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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



Doc# 1824145080 Fee \$90.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 08/29/2018 03:59 PM PG: 1 OF 27

The property identified as: **PIN:** 17-27-123-011-0000

Address:

Street: 2537 S Wabash

Street line 2:

City: Chicago

State: IL

ZIP Code: 60616

Lender: Goldman Sachs Bank USA

Borrower: 2537 S. Wabash CHI LLC

Loan / Mortgage Amount: \$3,772,000.00

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

Certificate number: 1798277C-CB84-46E5-88F4-7A95090007C4

Execution date: 8/29/2018

Sh

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**THIS INSTRUMENT PREPARED BY
AND WHEN RECORDED, RETURN
TO:**

Paxon J. Sinsangkeo, Esq.
Winstead PC
201 North Tryon Street
Suite 2000
Charlotte, North Carolina 28202

Permanent Tax Identification Number:
~~83-1369517~~ 7-27-123-011-0000
Street Address: 2537 South Wabash Avenue, Chicago, Illinois

TO BE RECORDED IN THE
MORTGAGE RECORDS OF
COOK COUNTY, ILLINOIS

**COLLATERAL IS OR INCLUDES FIXTURES AND
THIS SECURITY INSTRUMENT ALSO CONSTITUTES
A FIXTURE FINANCING STATEMENT**

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

This Guaranty Mortgage, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing (as amended from time to time, this "Security Instrument") is made, and is executed as of August 29, 2018, by **2537 S. WABASH CHI LLC**, a Delaware limited liability company (together with its permitted successors and permitted assigns, "Mortgagor"), whose address for all purposes hereunder is c/o City Storage Systems LLC, 350 South Beverly Drive, Suite 210, Beverly Hills, California 90212, for the benefit of **GOLDMAN SACHS BANK USA**, a New York State-Chartered Bank (together with all of its successors and assigns, "Mortgagee"), whose address for all purposes hereunder is 200 West Street, New York, New York, 10282.

ARTICLE I

DEFINITIONS

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

GUARANTY MORTGAGE, ASSIGNMENT OF RENTS AND LEASES.
COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS.
SECURITY AGREEMENT AND FIXTURE FILING – Page 1
49125-838/2537 South Wabash (IL.)

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"Borrower" means, CK Propco 1 LLC, a Delaware limited liability company.

"Guaranteed Obligations" means, collectively, (i) the full and prompt payment to Mortgagee of the Indebtedness when due under the Loan Agreement and (ii) full and prompt performance by Mortgagor and the other Loan Parties of all of their obligations under the Loan Documents.

"Indebtedness" means the principal balance of the Loan outstanding from time to time, together with interest and all other obligations and liabilities of Borrower under the Loan Documents, including all transaction costs, Exit Fees, draw fees, late fees and other amounts due or to become due to Mortgagee pursuant to the Loan Agreement, under this Security Instrument or in accordance with any of the other Loan Documents, and all other amounts, sums and expenses reimbursable by Borrower, Mortgagor or any other Loan Party to Mortgagee pursuant to the Loan Agreement, this Security Instrument or any of the other Loan Documents.

"Loan Agreement" means the Loan Agreement, dated as of October 13, 2017, by and between Mortgagee, as lender, Borrower, as borrower, and the Subsidiary Guarantors from time to time party thereto, as joined by Mortgagor pursuant to that certain Joinder Agreement by and among Borrower, Mortgagor and Mortgagee (the "Joinder Agreement"), as the same may be replaced, amended, supplemented, extended or otherwise modified from time to time.

"Loan Documents" means, collectively, (1) the Loan Agreement, (2) that certain Promissory Note, dated as of October 13, 2017, executed by Borrower pursuant to the Loan Agreement, in the maximum principal amount of \$100,000,000 (as the same may be amended, restated, componentized, supplemented, modified, assigned in whole or in part, replaced and/or divided into multiple notes from time to time, the "Note" or "Notes", as applicable), (3) the Joinder Agreement, (4) this Security Instrument and the other mortgages and deeds of trust executed by any Subsidiary Guarantor pursuant to the Loan Agreement, (5) all other documents now or hereafter executed by any Loan Party or any other person or entity to evidence or secure the payment of the Indebtedness, and (6) all modifications, restatements, extensions, renewals and replacements of the foregoing.

"Loan Party" and "Loan Parties" means, individually or collectively, as the context may require, the Persons identified as "Loan Party" or "Loan Parties" in the Loan Agreement or the other Loan Documents.

