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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



Doc# 1828234017 Fee \$82.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 10/09/2018 09:53 AM PG: 1 OF 23

The property identified as: **PIN:** 17-09-250-003-0000

Address:

Street: 311 West Illinois Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60654

Lender: Landesbank Hessen-Thüringen Girozentrale

Borrower: 311 West Illinois Street Owner LLC

Loan / Mortgage Amount: \$75,000,000.00

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.

CCH 1801818LD 3-FY

CTE JHOK

Certificate number: 63322AFD-8930-4844-8388-C28F900E1212

Execution date: 10/4/2018

Rv

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MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

This Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (this "**Mortgage**") is executed as of October 5, 2018, by **311 WEST ILLINOIS STREET OWNER LLC**, a Delaware limited liability company, having an office at 225 West Washington Street, Suite 2300, Chicago, Illinois 60606 ("**Mortgagor**"), to **LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE**, as agent ("**Agent**") for the benefit of itself and the Banks who are parties to the Loan Agreement hereinafter described, from time to time (collectively, "**Beneficiary**"). Agent's address is 420 Fifth Avenue, 24th Floor, New York, New York 10018-2729. Pursuant to the Loan Agreement, Agent has been given full power and authority to act on behalf of Beneficiary with regard to the enforcement of this Mortgage and the Note (defined below) secured by this Mortgage, and on all other matters relating to the Loan secured by this Mortgage.

RECITALS:

Mortgagor by a certain term loan promissory note dated as of the date hereof given to the Banks is indebted to the Banks in the aggregate principal sum of SEVENTY-FIVE MILLION AND NO/100THS DOLLARS (\$75,000,000.00) in lawful money of the United States of America (such note, as the same may be supplemented, amended, restated, renewed, replaced, substituted, modified or extended from time to time, shall, collectively, be referred to as the "**Note**"), with interest from the date thereof at the rate(s) set forth in the Loan Agreement, principal and interest to be payable in accordance with the terms and conditions provided in the Note and in that certain Term Loan Agreement dated as of the date hereof among Mortgagor, Agent and the Banks (as the same may be issued, supplemented, amended, restated, renewed, replaced, substituted, modified or extended from time to time, the "**Loan Agreement**").

Mortgagor desires to secure the payment and performance of the Obligations.

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

ARTICLE 1 DEFINITIONS

Section 1.01 **Definitions**. As used herein, the following terms shall have the following meanings:

(a) "**Mortgaged Property**": All of Mortgagor's right, title and interest in the following: (1) the real property described in Exhibit A, 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**"), (3) all fixtures (as defined in the UCC hereinafter described), including, without limitation, all materials, supplies, equipment (as defined in the UCC) not owned by, paid for by, financed (in compliance with the Loan Agreement) by, or leased from third parties, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor

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and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "**Fixtures**"); (4) all goods, accounts, general intangibles (including payment intangibles), deposit accounts (other than security deposit and contract deposit accounts), instruments, investment property, commercial tort claims, letter-of-credit rights, letters of credit, money, documents and chattel paper (as such terms are defined in the UCC) 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 Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment (specifically excluding the items of personal property described in that certain UCC Financing Statement filed on March 2, 2018 as file number 2018 1462213, showing Borrower as the debtor and BAYCAP LLC as the secured party, as affected by that certain UCC Financing Statement Amendment filed on March 13, 2018 as file number 2018 1734538), machinery, money, insurance proceeds, accounts, contract rights, trademarks, 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 (the "**Personalty**"); (5) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts maintained by Mortgagor or Beneficiary with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements prepared for Mortgagor, and all amendments and modifications thereof (the "**Plans**"); (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "**Leases**"); (8) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the "**Rents**"); (9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Property Agreements**"); (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, (14) any awards, remunerations, reimbursements, settlements or

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compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, the Improvements, the Fixtures or the Personalty, (15) all of Mortgagor's contractual rights in any escrow agreements in connection with security deposits and/or contract deposits, (16) any and all air and/or development rights and any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, the Improvements, the Fixtures or the Personalty; and (17) all software embedded within or used in connection with any of the collateral described above. As used in this Mortgage, the term "**Mortgaged Property**" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

(b) "**UCC**": The Uniform Commercial Code of the State of New York or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the State of New York, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

Capitalized terms not defined herein shall have the meanings ascribed thereto in the Loan Agreement.

ARTICLE 2 GRANT

Section 2.01 **Grant**. IN CONSIDERATION OF THE FOREGOING and to secure the full and timely payment and performance of the Obligations, Mortgagor has mortgaged, given, granted, warranted, bargained, sold, aliened, enfeoffed, conveyed, confirmed and assigned, and by these presents does mortgage, give, grant, warrant, bargain, sell, alien, enfeoff, convey, confirm and assign, unto Agent, with all powers of sale, all right, title and interest of Mortgagor now owned, or hereafter acquired, in and to the Mortgaged Property, subject to the Permitted Exceptions.

