments received by it which materially affect any part of the Mortgaged Property covered hereby, including, without limitation, notices, notices from any lessee or sublessee claiming that the Mortgagor is in default under any terms of any lease or sublease.

5. **Modifications in Writing.** This Mortgage may not be changed, terminated or modified orally or in any other manner than by an instrument in writing signed by the party against whom enforcement is sought.
6. **Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.
7. **Invalidity of Certain Provisions.** If the lien of this Mortgage is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured portion of the debt shall be completely paid prior to the payments of the secured portion of the debt, and all payments made on the debt, whether voluntary or otherwise, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage.
8. **No Merger.** If both the lessor's and lessee's estates under any lease or any portion thereof which constitutes a part of the Mortgaged Property shall at any time become vested in one owner, this Mortgage and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee as to the separate estates. In addition, upon the foreclosure of the lien created by this Mortgage on the Mortgaged Property pursuant to the provisions hereof, any leases or subleases then existing and created by Mortgagor shall not be destroyed or terminated by application of the law of merger or as a result of such foreclosure sale unless Mortgagee shall so elect. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any lease or sublease unless Mortgagee or such purchaser shall give written notice thereof to such tenant or subtenant.
9. **Governing Law and Construction of Clauses.**
 - a. With respect to procedural matters related to the perfection and enforcement of Mortgagee's rights against the Mortgaged Property, this Mortgage shall be governed by the laws of the state in which the Mortgaged Property is located. In all other respects, this Mortgage will be governed the laws of the State of California without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Mortgage is valid or enforceable, the provision that is questioned will be governed by whichever law would find the provisions to be valid and enforceable.
 - b. The loan transaction that is evidenced by the Note and this Mortgage has been applied for, considered approved and made, and all necessary loan documents have been accepted by Mortgagor in the State of California. Mortgagor agrees that in the event of litigation to enforce the terms of the Note, except as prohibited by applicable law, Mortgagor shall submit to the exclusive jurisdiction of the state courts located in the County of Orange, State of California, or the applicable federal district court that covers said county, and the lawsuit shall be tried and litigated therein. Mortgagor waives any right Mortgagor may have to assert the doctrine of forum non conveniens or to object to such venue.
10. **Transfer.** In the event all or any part of the Mortgaged Property, or any interest therein, is sold, conveyed, encumbered or otherwise transferred by the Mortgagor, without Mortgagee's prior written consent, or, if Mortgagor is a partnership or limited liability company, if any general partner, limited partner or member owning directly or indirectly 10% or more of the beneficial interest in the partnership or company transfers such interest, or if any general partner, limited partner or member of Mortgagor ceases to be a general partner, limited partner or member; or if Mortgagor is a corporation:

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- a. if any shareholder of Mortgagor owning directly or indirectly 10% or more of the issued and outstanding stock of Mortgagor as of the date hereof transfers, during the term of this Mortgage, any of such stock, or
- b. if any additional stock of Mortgagor is issued after the date hereof;

then, and in the event any of the foregoing events occur, Mortgagee may, in its sole discretion require a modification of the terms of the loan or loans secured hereby (including without limitation those related to the rate of interest and terms or schedule of repayment) in a manner satisfactory to Mortgagee, and may charge an “**assumption fee**” or similar fee in consideration of such modification or approval, or accelerate the indebtedness secured hereby and declare the then outstanding balance, with all accrued interest to be immediately due and payable.

11. **Books and Records.** Mortgagor shall keep books and records reflecting its financial condition including, but not limited to, the operation of the Mortgaged Property, in accordance with generally accepted accounting principles consistently applied. Mortgagee shall have the right, from time to time, and at all times, during normal business hours, to examine such books, records and accounts at the offices of the Mortgagor or other person or entity maintaining such books, records and accounts, and to make such copies thereof as Mortgagee may desire.
12. **Other Indebtedness Secured.** This Mortgage is also given as security for any and all other sums, indebtedness, obligations and liabilities of any and every kind however created, incurred, evidenced, acquired or arising, whether under the Note or this Mortgage, or any other instrument, obligation, contract, agreement or dealing of any and every kind now or hereafter existing or entered into between Mortgagor and Mortgagee or any Affiliate Lender, or otherwise, as amended, modified or supplemented from time to time, and whether direct, indirect, primary, secondary, fixed or contingent, and any and all renewals, modifications or extensions of any or all of the foregoing, now or hereafter during the term hereof owing and to become due from Mortgagor to Mortgagee or any entity now or hereafter owned, controlled or managed by Center Street Lending Corporation, Center Street Loans, Inc. or Center Street Lending Management, LLC, including, but not limited to: i) Center Street Lending Fund I, LLC, ii) Center Street Lending Fund IV, LLC, iii) Center Street Lending Fund IV SPE, LLC, iv) Center Street Lending V, LLC, v) Center Street Lending MP III SPE, LLC, vi) Center Street Lending MP IV, LLC, vii) Center Street Lending Fund X, LLC, and viii) Center Street Loans, Inc. (individually “**Affiliate Lender**” and collectively “**Affiliate Lenders**”) and their affiliates, successors and/or assigns, or the then record owner or owners of the Mortgaged Property when evidenced by another promissory note or notes, which are by the terms thereof secured by this Mortgage as identified on the **Cross-Collateralization and Cross-Default Agreement** signed by Mortgagor on or around April 12, 2018.
13. **WAIVER OF JURY TRIAL.** MORTGAGOR, BY THE EXECUTION HEREOF, AND MORTGAGEE, BY ACCEPTANCE HEREOF, EACH HEREBY MUTUALLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE, THAT:

