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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Report Mortgage Fraud

844-768-1713

CCH/1802/99CD/18/11



\*1829845098\*

Doc# 1829845098 Fee \$120.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 10/25/2018 03:17 PM PG: 1 OF 42

The property identified as: *1079* PIN: 17-16-204-034-0000

Address:

Street: 39 S. LASALLE STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60603

Lender: PNC BANK, NATIONAL ASSOCIATION

Borrower: KHP III 39 CHICAGO LLC AND 39 CHICAGO BUILDING LLC

Loan / Mortgage Amount: \$68,000,000.00

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.

Certificate number: B932DE5D-A06C-4C6E-80CD-62B97E2A88FF

Execution date: 10/25/2018

*R*

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This document prepared by  
and after recording return to:

Jones Day  
901 Lakeside Avenue  
Cleveland, OH 44114  
Attention: Dana Rogers

ADDRESS:  
39 S. LaSalle Street  
Chicago, IL 60603

PIN: 17-16-204-034-0000

## Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents Security Agreement and Fixture Filing



THIS LEASEHOLD AND SUBLEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of the 25th day of October, 2018, by KHP III 39 CHICAGO LLC, a Delaware limited liability company (the "Ground Tenant"), and 39 CHICAGO BUILDING LLC, a Delaware limited liability company (the "Borrower," and together with Ground Tenant, individually and collectively, the "Mortgagor"), with an address at 101 California Street, Suite 980, San Francisco, California 94111, in favor of PNC BANK, NATIONAL ASSOCIATION, a national banking association (the "Mortgagee"), with an address at 575 Market Street, 28<sup>th</sup> Floor, San Francisco, California 94105.

WHEREAS, pursuant to the Ground Lease, dated January 9, 2014, by and between ROC II IL LaSalle, LLC, a Delaware limited liability company, and The University of Chicago, an Illinois not-for-profit corporation ("Ground Lessor"), as evidenced by that certain Amended Memorandum of Ground Lease, recorded with the Cook County Recorder of Deeds on January 10, 2014 as Doc No. 1401022120, as assigned by ROC II IL LaSalle, LLC, a Delaware limited liability company, to Ground Tenant pursuant to that certain Ground Lease Assignment dated January 9, 2014 and recorded with the Cook County Recorder of Deeds on January 10, 2014 as Doc No. 1401022121 (as amended, restated or replaced from time to time, the "Ground Lease"), the Ground Tenant holds a leasehold interest in the land described in Exhibit A attached hereto and made a part hereof (the "Land");

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**WHEREAS**, the Ground Tenant owns the fee simple interest in the Improvements, as hereinafter defined;

**WHEREAS**, pursuant to the terms of a Ground Sublease, dated July 2, 2015, by and between the Ground Tenant and the Borrower (as amended, restated or replaced from time to time, the "**Sublease**"), the Borrower holds a subleasehold interest in the Land and a leasehold interest in the Improvements; and

**WHEREAS**, the Borrower has borrowed from the Mortgagee a loan in an amount not to exceed Sixty-Eight Million Dollars (\$68,000,000) (the "**Loan**"), which Loan is evidenced by one or more promissory notes in favor of the Mortgagee (as the same may be amended, supplemented or replaced from time to time, the "**Note**"). The Loan is also governed by the terms and conditions of a Term Loan Agreement dated on or before the date of this Mortgage (as the same may be amended, supplemented or replaced from time to time, the "**Loan Agreement**");

**NOW, THEREFORE**, for the purpose of securing the payment and performance of the following obligations (collectively called the "**Obligations**"):

(A) The Loan, the Note, the Loan Agreement, the PNC Provided Interest Rate Hedge Liabilities, and all other debts, liabilities, obligations, covenants and duties owing by the Mortgagor to the Mortgagee, whether direct or indirect, absolute or contingent, joint or several, due or to become due, now existing or hereafter arising under the Loan, the Note, the Loan Agreement or the PNC Provided Interest Rate Hedge Liabilities;

(B) All debts, liabilities and obligations of the Mortgagor to the Mortgagee arising out of overdrafts on deposit or other accounts or out of electronic funds transfers (whether by wire transfer or through automated clearing houses or otherwise) or out of the return unpaid of, or other failure of the Mortgagee to receive final payment for, any check, item, instrument, payment order or other deposit or credit to a deposit or other account, or out of the Mortgagee's non-receipt of or inability to collect funds or otherwise not being made whole in connection with depository or other similar arrangements;

(C) Any amendments, extensions, renewals and increases of or to any of the foregoing, and all costs and expenses of the Mortgagee incurred in the documentation, negotiation, modification, enforcement, collection and otherwise in connection with any of the foregoing, including reasonable attorneys' fees and expenses; and

(D) Any sums advanced by the Mortgagee or which may otherwise become due pursuant to the provisions of the Note, the Loan Agreement, the Master Agreement, this Mortgage or any other document or instrument at any time delivered to the Mortgagee to evidence or secure any of the Obligations (as each of the same may be amended, supplemented or replaced from time to time, collectively, the "**Loan Documents**"). Notwithstanding the foregoing, for purposes hereof, the following documents will not be deemed to be and are not Loan Documents for

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purposes of this Mortgage, the obligations thereunder will not be deemed to be and are not Obligations and this Mortgage will not be deemed to be and will not secure such documents or the obligations evidenced thereby: (i) the Environmental Indemnity Agreement (Unsecured) and (ii) the Limited Guaranty, each as defined in the Loan Agreement;

The Mortgagor, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, hereby **MORTGAGES, CONVEYS, TRANSFERS AND ASSIGNS TO MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS, FOREVER, AND HEREBY GRANTS TO MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER A CONTINUING SECURITY INTEREST IN, TO, AND UNDER ALL OF THE FOLLOWING DESCRIBED PROPERTY, ALL ACCESSIONS AND ADDITIONS THERETO, ALL SUBSTITUTIONS THEREFOR AND REPLACEMENTS AND PROCEEDS THEREOF, AND ALL REVERSIONS AND REMAINDERS OF SUCH PROPERTY NOW OWNED OR HELD OR HEREAFTER ACQUIRED** (the "**Property**"), to wit:

(a) All of the Mortgagor's estate, right title and interest in the Land, together with all of the easements, rights of way, privileges, liberties, hereditaments, gores, streets, alleys, passages, ways, waters, watercourses, air rights, oil rights, gas rights, mineral rights and all other rights and appurtenances thereunto belonging or appertaining, and all of the Mortgagor's estate, right, title, interest, claim and demand therein and in the public streets and ways adjacent thereto, either in law or in equity;

(b) All of Mortgagor's estate, right title and interest in the buildings, structures and improvements of every kind and description now or hereafter erected or placed on the Land, and all facilities, fixtures, machinery, apparatus, appliances, installations, equipment and other goods, which in each case have become so related to the Land that an interest in them arises under real property law, including all building materials to be incorporated into such buildings, all electrical equipment necessary for the operation of such buildings and heating, air conditioning and plumbing equipment now or hereafter attached to, appurtenant to, located in or used in connection with those buildings, structures or other improvements (the "**Improvements**");

(c) All of (i) Ground Tenant's right, title and interest as "Lessee" under the Ground Lease, and (ii) Borrower's right title and interest as "Tenant" under the Sublease;

(d) All of the Mortgagor's right, title and interest in and to all agreements, plans, franchises, management agreements, approvals (whether issued by a governmental authority or otherwise) and other documentation or written or recorded work product required for or in any way related to the development, construction, renovation, use, occupancy or ownership of the Improvements, if any, whether now existing or hereafter arising (the "**Development Documents**"), including all (i) plans, specifications and other design work for buildings and utilities, (ii) architect's agreements and construction contracts and warranties, (iii) environmental

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reports, surveys and other engineering work product, (iv) permits and licenses and (v) agreements of sale, purchase options and agreements for easements and rights of way benefiting the Land;

(e) All of the Mortgagor's right, title and interest in all rents, income, issues and profits arising or issuing from the Land and the Improvements and advantages and claims against guarantors of any Leases (defined below) (the "**Rents**") including the Rents arising or issuing from the Mortgagor's interest in all leases (including, without limitation, oil and gas leases), licenses, subleases or any other use or occupancy agreement now or hereafter entered into covering all or any part of the Land and Improvements (the "**Leases**"), all of which Leases and Rents are hereby assigned to the Mortgagee by the Mortgagor. The foregoing assignment shall include all fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties, and all cash or securities deposited under Leases to secure performance of lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more installments of rent coming due prior to the expiration of such terms. The foregoing assignment extends to Rents arising both before and after the commencement by or against the Mortgagor of any case or proceeding under any Federal or State bankruptcy, insolvency or similar law, and is intended as an absolute assignment and not merely the granting of a security interest. The Mortgagor, however, shall have a license to collect, retain and use the Rents so long as no Event of Default shall have occurred and be continuing or shall exist;

(f) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims; and

(g) This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the Uniform Commercial Code (the "**UCC**"). Without limiting any of the other provisions of this Mortgage, the Mortgagor, as debtor (as defined in the UCC), expressly grants unto the Mortgagee, as secured party, a security interest in all personal property of the Mortgagor, including the following, all whether now owned or hereafter acquired or arising and wherever located: (i) accounts (including health-care-insurance receivables and credit card receivables); (ii) securities entitlements, securities accounts, commodity accounts, commodity contracts and investment property; (iii) deposit accounts; (iv) instruments (including promissory notes); (v) documents (including warehouse receipts); (vi) chattel paper (including electronic chattel paper and tangible chattel paper); (vii) inventory, including raw materials, work in process, or materials used or consumed in the Mortgagor's business, items held for sale or lease or furnished or to be furnished under contracts of service, sale or lease, goods that are returned, reclaimed or repossessed; (viii) goods of every nature, including stock-in-trade, FF&E, goods on consignment, standing timber that is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, crops grown, growing, or to be grown, manufactured homes, computer programs embedded in such goods and farm products; (ix) equipment, including machinery, vehicles and furniture; (x) fixtures; (xi) agricultural liens; (xii) as-extracted collateral; (xiii) letter of credit rights; (xiv) general intangibles, of every kind and description, including payment intangibles, software, computer information, source codes, object codes, records and data, all existing and

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future customer lists, choses in action, claims (including claims for indemnification or breach of warranty), books, records, patents and patent applications, copyrights, trademarks, tradenames, tradestyles, trademark applications, goodwill, blueprints, drawings, designs and plans, trade secrets, contracts, licenses, license agreements, formulae, tax and any other types of refunds, returned and unearned insurance premiums, rights and claims under insurance policies; (xv) all supporting obligations of all of the foregoing property; (xvi) all property of the Mortgagor now or hereafter in the Mortgagee's possession or in transit to or from, or under the custody or control of, the Mortgagee or any affiliate thereof; (xvii) all cash and cash equivalents thereof; and (xviii) all cash and noncash proceeds (including insurance proceeds) of all of the foregoing property, all products thereof and all additions and accessions thereto, substitutions therefor and replacements thereof. By its signature hereon, the Mortgagor hereby irrevocably authorizes the Mortgagee to file against the Mortgagor one or more financing, continuation or amendment statements pursuant to the UCC in form satisfactory to the Mortgagee, and the Mortgagor will pay the costs of preparing and filing the same in all jurisdictions in which such filing is deemed by the Mortgagee to be necessary or desirable in order to perfect, preserve and protect its security interests. The Mortgagor hereby consent to the Mortgagee filing any UCC financing statements deemed necessary by the Mortgagee to perfect its interest in the Property, including a financing statement or financing statements describing the collateral as "all assets, now owned or hereafter acquired" or words of similar import.