ARTICLE 3 WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Beneficiary as follows:

Section 3.01 **Title to Mortgaged Property and Lien of this Instrument**. Mortgagor owns the Mortgaged Property free and clear of any Liens, claims or interests, except the Permitted Exceptions. This Mortgage creates valid, enforceable first priority Liens and security interests against the Mortgaged Property.

Section 3.02 **First Lien Status**. Mortgagor shall preserve and protect the first Lien and security interest status of this Mortgage and the other Loan Documents. If any Lien or security interest other than the Permitted Exceptions is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Agent a detailed written notice of such Lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Loan Agreement (including the requirement of providing a bond or other security satisfactory to Agent).

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Section 3.03 **Payment and Performance.** Mortgagor shall pay the Obligations when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

Section 3.04 **Replacement of Fixtures and Personalty.** Subject to the respective rights and obligations under **Section 6.03** hereof, Mortgagor shall not, without the prior written consent of Agent (which consent shall not be unreasonably withheld, conditioned or delayed), permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the Liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other Lien or security interest except such as may be first approved in writing by Agent or otherwise permitted under the Loan Agreement.

Section 3.05 **Maintenance of Rights of Way, Easements and Licenses.** Mortgagor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Agent (which consent shall not be unreasonably withheld, conditioned or delayed), consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Mortgagor shall comply in all material respects with all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 3.06 **Inspection.** Mortgagor shall permit Agent, and its agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and conduct such environmental and engineering studies as Agent may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

Section 3.07 **Other Covenants.** All of the covenants in the Loan Agreement are incorporated herein by reference and, together with covenants in this **Article 3**, shall be covenants running with the land. The covenants set forth in the Loan Agreement include, among other provisions: (a) limitations on the further sale, transfer or encumbering of any of the Mortgaged Property, (b) the obligation to pay when due all taxes on the Mortgaged Property or assessed against Beneficiary with respect to the Loan, (c) the right of Beneficiary to inspect the Mortgaged Property, (d) the obligation to keep the Mortgaged Property insured as Beneficiary may require, (e) the obligation to comply with all legal requirements (including environmental laws), maintain the Mortgaged Property in good condition, and promptly repair any damage or casualty, and (f) except as otherwise permitted under the Loan Agreement, the obligation of Mortgagor to obtain Beneficiary's consent prior to entering into, modifying or taking other actions with respect to Leases.

Section 3.08 **Condemnation Awards and Insurance Proceeds.**

(a) **Condemnation Awards.** Subject to the provisions of the Loan Agreement, Mortgagor assigns all awards and compensation for any condemnation or other

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taking, or any purchase in lieu thereof, to Beneficiary and authorizes Beneficiary to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Loan Agreement.

(b) **Insurance Proceeds.** Subject to the provisions of the Loan Agreement, (i) Mortgagor assigns to Beneficiary all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property and (ii) Mortgagor authorizes Beneficiary to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Beneficiary, instead of to Mortgagor and Beneficiary jointly.

Section 3.09 **CC&R's.** To promptly and in all material respects observe, perform, and discharge each and every condition, obligation, covenant and agreement affecting the Mortgaged Property, whether the same is prior and superior or subject and subordinate hereto, including, without limitation, if the Mortgaged Property is or will be a condominium, community apartment or part of a planned development project, each and every provision to be performed by Mortgagor under any declaration of covenants, conditions and restrictions or other similar document pertaining thereto.

ARTICLE 4 DEFAULT AND FORECLOSURE

Section 4.01 **Remedies.** If an Event of Default (as defined in the Loan Agreement) exists, Beneficiary may, at Beneficiary's election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the 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), whereupon the same shall become immediately due and payable.

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

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Beneficiary in connection therewith in accordance with the provisions of **Section 4.07.**

(d) **Foreclosure and Sale.** Institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. If (a) the Land shall consist of one or more parcels, whether or not contiguous and

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whether or not located in the same county, or (b) in addition to this Mortgage, Beneficiary shall now or hereafter hold one or more additional mortgages, Liens or other security (directly or indirectly) for the Obligations upon other property in the State, then to the fullest extent permitted by law, Beneficiary may, at its election, commence or consolidate in a single foreclosure action all foreclosure proceedings against all such collateral securing the Obligations (including the Mortgaged Property), which action may be brought or consolidated in the courts of any county in which any of such collateral is located. Mortgagor acknowledges that the right to maintain a consolidated foreclosure action is a specific inducement to Beneficiary to extend the Obligations, and Mortgagor expressly and irrevocably waives any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of forum non conveniens which it may now or hereafter have. With respect to any notices required or permitted under the UCC, Mortgagor agrees that five (5) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, 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. Beneficiary may be a purchaser at such sale and if Beneficiary is the highest bidder, may credit the portion of the purchase price that would be distributed to Beneficiary against the Obligations in lieu of paying cash.

