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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*1834016066\*

Doc# 1834016066 Fee \$108.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 12/06/2018 03:16 PM PG: 1 OF 36

The property identified as: PIN: 17-16-209-007-0000

**Address:**

**Street:** 200 WEST ADAMS STREET

**Street line 2:**

**City:** CHICAGO

**State:** IL

**ZIP Code:** 60606

**Lender:** BSREF HOLDINGS LLC

**Borrower:** 200 WEST ADAMS, LLC

**Loan / Mortgage Amount:** \$110,000,000.00

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:** 6FF2D8C5-1E94-419C-89B6-9DB0A45F4767

**Execution date:** 11/30/2018

CCRD REVIEW

931766 40FL

36

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**200 WEST ADAMS, LLC**

as mortgagor

**TO**

**BSREF HOLDINGS LLC,**

as mortgagee

Dated as of November 30, 2018

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

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Location: 200 West Adams Street, Chicago, Illinois 60604

**PREPARED BY AND UPON  
RECORDATION RETURN TO:**

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10006  
Attention: Matthew A. Kidd, Esq.

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EXECUTION VERSION

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

This MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (this "Mortgage"), is entered into and made effective as of November 30, 2018, by **200 WEST ADAMS, LLC**, a Delaware limited liability company (together with its permitted successors and assigns, "Mortgagor"), having its address and principal place of business at 1477 NW Everett Street, Portland, Oregon 97209, for the benefit of **BSREF HOLDINGS LLC**, a Delaware limited liability company (together with its successor and assigns, "Mortgagee"), having an address at 250 Vesey Street, 15th Floor, New York, NY 10281.

### WITNESSETH:

A. Mortgagor is the owner of the fee estate situated at 200 West Adams Street, Chicago, Illinois, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property").

B. Mortgagee is making a loan (the "Loan") to Mortgagor under and pursuant to the terms and provisions of that certain Loan Agreement by and between Mortgagee, as lender, and Mortgagor, as borrower, dated of even date herewith (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement"), which Loan is further evidenced by that certain Promissory Note, dated as of even date herewith, made by Mortgagor and payable to the order of Mortgagee in the original stated principal amount of ONE HUNDRED TEN MILLION AND NO/100 DOLLARS (\$110,000,000.00) (together with all renewals, modifications, increases and extensions thereof, the "Note").

C. As a material inducement in order for Mortgagee to make the Loan to Mortgagor, Mortgagor has agreed to execute and deliver this Mortgage to and for the benefit of Mortgagee.

D. Mortgagor and Mortgagee intend for these Recitals to be a material part of this Mortgage.

NOW, THEREFORE, in consideration of the Loan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby covenants and agrees as follows:

### ARTICLE I

#### DEFINITIONS

1.1 Definitions. Capitalized terms used in this Mortgage and not otherwise defined shall have the meanings assigned to them in the Loan Agreement. As used herein, the following terms shall have the following meanings:

Assignment: That certain Assignment of Leases and Rents, dated as of even date herewith, executed by Mortgagor for the benefit of Mortgagee relating to the Mortgaged Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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The Indebtedness and all of Mortgagor's other obligations under the Loan Documents are secured by among other things the Assignment and the other Loan Documents.

Code: The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is situated.

Contracts: All of the right, title, and interest of Mortgagor, including equitable rights, in, to, and under any and all, in each case to the extent assignable: (i) contracts for the purchase and/or sale of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments and supplements to and renewals and extensions of the contracts at any time made, and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Mortgaged Property or from the contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the contracts; (ii) contracts, licenses, permits, and rights relating to entitlements with respect to water, wastewater, and other utility services whether executed, granted, or issued by a Person, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no-action letters from each Governmental Authority required: (a) to evidence compliance by Mortgagor and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property; (b) for the construction and/or development of any improvements on the Mortgaged Property or rehabilitation thereof, if applicable (c) to develop and/or operate the Mortgaged Property as a commercial project; (iii) any financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; (iv) intentionally omitted; (v) contracts, licenses, permits and agreements relating in any way to the construction or renovation of the Land or Improvements or provision of materials therefor including, without limitation, the work to be performed in connection with the improvements requiring Capital Expenditures and any Approved TI/LC Costs or Outstanding TI/LC Costs; (vi) contracts with architects or engineers or others for the preparation or provision of any plans and specifications for the renovation of the Mortgaged Property, and all amendments and supplements to and renewals and extensions of such contracts at any time made; and (vii) all other contracts, licenses and permits which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Leases) including, without limitation any other contract pursuant to which Mortgagor is granted a possessory interest in and to the Land and/or Improvements.

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, which are now owned or hereafter acquired by Mortgagor and are now or hereafter attached to the Land or the Improvements, and including but not limited to any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment,

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water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and lighting, traffic control, waste disposal, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof. Notwithstanding the foregoing, Fixtures shall not include any property which Tenants are entitled to remove pursuant to Leases or fixtures owned by utility companies, except to the extent that Borrower shall have any right or interest therein.

Improvements: The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land.

Land: All of that certain real property or interest more particularly therein described in Exhibit A attached hereto and incorporated herein by reference, together with all rights, titles, interests and privileges of Mortgagor, if any, in and to (i) all streets, ways, roads, alleys, easements (including, without limitation, any easements under zoning lot development and easement agreements, whether now or hereafter affecting such real property), rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water, water rights and water courses which are appurtenant to, located on, under or above or used in connection with the Mortgaged Property, or any part thereof, whether adjudicated or unadjudicated, conditional or absolute, tributary, or non-tributary, surface or underground, designated or undesignated; (iv) timber, crops, pertaining to such real property; and (v) all appurtenances, including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to such real property or now or hereafter transferred to such real property, and all reversions and remainders in or to such real property.

Lease Rent Notice: A notice from Mortgagee to any Tenant under a Lease stating that the License has been terminated and instructing each such Tenant under a Lease to pay all current and future Rents under the Leases directly to Mortgagee, and attorn in respect of all other obligations thereunder directly to Mortgagee.