As used herein, the following additional terms shall be defined as follows:

**"Bankruptcy Code"** shall mean Title 11 of the United States Code entitled "Bankruptcy", as now or hereafter in effect or any successor statute thereof.

**"Lease Damage Claims"** shall mean all of the Ground Tenant's claims and rights to payment of damages, offsets, and other rights and remedies that may arise from: (a) Ground Lessor's failure to perform under the Ground Lease; (b) rejection or disaffirmance of the Ground Lease under any Debtor Relief Law or in connection with any Insolvency Proceeding; (c) violation or breach by Ground Lessor under the Ground Lease; or (d) Ground Lessor's sale of the portion of the Land owned by it pursuant to Section 363 of the Bankruptcy Code or similar provisions of any other Debtor Relief Law, and all damages and other sums payable with respect to or pursuant to any of the foregoing.

**"Lessee Bankruptcy Rights"** shall mean all of the Ground Tenant's rights, remedies, powers, and privileges arising at any time under, in, or in connection with or related to any Insolvency Proceeding affecting Ground Lessor, including the Ground Tenant's right: (a) to object to Ground Lessor's sale of the portion of the Land owned by Ground Lessor under any Debtor Relief Law, including Bankruptcy Code Section 363 and (b) to make the 365(h) Election, and any other comparable right under any other Debtor Relief Laws and all claims, suits, actions, proceedings, rights, remedies, and privileges related thereto or arising therefrom, including the Ground Tenant's right to claim any offset against rent and other charges and the right to file and prosecute any proofs of claim, complaints, motions, applications, objections, notices, and any other

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document in any case relating to Ground Lessor under any Debtor Relief Laws, any and all adequate protection or other value received by or to which the Ground Tenant is entitled in connection with any sale of the portion of the Land owned by Ground Lessor in connection with any Insolvency Proceeding.

“**365(h) Election**” shall mean the right of the Ground Tenant to treat the Ground Lease as terminated pursuant to Section 365(h)(1)(A)(i) of the Bankruptcy Code or retain the Ground Tenant’s rights under the Ground Lease pursuant to Section 365(h)(1)(A)(ii) of the Bankruptcy Code and all such other rights, powers, and privileges granted to a lessee pursuant to Section 365(h) of the Bankruptcy Code, together with all such other similar rights, powers, and privileges granted to a lessee under any other Debtor Relief Law.

TO HAVE AND TO HOLD the Property unto the Mortgagee, its successors and assigns, forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

Provided, however, upon the payment of the Loan in full and satisfaction of the other Obligations (other than contingent Obligations which expressly survive the repayment of the Loan in full), the estate hereby granted and conveyed shall become null and void. In furtherance of the foregoing, upon payment in full of the Loan and satisfaction of the other Obligations (other than contingent Obligations which expressly survive the repayment of the Loan in full), this Mortgage, including the lien of this Mortgage, shall be automatically terminated, and Mortgagee will cause this Mortgage to be released and reconveyed of record (and Mortgagee shall effect a full and proper termination, release and reconveyance).

The total unpaid principal balance of the indebtedness hereby secured at any one time outstanding shall not exceed two (2) times the maximum principal amount of the Note. This Mortgage shall be valid and shall, to the fullest extent permitted by any applicable Legal Requirement (defined below), have priority over any and all liens and encumbrances arising after this Mortgage is recorded in the Recorder’s office in the County in which the Land is located, including (to the extent permitted by applicable Legal Requirements) statutory liens except taxes and assessments levied on the Property.

1. Representations and Warranties. The Mortgagor represents and warrants to the Mortgagee that as of the date hereof:

(a) (i) the Ground Tenant has good and marketable title to a leasehold interest in the Land and a fee simple interest in the Improvements and (ii) the Borrower has a good and marketable sub-leasehold interest in the Land and a leasehold interest in the Improvements, in each case free and clear of all liens and encumbrances, except for Permitted Encumbrances;

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(b) the Borrower's and the Ground Tenant's names, organizational information and addresses are true and complete as set forth in the heading of this Mortgage. This Mortgage is a valid and enforceable first lien on the Mortgagor's interest in the Property, except for Permitted Encumbrances. The Mortgagor shall preserve its right, title and interest in the Property and the validity and priority of the lien hereof and shall forever warrant and defend the same to the Mortgagee against the claims of all persons.

## 2. Affirmative Covenants.

### 2.1 Impositions.

(a) Upon written request from Mortgagee, within thirty (30) days after the payment of any Imposition, the Mortgagor shall deliver to the Mortgagee evidence acceptable to the Mortgagee of such payment. The Mortgagor shall also deliver to the Mortgagee within ten (10) days of receipt thereof copies of all settlements and notices pertaining to the Impositions which may be issued by any governmental authority.

(b) Subject to the right of the Mortgagor to contest the payment of an Imposition as hereinafter provided, the Mortgagee may pay or perform any Imposition and add the amount so paid or the cost incurred to the Obligations, and all such amounts shall on demand be due and payable, together with interest thereon, from the date of such demand at the Default Rate.

(c) The Mortgagor may in good faith contest by proper legal proceedings the validity of any Legal Requirement or the validity or amount of any Imposition pursuant to the provisions of Section 4.2 of the Loan Agreement.

2.2 Legal Requirements. The Mortgagor will comply with applicable Laws ("Legal Requirements"), provided that failure to comply with a Legal Requirement is not a violation of this Section 2.2 so long as such failure could not reasonably be expected to result in material fines, penalties, costs or other similar liabilities or injunctive relief, or a Material Adverse Effect.

2.3 Maintenance of Security. Mortgagor shall use, and permit others to use, the Property only as a hotel, including restaurant, retail, office and other ancillary uses or such other uses as permitted by applicable Legal Requirements and approved in writing by the Mortgagee. The Mortgagor shall keep the Property in good condition and order and in a rentable and tenantable state of repair and will make or cause to be made, as and when necessary, all repairs, renewals, and replacements, structural and nonstructural, exterior and interior, foreseen and unforeseen, ordinary and extraordinary, provided, however, that no structural repairs, renewals or replacements that cost in excess of \$1,500,000 in the aggregate shall be made without the Mortgagee's prior written consent, which shall not be unreasonably withheld. The Mortgagor shall not remove, demolish or alter the Property nor commit or suffer waste with respect thereto, nor permit the Property to become deserted



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or abandoned. Subject to the rights of tenants under Leases, upon reasonable advance notice from the Mortgagee to the Mortgagor, the Mortgagor shall permit the Mortgagee and its agents from time to time to enter upon and visit the Property during normal business hours for the purpose of inspecting and appraising the same. The Mortgagor covenants and agrees not to take or permit any action with respect to the Property which will in any manner impair the security of this Mortgage.

3. Leases; Assignment of Leases. The Mortgagor shall not, without the prior written consent of the Mortgagee, (i) further assign or attempt to assign any portion of the Rents due and payable or to become due and payable under the Leases, (ii) accept prepayments of any portion of the Rents for a period of more than one (1) month in advance, or (iii) discount any future accruing Rents. The Mortgagor does hereby sell, assign, and transfer unto the Mortgagee all of the Rents and Leases from the Property, it being the intention of this Mortgage to establish, subject to the terms of this Mortgage, an absolute transfer and assignment of all such Rents and Leases from and on the Property unto the Mortgagee. The Mortgagor does hereby appoint irrevocably the Mortgagee its true and lawful attorney, in its name and stead, which appointment is coupled with an interest, to collect all of said Rents; provided that subject to the terms of the Loan Documents, the Mortgagee grants the Mortgagor the exclusive privilege to collect, retain and use such Rents unless an Event of Default has occurred and is continuing under this Mortgage.

4. Due on Sale Clause. Except as may be otherwise permitted by the Loan Agreement, the Mortgagor shall not sell, assign, give, mortgage, pledge, hypothecate, encumber, lease or otherwise transfer the Property or any part thereof or interest therein, voluntarily or involuntarily, without the Mortgagee's prior written consent.

5. Insurance. The Mortgagor shall obtain and maintain the insurance coverages specified in Section 4.5 of the Loan Agreement. Pursuant to the requirements of the Illinois Collateral Protection Act, 815 ILCS 180/1, *et seq.* ("**Collateral Protection Act**"), the Mortgagor is hereby notified that unless the Mortgagor provides the Mortgagee with evidence of the insurance coverage required by this Mortgage and each other Loan Document, the Mortgagee may purchase insurance at Mortgagor's expense to protect the Mortgagee's interest in the Property or any other collateral for the Obligations. This insurance may, but need not protect the Mortgagor's interests. The coverage the Mortgagee purchases may not pay any claim that the Mortgagor makes or any claim that is made against the Mortgagor in connection with the Property or any other collateral for the Obligations. The Mortgagor may later cancel any insurance purchased by the Mortgagee but only after providing the Mortgagee with evidence that the Mortgagor has obtained insurance as required by this Mortgage and each other Loan Document. If the Mortgagee purchases insurance for the Property or any other collateral for the Obligations, the Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that the Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total outstanding Obligations. The costs of the insurance may be more than the cost of insurance that the Mortgagor may be able to obtain on its own.

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## 6. Insurance Proceeds.