(e) **Receiver.** To the extent permitted by Law, make application to a court of competent jurisdiction for, and immediately obtain from such court as a matter of strict right and without notice to Mortgagor or regard to (i) the adequacy of the Mortgaged Property for the repayment of the Obligations or (ii) the solvency of Mortgagor or any other Person liable for the payment of the Obligations, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall be vested with the fullest powers permitted under applicable law and have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.07. Mortgagor and every other Person liable for payment of the Obligations hereby waives and authorizes Beneficiary to waive any requirement that a receiver post a bond.

(f) **Inspection Rights.** In accordance with, and subject to, any limitations set forth in the Loan Agreement and on reasonable notice (except in the case of an emergency), and without releasing Mortgagor from any obligation to cure any default of Mortgagor, Beneficiary or its agents, representatives, and employees acting by themselves or through a court-appointed receiver, may, from time to time and at all reasonable times (or at any time in the case of an emergency), enter and inspect the Mortgaged Property and every part of it (including all samples of building materials, soil, and groundwater, and all books, records, and files of Mortgagor relating to the Mortgaged Property) and perform any acts and things as Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the security of this Mortgage, for the purpose of determining:

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- (i) the existence, location, nature, and magnitude of any past or present release or threatened release,
- (ii) the presence of any Hazardous Materials on or about the Mortgaged Property in violation of any Environmental Law, and
- (iii) the compliance by Mortgagor of every environmental provision of this Mortgage and all other Loan Documents.

In furtherance of these purposes, without limitation of any of its other rights, Beneficiary may:

- (x) obtain a court order to enforce Beneficiary's right to enter and inspect the Mortgaged Property, to which the decision of Beneficiary as to whether there exists a release, threatened release, any Hazardous Materials on or about the Mortgaged Property in violation of any Environmental Law, or a breach by Mortgagor of any environmental provision of this Mortgage or any of the other Loan Documents, will be deemed reasonable and conclusive as between Mortgagor and Beneficiary; and
- (y) have a receiver appointed to enforce Beneficiary's right to enter and inspect the Mortgaged Property for Hazardous Materials.

All actual out-of-pocket costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations that Beneficiary or its agents, representatives, or employees may conduct, including the fees of the engineers, laboratories, contractors, consultants, and attorneys, will be paid by Mortgagor. All costs or expenses incurred by Beneficiary pursuant to this subsection (including, without limitation, court costs, reasonable consultants' fees, and reasonable attorneys' fees, whether incurred in litigation and whether before or after judgment) will bear interest at the Default Rate from the date Beneficiary makes a demand for payment until they have been paid in full. Except as provided by Legal Requirements, any inspections or tests made by Beneficiary or its representatives, employees, and agents, will be for Beneficiary's purposes only and will not be construed to create any responsibility or liability on the part of Beneficiary to Mortgagor or to any other person. Subject to Beneficiary providing notice to Mortgagor, Beneficiary will have the right, but not the obligation, to communicate with any governmental authority regarding any fact or reasonable belief of Beneficiary that constitutes or could constitute a breach of any of Mortgagor's obligations under any environmental provision in this Mortgage or any of the Loan Documents.

(g) **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 Note either before, during or after any proceeding to enforce this Mortgage).

Section 4.02 **Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Beneficiary in its sole discretion, may elect;

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the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.03 **Remedies Cumulative, Concurrent and Nonexclusive.** Beneficiary 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, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Note and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary, (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 Beneficiary 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 4.04 **Release of and Resort to Collateral.** Beneficiary may release, regardless of consideration and without the necessity for any notice to a consent by the holder of any subordinate Lien on the Mortgaged Property, any part of the Mortgaged 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 Mortgaged Property. For payment of the Obligations, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

Section 4.05 **Waiver of Redemption, Notice and Marshalling 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 law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Beneficiary's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.06 **Discontinuance of Proceedings.** If Beneficiary 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, Beneficiary shall have the unqualified right to do so and, in such an event, Mortgagor and Beneficiary shall be restored to their former positions with respect to the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary 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 which may then exist or the right of Beneficiary thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 4.07 **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other

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use of the Mortgaged Property, shall be applied by Beneficiary (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) receiver's fees and expenses, (2) court costs, (3) attorneys' and accountants' fees and expenses, (4) costs of advertisement, and (5) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold;

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

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

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

Section 4.08 **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to **Section 4.01(d)** shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged 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 Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

Section 4.09 **Costs of Enforcement.**

(a) If any Event of Default exists, Beneficiary 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 Beneficiary under **this Section 4.09(b)**, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate (as defined in the Loan Agreement); and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all actual out-of-pocket expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise.