License: Shall have the meaning ascribed to such term in the Assignment.

Loan: Shall have the meaning ascribed to such term in Recital B hereof.

Loan Agreement: Shall have the meaning ascribed to such term in Recital B hereof.

Minerals: All right, title and interest of Mortgagor, if any, in and to all substances in, on, under or above the Land which are now, or may become in the future, intrinsically valuable, and

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which now or may be in the future enjoyed through extraction or removal from the Land, including, without limitation, oil, gas, all other hydrocarbons, coal, lignite, carbon dioxide, all other non-hydrocarbon gases, uranium, all other radioactive substances, gold, silver, copper, iron and all other metallic substances or ores.

Mortgage: Shall have the meaning ascribed to such term in the first paragraph hereof.

Mortgaged Property: The Land, Minerals, Fixtures, Improvements, Personality, Contracts, Leases, Rents and Reserves, and all of the right, title and interest of Mortgagor now owned or hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personality, Contracts, Leases, Rents and Reserves, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of Mortgagor's other obligations under the Loan Documents. As used in this Mortgage, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Mortgagee: Shall have the meaning ascribed to such term in the first paragraph hereof.

Mortgagor: Shall have the meaning ascribed to such term in the first paragraph hereof.

Note: Shall have the meaning ascribed to such term in Recital B hereof.

Personalty: All of the right, title, and interest of Mortgagor in and to: (i) furniture, furnishings, equipment, machinery, tangible personal property, and goods located within, used in the operation of or derived from the Improvements; (ii) crops, farm products, timber and timber to be cut, and extracted Minerals; (iii) general intangibles (including payment intangibles), money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, monetary obligations, chattel paper (including electronic chattel paper), instruments, investment property, documents, letter of credit rights, inventory and commercial tort claims, in each case other than the name "Gerding Edlen" and logos and derivations thereof; (iv) all cash funds, fees (whether refundable, returnable, or reimbursable), deposit accounts or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Mortgagor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or Personality, including, but not limited to, those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and (v) all other personal property of any kind or character as defined in and subject to the provisions of Article 9 of the Code; any and all of which are now owned or hereafter acquired by Mortgagor, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, design, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and



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the proceeds thereof. Notwithstanding the foregoing, Personalty shall not include any property belonging to Property Manager or Tenants under Leases, except to the extent that Borrower shall have any right or interest therein.

Rents: Shall have the meaning ascribed to the term "Revenues" as set forth in the Loan Agreement.

Reserves: All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Land and the Improvements (other than Borrower's Operating Account), including, without limitation, all accounts established or maintained pursuant to the Loan Agreement, the Deposit Account Control Agreement, the Cash Management Agreement, or any other Loan Document, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof.

1.2 Additional Definitions. As used herein, the following terms shall have the following meanings: (i) "hereof", "hereby", "hereto", "hereunder", "herewith", and similar terms mean of, by, to, under and with respect to, this Mortgage or to the other documents or matters being referenced; (ii) "heretofore" means before, "hereafter" means after, and "herewith" means concurrently with the date of this Mortgage; (iii) all pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require; (iv) "including" means including, without limitation; (v) all terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require; and (vi) all capitalized terms used herein but not defined in Section 1.1 hereof shall have the meanings ascribed to such terms in the Loan Agreement.

## ARTICLE II

### GRANT

2.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance of Mortgagor's other obligations under the Loan Documents, Mortgagor MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS, CONVEYS, and CONFIRMS to Mortgagee Mortgagor's right, title and interest in and to the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee, WITH POWER OF SALE, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee.

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## ARTICLE III

### WARRANTIES AND REPRESENTATIONS

Mortgagor hereby unconditionally warrants and represents to Mortgagee, as of the date hereof and on each date that Mortgagor's representations are required to be made under the Loan Documents, except as set forth in the Exception Report, as follows:

3.1 Title and Lien. Mortgagor owns good, marketable and insurable title to the Property and good and marketable title to the related personal property owned by Mortgagor, to the Collateral Accounts and to any other Collateral, in each case free and clear of all Liens whatsoever except the Permitted Encumbrances. The Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (i) a valid, perfected first priority Lien on the Property and the rents therefrom, enforceable as such against creditors of and purchasers from Mortgagor and subject only to Permitted Encumbrances, and (ii) perfected Liens in and to all personalty, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances (to the extent perfection of a security interest is achieved by filing a UCC-1). The Permitted Encumbrances do not and will not, individually or in the aggregate, materially and adversely affect or interfere with the value, or current or contemplated use or operation, of the Property, or the security intended to be provided by this Mortgage, or to Mortgagor's knowledge, the ability of the Property to generate net cash flow sufficient to service the Loan, or Mortgagor's ability to pay its obligations as and when they come due, including its ability to repay the Indebtedness in accordance with the terms of the Loan Documents. Except as insured over by a Title Insurance Policy, there are no claims for payment for work, labor or materials affecting the Property that are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents. No creditor of Mortgagor other than Lender has in its possession any goods that constitute or evidence the Collateral. This Mortgage constitutes a valid, subsisting and enforceable first lien and security interest on, in, and against the Mortgaged Property, subject to Permitted Encumbrances. The foregoing warranty of title shall survive the foreclosure or other enforcement of this Mortgage, and shall inure to the benefit of and be enforceable by Mortgagee in the event Mortgagee acquires title to the Mortgaged Property pursuant to any foreclosure or otherwise.

3.2 Incorporation of Warranties and Representations. All the warranties, representations, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein, and subject to the same limitations and disclosures set forth in such Loan Documents.

## ARTICLE IV

### AFFIRMATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Mortgagee as follows:

4.1 Payment and Performance. Mortgagor will pay the Indebtedness as and when specified in the Loan Documents and will perform and discharge all of Mortgagor's other



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obligations under the Loan Documents in full on or before the dates the same are to be performed (subject to any applicable notice and/or cure periods).