6.1 Rights of Mortgagee to Insurance Proceeds Subject to the provisions of Sections 6.3 and 6.4 hereof, in the event of a casualty loss with respect to the Project, the Mortgagee shall have the exclusive right to adjust, collect and compromise all insurance claims (other than claims involving business interruption insurance) in excess of \$1,500,000, and the Mortgagor shall not adjust, collect or compromise any claims in excess of \$1,500,000 under said policies without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed. the Mortgagor shall have the exclusive right to adjust, collect and compromise all insurance claims of \$1,500,000 or less. For claims in excess of \$1,500,000, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to the Mortgagee instead of to the Mortgagor and the Mortgagee jointly, and the Mortgagor appoints the Mortgagee as the Mortgagor's attorney-in-fact to endorse any draft therefor. All insurance proceeds for claims in excess of \$1,500,000 shall be payable to the Mortgagee. In the event of a casualty loss (excluding losses that are covered by business interruption insurance) with respect to the Project of less than \$10,000,000 (a "Minor Loss"), provided that the conditions of Sections 6.3 and 6.4 hereof are satisfied at the time of such casualty, the Mortgagee shall apply the insurance proceeds received for a Minor Loss to the repair and restoration of the Property under such terms and conditions as are set forth in Sections 6.3 and 6.4 hereof. Following the occurrence of an Event of Default or if any of the other conditions set forth in Sections 6.3 and 6.4 are not satisfied, or if the casualty loss (excluding losses that are covered by business interruption insurance) with respect to the Project exceeds \$10,000,000, any such proceeds may, at the sole option of the Mortgagee, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Property under such terms and conditions as are set forth in Section 6.3 or otherwise as the Mortgagee may impose. The Mortgagee shall not be deemed to have elected such option until such option is elected specifically in writing. Until so elected, the Mortgagee shall not in any circumstances be deemed to have waived its right to make such election. Notwithstanding anything to the contrary contained herein, any proceeds of any business interruption insurance received by the Mortgagee shall be disbursed by the Mortgagee to the Mortgagor upon receipt after the Mortgagee applies such portion of the proceeds as is required to reimburse the Mortgagee for any expenses incurred by the Mortgagee in settling, prosecuting or defending any claims.

6.2 Condemnation. The Mortgagor, promptly upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Property, shall notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings and the Mortgagor shall deliver to the Mortgagee all instruments requested by it to permit such participation. Any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof, is hereby assigned to and shall be received and

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collected directly by the Mortgagee. In the event that the Mortgagee shall receive any such award or compensation equal to or less than the amount of a Minor Loss, and provided that the conditions of Sections 6.3 and 6.4 hereof are satisfied at the time of such condemnation, the Mortgagee shall apply the award or compensation proceeds received for such Minor Loss to the repair and restoration of the Property under such terms and conditions as are set forth in Sections 6.3 and 6.4 hereof. Following the occurrence of an Event of Default or if any of the other conditions set forth in Sections 6.3 and 6.4 are not satisfied or the award or compensation exceeds \$10,000,000 then any such award or compensation proceeds may, at the sole option of the Mortgagee, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Property under such terms and conditions as are set forth in Section 6.3 or otherwise as the Mortgagee may impose. The Mortgagee shall not be deemed to have elected such option until such option is elected specifically in writing. Until so elected, the Mortgagee shall not in any circumstances be deemed to have waived its right to make such election.

## 6.3 Restoration.

(a) All amounts of casualty insurance or condemnation proceeds received by the Mortgagee pursuant to this Section 6 which are to be applied to the restoration of the Property in accordance with this Section 6 and, in the event that the conditions set forth in this Section 6.3 and Section 6.4 hereof have been satisfied, may either be held in a restoration fund ("**Restoration Fund**") by the Mortgagee or, if it refuses to serve, in a separate identifiable account of a federal or state-chartered bank or trust company appointed by the Mortgagee which has a combined capital and surplus of not less than \$100,000,000 as restoration fund trustee (the "**Restoration Fund Trustee**") with any additions thereto that may be required by the Mortgagee as hereinafter provided. The interest or income, if any, received on all deposits or investments of any monies in the Restoration Fund shall be added to the Restoration Fund. If the Mortgagee consents to the deposit of such funds in an interest-bearing account or otherwise consents to the investment of such funds, neither the Mortgagee nor the Restoration Fund Trustee shall be liable or accountable for any loss resulting from any such deposit or investment or for any withdrawal, redemption or sale of deposits or investments. The Mortgagee and the Restoration Fund Trustee may impose reasonable charges for services performed in managing the Restoration Fund and may deduct such charges therefrom. Restoration shall be performed only in accordance with the following conditions:

- (i) prior to commencement of restoration and from time to time during restoration, the Mortgagee may require the Mortgagor to deposit additional monies into the Restoration Fund in amounts which, in the Mortgagee's reasonable judgment, are sufficient to defray all costs to be incurred to complete the restoration and all costs associated therewith, including labor, materials, architectural and design fees and expenses and contractor's fees

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and expenses, to the extent the same exceed the amounts contained in the Restoration Fund, and the Mortgagee shall have approved a budget and cost breakdown for the restoration, together with a disbursement schedule, all in detail reasonably satisfactory to the Mortgagee;

- (ii) prior to commencement of restoration, plans and specifications for the restoration and contracts for the restoration in amounts in excess of \$250,000 shall have been approved by the Mortgagee and all governmental authorities having jurisdiction, and if requested by the Mortgagee, the Mortgagee shall be provided with acceptable surety bonds or acceptable subguard protection insuring satisfactory completion of the restoration and the payment of all subcontractors and materialmen;
- (iii) intentionally omitted;
- (iv) at the time of any disbursement from the Restoration Fund, an Event of Default or Potential Default shall not have occurred, no mechanics' or materialmen's liens shall have been filed and remain undischarged and an endorsement satisfactory to the Mortgagee to its title insurance policy shall have been delivered to the Mortgagee;
- (v) disbursements from the Restoration Fund shall be made from time to time, but not more frequently than once each calendar month, for completed work under the aforesaid contracts (subject to retainage as provided in (vii) below) and for other costs associated therewith and approved by the Mortgagee upon receipt of evidence satisfactory to the Mortgagee of the stage of completion and of performance of the work in a good and workmanlike manner in accordance with the contracts, plans and specifications as reasonably approved by the Mortgagee in accordance with this Section 6.3;
- (vi) the Mortgagor will pay the cost of the Mortgagee's inspecting architect or engineer and the cost of any reasonable out-of-pocket attorney's fees and disbursements incurred by the Mortgagee in connection with such restoration;
- (vii) the Mortgagee shall have the option to retain up to ten percent (10%) of the cost of all work until the restoration is fully completed, as reasonably determined by the Mortgagee, and all occupancy permits therefor have been issued;
- (viii) the Mortgagee may impose such other reasonable conditions, including a restoration schedule, as are customarily imposed by construction lenders to assure complete and lien-free restoration; and

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(ix) any sum remaining in the Restoration Fund upon completion of restoration shall be paid to the Mortgagor provided no Event of Default shall have occurred and be continuing under the Loan Agreement or other Loan Documents.

(b) If restoration of the Subject Property does not commence pursuant to the requirements of this Section 6.3 within thirty (30) days of receipt by the Mortgagee of such insurance or condemnation proceeds, which commencement may include preparation of plans and specifications for such restoration or similar actions with respect to the restoration, then the Mortgagee may (A) declare all Obligations immediately due and payable, and/or (B) perform or cause to be performed such repair, restoration or rebuilding and may take such other steps as the Mortgagee may elect to carry out such repair, restoration or rebuilding and may enter upon the Property for any of the foregoing purposes, and the Mortgagor hereby waives, for itself and all others holding under it, any claim against the Mortgagee and any receiver and their respective agents (other than a claim based upon the alleged gross negligence or intentional misconduct of the Mortgagee or any such receiver or agent) arising out of anything done by them or any of them pursuant to this paragraph and may apply such insurance or condemnation proceeds to pay the Obligations in such order and amounts as the Mortgagee in its sole discretion may choose.

(c) the Mortgagor waives any and all right to claim or recover against the Mortgagee, its officers, employees, agents and representatives for loss of or damage to the Mortgagor, the Property, the Mortgagor's property or the property of others under the Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

6.4 Proceeds Available for Restoration. In accordance with the provisions of Sections 6.1 and 6.2 hereof and subject to the provision regarding the disbursement of the proceeds of any business interruption insurance as set forth in the last sentence of Section 6.1, the Mortgagee agrees to make casualty and condemnation proceeds available for restoration and reconstruction of the Property in accordance with and subject to the terms of Section 6.3 hereof, provided the following conditions are met to the Mortgagee's reasonable satisfaction at the appropriate time following such casualty or condemnation:

(a) no Event of Default or Potential Default shall have occurred and be continuing;

(b) the casualty or condemnation proceeds (other than proceeds of any business interruption insurance) are less than \$10,000,000;

(c) the Management Agreement remains in full force and effect;

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(d) the Mortgagor provides evidence reasonably satisfactory to the Mortgagee that reconstruction of the Improvements can be completed no later than three months prior to the Expiration Date;

(e) the Mortgagee determines, in its reasonable discretion after consulting with the Mortgagee's inspecting architect, that casualty or condemnation proceeds are sufficient to pay in full the cost of reconstruction. In the event that the Mortgagee determines that such proceeds are not sufficient, the Mortgagee shall not be required to make any proceeds available for reconstruction unless the Mortgagor complies with the provisions of Section 6.3(a)(i) hereof; and

(f) the Mortgagee determines that upon completion of reconstruction, the value of the Property will not be materially less than the value thereof immediately prior to the relevant casualty or condemnation.