Section 4.10 **No Beneficiary in Possession.** Neither the enforcement of any of the remedies under **this Article 4**, the assignment of the Rents and Leases under **Article 5**, the security interests under **Article 6**, nor any other remedies afforded to Beneficiary under the Loan Documents at law or in equity shall cause Beneficiary to be deemed or construed to be a

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mortgagee in possession of the Mortgaged Property (in the absence of the actual taking of possession of the Mortgaged Property), to obligate Beneficiary to lease the Mortgaged 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.

Section 4.11 **Transfer Tax.** Mortgagor shall pay, and indemnify Beneficiary and any grantee for, any: (a) City of Chicago, Cook County or State of Illinois transfer taxes arising from any foreclosure, deed in lieu of foreclosure, or other divestiture of Mortgagor's title to the Mortgaged Property directly or indirectly through Beneficiary's exercise of remedies under the Loan Documents (any such taxes on any such transfers or divestitures, "**Transfer Taxes**"); (b) audit or claim by any governmental authority on Transfer Taxes; (c) interest and penalties for failure to pay Transfer Taxes; and (d) reasonable attorneys' fees of enforcing the indemnity.

Section 4.12 **Waiver of Redemption and Reinstatement.** Mortgagor further agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisement, valuation, stay or extension laws now or hereafter in force, or take any other action (other than good faith defenses and compulsory counterclaims, and the payment in full of the outstanding Obligations) that would prevent or hinder the enforcement of foreclosure of this Mortgage or the absolute sale of the Mortgaged Property, or the final and absolute delivery of possession thereof, immediately after such foreclosure sale, to the purchaser thereat. Mortgagor, for itself and all who may, at any time, claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof, and agrees that Beneficiary or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 1/15-1101 et seq.; the "**Act**") or residential real estate (as defined in Section 15-1219 of the Act). On behalf of Mortgagor, and each and every person acquiring any interest in, or title to, the Mortgaged Property subsequent to the date of this Mortgage, and on behalf of all other persons, to the maximum extent permitted by applicable law, Mortgagor hereby waives any and all rights: (x) of redemption from any foreclosure, or other disposition of any kind or nature, of the Mortgaged Property, or any part thereof, or interest therein, under or pursuant to rights herein granted to Beneficiary; and (y) to reinstatement of the indebtedness hereby secured, including, without limitation, any right to reverse any acceleration of such indebtedness pursuant to 735 ILCS 5/15-1602. All waivers by Mortgagor in this Mortgage have been made voluntarily, intelligently and knowingly by Mortgagor, after Mortgagor has been afforded an opportunity to be informed by counsel of Mortgagor's choice as to possible alternative rights. Mortgagor's execution of this Mortgage shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

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ARTICLE 5 ASSIGNMENT OF RENTS AND LEASES

Section 5.01 **Assignment.** Mortgagor acknowledges and confirms that it has executed and delivered to Beneficiary an Assignment of Rents and Leases dated as of the date hereof (the "**Assignment of Rents and Leases**"), intending that such instrument create a present, absolute assignment to Beneficiary of the Leases and Rents. Without limiting the intended benefits or the remedies provided under the Assignment of Rents and Leases, Mortgagor hereby assigns to Beneficiary, as further security for the Obligations, the Leases and Rents. While any Event of Default exists, Beneficiary shall be entitled to exercise any or all of the remedies provided in the Assignment of Rents and Leases and in **Article 4** hereof, including the right to have a receiver appointed. If any conflict or inconsistency exists between the assignment of the Rents and the Leases in this Mortgage and the absolute assignment of the Rents and the Leases in the Assignment of Rents and Leases, the terms of the Assignment of Rents and Leases shall control.

Section 5.02 **No Merger of Estates.** So long as any part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Beneficiary, any lessee or any third party by purchase or otherwise.

ARTICLE 6 SECURITY AGREEMENT

Section 6.01 **Security Interest.** This Mortgage constitutes both a real property mortgage and a "security agreement" within the meaning of the UCC and other applicable law with respect to the Personalty, the Fixtures, the Plans, the Leases, the Rents and the Mortgaged Property Agreements and all other Mortgaged Property which is collateral under the UCC (collectively, the "**Personal Property**"). To this end, but subject to any applicable provisions of the Loan Agreement, Mortgagor grants to Beneficiary, a first and prior security interest in the Personal Property to secure the payment of the Obligations and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Personal Property sent to Mortgagor at least five (5) Business Days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.02 **Financing Statements.** Mortgagor shall file upon written request from Beneficiary and/or hereby authorizes Beneficiary to file, at Mortgagor's expense, such financing, amendment and/or continuation statements as Beneficiary believes necessary or desirable to create, perfect and/or preserve Beneficiary's security interest hereunder. Mortgagor shall promptly notify Beneficiary if Mortgagor (a) re-domesticates to another state, (b) moves its chief executive office to another state, (c) changes its name, (d) is merged into another entity or (e) moves any of its tangible personal property to another state, unless such personal property is replaced by similar property of equal or greater value. For purposes of such filings, Mortgagor agrees to furnish any information reasonably requested by Beneficiary promptly upon request by