4.2 First Lien Status. Mortgagor will protect the first and prior Liens and security interests of this Mortgage and the other Loan Documents and will not permit to be created or to exist in respect of the Mortgaged Property or any part thereof any Lien or security interest on a parity with, superior to, or inferior to any of the Liens or security interests hereof, except for the Permitted Encumbrances.

4.3 Insurance. Mortgagor will, at Mortgagor's own cost and expense, obtain and maintain and keep in full force and effect insurance upon and relating to the Mortgaged Property as required in the Loan Agreement.

4.4 Intentionally Omitted.

4.5 Incorporation of Affirmative Covenants, Conditions and Agreements. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage to the Mortgaged Property, pay all property taxes and other impositions, and comply with Legal Requirements, in each case, subject to and in accordance with the terms of the Loan Agreement, and (ii) agrees that the proceeds of insurance and awards for condemnation shall be settled, held and applied in accordance with the Loan Agreement.

4.6 Further Assurances. Mortgagor will, on demand and at the sole cost and expense of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver, and hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact (which appointment herein is immediate but is exercisable upon the occurrence and during the continuance of an Event of Default), coupled with an interest, to execute in the name of Mortgagor, to the extent Mortgagee may lawfully do so, all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, documents, instruments, agreements, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, hypothecated, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, or for complying with all Legal Requirements; provided, however, that in each case, no such instrument, agreement, certificate or document shall decrease the rights or increase the obligations of Mortgagor, Guarantor or their Affiliates under this Mortgage or the other Loan Documents, or otherwise adversely affect Mortgagor, Guarantor or their Affiliates (other than to a de minimis extent). Mortgagor, within ten (10) Business Days of request therefor, will execute and deliver, and in the event it shall fail to so execute and deliver within said period, hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements to evidence more effectively the security interest of Mortgagee in the Mortgaged Property.

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## ARTICLE V

### NEGATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Mortgagee as follows:

5.1 Intentionally Omitted.

5.2 No Drilling. Mortgagor will not, without the prior written consent of Mortgagee, permit any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof; provided, however, extraction of Minerals from the subsurface of the Land shall not be deemed to violate this Section 5.2 so long as such extraction is done from an offsite location consistent with all Legal Requirements and in a manner such that no material negative effect or danger whatsoever occurs with respect to the surface of the Land or the Improvements located thereon.

5.3 No Transfer or Encumbrance. Neither Mortgagor nor any shareholder, member or partner of Mortgagor, will Transfer the Mortgaged Property, or any part thereof, without obtaining Mortgagee's prior written consent, other than as expressly permitted pursuant to the Loan Agreement. Mortgagor will not create, incur, assume or suffer to exist any Lien or encumbrance against all or any portion of the Mortgaged Property, other than as expressly permitted pursuant to the Loan Agreement including, without limitation, any Lien securing PACE Debt.

5.4 Incorporation of Covenants, Conditions and Agreements. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein, and subject to limitations as set forth in such Loan Documents.

## ARTICLE VI

### EVENTS OF DEFAULT

6.1 The occurrence of an Event of Default under the Loan Agreement or any other Loan Document shall constitute an "Event of Default" under this Mortgage.

## ARTICLE VII

### REMEDIES

7.1 Mortgagee's Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, this Mortgage shall be subject to foreclosure as provided by law and Mortgagee may, at Mortgagee's option, exercise any of its rights or remedies at law or in equity and, in addition exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

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(a) Right to Perform Mortgagor's Covenants. If Mortgagor has failed to keep or perform any covenant whatsoever contained in this Mortgage or the other Loan Documents (after the expiration of any applicable notice and cure periods), Mortgagee may, but shall not be obligated to any Person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness, and Mortgagor promises, upon demand, to pay to Mortgagee within ten (10) days of request therefor, at the place where the Note is payable, all sums so advanced or paid by Mortgagee, with interest from the date when requested by Mortgagee at the Default Rate. No such payment by Mortgagee shall constitute a waiver of any Event of Default. In addition to the Liens and security interests hereof, Mortgagee shall be subrogated to all rights, title, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Mortgagee may make an advance, or which Mortgagee may pay.

(b) Right of Entry. Mortgagee may, but shall not be obligated to, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, subject to the rights of Tenants, and take exclusive possession of the Mortgaged Property, without liability for trespass, damages or otherwise, and of all books, records, and accounts relating thereto and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the right to rent the same for the account of Mortgagor and to apply such Rents as provided in Article IX hereof. All such actual, out of pocket costs, expenses, and liabilities incurred by Mortgagee in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Mortgagor and shall bear interest from the date of request for reimbursement from Mortgagee until paid at the Default Rate, all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor, including specifically, without limitation, one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Mortgagee pursuant to this subsection, Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of Mortgagee in managing the Mortgaged Property unless such loss is caused by the willful misconduct or gross negligence of Mortgagee, nor shall Mortgagee be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. **MORTGAGOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY MORTGAGEE FOR, AND TO HOLD MORTGAGEE HARMLESS FROM, ANY AND ALL ACTUAL, OUT OF POCKET LIABILITY, LOSS, OR DAMAGE, WHICH MAY OR MIGHT BE INCURRED BY MORTGAGEE UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST MORTGAGEE BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE, EXCEPT FOR THOSE LOSSES, COSTS, LIABILITIES OR EXPENSES THAT ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF MORTGAGEE OR ITS AFFILIATES.** Should Mortgagee incur any such liability, the amount thereof, including without limitation actual,

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out of pocket costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of demand from Mortgagee until paid at the Default Rate, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor within ten (10) days of written demand. Absent Mortgagee taking actual possession of the Property, nothing in this subsection shall impose any duty, obligation, or responsibility upon Mortgagee for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Mortgaged Property by the Tenants or by any other Persons (other than Mortgagee or its agents), or for any hazardous substance in, on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or, except as otherwise set forth herein, for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any Tenant, licensee, employee, or stranger. Mortgagor hereby assents to, ratifies, and confirms any and all actions of Mortgagee with respect to the Mortgaged Property taken under this subsection.