7. Events of Default. The occurrence of any one or more of the following events shall constitute an "**Event of Default**" hereunder:

(a) a failure to pay any Obligations when due in accordance with the terms of the Loan Document evidencing the Obligations (subject to any applicable notice and cure period);

(b) the Mortgagor shall fail to perform or observe any of the obligations in Section 2 of this Mortgage (subject to any applicable cure period expressly provided in the Loan Agreement);

(c) a failure by the Mortgagor to duly perform and observe any other provision in this Mortgage, and such failure shall continue for a period of thirty (30) days after notice from the Mortgagee (such grace period to be applicable only in the event such default can be remedied by corrective action of the Mortgagor as determined by the Mortgagee in its sole discretion), provided that, in the event that such default cannot be remedied with reasonable due diligence during such thirty (30) day period, such default shall not constitute an Event of Default so long as the Mortgagor continues with reasonable due diligence to attempt to remedy the same for such additional period of time as may be required but not to exceed a total of ninety (90) days from the date of the giving of the written notice referred to above by the Mortgagee;

(d) any attachment proceeding shall be commenced against the Mortgagor for the collection of any indebtedness or liability and the same is not cured within thirty (30) days thereafter;

(e) the occurrence of an "Event of Default" under the Loan Agreement;

(f) the Improvements shall be substantially damaged or destroyed by an uninsured or inadequately insured casualty; provided, however, the foregoing shall not be an Event of Default if the Mortgagor deposits with the Mortgagee the Repair Cost Deficit (as defined below) within

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thirty (30) days of the Mortgagee's written request (which request shall not be made until the Mortgagor determines the amount of the Repair Cost Deficit, which determination shall be made within a commercially reasonable period). For purposes of this Section 7(f), the "**Repair Cost Deficit**" shall equal (i) the costs to be incurred to complete the repair, including labor, materials, architectural and design fees and expenses and contractor's fees and expenses, as estimated by the Mortgagor and approved by the Mortgagee in its reasonable discretion, less (ii) any casualty insurance or condemnation proceeds available for such repair; or

(g) the Mortgagor shall fail to comply with any duty or obligation imposed pursuant to the Environmental Indemnity Agreement (Secured) beyond any applicable notice and/or cure period provided therein, or any warranty or representation contained therein shall be incorrect or misleading in any material respect as of the date made or deemed to have been made.

8. Rights and Remedies of Mortgagee. If an Event of Default occurs and is continuing, the Mortgagee may, at its option and without demand, notice or delay, do one or more of the following:

(a) The Mortgagee may declare the entire unpaid principal balance of the Obligations, together with all interest thereon, to be due and payable immediately.

(b) The Mortgagee may (i) institute and maintain an action on any instruments evidencing the Obligations or any portion thereof, and (ii) take such other action at law or in equity for the enforcement of any of the Loan Documents as the law may allow, and in each such action the Mortgagee shall be entitled to all costs of suit and attorneys' fees.

(c) The Mortgagee shall have the right immediately or at any time thereafter to foreclose the lien of this Mortgage:

(i) Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of the Mortgagee, in the Mortgagee's sole and absolute discretion, appoint the Mortgagee as a mortgagee-in-possession or appoint a receiver of the Property (a "**Receiver**") pursuant to the Illinois Mortgage Foreclosure Law, as amended (735 ILCS 5/15-1101, *et seq.*) (the "**Mortgage Foreclosure Act**"). Such appointment may be made either before or after sale, without choice; without regard to the solvency or insolvency, at the time of application for each Receiver, of the person or persons, if any, liable for the payment of the Obligations; without regard to the value of the Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and the Mortgagee hereunder or any employee or agent thereof may be appointed as such Receiver. Such Receiver shall have all powers and duties prescribed by the Mortgage Foreclosure Act, including the power to take possession, control and care of the Property and to collect all Rents (including, but not limited to, any

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delinquent Rents) thereof during the pendency of such foreclosure suit and apply all funds received toward the Obligations, and in the event of a sale and a deficiency where the Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when the Mortgagor, its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such Receiver, would be entitled to collect such Rents and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. To the extent permitted under any applicable Legal Requirements, such Receiver may take any action permitted to be taken by the Mortgagee pursuant to any other Loan Document, extend or modify any then existing Leases and make new leases of the Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons and other parties whose interests in the Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser or at any time thereafter.

- (ii) The court may, from time to time, authorize said Receiver to apply the net amounts remaining in his hands, after deducting reasonable compensation for the Receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of the Obligations, including without limitation the following, in such order of application as the Mortgagee may, in its sole and absolute discretion, elect: (A) amounts due upon the Note and any other Loan Documents; (B) amounts due upon any decree entered in any suit foreclosing this Mortgage; (C) costs and expenses incurred by the Mortgagee, including costs and expenses of foreclosure and litigation upon the Property; (D) insurance premiums, repairs, Impositions, and interest, penalties and costs, in connection with the Property; (E) any other encumbrance or lien upon the Property that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same; and (F) all costs, expenses, and monies advanced by the Mortgagee to cure or attempt to cure any default by the Mortgagor in the performance of any obligation or condition contained in any of the other Loan Documents or this Mortgage or otherwise, to protect the security hereof provided herein, or in any of the other Loan Documents, with interest on such sums advanced at the Default Rate (as defined in the Loan Agreement). The excess of the proceeds of



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sale, if any, shall then be paid to the Mortgagor (or such other person or party as is applicable in accordance with applicable Legal Requirements).

(iii) This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Property, as the Mortgagee may elect, until all of the Property has been foreclosed against and sold. As part of the foreclosure, Mortgagee in its sole discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Property, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, parcels, or units, as the Mortgagee may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable Legal Requirements. Upon the completion of any such sale or sales, the Mortgagee shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers of the property so sold, in accordance with any applicable Legal Requirements, and the Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of the Mortgagor, in its name and stead, which appointment is coupled with an interest, to make all necessary transfers of property thus sold, and for that purpose the Mortgagee may execute and deliver, for and in the name of the Mortgagor, all necessary instruments of assignment and transfer, the Mortgagor hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof.

(iv) In the case of any sale of the Property pursuant to any judgment or decree of any court at public auction or otherwise, the Mortgagee may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Note and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of this Mortgage (or the commencement of or preparation thereof) in any court, all expenses of every kind paid or incurred by the Mortgagee for the enforcement, protection or collection of this security interest, including court costs, attorneys' fees, stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by the Mortgagor, with interest on such sums advanced at the Default Rate.

(d) The Mortgagee may, in its sole and absolute discretion, whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale of the Property or during any period of redemption, without regard to waste, adequacy of the security or solvency of the Mortgagor revoke the privilege granted the Mortgagor hereunder to collect the Rents, and may, at its option, without notice: (i) enter and take

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actual possession of the Property, the Rents and the Leases or any part thereof personally, or by its agents or attorneys, and exclude the Mortgagor therefrom; (ii) enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Mortgagor relating thereto; (iii) as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Property, the Rents, and the Leases and conduct the business, if any, thereof (including entering into new leases of the Property, or any part thereof, under such terms and conditions as the Mortgagee, in its sole and absolute discretion, may elect) either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents and the Leases (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any Lease made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to the Property that, in its reasonable discretion, may seem appropriate; (vii) insure and reinsure the Property for all risks incidental to the Mortgagee's possession, operation and management thereof; (viii) perform such other acts in connection with the management and operation of the Property, as the Mortgagee in its sole discretion may deem necessary or desirable, (ix) collect any or all of the Rents, including any Rents past due and unpaid, (x) perform any obligation or exercise any right or remedy of the Mortgagor under any Lease, or (xi) enforce any obligation of any tenant of any of the Property. The Mortgagee may exercise any right under this Section 8(d), whether or not the Mortgagee shall have entered into possession of any of the Property, and nothing herein contained shall be construed as constituting the Mortgagee a "mortgagee in possession", unless the Mortgagee shall have entered into and shall continue to be in actual possession of the Property. The Mortgagor hereby authorizes and directs each and every present and future tenant of any of the Property to pay all Rents directly to the Mortgagee and to perform all other obligations of that tenant for the direct benefit of the Mortgagee, as if the Mortgagee were the landlord under the Lease with that tenant, immediately upon receipt of a demand by the Mortgagee to make such payment or perform such obligations. The Mortgagor hereby waives any right, claim or demand it may now or hereafter have against any such tenant by reason of such payment of Rents or performance of obligations to the Mortgagee, and any such payment or performance to the Mortgagee shall discharge the obligations of the tenant to make such payment or performance to the Mortgagor.

(e) The Mortgagor hereby grants the Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein and in every other Loan Document, at any and all times after any Event of Default without notice to the Mortgagor or any other person or other party. The Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order as it may, in its sole

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and absolute discretion, determine: (i) to the payment of the operating expenses of the Property, established claims for damages, if any, and premiums on insurance hereinabove authorized; (ii) to the payment of Impositions, costs, expenses, and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Property, and of placing the Property in such condition as will, in the judgment of the Mortgagee, make it readily saleable; (iii) to the payment of any Obligations; and (iv) to the payment of any other cost or expense required or permitted hereunder.

(f) The exercise of any of the Mortgagee's rights pursuant to Section 8, the taking possession by the Mortgagee as a mortgagee-in-possession, the appointment of a Receiver, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default or waive, modify or affect notice of default hereunder or invalidate any act done pursuant to said notice, nor in any way operate to prevent the Mortgagee from pursuing any remedy which now or hereafter it may have under the terms and conditions of this Mortgage, the other Loan Documents, or any other instruments securing the same. The rights and powers of the Mortgagee hereunder shall remain in full force and effect both prior to and after any foreclosure of this Mortgage and any sale pursuant thereto and until expiration of the period of redemption for said sale. The purchaser at any foreclosure sale, including the Mortgagee, shall have the right at any time and without limitation, to advance money to any Receiver to pay any part or all of the items which the Receiver would otherwise be authorized to pay if cash were available from the Property and the sum so advanced, with interest at the Default Rate, shall be a part of the sum required to be paid to redeem from any foreclosure sale.

(g) It is the intention of the parties that this Mortgage shall confer upon the Mortgagee the fullest rights, remedies and benefits available under applicable Legal Requirements. **The Mortgagee may take any of the actions referred to in this Section 8 irrespective of and without regard to the adequacy of the security for the Obligations.**

(h) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Mortgage Foreclosure Act, the provision of the Mortgage Foreclosure Act shall take precedence over the provision of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Mortgage Foreclosure Act. The Mortgagor and the Mortgagee shall have the benefit of all of the provisions of the Mortgage Foreclosure Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Mortgage Foreclosure Act which is specifically referred to herein may be repealed, the 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. If any provision of this Mortgage shall grant to the Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in the Mortgagee under the Mortgage Foreclosure Act in

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the absence of said provision, the Mortgagee shall be vested with the rights granted in the Mortgage Foreclosure Act to the full extent permitted by the applicable Legal Requirements.