"Property" means all of Mortgagor's right, title and interest in and to each of the following (whether now owned or hereafter acquired):

- (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Mortgagor (the "Land");
- (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "Improvements");

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

(4) in and to all goods, accounts, general intangibles, instruments, documents, books and records, accounts receivable, chattel paper, investment property, securities accounts and all other personal property of any kind or character, including such items of "personal property" as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and/or the Improvements or that may be used in or relating to the planning, development, financing or operation of the Land and/or the Improvements, including furniture, furnishings, equipment, kitchen equipment (to the extent not Fixtures, and including, but not limited to, any tools or implements), machinery, money, insurance proceeds, condemnation awards, accounts, contract rights, causes of action, trademarks, tradenames, servicemarks, logos, copyrights, patents, website domains, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs and all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments against the Land and/or Improvements as a result of tax certiorari or any applications or proceedings for reduction (the "Personalty"),

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

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

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

(8) all of the rents, revenues, income, proceeds, issues, profits (including all oil or gas or other mineral royalties and bonuses), security and other types of deposits, and other benefits paid or payable and to become due or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, occupying, operating from, residing in, selling or otherwise enjoying any portion or portions of the Land and/or Improvements (the "Rents"),

(9) the Approved Management Agreement and all other contracts and agreements in any way relating to, executed in connection with, or used in, the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition, management or ownership of the Land and/or Improvements or the sale of goods or services produced in or relating to the Land and/or Improvements (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Property Agreements"), including all right, title and interest of Mortgagor in, to and under (a) all construction contracts, architects' agreements, engineers' contracts, utility contracts, letters of credit, escrow agreements, maintenance agreements, management, leasing and related agreements, parking agreements, equipment leases, service contracts, operating leases, catering and restaurant leases and agreements, agreements for the sale, lease or exchange of goods or other property, agreements for the performance of services, permits, variances, licenses, certificates and entitlements, (b) all material agreements and instruments under which Mortgagor or any of its affiliates or the seller of the Property have remaining rights or obligations in respect of Mortgagor's acquisition of the Property or equity interests therein, (c) applicable business licenses, variances, entitlements, certificates, state health department licenses, liquor licenses, food service licenses, licenses to conduct business, certificates of need and all other permits, licenses and rights obtained from any Governmental Authority or private Person, (d) all rights of Mortgagor to receive monies due and to become due under or pursuant to the Property Agreements, (e) all claims of Mortgagor for damages arising out of or for breach of or default under the Property Agreements, (f) all rights of Mortgagor to terminate, amend, supplement,

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modify or waive performance under the Property Agreements, to compel performance and otherwise to exercise all remedies thereunder, and, with respect to Property Agreements that are letters of credit, to make any draws thereon, and (g) to the extent not included in the foregoing, all cash and non-cash proceeds, products, offspring, rents, revenues, issues, profits, royalties, income, benefits, additions, renewals, extensions, substitutions, replacements and accessions of and to any and all of the foregoing,

(10) all rights, privileges, titles, interests, liberties, tenements, hereditaments, rights-of-way, easements, sewer rights, water, water courses, water rights and powers, air rights and development rights, licenses, permits and construction and equipment warranties, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, underground vaults, passages, strips or gores of land adjoining the Land or any part thereof,

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

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

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

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

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

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

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

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ARTICLE 2

HABENDUM

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

ARTICLE 3

DEFAULT AND FORECLOSURE

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

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

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

(c) Operation of Property. Whether or not a receiver has been appointed pursuant to Section 3.1(e) hereof, hold, lease, develop, manage, operate, control and otherwise use the Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems reasonably necessary or desirable), exercise all

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rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents, and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 3.7 hereof.

(d) Foreclosure and Sale. Institute proceedings for the complete foreclosure of this Security Instrument, in which case the Property may be sold for cash or credit in one or more parcels or in several interests or portions and in any order or manner in accordance with applicable law governing foreclosures. At any such sale by virtue of any legal right, remedy or recourse to the fullest extent permitted under applicable law, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Guaranteed Obligations in lieu of paying cash. With respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) Business Days' prior written notice shall be deemed commercially reasonable.

(e) Receiver. Prior to, concurrently with, or subsequent to the institution of foreclosure proceedings, make application to a court of competent jurisdiction for, and (to the extent permitted by applicable law) obtain from such court as a matter of strict right and without notice to Mortgagor or anyone claiming under Mortgagor or regard to the value of the Property or the solvency or insolvency of Mortgagor or the adequacy of any collateral for the repayment of the Guaranteed Obligations or the interest of Mortgagor therein, the appointment of a receiver or receivers of the Property, and Mortgagor irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 3.7 hereof.