The remedies in this subsection are in addition to other remedies available to Mortgagee and the exercise of the remedies in this subsection shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to Mortgagee. Any receipt of consideration received by Mortgagee pursuant to this subsection shall be immediately credited against the Indebtedness (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness.

(c) Right to Accelerate. Mortgagee may, but shall not be obligated to, without notice (unless required under the Loan Documents or applicable law), demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived to the extent permitted by applicable law by Mortgagor and all other Persons obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to Mortgagee shall not be deemed to be a waiver of any rights or remedies of Mortgagee under the Loan Documents, at law or in equity.

(d) Foreclosure. Mortgagee may immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions or any of the Indebtedness secured hereby, pursuant to the statutes in such case made and provided, and sell the Mortgaged Property or cause the Mortgaged Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Mortgagee in its sole and absolute discretion, in each case subject to applicable law. Should Mortgagee desire that more than one sale or other disposition of the Mortgaged Property be conducted, Mortgagee shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or on such different days or at such different times and in such order as Mortgagee may designate in its sole and absolute discretion, and no such sale or disposition shall terminate or otherwise affect the Liens and security interests of this Mortgage on any part of the Mortgaged Property not sold or disposed of until all of the Indebtedness has been paid in full and Mortgagor's other obligations under the Loan Documents have been fully performed and discharged. In the event foreclosure proceedings are instituted or filed by



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Mortgagee, all actual out of pocket expenses incident to such proceedings, including, but not limited to, court costs and reasonable attorneys' fees and expenses, shall be paid by Mortgagor on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Indebtedness evidenced by the Note. The secured Indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Rate (if applicable), any prepayment charge, fee or premium required to be paid under and in accordance with the Note and the Loan Agreement in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and expenses and any other amounts due and unpaid to Mortgagee under the Loan Documents, may be bid by Mortgagee in the event of a foreclosure sale hereunder. Without limiting the foregoing or any other rights or remedies available to Mortgagee, Mortgagee may also commence and prosecute a judicial foreclosure action under applicable law.

(e) If the Mortgaged Property consists of multiple parcels, then in any sale of the Mortgaged Property pursuant to Mortgagee's exercise of its remedies during the continuance of an Event of Default (including any judicial foreclosure sale and any nonjudicial sale under applicable law), the multiple parcels may be sold in a single sale or, at the option of the Mortgagee in its sole and absolute discretion, a sale of any one or more of such parcels separately. Any such separate sales may be made in whatever order Mortgagee determines in its sole and absolute discretion. Mortgagee may, in its sole and absolute discretion, cause the entire Mortgaged Property to be offered for sale as a single auction lot and may also cause bids to be solicited for individual parcels of the Mortgaged Property as separate auction lots in any order, but shall be under no obligation to proceed in either manner or the other. Mortgagor acknowledges that if Mortgagee sells multiple parcels individually, no fair value or deficiency hearing shall be required after each sale.

(f) Mortgagee's Judicial Remedies. Mortgagee may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of Mortgagor's other obligations under the Loan Documents in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the Liens and security interests of this Mortgage as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to Mortgagee with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Mortgagee.

(g) Mortgagee's Right to Appointment of Receiver. Mortgagee, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of Mortgagor's other obligations under the Loan Documents, without notice to Mortgagor and without any showing of insolvency, fraud, or mismanagement on the part of Mortgagor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and, to the extent permitted by law, of the Rents. Mortgagor, for itself and on behalf of each other Person liable for payment of the Indebtedness, hereby to the extent permitted by applicable law: (i) waives, and authorizes Mortgagee to waive, any requirement that a receiver post a bond; (ii) waives any requirement for notice of appointment of a receiver; and (iii) irrevocably consents to the appointment of a receiver

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or receivers. Any receiver(s) appointed pursuant to the provisions of this subsection (g) shall have the usual powers and duties of receivers in such matters.

(h) Mortgagee's Uniform Commercial Code Remedies. Mortgagee may exercise any or all of the remedies available to a secured party under the Code.

(i) Rights Relating to Rents. Mortgagor has, pursuant to Article IX of this Mortgage, assigned absolutely to Mortgagee all Rents under each of the Leases covering all or any portion of the Mortgaged Property. To the extent permitted by law, Mortgagee at any time, and without notice (unless expressly required under the Loan Documents or by applicable law), either in person, by agent, or by receiver to be appointed by a court, may, but shall not be obligated to, enter into and take possession of the Mortgaged Property or any part thereof, subject to the rights of Tenants, and with or without taking possession of the Mortgaged Property or any part thereof, and in its own name, may sue for or otherwise collect the Rents. Mortgagor hereby agrees that Mortgagee shall upon the occurrence of an Event of Default, and without further action of any kind or nature by Mortgagee, terminate the License granted to Mortgagor in Section 9.2 hereof, and thereafter direct each Tenant under the Leases, pursuant to a Lease Rent Notice, to pay directly to Mortgagee the Rents due and to become due under the Leases and attorn in respect of all other obligations thereunder directly to Mortgagee without any obligation on the part of the Tenants under the Leases to determine whether an Event of Default does in fact exist or has in fact occurred; provided, however, notwithstanding the foregoing, so long as the Event of Default giving rise to the revocation of the License is no longer continuing, and provided that no other Event of Default shall then exist, the license granted to Mortgagor herein shall be automatically reinstated without any further action of the parties (provided, however, that Mortgagee shall accordingly notify all Tenants to which Mortgagee delivered a Lease Rent Notice to). It shall never be necessary for Mortgagee to institute legal proceedings to enforce any provision of this Section 7.1(i). All Rents collected by Mortgagee shall be applied as provided for in Article IX of this Mortgage and the Assignment; provided, however, that if the actual, out of pocket costs, expenses, and attorneys' fees and expenses incurred in connection therewith shall exceed the amount of Rents so collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Rate from the date demanded by Mortgagee, and shall be due and payable within ten (10) Business Days of demand. The entering upon and taking possession of the Mortgaged Property, the collection of Rents, and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of Event of Default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such Event of Default is fully cured. Failure or discontinuance by Mortgagee at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Mortgagee of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Mortgagee shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the Lien or charge of this Mortgage, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any collateral given by Mortgagor to Mortgagee. In addition, Mortgagee may from time to time elect, and notice hereby is given to each Tenant under each Lease, to subordinate the Lien of this Mortgage to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election the Lien of this Mortgage shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each instance such subordination will not affect or be