(i) The Mortgagee may exercise from time to time any rights, powers and remedies available to it under the applicable UCC and as may be provided in this Mortgage and any other Loan Document. The Mortgagor shall, promptly upon request by the Mortgagee, assemble the Property other than the Land and Improvements (“**Other Collateral**”) and make it available to the Mortgagee at the Land. Any notification of intended disposition required by any Legal Requirement or with respect to any Other Collateral shall be deemed reasonably and properly given if given at least ten (10) Business Days before such disposition. Without limiting the generality of the preceding sentences of this Section 8(i), the Mortgagee may, with respect to so much of the Other Collateral as is personal property under applicable Legal Requirements, to the fullest extent permitted by applicable Legal Requirements, without further notice, advertisement, hearing or process of law of any kind except as required by applicable Legal Requirements: (i) notify any person or other party obligated on the Other Collateral to perform directly for the Mortgagee its obligations thereunder; (ii) enforce collection of any of the Other Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for a period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto; (iii) endorse any checks, drafts or other writings in the name of the Mortgagor to allow collection of the Other Collateral; (iv) take control of any proceeds of the Other Collateral; (v) subject to the rights of tenants under Leases, enter upon any Property where any of the Other Collateral may be located and take possession of and remove such Other Collateral; (vi) sell any or all of the Other Collateral, free of all rights and claims of the Mortgagor therein and thereto, at any public or private sale; and (vii) bid for and purchase any or all of the Other Collateral at any such sale. Any proceeds of any disposition by the Mortgagee of any of the Other Collateral may be applied by the Mortgagee to the payment of expenses in connection with the Other Collateral, including reasonable attorneys’ fees and legal expenses, and any balance of such proceeds shall be applied by the Mortgagee toward the payment of such of the Obligations and in such order of application determined by the Mortgagee, and any excess shall be paid to the Mortgagor or other secured parties, as their interests may appear. The Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Note and other Loan Documents and, to the fullest extent permitted by applicable Legal Requirements, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by Mortgagee of any of its rights and remedies hereunder. The Mortgagor hereby appoints the Mortgagee its attorney-in-fact with full power of substitution to take possession of the Other Collateral upon and during the continuance of any Event of Default and, as the Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by the Mortgagee to accomplish the disposition of the

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Other Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Obligations are outstanding.

9. Application of Proceeds. The Mortgagee shall apply the proceeds of any foreclosure sale of, or other disposition or realization upon, or Rents or profits from, the Property to satisfy the Obligations in such order of application as the Mortgagee shall determine in its exclusive discretion.

10. Mortgagee's Right to Protect Security. The Mortgagee is hereby authorized to do any one or more of the following, irrespective of whether an Event of Default has occurred: (a) appear in and defend any action or proceeding purporting to affect the security hereof or the Mortgagee's rights or powers hereunder; and (b) take such action as the Mortgagee may determine to pay, perform or comply with any Impositions or Legal Requirements, to cure any Events of Default and to protect its security in the Property.

11. Intentionally Omitted.

12. Specific Representations, Warranties and Covenants Respecting Ground Lease. In addition to the Mortgagor's representations, warranties and covenants elsewhere contained herein, and without limitation thereof, the Ground Tenant specifically represents, warrants, covenants and agrees to and with the Mortgagee as follows:

(a) Other than as may be particularly described in **Exhibit B** to this Mortgage, to Ground Tenant's knowledge, the Ground Lease has not been amended, modified, supplemented, assigned, or transferred prior to the date hereof.

(b) The Ground Tenant shall hereby forever warrant, defend, protect, and preserve against the claims of all persons: (i) the Ground Tenant's leasehold interest in the Land and (ii) the validity and priority of the respective lien and title interest of the Mortgagee granted by the Ground Tenant to the Mortgagee hereunder. Without the Mortgagee's express prior written consent in each instance, the Ground Tenant: (i) shall not fail to timely exercise any option or right to renew or extend the term of the Ground Lease, at least ten (10) Business Days prior to the expiration thereof, in accordance with the terms and conditions of the Ground Lease; (ii) shall provide prompt written notice to the Mortgagee with respect to any such exercise of any option or right to renew or extend the term of the Ground Lease; and (iii) shall execute, acknowledge, deliver and record any document reasonably requested by the Mortgagee to evidence the respective lien and title interest of this Mortgage on such extended or renewed lease term of the Ground Lease. In the event the Ground Tenant shall fail to timely exercise any such option or right as and when provided above, the Mortgagee may exercise such option or right as the Ground Tenant's attorney-in-fact in the Mortgagee's own name or in the name of and on behalf of a nominee of the Mortgagee, as and when the Mortgagee may determine in the exercise of its sole and exclusive discretion.

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(c) To the fullest extent permitted by applicable Law and the terms and conditions of the Ground Lease, and without limiting any provision contained herein, the Ground Tenant does hereby assign, transfer, set, over and deliver to the Mortgagee, for collateral purposes only, all of the Ground Tenant's rights, title and interest in, to and under the Ground Lease. By its acceptance hereof, the Mortgagee hereby covenants and agrees that so long as there exists no Event of Default, the Ground Tenant shall have the right to possess and enjoy the Land and other premises leased pursuant to the Ground Lease, subject to the terms and conditions contained herein.

(d) The Ground Tenant shall not acquire the fee interest in the Land or other premises under the Ground Lease without the express prior written approval of the Mortgagee, which shall not be unreasonably withheld or conditioned. In the event that the Ground Tenant acquires such fee title to the Land or other premises, such interest shall be deemed to be subject to and covered by this Mortgage, and in confirmation thereof, the Ground Tenant shall promptly: (i) provide the Mortgagee with notice of such further title interest of the Ground Tenant to the Land and (ii) execute, acknowledge, and deliver such other and further instruments, documents, and agreements as may be reasonably required by the Mortgagee to ratify, confirm, re-affirm, and perfect the Mortgagee's interest in the Land, including, without limitation, any additional mortgage or amendment requested by the Mortgagee to confirm the Ground Tenant's right, title and interest in and to the fee title of the Ground Tenant to the Land. Without the express prior written approval of the Mortgagee, there shall be no merger of the leasehold estate created by the Ground Lease with the fee estate of the Land, and the Ground Tenant's leasehold estate created by the Ground Lease shall not merge, but shall always remain separate and distinct, notwithstanding any union of such estates in Ground Lessor, the Mortgagee, or the Ground Tenant by purchase, operation of Law, or otherwise. In the event that the Mortgagee shall acquire such fee title and leasehold estate by foreclosure of this Mortgage (or by conveyance or assignment in lieu thereof) or otherwise, then such estates shall not merge as a result thereof but shall remain separate and distinct for all purposes after such acquisition unless and until the Mortgagee elects in writing to merge such estates.

(e) The Ground Tenant shall promptly notify the Mortgagee in writing of any default (however described or defined in the Ground Lease) by Ground Lessor in the performance or observance of any of the material terms, covenants or conditions on the part of Ground Lessor to be performed or observed under the Ground Lease. Further, the Ground Tenant, promptly upon learning that Ground Lessor has failed to perform the terms and provisions under the Ground Lease (including by reason of a rejection or disaffirmance or purported rejection or disaffirmance of such Ground Lease pursuant to any Debtor Relief Law), shall notify the Mortgagee in writing of any such failure to perform. The Ground Tenant shall promptly cause a copy of each such notice received by the Ground Tenant to be delivered to the Mortgagee no later than five (5) Business Days after the receipt thereof.

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(f) The Ground Tenant shall promptly notify the Mortgagee in writing of any of the following: (i) any (x) notice of default by the Ground Tenant in the performance or observance of any of the terms, covenants, or conditions on the part of the Ground Tenant to be performed or observed under the Ground Lease, (y) notice of the occurrence of any event which with the passage of time may become a default (however defined or described) under the Ground Lease or permit Ground Lessor to terminate the Ground Lease or re-enter and take possession of the Land, and/or (z) notice of the exercise by Ground Lessor of any remedies relating to defaults or breach of the Ground Lease; (ii) the receipt by the Ground Tenant of any written notice from Ground Lessor of termination of the Ground Lease (or otherwise threatening to terminate the Ground Lease) pursuant to the provisions of the Ground Lease; and/or (iii) any litigation or arbitration threatened or commenced with respect to the Ground Lease. The Ground Tenant shall promptly cause a copy of each such notice received by the Ground Tenant to be delivered to the Mortgagee no later than five (5) Business Days after the receipt thereof.

(g) The Ground Tenant shall, within thirty (30) days after written demand from the Mortgagee, no more than once in any twelve (12) month period, unless an Event of Default is continuing or Ground Lessor has previously defaulted under the Ground Lease, use its commercially reasonable efforts to obtain from Ground Lessor and deliver to the Mortgagee an estoppel certificate in substantially the form of the estoppel delivered by Ground Lessor in connection with the closing of the Loan or such other form reasonably satisfactory to the Mortgagee stating that the Ground Lease is in full force and effect, is unmodified (or if it has been modified, setting forth such modifications), that no notice of termination thereon has been served on the Ground Tenant or Ground Lessor, as the case may be, stating the date to which the rent has been paid, and stating whether there are any defaults thereunder and specifying the nature of such defaults.

(h) The Ground Tenant shall furnish the Mortgagee within ten (10) days of the request therefor: (i) proof of payment of all items which are required to be paid by the Ground Tenant pursuant to the Ground Lease and (ii) any and all information with respect to the Ground Lease that the Mortgagee may reasonably request concerning the Ground Tenant's and/or Ground Lessor's performance under, and compliance with, the terms and conditions thereof.

(i) Except as contemplated in Section 2.4 of the Loan Agreement, without the express prior written consent of the Mortgagee in its reasonable discretion in each instance, the Ground Tenant shall not, either orally or in writing: (i) modify, amend, supplement, alter, or change the Ground Lease; (ii) terminate or cancel the Ground Lease or otherwise surrender all or any portion of the Ground Tenant's leasehold estate and interest under the Ground Lease; (iii) assign, transfer, or sublease (other than pursuant to the Sublease) all or any portion of the Ground Tenant's leasehold estate and interest under the Ground Lease; or (iv) cause, agree to, any subordination, or consent to the subordination of, the Ground Lease to any mortgage, deed of trust or other lien encumbering (or

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which may thereafter encumber) Ground Lessor's fee interest in the portion of the Land demised to the Ground Tenant under the Ground Lease.

(j) Without the Mortgagee's express prior written consent in each instance, the Ground Tenant shall not agree with Ground Lessor to disburse any proceeds of any casualty or condemnation contrary to the provisions of this Mortgage and the other Loan Documents.