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

(g) Liquor Licenses. Mortgagor shall cooperate with Mortgagee to (i) facilitate the orderly transfer (to the fullest extent permitted by applicable laws) to Mortgagee or its designee of all liquor license permits in respect of the Property and (ii) enable the continued provision of alcoholic beverages and operation of liquor services at the Property without interruption, in each case, until such time as Mortgagee or its designee shall have

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obtained such Permits. If any other party is the holder of the liquor license permits in respect of the Property, either as of the date hereof or subsequent to the date hereof, Mortgagor shall cause such party to deliver to Mortgagee in writing an agreement to abide by the foregoing.

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

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

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

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

Section 3.6 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Guaranteed Obligations, the Loan Documents, the Property and otherwise.

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and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default that may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

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

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

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

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

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

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

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

Section 3.9 Additional Advances and Disbursements: Costs of Enforcement. If any Event of Default is continuing, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section, or otherwise under this Security

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Instrument or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall constitute additions to the Guaranteed Obligations and shall be secured by this Security Instrument and Mortgagor covenants and agrees to pay them to the order of Mortgagee promptly upon demand.

Section 3.10 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 3, the assignment of the Rents and Leases under Article 4, the collateral assignment of the Property Agreements under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a lender in possession or mortgagee in possession of the Property, to obligate Mortgagee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages (excluding (i) consequential, special and punitive damages unless arising from a third-party claim against Mortgagee, and (ii) diminution in the value of the Property) that are asserted against or incurred by Mortgagee, as the case may be, solely by reason of Mortgagee's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent of Mortgagee's gross negligence or willful misconduct or any claim arising as a result of an act or omission of Mortgagee after the date on which Mortgagee has taken control of the Property pursuant to an exercise of its rights and remedies hereunder or in the Loan Documents. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Guaranteed Obligations secured hereby, and Mortgagor shall reimburse Mortgagee, as the case may be, therefor immediately upon demand.

ARTICLE 4

ASSIGNMENT OF RENTS AND LEASES

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

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

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

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exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder.

Section 4.4 Irrevocable Instructions to Tenants. At Mortgagee's written request, Mortgagor shall deliver a copy of this Security Instrument to each tenant under a Lease and to each manager and managing agent or operator of the Property, and Mortgagee shall have the continuing right to do so. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Mortgagor, to comply with all demands of Mortgagee under this Article 4 and to turn over to Mortgagee on demand all Rents that it receives. Mortgagor hereby acknowledges and agrees that payment of any Rents by a person to Mortgagee as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such Rents had been paid to Mortgagor. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, upon an Event of Default that is continuing, to enter upon the Property in person or by agent, without bringing any action or proceeding, or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license shall be applied in accordance with the provisions of the Loan Agreement. Neither the enforcement of any of the remedies under this Article 4 nor any other remedies or security interests afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a lender in possession or mortgagee in possession of the Property, to obligate Mortgagee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all out-of-pocket claims, liability, expenses, losses or damages (excluding (i) consequential, special and punitive damages unless arising from a third-party claim against Mortgagee, and (ii) diminution in the value of the Property) that are asserted against or incurred by Mortgagee solely by reason of Mortgagee's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent caused by Mortgagee's gross negligence or willful misconduct or any claim arising as a result of an act or omission of Mortgagee after the date on which Mortgagee has taken control of the Property pursuant to an exercise of its rights and remedies hereunder or in the Loan Documents. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Guaranteed Obligations secured hereby, and Mortgagor shall reimburse Mortgagee therefor within ten (10) days after demand.

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

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ARTICLE 5

COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS

Section 5.1 Collateral Assignment. Mortgagor does hereby collaterally assign and pledge to Mortgagee, Mortgagor's right, title and interest in, to and under all current and future Property Agreements. Such collateral assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Property Agreement or otherwise impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such collateral assignment.

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

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

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deliver a copy of this Security Instrument to each grantor or licensor of or the contracting party to a Property Agreement, and Mortgagee shall have the continuing right to do so.