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Beneficiary. Mortgagor is a registered organization (as defined in the UCC), organized solely under the laws of the State of Delaware. Mortgagor authorizes Beneficiary and its counsel to file UCC financing statements describing the collateral as “all assets of the debtor, whether now owned or existing or hereafter acquired or arising and all proceeds and products thereof, including, without limitation, all fixtures on the Land and/or the Improvements”, and any limitations on such collateral description, notwithstanding that such collateral description may be broader in scope than the Personal Property. Mortgagor shall promptly notify Beneficiary of any change in its organizational identification number. If Mortgagor does not now have an organizational identification number and later obtains one, Mortgagor promptly shall notify Beneficiary of such organizational identification number.

Section 6.03 Fixture Filing.

(a) This Mortgage shall also constitute a “fixture filing” for the purposes of the UCC, including, without limitation, Section 9-502(c) thereof, against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Mortgage. Notwithstanding the foregoing, at Beneficiary’s election, Mortgagor shall also file and/or authorize Beneficiary to file, at Beneficiary’s expense, financing statements required or permitted in the filing office (as defined in the UCC) to perfect a security interest in the Fixtures.

(b) It is understood and agreed that, to protect Beneficiary against the effect of UCC § 9-334, if any fixture owned by Mortgagor on the Mortgaged Property, or any part of any fixture, is replaced or added to, or any new fixture owned by Mortgagor is installed by Mortgagor, and in each case the fixture has a cost or fair market value in excess of Ten Thousand and 00/100 Dollars (\$10,000.00), and the fixture is or may be subject to a security interest held by a seller or any other party, the following shall apply:

(i) Mortgagor or any owner of all or any part of the Mortgaged Property will, before the replacement, addition, or installation of any fixture, obtain the prior written approval of Beneficiary, and give Beneficiary written notice that a security agreement with respect to the fixture has been or will be consummated, and the notice shall contain the following information:

(w) a description of the fixtures to be replaced, added to, installed, or substituted;

(x) a recital of the location at which the fixtures will be replaced, added to, installed, or substituted;

(y) a statement of the name and address of the holder and amount of the security interest; and

(z) the date of the purchase of the fixtures.

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Neither this subsection nor any consent by Beneficiary pursuant to this subsection will constitute an agreement to subordinate any right of Beneficiary in fixtures or other property covered by this Mortgage.

(ii) After the occurrence and during the continuance of an Event of Default, Beneficiary may at any time pay the balance due under the security agreement and the amount paid will be:

(x) secured by this Mortgage and will be a Lien on the Mortgaged Property, enjoying the same priorities as this Mortgage ,

(y) added to the amount of the Note or other obligation secured by this Mortgage , and

(z) payable on demand with interest at the Default Rate from the time of the payment; and if Mortgagor is in default for ten (10) days after demand, the entire principal sum secured hereby with all unpaid interest will, at the Beneficiary's option, become immediately due, regardless of any contrary provision in this Mortgage or the Note; or, unless prohibited by such security agreement, Beneficiary will have the privilege of acquiring by assignment from the holder of the security interest any contract rights, accounts receivable, chattel paper, negotiable or nonnegotiable instruments, or other evidence of Mortgagor's indebtedness for the fixtures, and, on acquiring these interests by assignment, will have the right to enforce the security interest as an assignee, in accordance with the UCC and other applicable law.

(iii) Whether Beneficiary has paid or taken an assignment of the security interest, if at any time Mortgagor is in default for a period of ten (10) days under the security agreement covering the fixtures, and the obligations secured by such security agreement exceed \$50,000, that default will be considered a material breach of Mortgagor's covenants under this Mortgage , and will, at Beneficiary's option, constitute an Event of Default, and the principal sum secured will, at Beneficiary's option, become immediately due.

(iv) The provisions of subsections (ii) and (iii) above will not apply if the goods that may become fixtures are of at least equivalent value and quality as any property being replaced and if the rights of the party holding the security interest have been expressly subordinated, at no cost to Beneficiary, to the Lien of this Mortgage in a manner satisfactory to Beneficiary, including, without limitation, at Beneficiary's option, providing to Beneficiary a satisfactory opinion of counsel that this Mortgage constitutes a valid and subsisting first Lien on the fixtures that is not subordinate to the Lien of the security interest under any applicable law, including, without limitation, the provisions of UCC §§ 9-334 and 9-604.