(k) The Mortgagee shall have the right, but not the obligation, to take any actions necessary to cure any default (however defined or described) by the Ground Tenant under the Ground Lease within the time provided by the terms of the Ground Lease for such purpose. The Ground Tenant shall execute and deliver, on request of the Mortgagee, such instruments as the Mortgagee may reasonably request and deem required to permit the Mortgagee to cure any default by the Ground Tenant under the Ground Lease or permit the Mortgagee to take such other action as the Mortgagee considers desirable to cure or remedy the matter in default and preserve the interest of the Mortgagee in the Property. Upon receipt by the Mortgagee from Ground Lessor of any written notice of default by the Ground Tenant under the Ground Lease, the Mortgagee may rely thereon and, whether or not such notice or notice of default constitutes an Event of Default, take any and all action deemed necessary by the Mortgagee to prevent or cure such default, notwithstanding that the occurrence of such default may be disputed by the Ground Tenant. Without limiting the rights and remedies of the Mortgagee pursuant to this Mortgage, in exercising its rights to prevent or to cure any such default with respect to the Ground Lease: (i) the Mortgagee shall have the absolute and immediate right, subject to the rights of tenants under Leases, to enter in and upon the Property or any part thereof as, when, and to the extent determined necessary or appropriate by the Mortgagee and without the Mortgagee being deemed or construed to be a mortgagee in possession and (ii) the Mortgagee may pay and expend such sums of money as the Mortgagee in its sole but reasonable determination deems appropriate to effect such cure or prevent such default (which sums shall automatically constitute Obligations immediately upon payment by the Mortgagee), and the Mortgagor hereby agrees to pay to the Mortgagee within ten (10) Business Days after demand, all such sums so paid and expended by the Mortgagee, together with interest thereon at the Default Rate.

(l) The Ground Tenant shall promptly notify the Mortgagee in writing of any request that any party to the Ground Lease makes for any arbitration or other dispute resolution procedure pursuant to the Ground Lease and of the institution of any such arbitration or dispute resolution. The Ground Tenant hereby authorizes the Mortgagee, if an Event of Default shall then exist, to participate, in any such arbitration or dispute resolution. To the extent that the Ground Tenant is entitled to participate in any such arbitration or dispute resolution hereunder and under the other Loan Documents, the Ground Tenant hereby agrees that it shall promptly deliver to the Mortgagee a copy of the determination of each such arbitration or dispute resolution mechanism and shall at all



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times keep the Mortgagee apprised with respect to the status of such arbitration or dispute resolution.

(m) During the existence of an Event of Default, the Ground Tenant hereby authorizes the Mortgagee, at the Mortgagee's sole option and in its sole and exclusive discretion from time to time: (i) to pay any and all rental payments or similar sums to be paid by the Ground Tenant which are then due and payable under the Ground Lease, with interest and penalties thereon if charged by Ground Lessor under the Ground Lease and (ii) to incur and pay all sums reasonably necessary to protect the Mortgagee's rights hereunder and under the Ground Lease. Such sums shall automatically constitute Obligations immediately upon payment by the Mortgagee and the Mortgagor hereby agrees to pay to the Mortgagee within ten (10) Business Days after demand, all such sums so paid and expended by the Mortgagee, together with interest thereon at the Default Rate. Without limiting any other provisions hereof, the Ground Tenant hereby irrevocably constitutes and appoints the Mortgagee and any officer or agent of the Mortgagee, with full power of substitution, as its true and lawful attorney-in-fact, coupled with an interest, with full irrevocable power and authority in the place and stead of the Ground Tenant or in the Ground Tenant's own name to exercise all rights, remedies, powers, privileges, and discretions of the Ground Tenant under the Ground Lease and otherwise to carry out the purposes of this Mortgage and the exercise of the Mortgagee's rights and remedies hereunder, in each case, to be exercised by the Mortgagee only during the existence of an Event of Default. The foregoing appointment is irrevocable and continuing and such rights, powers and privileges shall be exclusive in the Mortgagee, its successors and assigns, so long as such Event of Default remains uncured by the Ground Tenant.

### 13. Treatment of Ground Lease in Bankruptcy of Ground Lessor.

(a) If Ground Lessor rejects or disaffirms, or seeks or purports to reject or disaffirm, the Ground Lease pursuant to any Debtor Relief Law, then the Ground Tenant shall not exercise the 365(h) Election without the express prior written consent of the Mortgagee. To the extent permitted by Law, the Ground Tenant shall not suffer, permit, or consent to the termination (and/or any rejection or disaffirmance) of the Ground Lease pursuant to the Debtor Relief Law without the Mortgagee's express prior written consent. The Ground Tenant acknowledges and agrees that because the Ground Lease is a primary element of the Mortgagee's security for the Obligations secured hereunder, it is not anticipated that the Mortgagee would consent to termination of the Ground Lease. Accordingly, if the Ground Tenant makes any 365(h) Election in violation of this Mortgage, then such 365(h) Election shall be void and of no force or effect.

(b) To the extent permitted by Law, the Ground Tenant hereby assigns to the Mortgagee the 365(h) Election with respect to the Ground Lease until the Obligations secured hereunder have been indefeasibly paid and satisfied in full (other than contingent Obligations which expressly survive the repayment of the Loan in full). The Ground Tenant

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acknowledges and agrees that the foregoing assignment of the 365(h) Election and related rights is one of the rights that the Mortgagee may use at any time to protect and preserve the Mortgagee's other rights and interests under this Mortgage. The Ground Tenant further acknowledges that exercise of the 365(h) Election by the Ground Tenant in favor of terminating the Ground Lease would constitute waste prohibited by this Mortgage. The Ground Tenant acknowledges and agrees that the 365(h) Election is in the nature of a remedy available to the Ground Tenant under the Ground Lease, and is not a property interest that the Ground Tenant can separate from the Ground Lease as to which it arises. Therefore, the Ground Tenant agrees and acknowledges that exercise of the 365(h) Election in favor of preserving the right to possession under the Ground Lease shall not be deemed to constitute the Mortgagee's taking or sale of the Land and any other premises (or any element thereof) and shall not entitle the Ground Tenant to any credit against the Obligations secured hereunder or otherwise impair the Mortgagee's remedies. Without limiting the generality of the foregoing, the Ground Tenant acknowledges and agrees that, in the event that the 365(h) Election is exercised in favor of the Ground Tenant remaining in possession, then the Ground Tenant's resulting right to possession and use of the Land (and the rents, issues and profits therefrom), as adjusted by the effect of Section 365 of the Bankruptcy Code, shall then be subject to the lien and encumbrance of this Mortgage; provided, however, the Ground Tenant acknowledges and agrees that such right to possession and use of the Land as so adjusted is not equivalent to the Ground Tenant's leasehold estate under the Ground Lease as of the date hereof.

(c) If Ground Lessor rejects or disaffirms the Ground Lease or purports or seeks to disaffirm the Ground Lease pursuant to any Debtor Relief Law, then (i) to the fullest extent not prohibited by applicable Law, the Ground Tenant shall remain in possession of the Property demised under the Ground Lease and shall perform all acts reasonably necessary for the Ground Tenant to remain in such possession for the unexpired term of the Ground Lease (including all renewals), whether the then existing terms and provisions of the Ground Lease require such acts or otherwise; and (ii) all the terms and provisions of this Mortgage and the lien created by this Mortgage shall remain in full force and effect and shall extend automatically to all of the Ground Tenant's rights and remedies arising at any time under, or pursuant to, Section 365(h) of the Bankruptcy Code, including all of the Ground Tenant's rights to remain in possession of the Property demised by the Ground Lease.

(d) If pursuant to Section 365(h)(1)(B) of the Bankruptcy Code or any other similar Debtor Relief Law, the Ground Tenant seeks to offset against any rent under the Ground Lease the amount of any Lease Damage Claim, then the Ground Tenant shall notify the Mortgagee of its intent to do so at least twenty (20) days before effecting such offset. Such notice shall set forth the amounts proposed to be so offset and the basis for such offset. If the Mortgagee reasonably objects to all or any part of such offset, then the Ground Tenant shall not effect any offset of the amounts to which the Mortgagee reasonably objects. If the Mortgagee approves such offset, then the Ground Tenant may effect such

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offset as set forth in the Ground Tenant's notice. Neither the Mortgagee's failure to object, nor any objection or other communication between the Mortgagee and the Ground Tenant that relates to such offset, shall constitute the Mortgagee's approval of any such offset. The Ground Tenant shall indemnify the Mortgagee against any offset against the rent reserved in any Lease.

(e) In connection with any Insolvency Proceeding, the Ground Tenant, upon learning that Ground Lessor intends to conduct a sale of the portion of the Land owned by Ground Lessor, shall immediately notify the Mortgagee of such intention and, to the fullest extent not prohibited by applicable Law, the Ground Tenant shall timely file any and all objections, pleadings, and notices contesting and objecting to Ground Lessor's intention to sell the portion of the Land owned by Ground Lessor, whether such sale is pursuant to Section 363 of the Bankruptcy Code or any other Debtor Relief Law.

(f) The Ground Tenant, upon learning of any Insolvency Proceeding with respect to Ground Lessor, shall immediately notify the Mortgagee of such Insolvency Proceeding, including using good faith efforts to provide relevant information pertaining thereto as reasonably requested by the Mortgagee, including jurisdiction, case number, and relevant case information. The Ground Tenant, upon learning of any actions by Ground Lessor to sell or encumber the portion of the Land owned by Ground Lessor, or terminate, reject, disaffirm or assign the Ground Lease, shall promptly notify the Mortgagee, including using good faith efforts to provide the Mortgagee with copies of any and all notices and pleadings filed in connection with the foregoing.

#### 14. Certain Waivers.

(a) The Mortgagor hereby waives and releases all benefit that might accrue to the Mortgagor by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time for payment or any rights of marshalling in the event of any sale hereunder of the Property, and, unless specifically required herein, all notices of the Mortgagor's default or of the Mortgagee's election to exercise, or the Mortgagee's actual exercise of any option under this Mortgage or any other Loan Document.