(A) NEITHER THE MORTGAGOR NOR MORTGAGEE, NOR ANY ASSIGNEE, SUCCESSOR, HEIR OR LEGAL REPRESENTATIVE OF MORTGAGOR OR MORTGAGEE SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS MORTGAGE, THE NOTE, ANY CONSTRUCTION LOAN AGREEMENT, OTHER LOAN AGREEMENT OR ANY LOAN DOCUMENT EVIDENCING, SECURING OR RELATING TO THE OBLIGATIONS OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES THERETO;

(B) NEITHER THE MORTGAGOR NOR MORTGAGEE WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

(C) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THOSE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(D) NEITHER THE MORTGAGOR NOR MORTGAGEE HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO ENTER INTO THIS TRANSACTION.

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14. **COUNTERPARTS.** Separate signatures are permissible, and all signatures hereto may be provided by the parties hereto in separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

**[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK.
SIGNATURES ARE ON THE FOLLOWING PAGE]**

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has hereunto set hand and seal all done as of the day and year first written above.

Mortgagor(s):

Esparza Living Trust dated on February 4, 2014

[Signature] Date: 4-12-18

Name: Lorenzo D. Esparza, Trustee

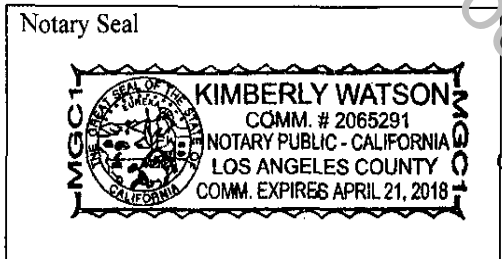
[Signature] Date: 4-12-18

Name: Tonya L. Esparza, Trustee

STATE OF CALIFORNIA)
)ss.
COUNTY OF LOS ANGELES)

The foregoing instrument was acknowledged before me this 12 day of APRIL, 20 18, by Lorenzo D. Esparza and Tonya L. Esparza as Trustee and Trustee on behalf of Esparza Living Trust dated on February 4, 2014 . He/She is personally known to me or has produced DRIVER LICENSE as identification.

WITNESS my hand and official seal.



[Signature]
(Signature of Notary)
Print Name: KIMBERLY WATSON
My Commission Expires: 4-21-18

UNOFFICIAL COPY

EXHIBIT 'A'

File No.: **11059-282292 (CH)**
Property: **950 N MICHIGAN AVENUE #2604, CHICAGO, IL 60611**

PARCEL 1:

UNIT NUMBER 26-F IN ONE MAGNIFICENT MILE CONDOMINIUM AS DELINEATED ON A SURVEY OF PARTS OF CERTAIN LOTS IN MOSS SUBDIVISION OF PART OF LOT 10, AND PARTS OF CERTAIN LOTS AND VACATED ALLEY LYING SOUTH OF THE SOUTH LINE OF CERTAIN LOTS IN LAWRENCE'S SUBDIVISION OF PART OF LOT 7, ALL IN THE SUBDIVISION OF THE NORTH 1/2 OF BLOCK 8 IN CANAL TRUSTEE'S SUBDIVISION OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO DECLARATION OF CONDOMINIUM RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS, AS DOCUMENT NUMBER 26845241 AS AMENDED FROM TIME TO TIME; TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS

PARCEL 2:

ALL THOSE CERTAIN EASEMENTS, PRIVILEGES, RIGHTS OF USE, AND ALL OTHER BENEFITS DESCRIBED IN THAT CERTAIN ONE MAGNIFICENT MILE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS MADE AND ENTERED INTO AS OF NOVEMBER 1, 1983, BY THE LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 14, 1978, AND KNOWN AS TRUST NUMBER 100049 AND RECORDED NOVEMBER 1, 1983, AS DOCUMENT NUMBER 26845239, AND AS AMENDED FROM TIME TO TIME AND AS CREATED FOR THE BENEFIT OF PARCEL 1 BY A DEED FROM LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 14, 1978, AND KNOWN AS TRUST NUMBER 100049 TO LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 1, 1981, AND KNOWN AS TRUST NUMBER 103785, DATED NOVEMBER 1, 1983, AND RECORDED NOVEMBER 1, 1983 AS DOCUMENT NUMBER 26845241 ALL IN COOK COUNTY, ILLINOIS.

A.P.N. 17-03-207-068-1162