Section 6.04 Assignment of Agreements.

(a) (a) To the extent not prohibited by provision of such agreements, permits or contracts, as partial security for the Obligations, Mortgagor sells, assigns, transfers,

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sets over, and delivers to Beneficiary all of Mortgagor's right, title, and interest in all agreements, permits, and contracts pertaining to the use or operation of the Mortgaged Property, including, but not limited to, environmental impact reports; negative declarations; map approvals; grading and construction permits; conditional use permits; applications for all permits; management agreements; all development rights in the Mortgaged Property that Mortgagor may now or later acquire (including, without limitation, development rights arising in connection with any action by a governmental entity, including, by way of illustration, but not of limitation, inducement resolutions of county, municipal, or other governmental entities); agreements with contractors, suppliers, and construction managers; and agreements pertaining to the transfer of development rights or permitted floor area under applicable laws or ordinances, as they may be amended or otherwise modified from time to time (collectively, the "**Agreements**"), including, without limitation, the right of Mortgagor to terminate any of the Agreements, to perform under them, and to compel performance and otherwise exercise all remedies under them, together with the immediate and continuing right to collect and receive all sums that may become due to Mortgagor, or which Mortgagor may now or later become entitled to demand or claim, arising or issuing out of the Agreements, including, without limitation, claims of Mortgagor for damages arising out of breach of or default under any of the Agreements and all rights of Mortgagor to receive proceeds of any insurance, indemnity, warranty, or guaranty with respect to any of the Agreements. However, so long as no Event of Default has occurred and is continuing, Mortgagor will have the right under a license granted hereby to collect and retain all sums that may become payable to Mortgagor under the Agreements and to take any action thereunder which Mortgagor reasonably believes necessary or desirable.

(b) Mortgagor covenants and agrees to observe, perform, and discharge the obligations, terms, covenants, conditions, and warranties to be observed, performed, and discharged by it under the Agreements. Beneficiary, upon and during the continuation of an Event of Default, at its option and upon written notice to Mortgagor, will have the right to declare the assignment in this **Section 6.04** to be absolute and the license granted in **Section 6.04(a)** terminated, and, in addition, Beneficiary will have the complete right then or later to exercise and enforce all of the rights and remedies provided by Legal Requirements.

(c) The acceptance by Beneficiary of the assignment in this **Section 6.04**, with all the rights, powers, privileges, and authority granted will not, prior to the exercise of Beneficiary's right to declare the assignment in this **Section 6.04** to be absolute, obligate Beneficiary to assume any obligations under the Agreements or to take any action under them, or to expend any money or incur any expense or perform or discharge any obligation, duty, or liability under the Agreements, or to assume any obligation or responsibility for the nonperformance of the provisions by Mortgagor.

ARTICLE 7 STATE SPECIFIC PROVISIONS

Section 7.01 **Compliance with Illinois Mortgage Foreclosure Law.** In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 Illinois Compiled Statutes 5 Sections 15-1101 et seq.) (herein called the "**Act**"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this

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Mortgage that can be construed in a manner consistent with the Act. Furthermore, if any provision of this Mortgage grants to Beneficiary any rights or remedies, upon default of Mortgagor, that are more limited than the rights that would otherwise be vested in Beneficiary under the Act, in the absence of said provision, Beneficiary shall be vested with the rights granted in the Act, to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Beneficiary, to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

Section 7.02 **Illinois Collateral Protection Act.** Unless Mortgagor provides Beneficiary with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or the other Loan Documents, Beneficiary may purchase insurance at Mortgagor's expense to protect Beneficiary's interests in the Mortgaged Property. This insurance may, but need not, protect Mortgagor's interest. The coverage that Beneficiary purchases may not pay any claim that Mortgagor may make or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Beneficiary, but only after providing Beneficiary with evidence that Mortgagor has obtained insurance as required by this Mortgage, the Loan Agreement or the other Loan Documents. If Beneficiary purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of such insurance, including interest and any other charges that may be imposed in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. Without limitation of any other provision of this Mortgage, the Loan Agreement or the other Loan Documents, the cost of such insurance shall be added to the indebtedness secured hereby. The cost of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

Section 7.03 **Maximum Indebtedness.** The maximum principal amount secured by this Mortgage (excluding interest, costs, expenses and protective advances) is \$150,000,000.00.

ARTICLE 8 MISCELLANEOUS

Section 8.01 **Notices.** Any approval, consent, notice, request or other communication required or permitted to be given under this Mortgage shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this **Section 8.01**). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth below.