(b) The Mortgagor voluntarily and knowingly hereby acknowledges that the transaction of which this Mortgage is a part is a transaction that does not include either agricultural real estate or residential real estate (each as defined in the Mortgage Foreclosure Act). Mortgagor, on behalf of itself and all persons or other parties now or hereafter interested in the Property or the Other Collateral, to the fullest extent permitted by applicable Legal Requirements hereby waives all rights under all appraisal, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all Obligations secured by this Mortgage, and

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Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of the Property. Without limiting the generality of the preceding sentence, the Mortgagor, on its own behalf and on behalf of each and every person or other party acquiring any interest in or title to the Property subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Without limiting the foregoing, the Mortgagor, on its own behalf and on behalf of each and every person or other party acquiring any interest in or title to the Property subsequent to the date of this Mortgage, hereby irrevocably waives pursuant to 735 ILCS 5/15 1601 et seq. of the Mortgage Foreclosure Act any and all rights of reinstatement (including, without limitation, all rights of reinstatement provided for in 735 ILCS 5/15 1602) or redemption from sale or from or under any order, judgment or decree of foreclosure of this Mortgage (including, without limitation, all rights of redemption provided for in 735 ILCS 5/12 122 et seq. and 735 ILCS 5/15 1603) or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. The Mortgagor hereby expressly waives and releases all rights to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Property and/or any other property now or hereafter constituting security for any of the Obligations marshaled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

15. Additional Agreements and Waivers. In order to induce the Mortgagee to make available the Loan to the Borrower, the Ground Tenant, as additional security for the Borrower's obligations under the Note and the other Loan Documents, has executed this Mortgage in favor of the Mortgagee. The Ground Tenant is not a borrower under the Loan Agreement, and to the extent the Obligations are obligations of the Borrower, and not of the Ground Tenant, the Ground Tenant hereby agrees as follows:

15.1 Waiver of Subrogation and Related Rights. Until such time as the Obligations have been indefeasibly paid in full (other than contingent Obligations which expressly survive the repayment of the Loan in full), the Ground Tenant hereby waives and agrees not to enforce any claim, right, or remedy which the Ground Tenant may now have or hereafter acquire against the Borrower that arises hereunder and/or from the payment or performance by the Borrower of the Obligations, whether or not any such claim, right or remedy arises in equity, under contract, by statute or otherwise, including, without limitation, (a) any right of the Ground Tenant to be subrogated in whole or in part to any claim, right or remedy of Mortgagee, (b) any claim, right or remedy of reimbursement, exoneration, contribution or indemnification from the Borrower, (c) any right to participate in or benefit from any claim, right or remedy of the Mortgagee against the Borrower or any security which the Mortgagee now has or hereafter acquires, and (d) any right to require the marshaling of assets of the Borrower. The Ground Tenant acknowledges that the Ground Tenant will receive direct and indirect benefits from the financing arrangements

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contemplated by the Loan Agreement and that the waivers set forth herein (including, but not limited to, this Section 15) are knowingly and voluntarily made in contemplation of such benefits.

15.2 Waiver of Certain Notices. The Ground Tenant hereby waives any presentment, demand, notice of dishonor or nonpayment, protest and notice of protest in connection with the Obligations other than notices expressly required by the terms of the Loan Documents. Except as expressly required by the terms of the Loan Documents, the Ground Tenant hereby further waives any and all notice with respect to (a) acceptance by the Mortgagee of this Mortgage or any of the other Loan Documents, (b) the provisions of any of the Loan Documents or any other instrument or agreement relating to the Obligations and (c) any Event of Default or Potential Default in connection with the Obligations.

15.3 Consent to Releases and Modifications. The Ground Tenant hereby covenants and agrees that the Mortgagee may, from time to time and as many times as the Mortgagee, in its sole and absolute discretion, may deem appropriate, do any of the following without notice to the Ground Tenant and without adversely affecting the validity or enforceability of this Mortgage: (a) release, surrender, exchange, compromise, or settle the Obligations or any portion thereof; (b) change, renew, or waive the terms of the Obligations or any portion thereof, subject to the Borrower's consent if required under the Loan Documents (provided, that nothing herein shall permit the Mortgagee to modify the terms of any Loan Document to which the Ground Tenant is a party, including this Mortgage without the Ground Tenant's written consent); (c) change, renew, or waive the terms, including, without limitation, the rate of interest charged to the Borrower, of any note, instrument, or agreement relating to the Obligations or any portion thereof, subject to the Mortgagee's consent, if required under the Loan Documents; (d) grant any extension or indulgence with respect to the payment or performance of the Obligations or any part thereof; (e) enter into any agreement of forbearance with respect to the Obligations or any portion thereof; (f) sell, release, surrender, exchange, or compromise any security held by the Mortgagee for any of the Obligations; (g) release any Person that is a guarantor or surety or who has agreed to purchase the Obligations or any portion thereof; (h) release, surrender, exchange, or compromise any security or Lien held by the Mortgagee for the liabilities of any Person that is a guarantor or surety for the Obligations or any portion thereof; and (i) settle, release, adjust or compromise any claim of the Mortgagee against the Borrower or any other person secondarily or otherwise liable, including, without limitation, any other guarantors or sureties of the Obligations. The Ground Tenant hereby further covenants and agrees that the Mortgagee may do any of the above as it deems necessary or advisable, in its sole and absolute discretion, without giving any notice to the Ground Tenant, except to the extent required under the Loan Documents, and that the same shall not result in a release of the Ground Tenant's obligations hereunder.

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15.4 Waiver of Suretyship and Other Defenses. The Ground Tenant hereby waives: (a) any defense based upon any legal disability or other defense of any kind of the Borrower, any other guarantor or any other Person, or by reason of the cessation or limitation of the liability of the Borrower from any cause other than full payment of all amounts constituting Obligations; (b) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of the Borrower or any principal of the Borrower or any defect in the formation of the Borrower or any principal of the Borrower; (c) any defense based upon the application by the Borrower of the proceeds of the Loan for purposes other than the purposes represented by the Borrower to the Mortgagee or intended or understood by the Mortgagee or the Ground Tenant; (d) any and all rights and defenses arising out of an election of remedies by the Mortgagee, even though that election of remedies, such as a nonjudicial foreclosure (to the extent permitted by applicable law) with respect to security for a guaranteed obligation, has destroyed the Ground Tenant's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise; (e) any defense based upon the Mortgagee's failure to disclose to the Ground Tenant any information concerning the Borrower's financial condition or any other circumstances bearing on the Borrower's ability to pay all sums payable under the Note or any of the other Loan Documents; (f) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of the principal; (g) any right of subrogation, any right to enforce any remedy which the Mortgagee may have against the Borrower and any right to participate in, or benefit from, any security for the Notes or the other Loan Documents now or hereafter held by the Mortgagee; (h) any defense based on impairment of collateral; (i) any and all suretyship rights and defenses of any kind, including any and all of the rights and defenses described in Section 2856(a) of the California Civil Code and any and all modifications and replacements thereof; (j) any defense based upon the Mortgagee's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code; (k) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Bankruptcy Code; (l) presentment, demand, protest and notice of any kind; and (m) to the extent permitted by law, the benefit of any statute of limitations affecting the liability of the Ground Tenant hereunder or the enforcement hereof. The Ground Tenant further unconditionally and irrevocably waives any rights and defenses the Ground Tenant may have because the Borrower's debt is secured by real property; this means, among other things, that: (1) the Mortgagee may collect from the Ground Tenant without first foreclosing on any real or personal property collateral pledged by the Borrower, and (2) if the Mortgagee forecloses on any real property collateral pledged by the Borrower, then (A) the amount of debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Mortgagee may collect from the Ground Tenant even if the Mortgagee, by foreclosing on the real property collateral, has destroyed any right the Ground Tenant may have to collect from the Borrower. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses

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the Ground Tenant may have because the Borrower's debt is secured by real property. These rights and defenses being waived by the Ground Tenant include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure, if applicable. Without limiting the generality of the foregoing or any other provision hereof, the Ground Tenant also waives the Ground Tenant's rights of subrogation, reimbursement, indemnification, and contribution and any and all other rights and defenses that are or may become available to the Ground Tenant by reason of California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433 or otherwise. Finally, the Ground Tenant agrees that the performance of any act or any payment which tolls any statute of limitations applicable to the Note or any of the other Loan Documents shall similarly operate to toll the statute of limitations applicable to the Ground Tenant's liability hereunder.

16. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder ("**Notices**") must be in writing and will be given in accordance with the terms of the Loan Agreement.

17. Further Acts. If required by the Mortgagee, the Mortgagor will execute all documentation necessary for the Mortgagee to obtain and maintain perfection of its liens and security interests in the Property. The Mortgagor will, at the cost of the Mortgagor, and without expense to the Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as the Mortgagee shall, from time to time, require for the better assuring, conveying, assigning, transferring or confirming unto the Mortgagee the property and rights hereby mortgaged, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee, or for carrying out the intent of or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, provided the same do not increase the Mortgagor's obligations or decrease the Mortgagor's rights under the Loan Documents. During the continuance of an Event of Default, the Mortgagor grants to the Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to the Mortgagee under this Mortgage or the other Loan Documents, at law or in equity, including, without limitation, the rights and remedies described in this section.

18. Intentionally Omitted.

19. Recording Taxes; Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to this Mortgage or the other Loan Documents, or impose any recording or other tax or charge on the same, the Mortgagor will pay for the same, with interest and penalties thereon, if any.

20. Preservation of Rights. No delay or omission on the Mortgagee's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Mortgagee's action or inaction impair any such right or

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power. The Mortgagee's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Mortgagee may have under other agreements, at law or in equity.

21. Illegality. If any provision contained in this Mortgage should be invalid, illegal or unenforceable in any respect, it shall not affect or impair the validity, legality and enforceability of the remaining provisions of this Mortgage.

22. Credit Agreements Act; Changes in Writing. The Mortgagor expressly agrees that for purposes of this Mortgage and the other Loan Documents: (i) this Mortgage and the other Loan Documents shall be a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1, *et seq.* (the "**Credit Agreement Act**"); (ii) the Credit Agreement Act applies to this transaction including, but not limited to, the execution of this Mortgage and the Note; and (iii) any action on or in any way related to this Mortgage and each other Loan Document shall be governed by the Credit Agreement Act. No modification, amendment or waiver of, or consent to any departure by the Mortgagor from, any provision of this Mortgage will be effective unless made in a writing signed by the Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Mortgagor will entitle the Mortgagor to any other or further notice or demand in the same, similar or other circumstance.

23. Entire Agreement. This Mortgage (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

24. Survival; Successors and Assigns. This Mortgage will be binding upon and inure to the benefit of the Mortgagor and the Mortgagee and their respective heirs, executors, administrators, successors and assigns; provided, however, that the Mortgagor may not assign this Mortgage in whole or in part without the Mortgagee's prior written consent and the Mortgagee at any time may assign this Mortgage in whole or in part, subject to the terms of the Loan Agreement.

25. Interpretation. In this Mortgage, unless the Mortgagee and the Mortgagor otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivisions of sections) or exhibits are to those of this Mortgage; and references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Mortgage. Section headings in this Mortgage are included for convenience of reference only and shall not constitute a part of this Mortgage for any other purpose. If this Mortgage is executed by more than one party as Mortgagor, the obligations of such persons or entities will be joint and several.