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applicable to, and expressly excludes any Lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant and other rights, title, interests or estates of any nature whatsoever with respect to all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of this Mortgage and the execution of the Lease identified in such instrument of subordination.

(j) Other Rights. Mortgagee may, but shall not be obligated to: (i) surrender the insurance policies maintained pursuant to Section 4.3 hereof or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of Section 7.4 hereof, and, in connection therewith, Mortgagor hereby irrevocably constitutes and appoints Mortgagee as agent and attorney-in-fact, coupled with an interest, for Mortgagor to collect such premiums; (ii) apply the funds on deposit in the Basic Carrying Costs Escrow Account and insurance premiums, if any, required by the provisions of this Mortgage or the other Loan Documents, toward payment of the Indebtedness; and (iii) exercise, and shall have any and all other rights and remedies which Mortgagee may have at law or in equity, or by virtue of any Loan Document, or under the Code, or otherwise.

(k) Mortgagee as Purchaser. Mortgagee may, but shall not be obligated to, be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein or upon any other foreclosure of the Liens and security interests hereof, or otherwise, and Mortgagee shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the Liens and security interests hereof (other than Permitted Encumbrances). Mortgagee, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Mortgagee's purchase or the amount of the Indebtedness bid by Mortgagee at such sale shall be applied in accordance with Section 7.4 of this Mortgage.

7.2 Other Rights of Mortgagee. Should any part of the Mortgaged Property come into the possession of Mortgagee, whether before or after an Event of Default, Mortgagee may (for itself or by or through other Persons), but shall not be obligated to, hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Mortgagee may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Mortgagee may from time to time deem necessary in its reasonable discretion) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Mortgagee in respect of the Mortgaged Property. During the continuance of an Event of Default, Mortgagee may complete the construction of certain improvements upon the Mortgaged Property and enter into the necessary contracts therefore, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest accruing if not paid within five (5) days of request therefor until paid at the Default Interest Rate. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage. Mortgagor covenants to promptly reimburse and pay to Mortgagee within ten (10) days of demand, at the place where the Note is payable, the amount of all reasonable, actual, out of pocket expenses (including without limitation the cost of any insurance, Real Estate and Property Taxes, or other charges) incurred by Mortgagee in connection with Mortgagee's custody, preservation, use, or operation of the Mortgaged Property, together with interest thereon from the date demanded by Mortgagee at the Default Rate and all

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such expenses, costs, taxes, interest, and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Mortgaged Property shall be borne by Mortgagor, and Mortgagee shall have no liability whatsoever for decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Mortgagee's possession.

**7.3 Possession After Foreclosure.** In the event there is a sale or sales pursuant to Section 7.1(d) hereof, the purchaser at any such sale or sales shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Mortgagor or Mortgagor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Mortgagor and Mortgagor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a rental per day, due and payable daily, as determined by such purchaser in its sole and absolute discretion), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

**7.4 Application of Proceeds.** The proceeds from any sale or sales, lease, or other disposition made pursuant to this Article VII, or the proceeds from the surrender of any insurance policies pursuant hereto, or any Rents collected by Mortgagee from the Mortgaged Property (following any application of such Rents in accordance with Section 9.3 hereof), or sums received pursuant to Section 8.1 hereof which Mortgagee elects to apply to the Indebtedness in accordance with the applicable provisions of the Loan Agreement, or proceeds from insurance received pursuant to Section 8.2 hereof which Mortgagee elects to apply to the Indebtedness in accordance with the applicable provisions of the Loan Agreement, and if so permitted by law, any remaining proceeds shall be applied, as the case may be, in accordance with the terms of the Loan Agreement. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

**7.5 Abandonment of Sale.** In the event a foreclosure hereunder is commenced by Mortgagee in accordance with Section 7.1(d) hereof, at any time before the sale, Mortgagee may, but shall not be obligated to, abandon the sale, and Mortgagee may then institute suit for the collection of the Indebtedness and for the foreclosure of the Liens and security interests hereof and of the Loan Documents. If Mortgagee should institute a suit for the collection of the Indebtedness and for a foreclosure of the Liens and security interests, Mortgagee may, at any time before the entry of a final judgment in said suit, dismiss the same and sell the Mortgaged Property or any part thereof in accordance with the provisions of this Mortgage.

**7.6 Payment of Fees.** If the Note or any other part of the Indebtedness shall be collected or if any of the Indebtedness shall be enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to Mortgagee to

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accelerate the maturity thereof, or if Mortgagee becomes a party to any suit where this Mortgage or the Mortgaged Property or any part thereof is involved, Mortgagor agrees to pay Mortgagee's actual out of pocket court costs and reasonable attorneys' fees and expenses incurred, and such costs, fees and expenses shall be and become a part of the Indebtedness and shall bear interest from the date such costs are demanded at the Default Rate.

## 7.7 Miscellaneous.

(a) Discontinuance of Remedies. In case Mortgagee shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Mortgagee shall have the unqualified right so to do and, in such event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if same had never been invoked.