Section 5.4 Indemnity. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all out-of-pocket claims, liability, expenses, losses or damages (excluding (i) consequential, special and punitive damages unless arising from a third-party claim against Mortgagee, and (ii) diminution in the value of the Property) that are asserted against or incurred by Mortgagee solely by reason of Mortgagee's status as an assignee pursuant to the collateral assignment of Property Agreements contained herein, but excluding any claim to the extent caused by Mortgagee's gross negligence or willful misconduct or any claim arising as a result of an act or omission of Mortgagee after the date on which Mortgagee has taken control of the Property pursuant to an exercise of its rights and remedies hereunder or under the Loan Documents. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Guaranteed Obligations secured hereby, and Mortgagor shall reimburse Mortgagee therefor within five (5) Business Days after demand.

Section 5.5 Property Agreement Covenants.

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

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

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

ARTICLE 6

SECURITY AGREEMENT

Section 6.1 Security Interest. This Security Instrument constitutes both a real property mortgage and a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements (said portion of the Property subject to the UCC, the "Collateral"). The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. Mortgagor, by executing and

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delivering this Security Instrument, hereby grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Property that is personal property to secure the payment and performance of the Guaranteed Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at the Property. Mortgagor shall pay to Mortgagee within ten (10) days after written demand any and all out-of-pocket expenses, including actual reasonable legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, shall, except as otherwise required by law, be applied by Mortgagee in accordance with Section 3.7 hereof.

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

Section 6.3 Fixture Filing. This Security Instrument shall also constitute a "fixture filing" for the purposes of the UCC upon all of the Property that is or is to become "fixtures" (as that term is defined in the UCC), upon being filed for record in the real estate records of the city or county wherein such fixtures are located. Information concerning the security interest herein

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granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Security Instrument.

ARTICLE 7

MISCELLANEOUS

Section 7.1 Notices. Any notice required or permitted to be given under this Security Instrument shall be given in the manner described in the Loan Agreement.

Section 7.2 Covenant Running with the Land. All representations, warranties, covenants and obligations contained in the Loan Agreement are incorporated herein by this reference and, to the extent relating to the Property, are intended by the parties to be, and shall be construed as, covenants running with the land. All persons or entities who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3 Attorney-in fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which appointment is irrevocable and coupled with an interest, after the occurrence and during the continuance of an Event of Default (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed or assignment of lease pursuant to the foreclosure of this Security Instrument or the delivery of a deed or assignment of lease in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed or the assignee of any such assignment of lease and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Collateral, and (d) to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be included in the Guaranteed Obligations and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action that it is empowered to take under this Section 7.3.

Section 7.4 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns.

Section 7.5 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a

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waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6 Subrogation. To the extent proceeds of the Notes have been used to extinguish, extend or renew any indebtedness against the Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Property and held by the holder of such indebtedness and shall have the benefit of the priority of all of the same, and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

Section 7.7 Loan Agreement. If any conflict or inconsistency exists between this Security Instrument and the Loan Agreement, the Loan Agreement shall govern.

Section 7.8 Release. Upon payment in full of the Indebtedness and performance in full of all of the outstanding Guaranteed Obligations, the estate hereby granted shall cease, terminate and be void and Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Security Instrument or assign this Security Instrument, in each case in accordance with the Loan Agreement.

Section 7.9 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of, and hereby waives, any appraisal, valuation, stay, marshaling of assets, exemption, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Security Instrument or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

Section 7.10 Waiver of Jury Trial; Consent to Jurisdiction.

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

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

(b) MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE HEREBY CONSENT FOR THEMSELVES AND MORTGAGOR HEREBY CONSENTS IN RESPECT OF ITS PROPERTIES, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY. MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE FURTHER CONSENT, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE IN WHICH ANY OF THE COLLATERAL IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO SUCH COLLATERAL. MORTGAGOR AND MORTGAGEE FURTHER IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH IN SECTION 9.4 OF THE LOAN AGREEMENT IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE HEREBY IRREVOCABLY WAIVE ANY OBJECTION THAT THEY MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF MORTGAGEE TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST MORTGAGOR IN ANY JURISDICTION.

Section 7.11 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify, limit or define, or be used in construing, the scope, intent or text of such Articles, Sections or Subsections.

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Section 7.12 Governing Law. THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE LAND IS LOCATED. WITH RESPECT TO ANY PERSONAL PROPERTY INCLUDED IN THE "PROPERTY", THE CREATION OF THE SECURITY INTEREST THEREIN SHALL BE GOVERNED BY THE UCC, AND THE PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION AND PRIORITY OF SUCH SECURITY INTEREST SHALL BE GOVERNED IN ACCORDANCE WITH THE MANDATORY CHOICE OF LAW RULES SET FORTH IN THE UCC.