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26. **Governing Law and Jurisdiction.** WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS AND SECURITY TITLE CREATED PURSUANT TO THIS MORTGAGE, THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER STATE, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAWS OF STATE OF ILLINOIS, THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) SHALL GOVERN ANY AND ALL MATTERS, CLAIMS, CONTROVERSIES OR DISPUTES ARISING UNDER OR RELATED TO THIS MORTGAGE, THE RELATIONSHIP OF THE PARTIES, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES RELATING TO THIS MORTGAGE. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, CONTRACT, TORT OR OTHERWISE, AGAINST ANY OTHER PARTY OF THE FOREGOING, IN ANY WAY RELATING TO ANY LOAN DOCUMENT OR TRANSACTIONS RELATED TO ANY LOAN DOCUMENT, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF CALIFORNIA SITTING IN THE CITY AND COUNTY OF SAN FRANCISCO, OR OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CALIFORNIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING IS CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN ANY LOAN DOCUMENT AFFECTS ANY RIGHT THAT THE MORTGAGEE MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT AGAINST THE MORTGAGOR OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE IN ANY COURT REFERRED TO IN THIS SECTION 25 AND THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT

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27. Change in Name or Locations. The Mortgagor hereby agrees that if the Mortgagor changes its name, its type of organization, its state of organization (if Mortgagor is a registered organization), or establishes a name in which it may do business that is not the current name of the Mortgagor, the Mortgagor will promptly notify the Mortgagee in writing of the additions or changes.

28. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Property, it is hereby understood and agreed that should the Mortgagee acquire an additional or other interests in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

29. Fixture Filing. This Mortgage, to the extent that it conveys or otherwise deals with items of personal property which are or may become fixtures, shall also constitute a financing statement filed as a fixture filing in the Official Records of the County Recorder of the County in which the Land is located with respect to any and all fixtures included within the term "Property" as used herein and with respect to any equipment or other personal property that may now be or hereafter become such fixtures. The information required for a sufficient fixture filing financing statement pursuant to Section 9-502 of the Uniform Commercial Code is as follows:

Debtor's legal name:	KHP III 39 Chicago LLC and 39 Chicago Building LLC
Type of legal entity (Corp., LLC, etc.):	Each, a limited liability company
Mailing address:	101 California Street, Suite 980 San Francisco, CA 94111
State of Organization of Debtor(s):	Delaware
Name of Secured Party:	PNC Bank, National Association
Mailing address:	575 Market St., 28 <sup>th</sup> Floor San Francisco, CA 94105
Description of the collateral:	All "Property" defined in this Mortgage, whether now owned or hereafter acquired
Description of real estate to which the collateral is attached or upon which it is or will be located:	The Land described on Exhibit A hereto

30. **WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY**

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APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, LENDER OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON COULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 30.

31. Protective Advances. All advances, disbursements and expenditures made by the Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Loan Documents or by the Mortgage Foreclosure Law (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Mortgage Foreclosure Law, including those provisions of the Mortgage Foreclosure Law hereinbelow referred to:

31.1 all advances by the Mortgagee in accordance with the terms of the Loan Documents to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Property; (B) preserve the lien of this Mortgage or the priority hereof; or (C) enforce this Mortgage, each as referred to in subsection (1)(5) of Section 5/15-1302 of the Mortgage Foreclosure Law;

31.2 payments by the Mortgagee of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Mortgage Foreclosure Law;

31.3 advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

31.4 attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d)(2) and 5/15-1510 of the Mortgage Foreclosure Law; (B) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the

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interest of the Mortgagee hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action related to this Mortgage or the Property;

31.5 The Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Mortgage Foreclosure Law;

31.6 expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the Mortgage Foreclosure Law;

31.7 expenses incurred and expenditures made by the Mortgagee for any one or more of the following: (A) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (B) if the Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by the Mortgagee whether or not the Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or the Mortgagee takes possession of the Property imposed by subsection (c)(1) of Section 5/15-1704 of the Mortgage Foreclosure Law; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by the Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (G) if the Loan is a construction loan, costs incurred by the Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; and (H) pursuant to any lease or other agreement for occupancy of the Property, for amounts required to be paid by the Mortgagor;

31.8 all Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Loan Documents;

31.9 this Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 5/15-1302 of the Mortgage Foreclosure Law; and

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31.10 all Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Mortgage Foreclosure Law, apply to and be included in:

- (a) determination of the amount of indebtedness secured by this Mortgage at any time;
- (b) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (c) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Mortgage Foreclosure Law;
- (d) application of income in the hands of any receiver or the Mortgagee in possession; and
- (e) computation of any deficiency judgment pursuant to Section 5/15-1511 of the Mortgage Foreclosure Law.

32. Use of Proceeds. The Mortgagor represents and warrants to the Mortgagee that the proceeds of the Loan secured hereby shall be used solely for business purposes and in furtherance of the regular business and affairs of the Mortgagor, and the entire principal obligation secured by this Mortgage constitutes (i) a "business loan" (as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c)) to a business association, and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(1).

33. Maturity Date; Interest. The Note has a maturity date of October 25, 2023, and each Note bears interest at variable rates determined in accordance with the terms and conditions of the Loan Agreement and the Note. *[Signatures Follow on Next Page]*

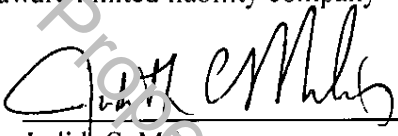
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The Mortgagor acknowledges that it has read and understood all the provisions of this Mortgage, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

WITNESS the due execution and delivery hereof as a document, as of the date first written above, with the intent to be legally bound hereby.

“Borrower”

**39 CHICAGO BUILDING LLC,**  
a Delaware limited liability company

By:   
Name: Judith C. Miles  
Title: Executive Member and Secretary

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

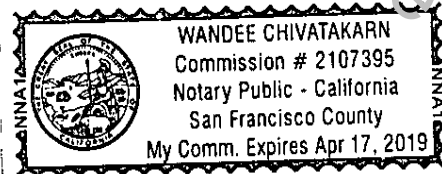
COUNTY OF San Francisco

On October 22, 2018 before me, Wandee Chivatakarn, Notary Public, personally appeared Judith C. Miles, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.

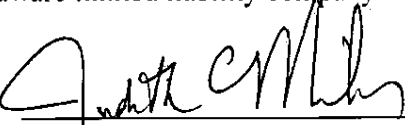
Signature,  (Seal)



# UNOFFICIAL COPY

“Ground Tenant”

**KHP III 39 CHICAGO LLC,**  
a Delaware limited liability company

By:   
Name: Judith C. Miles  
Title: Executive Member and Secretary

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 )

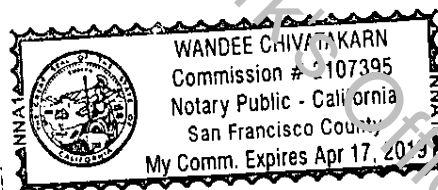
COUNTY OF San Francisco )

On October 22, 2018 before me, Wandee Chivatakarn, Notary Public, personally appeared Judith C. Miles, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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)



# UNOFFICIAL COPY

## EXHIBIT A

### Legal Description

#### Estate A:

(A) The fee estate in the improvements located on parcels 1 and 2 of the land described below:

(B) The leasehold estate created by the instrument herein referred to as the lease, executed by the University of Chicago, a not for profit corporation of Illinois, as Lessor, and Roc II IL LaSalle, LLC, a Delaware limited liability company dated January 9, 2014, an amended Memorandum of Lease recorded January 10, 2014 as document 1401022120 and as further amended by that certain ground lease assignment to KHP III 39 Chicago LLC, a Delaware limited liability company recorded January 10, 2014 as document number 1401022121, which lease demises the following described land for a term of years beginning January 9, 2014 and ending July 7, 2103.

#### Estate B:

The estate or interest in the Land described below and covered herein is: The subleasehold estate (said subleasehold estate being defined in paragraph 1.C of the ALTA leasehold endorsement(s) attached Hereto), created by the instrument herein referred to as the sublease, executed by: KHP III 39 Chicago LLC, as sublessor, and 39 Chicago Building LLC, as Sublessee, Dated as of July 2, 2015, Which Lease Was recorded July 6, 2015 as document 1518716067, which lease demises the following described Land for a term of years beginning July 2, 2015 and ending July 6, 2103:

#### Parcel 1:

The South 80.00 feet of Lots 6, 7 and 8 (except that part of Lot 8 taken and used for LaSalle Street) in Block 118 in School Section Addition to Chicago in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, excepting ownership of the buildings and improvements located on the Land.

#### Parcel 2:

The vacated Public Alley, lying North of and adjoining Lots 21 to 28, Both Inclusive; lying South of and adjoining Lots 29, 31, 32 and 33; lying East of the East Line of South LaSalle Street, as widened, and lying West of and adjoining Lots 18 and 19 in assessor's division of Block 118 in School Section Addition to Chicago of the East 1/2 of the Northeast 1/4 of Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, more particularly described as follows:



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beginning at the Northwest Corner of Lot 28 aforesaid; Thence East along the North Line of Lots 28, 27, 26, 25, 24, 23, 22 and 21 aforesaid to the Northeast Corner of Lot 21 aforesaid; thence North along the West Line of Lots 18 and 19 to the Southeast Corner of Lot 33 aforesaid; thence West along the South Line of Lots 33, 32 and 31 and part of Lot 29 to a point 45.10 feet East of the West Line of Said Lot 29; thence South parallel with said West Line, a distance of 8.00 feet; thence West along the South Line of Said Lot 29 to the Southwest corner of Lot 29, being Also the East Line of South LaSalle Street, as widened; thence South along said East Line of South LaSalle Street, as widened, to the point of beginning, excluding therefrom the East 22.75 feet thereof, all in Cook County, Illinois, excepting ownership of the buildings and improvements located on the Land

Tax Parcel Number: 17-16-204-034-0000

Common Address: 39 S. LaSalle Street  
Chicago, IL 60603

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## EXHIBIT B

### GROUND LEASE

Ground Lease, dated January 9, 2014, by and between ROC II IL LaSalle, LLC, a Delaware limited liability company, and The University of Chicago, an Illinois not-for-profit corporation, as evidenced by that certain Amended Memorandum of Ground Lease, recorded with the Cook County Recorder of Deeds on January 10, 2014 as Doc No. 1401022120, as assigned by ROC II IL LaSalle, LLC, a Delaware limited liability company, to Ground Tenant pursuant to that certain Ground Lease Assignment dated January 9, 2014 and recorded with the Cook County Recorder of Deeds on January 10, 2014 as Doc No. 1401022121.

COOK COUNTY  
RECORDER OF DEEDS

COOK COUNTY  
RECORDER OF DEEDS