(b) Other Remedies. In addition to the remedies set forth in this Article VII, upon the occurrence and during the continuance of an Event of Default, Mortgagee shall, in addition, have all other remedies available to it under the Loan Documents, at law, or in equity.

(c) Remedies Cumulative, Non-Exclusive; Etc. All rights, remedies, and recourses of Mortgagee granted in the Note, this Mortgage, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity, in each case, to the extent permitted by applicable law: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Mortgagor, the Mortgaged Property, or any one or more of them, at the sole and absolute discretion of Mortgagee; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Mortgagee exercising or pursuing any remedy in relation to the Mortgaged Property prior to Mortgagee bringing suit to recover the Indebtedness or suit on Mortgagor's other obligations under the Loan Documents; and (vi) in the event Mortgagee elects to bring suit on the Indebtedness and/or Mortgagor's other obligations under the Loan Documents and obtains a judgment against Mortgagor prior to exercising any remedies in relation to the Mortgaged Property, all Liens and security interests, including the Lien of this Mortgage, shall remain in full force and effect and may be exercised at Mortgagee's option.

(d) Partial Release; Etc. Mortgagee may, but shall not be obligated to, release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the Liens or security interests evidenced by this Mortgage or the other Loan Documents or affecting the obligations of Mortgagor or any other party to pay the Indebtedness or perform and discharge Mortgagor's other obligations under the Loan Documents. For payment of the Indebtedness, Mortgagee may resort to any of the collateral therefor in such order and manner as Mortgagee may elect in its sole and absolute discretion. No collateral heretofore, herewith, or hereafter taken by Mortgagee shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

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(e) Waiver and Release by Mortgagor. To the full extent Mortgagor may do so under applicable law, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption and, Mortgagor, for Mortgagor and Mortgagor's representatives, successors and assigns, and for any and all Persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, exemption from civil process, notice of intention to mature or declare due the whole or any part of the Indebtedness, notice of election to mature or declare due the whole or any part of the Indebtedness and all rights to a marshalling of the assets of Mortgagor, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the Liens and security interests created hereby and by the other Loan Documents. Mortgagor shall not have, or assert, any right under any statute or rule of law pertaining to the marshalling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Mortgaged Property for the collection of the Indebtedness without any prior or different resort for collection, or the right of the Mortgagee under the terms of this Mortgage to the payment of such Indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatever. If any law referred to in this Section 7.7(e) and currently in force, of which Mortgagor or Mortgagor's representatives, successors and assigns and such other Persons claiming any interest in the Mortgaged Property might take advantage despite this Section 7.7(e), shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 7.7(e).

(f) Intentionally Omitted.

(g) No Implied Covenants. To the extent permitted by applicable law, Mortgagor and Mortgagee mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Mortgage and the other Loan Documents. All agreed contractual duties are set forth in this Mortgage, the Note, the Loan Agreement, and the other Loan Documents.

(h) Real Property Laws Govern. The remedies in this Article VII shall be available under and governed by the real property laws of the State of Illinois and shall not be governed by the personal property laws of the State of Illinois, including but not limited to, the power to dispose of personal property in a commercially reasonable manner under the Code, provided Mortgagee elects to proceed as to the Fixtures and Personalty together with the other Mortgaged Property under and pursuant to the real property remedies of this Article VII.

## ARTICLE VIII

### **SPECIAL PROVISIONS**

8.1 Condemnation Proceeds. Mortgagee shall be entitled to receive any and all sums which may be awarded and become payable to Mortgagor, subject to the terms of the Loan Agreement. Any sums received by Mortgagee as a result of condemnation shall be applied or disbursed in accordance with the terms of the Loan Agreement.



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8.2 Insurance Proceeds. The proceeds of any and all insurance upon the Mortgaged Property shall be collected and applied or disbursed in accordance with the terms of the Loan Agreement.

## ARTICLE IX

### **ASSIGNMENT OF RENTS**

9.1 Present Assignment. In furtherance of and in addition to the assignments made by Mortgagor in Section 2.1 of this Mortgage and the Assignment, Mortgagor absolutely and unconditionally ASSIGNS, TRANSFERS, GRANTS, BARGAINS, SELLS, CONVEYS and SETS OVER to Mortgagee, all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents, subject only to the Permitted Encumbrances applicable thereto and the License, it being the intention of Mortgagor and Mortgagee that this conveyance be absolute and presently and immediately effective; and is neither conditional nor security for the payment and performance of the Indebtedness and Mortgagor's other obligations under the Loan Documents, TO HAVE AND TO HOLD the Leases and Rents unto Mortgagee, forever, and Mortgagor does hereby bind itself, its successors, and assigns to warrant and forever defend the title to the Rents unto Mortgagee.

9.2 Limited License. Mortgagee hereby grants to Mortgagor the License subject to termination of the License (and further subject to reinstatement of such License) and the other terms and provisions of Section 7.1(i) hereof, to exercise and enjoy all incidences of the status of a lessor with respect to the Rents, including without limitation, the right to collect, demand, sue for, attach, levy, recover, and receive the Rents and to give proper receipts, releases, and acquittances therefor. Mortgagor hereby agrees to receive all Rents and hold the same as Mortgagee's agent to be applied, and to apply the Rents so collected, in accordance with the terms set forth in Article III of the Loan Agreement. Neither this assignment of Rents nor the receipt of Rents by Mortgagee shall effect a *pro tanto* payment of the Indebtedness, and such Rents shall be applied as provided in this Section 9.2. Furthermore, and notwithstanding the provisions of this Section 9.2, no credit shall be given by Mortgagee for any Rents until the money constituting the Rents collected is actually received by Mortgagee or deposited in the Deposit Account or the Cash Management Account.