Section 7.13 General Indemnity; Payment of Expenses. Section 9.17 of the Loan Agreement is incorporated by this reference, as if fully set forth herein.

Section 7.14 Entire Agreement. This Security Instrument and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor pertaining to the subject matter hereof and thereof and supersede all prior agreements, understandings, representations or other arrangements, whether express or implied, written or oral, between such parties relating to the subject matter hereof and thereof. This Security Instrument and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.15 Severability. If any provision of this Security Instrument is invalid or unenforceable, then such provision shall be given full force and effect to the fullest possible extent, and all of the remaining provisions of this Security Instrument shall remain in full force and effect and shall be binding on the parties hereto.

Section 7.16 Reserved.

Section 7.17 Lien Absolute. Mortgagor acknowledges that this Security Instrument and a number of other Loan Documents and those documents required by the Loan Documents together secure the Guaranteed Obligations. Mortgagor agrees that, to the extent permitted by law, the lien of this Security Instrument and all obligations of Mortgagor hereunder shall be absolute and unconditional and shall not in any manner be affected or impaired by:

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

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

(c) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any of the Guaranteed Obligations or any of the collateral security therefor, including the Loan Documents, or due to any other circumstance that might otherwise constitute a defense available to, or a discharge of, Mortgagor in respect of the Guaranteed Obligations hereby

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secured or any collateral security therefor, including the Loan Documents, or due to any other circumstance that might otherwise constitute a defense available to, or a discharge of, Mortgagor in respect of the Guaranteed Obligations or this Security Instrument (other than the indefeasible payment in full in cash of all of the Guaranteed Obligations);

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

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

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

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

Section 7.18 Real Estate Taxes. Mortgagor shall not be entitled to any credit upon the Guaranteed Obligations or deduction from the assessed value of the Property by virtue of payment of real estate taxes on the Property. If any law or regulation applicable to Mortgagee, any Note, any of the Property or this Security Instrument is enacted that deducts from the value of property for the purpose of taxation any Lien thereon, or imposes upon Mortgagee the payment of the whole or any portion of the taxes or assessments or charges or Liens required by any of the Loan Documents to be paid by Mortgagor, or changes in any way the laws or regulations relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect the Security Instrument, the Guaranteed Obligations or Mortgagee, then Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or Liens, or reimburse Mortgagee for any amounts paid by Mortgagee. If in the reasonable opinion of Mortgagee's counsel it might be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, Mortgagee may elect to declare all of the Guaranteed Obligations to be due and payable 90 days from the giving of written notice by Mortgagee to Mortgagor.

Section 7.19 Incorporation by Reference.

(a) All obligations of Mortgagor under this Security Instrument shall be limited by the provisions of Section 9.19 of the Loan Agreement, the provisions of which are incorporated herein by this reference.

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

Section 7.20 State Specific Provisions. The provisions of Exhibit B attached hereto are hereby incorporated by reference as though set forth in full herein.

Section 7.21 Last Dollars Secured. The parties agree that any payments or repayments of the Guaranteed Obligations shall be and be deemed to be applied first to the portion of the Guaranteed Obligations that is not secured hereby, if any, it being the parties' intent that the portion of the Guaranteed Obligations last remaining unpaid shall be secured hereby.

Section 7.22 Mortgage Recording Taxes. Mortgagor hereby covenants to pay any and all mortgage recording or other taxes or fees due in connection with this Security Instrument.

Section 7.23 Multiple Exercise of Remedies. To the extent permitted by law, Mortgagor specifically consents and agrees that Mortgagee may exercise rights and remedies hereunder and under the other Loan Documents separately or concurrently and in any order that Mortgagee may deem appropriate.

Section 7.24 Rules of Construction. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require. All references to sections, schedules and exhibits are to sections, schedules and exhibits in or to this Security Instrument unless otherwise specified. Unless otherwise specified: (i) all meanings attributed to defined terms in this Security Instrument shall be equally applicable to both the singular and plural forms of the terms so defined, (ii) "including" means "including, but not limited to" and "including, without limitation" and (iii) the words "hereof," "herein," "hereby," "hereunder" and words of similar import when used in this Security Instrument shall refer to this Security Instrument as a whole and not to any particular provision, article, section or other subdivision of this Security Instrument.

Section 7.25 Counterparts; Facsimile Signatures. This Security Instrument may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Any counterpart delivered by facsimile, pdf or other electronic means shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Security Instrument.

Mortgagor hereby acknowledges receipt of a true copy of the within Security Instrument.


[Remainder of page intentionally left blank. Signature page follows.]