<u>If to Mortgagor:</u>	311 West Illinois Street Owner LLC 225 W. Washington Street, Suite 2300 Chicago, Illinois 60606 Attention: Kevin Hites
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with copies to: Ginsberg Jacobs LLC
300 South Wacker Drive, Suite 2750
Chicago, Illinois 60606
Attention: David A. Lapins, Esq.

and c/o J.P. Morgan Investment Management Inc.
270 Park Avenue, 7th Floor
New York, NY 10017
Attention: Michael F. Buckley

and Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Attention: Edward M. Rishty, Esq.

If to Agent: Landesbank Hessen-Thüringen Girozentrale
420 Fifth Avenue, 24th Floor
New York, New York 10018-2729
Attention: Thomas Crowley

With copies to: Landesbank Hessen-Thüringen Girozentrale
420 Fifth Avenue, 24th Floor
New York, New York 10018-2729
Attention: General Counsel, New York Branch

and Dentons US LLP
1221 Avenue of the Americas
New York, New York 10020-1055
Attention: Gary A. Goodman, Esq.

Any communication so addressed and mailed shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first (1st) Business Day after deposit with an overnight air courier service, or (3) on the third (3rd) Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by Mortgagor or Beneficiary, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to the party's telecopy number specified above, and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this **Section 8.01**. Any party may designate a change of address by notice to the others by giving at least ten (10) days prior notice of such change of address.

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Section 8.02 **Covenants Running with the Land.** All Obligations contained in this Mortgage are intended by Mortgagor and Beneficiary to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Beneficiary has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged 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 Beneficiary.

Section 8.03 **Attorney-in-Fact.** Mortgagor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed 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 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 Beneficiary's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) Beneficiary shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this **Section 8.03.**

Section 8.04 **Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Beneficiary and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

Section 8.05 **No Waiver.** Any failure by Beneficiary to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Beneficiary shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 8.06 **Subrogation.** To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Beneficiary shall be subrogated to all of the rights, Liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, Liens and interests, if any, are not waived, but are continued in full force and effect in favor of Beneficiary.

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Section 8.07 **Loan Agreement.** If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern.

Section 8.08 **Release.** Upon payment in full of the Obligations and performance in full of the Obligations, Beneficiary, at Mortgagor's expense, shall release the Liens and security interests created by this Mortgage; provided, however, that in lieu of such release, so long as at the time of such payment in full no default shall have occurred and be continuing, Beneficiary shall assign the Note and this Mortgage, without representation or recourse, to an institutional lender designated by Mortgagor. Notwithstanding the foregoing, on any repayment or refinancing of the Loan, Beneficiary shall not be obligated to deliver an assignment of this Mortgage, and shall be obligated only to deliver a release, satisfaction or discharge, if Beneficiary continues to hold any other mortgage encumbering the Mortgaged Property (unless Beneficiary is simultaneously assigning to a replacement lender all such mortgages otherwise held by Beneficiary).

Section 8.09 **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 any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Beneficiary or any rights or remedies of Beneficiary.

Section 8.10 **Limitation on Liability.** Mortgagor's liability hereunder is subject to the limitation on liability provisions of Article 12 of the Loan Agreement.

Section 8.11 **Obligations of Mortgagor, Joint and Several.** If more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such persons or entities hereunder shall be joint and several.

Section 8.12 **Governing Law.**

(a) IN ACCORDANCE WITH THE TERMS OF THE LOAN DOCUMENTS AND EXCEPT AS PROVIDED BELOW, THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS MORTGAGE AND UNDER THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LEGAL REQUIREMENTS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICTS-OF-LAW RULES AND PRINCIPLES OF SUCH STATE. THE MORTGAGOR AND THE BENEFICIARY FURTHER ACKNOWLEDGE, AGREE AND STIPULATE THAT THIS MORTGAGE WAS MADE BY THE MORTGAGOR IN THE STATE OF NEW YORK, THAT THE PROCEEDS OF THE OBLIGATIONS SECURED HEREBY WERE RECEIVED BY THE MORTGAGOR IN THE STATE OF NEW YORK AND THAT THE STATE OF NEW YORK HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES INVOLVED IN THIS TRANSACTION AND TO THE UNDERLYING TRANSACTIONS SECURED BY THIS MORTGAGE. NOTWITHSTANDING THE FOREGOING, THE PARTIES AGREE THAT:

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(i) THE PROCEDURES GOVERNING THE ENFORCEMENT BY THE BENEFICIARY OF PROVISIONAL REMEDIES AGAINST THE MORTGAGOR DIRECTLY RELATING TO THE REAL PROPERTY ENCUMBERED HEREBY, INCLUDING, BY WAY OF ILLUSTRATION BUT NOT LIMITATION, ANY SUCH ACTIONS FOR REPLEVIN, FOR CLAIM OR DELIVERY OF PROPERTY, OR FOR THE APPOINTMENT OF A RECEIVER, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS;