9.3 Reliance Upon Lease Rent Notice. Upon receipt from Mortgagee of a Lease Rent Notice, each Tenant under the Leases is hereby authorized and directed to pay directly to Mortgagee all Rents thereafter accruing and the receipt of Rents by Mortgagee shall satisfy such Tenant's obligations under its Lease to the extent of all amounts so paid; provided, however, Lender may only send such notices, and take such actions relative to such Rents and sums due, as are expressly permitted relative thereto pursuant to the terms herein or in the Loan Agreement. Such Rents shall be disbursed and/or applied in accordance with the terms of the Loan Agreement and the Cash Management Agreement. The receipt by a Tenant under the Leases of a Lease Rent Notice shall be sufficient authorization for such Tenant to make all future payments of Rents directly to Mortgagee and each such Tenant shall be entitled to rely on such Lease Rent Notice and shall have no liability to Mortgagor for any Rents paid to Mortgagee after receipt of such Lease Rent Notice. Rents so received by Mortgagee under this Mortgage for any period during the continuance of an Event of Default but prior to foreclosure under the Mortgage or acceptance

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of a deed in lieu of such foreclosure shall be applied by Mortgagee as provided in the Loan Agreement in such order and priority as Mortgagee shall determine in its sole and absolute discretion. In no event will this Article IX reduce the Indebtedness except to the extent, if any, that Rents are actually received by Mortgagee and applied upon or after said receipt to such Indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Mortgagee may, at its option, at any time and from time to time, release to Mortgagor, Rents so received by Mortgagee or any part thereof. As between Mortgagor and Mortgagee, and any Person claiming through or under Mortgagor, other than any Tenant under the Leases that has not received a Lease Rent Notice, this assignment of Rents is intended to be absolute, unconditional and presently effective (and not an assignment for additional security), and the Lease Rent Notice hereof is intended solely for the benefit of each such Tenant and shall never inure to the benefit of Mortgagor or any Person claiming through or under Mortgagor, other than a Tenant who has not received such Lease Rent Notice. It shall never be necessary for Mortgagee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Mortgage with respect to Rents. **MORTGAGOR SHALL HAVE NO RIGHT OR CLAIM AGAINST ANY TENANT FOR THE PAYMENT OF ANY RENTS PAID TO MORTGAGEE HEREUNDER AFTER TENANT RECEIVES THE LEASE RENT NOTICE.**

9.4 Collection of Rent. At any time during which Mortgagor is receiving Rents directly from any of the Tenants under the Leases, Mortgagor shall, upon receipt of written direction from Mortgagee, make demand and/or sue for all Rents due and payable under one or more Leases, as directed by Mortgagee, as it becomes due and payable, including Rents which are past due and unpaid. If Mortgagor fails to timely take such action, or at any time during which Mortgagor is not receiving Rents directly from Tenants under the Leases, Mortgagee shall have the right, but shall be under no duty or obligation, to demand, collect and sue for, in its own name or in the name of Mortgagor, all Rents due and payable under the Leases, as the same become due and payable, including Rents which are past due and unpaid. In furtherance of the foregoing, Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact, coupled with an interest, to collect and sue for, in the name of Mortgagor, all Rents due and payable under the Leases; provided Mortgagee shall exercise its rights as attorney-in-fact only during the continuance of an Event of Default.

9.5 Termination. Upon payment in full of the Indebtedness and satisfaction of Mortgagor's other obligations under the Loan Documents in full, the assignment in Section 9.1 of this Mortgage shall terminate, become null and void and shall be of no further force and effect without any further act or instrument. Upon payment in full of the Indebtedness and satisfaction in full of Mortgagor's other obligations under the Loan Documents, then at the request and expense of Mortgagor, Mortgagee shall execute and deliver such instrument or instruments effective to evidence the termination of this Mortgage and release of this Mortgage from the public records and the reassignment to Mortgagee of the rights, powers and authorities granted herein.

## ARTICLE X

### SECURITY AGREEMENT

10.1 Security Interest. This Mortgage shall constitute and serve as a "Security Agreement" under Article 9 of the Code and with respect to Personalty, Fixtures, Contracts and



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Leases and other personal property within the meaning of the Code. This Mortgage shall constitute a financing statement for all purposes and may be filed with the appropriate officer or office in accordance with the Code. To this end, Mortgagor does hereby GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER unto Mortgagee, a first and prior security interest in all of Mortgagor's right, title and interest in, to, under and with respect to the Personalty, Fixtures, Contracts and Leases and other personal property within the meaning of the Code to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of Mortgagor's other obligations under the Loan Documents. It is the intent of Mortgagor and Mortgagee that this Mortgage encumber all Leases and that all items contained in the definition of "Leases" which are included within the Code be covered by the security interest granted in this Article X and that all items contained in the definition of "Leases" which are excluded from the Code be covered by the provisions of Article II hereof.

10.2 Financing Statements. Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance reasonably satisfactory to Mortgagee, such Uniform Commercial Code financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect, and preserve Mortgagee's security interests herein granted, and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect, and preserve such security interest. Without limiting the foregoing, Mortgagor hereby specifically authorizes Mortgagee to prepare, file of record or otherwise effectuate new financing statements, financing statement amendments and financing statement continuations that Mortgagee deems necessary to create, perfect and/or preserve Mortgagee's security interest granted herein which describe all or any portion of the Mortgaged Property as collateral thereunder and Mortgagor specifically agrees that Mortgagee may cause same to be filed without any signature of a representative of Mortgagor appearing thereon where such filings are permitted by applicable law. For purposes of the security interests herein granted, the address of the Debtor (Mortgagor) and the address of the Secured Party (Mortgagee) are as set forth in the first paragraph of this Mortgage.

10.3 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the Code with respect to all or part of the Mortgaged Property which constitute "fixtures" under the Code. Information concerning the security interests herein granted may be obtained from the Mortgagor and Mortgagee at the addresses set forth in the first paragraph of this Mortgage.

## ARTICLE XI

### **SPECIAL ILLINOIS PROVISIONS**

11.1 Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article XI and the other provisions of this Mortgage, the terms and conditions of this Article XI shall control and be binding.