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Executed and delivered as of the date first hereinabove set forth.

MORTGAGOR:

2537 S. WABASH CHI LLC,
a Delaware limited liability company

By: 

Name: Diego Berdakin
Title: Authorized Signatory

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

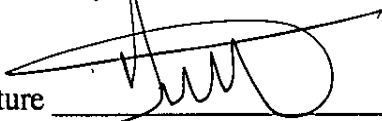
STATE OF CALIFORNIA §

COUNTY OF LOS ANGELES §

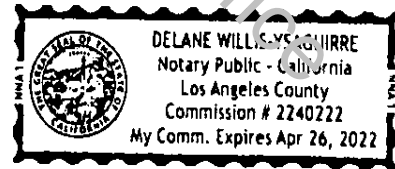
On August 02, 2018, before me, Delane Willis Maguire, Notary Public personally appeared DIEGO BERDAKIN, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



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EXHIBIT A

Legal Description

LOTS 5 TO 9, IN THE SUBDIVISION OF THE WEST ½ OF BLOCK 71, IN THE CANAL TRUSTEES' SUBDIVISION OF THE WEST ½ OF SECTION 27, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDER OF DEEDS**

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EXHIBIT B

Special Provisions for the State of Illinois

THIS EXHIBIT B is attached to and made a part of that certain Guaranty Mortgage, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing dated as of August 29, 2018 (the "Security Instrument"), executed and delivered by **2537 S. WABASH CHI LLC**, a Delaware limited liability company, mortgagor for all purposes hereunder (together with its permitted successors and permitted assigns, "Mortgagor"), for the benefit of **GOLDMAN SACHS BANK USA**, a New York state-chartered bank mortgagee for all purposes hereunder (together with all its successors and assigns, "Mortgagee"). This Exhibit B is hereby incorporated by reference into and made a part of the Security Instrument as if fully set forth therein. All provisions and terms of the Security Instrument not otherwise amended or modified herein shall remain in full force and effect, and all definitions contained in the Security Instrument shall have the same meanings for purposes of this Exhibit B, except as otherwise specifically defined or modified hereby.

1. Principles of Construction. In the event of any inconsistencies between the terms and provisions of this Exhibit B and the terms and provision of the other Sections and Articles of this Security Instrument, the terms and provisions of this Exhibit B shall govern and control.

2. Business Loan Recital/Statutory Exemption. Mortgagor 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 Guaranteed Obligations secured hereby has been incurred by Mortgagor solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said Section 4(1); (C) the Guaranteed Obligations 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 Guaranteed Obligations are 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 Mortgagor and Mortgagor's investment or profit, as contemplated by said section. Without limiting the generality of anything contained herein, Mortgagor acknowledges and agrees that the transaction of which this Security Instrument is part is a transaction 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).

3. Illinois Mortgage Foreclosure Act. It is the express intention of Mortgagee and Mortgagor that the rights, remedies, powers and authorities conferred upon Mortgagee pursuant to this Security Instrument shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 et seq. (the "Act"), including all amendments thereto which may become effective from time to time after the date hereof, and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provisions in this Security Instrument are deemed inconsistent with any provision in the Act, the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render

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unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act. If any provision of this Security Instrument shall grant to Mortgagee any rights or remedies which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of such provisions, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

4. Maximum Indebtedness. The principal amount of the Indebtedness attributable to the Property shall not exceed **\$7,544,000.00**, which amount is double the Allocated Loan Amount of **\$3,772,000.00** with respect to the Property under the Note.

5. Waiver of Right of Redemption and Reinstatement. Without limiting the generality of any provisions of this Security Instrument, Mortgagor hereby waives all its rights of redemption and reinstatement as provided under Sections 15-1601 and 15-1602 of the Act.

6. Mortgagee in Possession. In addition to any provision of this Security Instrument authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 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 Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of the Act.

7. Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows:

Unless the Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Security Instrument, the Loan Agreement or any of the other Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property or any other collateral for the Guaranteed Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property or any other collateral for the Guaranteed Obligations. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Security Instrument, the Loan Agreement or any of the other Loan Documents. If Mortgagee purchases insurance for the Property or any other collateral for the Guaranteed Obligations, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The cost of the insurance may be added to the Indebtedness and future obligations secured hereunder.

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The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

8. Maturity Date. The Indebtedness shall be due and payable in full on or before **October 9, 2023**, or such earlier date as may result from the acceleration of the Loan in accordance with the Loan Agreement.

[No further text on this page.]

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDER OF DEEDS**