(ii) THE LEGAL REQUIREMENTS OF THE STATE OF ILLINOIS SHALL APPLY TO THE EXTENT, BUT ONLY TO THE EXTENT, NECESSARY IN ORDER TO CREATE, TO PERFECT, AND TO FORECLOSE THE SECURITY INTEREST AND LIENS CREATED HEREBY; PROVIDED, HOWEVER, THAT NOTHING IN THIS PARAGRAPH SHALL IN ANY EVENT BE CONSTRUED TO PROVIDE THAT THE SUBSTANTIVE LEGAL REQUIREMENTS OF THE STATE OF ILLINOIS SHALL APPLY TO THE OBLIGATIONS SECURED BY THIS MORTGAGE OR EVIDENCED BY THE OTHER LOAN DOCUMENTS, WHICH ARE AND SHALL CONTINUE TO BE GOVERNED BY THE SUBSTANTIVE LEGAL REQUIREMENTS OF THE STATE OF NEW YORK. IN SUCH CONNECTION, THE PARTIES FURTHER AGREE THAT.

(b) THE BENEFICIARY MAY ENFORCE ITS RIGHTS UNDER THE LOAN DOCUMENTS, INCLUDING ITS RIGHT TO SUE THE MORTGAGOR, AND/OR ANY GUARANTOR, TO COLLECT ANY OUTSTANDING OBLIGATIONS, OR TO OBTAIN A JUDGMENT AGAINST THE MORTGAGOR IN THE STATE OF NEW YORK, THE STATE OF ILLINOIS OR OTHER STATES FOR ANY DEFICIENCY PRIOR TO OR FOLLOWING FORECLOSURE, IN ACCORDANCE WITH NEW YORK LEGAL REQUIREMENTS, AND IF THE BENEFICIARY OBTAINS A DEFICIENCY JUDGMENT IN A STATE OTHER THAN IN THE STATE OF ILLINOIS, THE BENEFICIARY SHALL HAVE THE RIGHT TO ENFORCE SUCH JUDGMENT IN THE STATE OF ILLINOIS, AS WELL AS IN OTHER STATES;

(c) WHENEVER POSSIBLE, EACH PROVISION OF THIS MORTGAGE SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LEGAL REQUIREMENTS, BUT IF ANY PROVISION OF THIS MORTGAGE SHALL BE UNENFORCEABLE OR PROHIBITED BY OR INVALID UNDER APPLICABLE LEGAL REQUIREMENTS, SUCH PROVISION SHALL BE INEFFECTIVE TO THE EXTENT OF SUCH UNENFORCEABILITY, PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINING PROVISIONS OF THIS MORTGAGE.

Section 8.13 **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 8.14 **Entire Agreement.** This Mortgage and the other Loan Documents embody the entire agreement and understanding between Beneficiary and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by

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evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

[signatures appear on the following page]

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

Property of Cook County Clerk's Office

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Executed and delivered as of the date first above written.

MORTGAGOR:

311 WEST ILLINOIS STREET OWNER LLC,
a Delaware limited liability company

By Jeanne Lazar
Name: Jeanne Lazar
Its Authorized Signatory

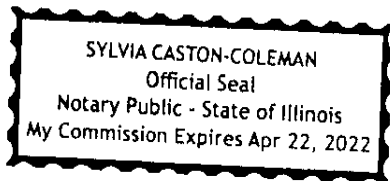
STATE OF Illinois)
COUNTY OF COOK) ss.

I, Sylvia Caston-Coleman, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jeanne Lazar, the Authorized Signatory of 311 West Illinois Street Owner, LLC, a Delaware limited liability company (the "Company") personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument in his/her capacity as Authorized Signatory of the Company as his/her free and voluntary act, and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

Given under my hand and official seal, this 4 day of October, 2018.

Sylvia Caston-Coleman
Notary Public

My commission expires: 4-22-2022



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EXHIBIT A

Lots 1 through 6, inclusive, together with that part of Lot 7 in Block 4 in Butler, Wright & Webster's Addition to Chicago in the West 1/2 of the West 1/2 of the Northeast 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, lying East of the following described line:

Beginning at a point on the North Line of Lot 7 aforesaid 6.08 feet West of the Northeast Corner thereof; thence Southerly along a line drawn 6.08 feet West of and parallel with the East Line of Said Lot 7, a distance of 76.05 feet; thence Easterly perpendicular to the last described line, 2.08 feet; thence Southerly along a line drawn 4.00 feet West of and parallel with the East Line of Said Lot 7, a distance of 24.00 feet to the South line of Said Lot 7, being the Southerly Terminus of the herein described line, in Cook County Illinois.

Address:

311 West Illinois Street, Chicago, Illinois 60654

PINs:

17-09-250-003-0000

17-09-250-004-0000

17-09-250-005-0000

17-09-250-006-0000

EXH A-1