#### 11.2 Compliance with the Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *et. seq.* (as amended

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from time to time the “IMF Law”), the provision of the IMF Law shall take precedence over the provisions 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 IMF Law.

(b) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Law which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(c) Without in any way limiting or restricting any of Mortgagee’s rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, Mortgagee shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the IMF Law. If any provision of this Mortgage shall grant to Mortgagee any rights, remedies, powers or authorities during the continuance of an Event of Default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the IMF Law in the absence of said provision, Mortgagee shall be vested with all of the rights, remedies, powers and authorities granted in the IMF Law to the full extent permitted by law.

(d) All advances, disbursements and expenditures made or incurred by 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 this Mortgage, the other Loan Documents or by the IMF Law (collectively “Protective Advances”), shall have the benefit of all applicable provisions of the IMF Law, including, without limitation, those provisions of the IMF Law herein below referred to:

(1) all advances by Mortgagee in accordance with the terms of this Mortgage or the other Loan Documents to: (A) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the Lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the IMF Law;

(2) payments by Mortgagee of (A) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior Liens or encumbrance (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior Lien or encumbrance, other than Permitted Encumbrances and Permitted Debt); (B) 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 Mortgaged 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 relating to the Mortgaged Property reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the IMF Law;

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(3) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior Liens (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior Lien);

(4) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d) and 15-1510 of the IMF Law; (B) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (C) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Mortgaged Property;

(5) Mortgagee's actual, out of pocket fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection 15-1508(b)(1) of the IMF Law;

(6) expenses deductible from proceeds of sales referred to in Subsections 15-1512(a) and (b) of the IMF Law; and

(7) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) premiums for casualty and liability insurance paid by Mortgagee whether or not 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 mortgagee takes possession of the Mortgaged Property imposed by Subsection 15-1704(c)(1) of the IMF Law; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments deemed by Mortgagee to be required for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged 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 Mortgaged Property; and (D) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property.

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 Default Rate.

This Mortgage shall be a Lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the IMF Law.

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 IMF Law, apply to and be included in:

(1) any determination of the amount of Indebtedness secured by this Mortgage at any time;

(2) the Indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the

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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;

(3) if the right of redemption has not been waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections 5-1603(d)(2) and (e) of the IMF Law;

(4) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the IMF Law;

(5) application of income in the hands of any receiver or mortgagee in possession; and

(6) computation of any deficiency judgment pursuant to Subsections 15-1508(b)(2), 15-1508(e) and Section 15-1511 of the IMF Law.

(e) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the IMF Law, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMF Law. All expenses incurred by Mortgagee, to the extent reimbursable under 15-1510, 15-1512, or any other provisions of the IMF Law, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the Indebtedness secured by this Mortgage and by the judgment of foreclosure. Such receiver may be appointed by any court of competent jurisdiction upon ex parte application (Mortgagor hereby waiving any right to any hearing or notice of hearing prior to the appointment of a receiver).

**11.3 Waiver of Right of Redemption and Other Rights.** To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the Mortgaged Property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and reinstatement under the IMF Law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable

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law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the Lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Law or residential real estate as defined in Section 5/15-1219 of the IMF Law.

**11.4 Use of Proceeds.** Mortgagor represents and warrants to Mortgagee (i) that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(I) (or any substitute, amended or replacement statute), and that the Indebtedness secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(I), and (ii) that the Loan evidenced by the Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 *et seq.*

**11.5 No Lien Management Agreements and Broker Agreements.** Mortgagor shall include a "no lien" provision in any property management agreement hereafter entered into by Mortgagor with a property manager for the Mortgaged Property, whereby such property manager waives and releases any and all mechanics' lien rights that such property manager, or anyone claiming through or under such property manager, may have pursuant to the Illinois Mechanics Lien Act, 770 ILCS 60/1 *et seq.* In addition, Mortgagor shall cause such property manager to enter into a subordination of management agreement with Mortgagee, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager, to the lien of this Mortgage. Any agreement entered into hereafter by Mortgagor with any "broker" (as defined in the Real Estate License Act of 2000, 225 ILCS 454/1 *et seq.*) that is an affiliate of Mortgagor for the purpose of selling, leasing or otherwise conveying an interest in the Mortgaged Property shall contain a "no lien" provision whereby such broker waives and releases any and all lien rights that such broker, or anyone claiming through or under such broker, may have pursuant to the Commercial Real Estate Broker Lien Act, 770 ILCS 15/1 *et seq.* Mortgagor shall cause each such broker to enter into a subordination agreement with Mortgagee, in recordable form, whereby such broker, on its own behalf or on behalf of any party claiming by, through or under such broker, subordinates present and future lien rights to the Lien of this Mortgage.

**11.6 Fixture Financing Statement.** From the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Section 9-502(b) of the Illinois Uniform Commercial Code (as amended from time to time) with respect to the Mortgaged Property and the goods described herein, which goods are or are to become fixtures related to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth below. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or the counties where the Mortgaged Property is located. For this purpose, the following information is set forth.

- (a) Name and Address of Debtor:



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200 West Adams, LLC  
1477 NW Everett Street  
Portland, Oregon 97209

(b) Name and Address of Secured Party:

BSREF Holdings LLC  
250 Vesey Street, 15<sup>th</sup> Floor  
New York, New York 10281

(c) This document covers goods which are or are to become fixtures.

(d) 200 West Adams, LLC is the record owner of the Land described in Exhibit A attached hereto

(e) Debtor's chief executive office is located in the State of Oregon.

(f) Debtor's state of formation is Delaware.

(g) Debtor's exact legal name is as set forth in the first paragraph of this Mortgage.

(h) 200 West Adams, LLC's organizational identification number is 5866350.

(i) Debtor agrees that:

(1) Where Mortgaged Property is in possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Mortgaged Property for the benefit of Mortgagee;

(2) Mortgagor will cooperate with Mortgagee in obtaining control with respect to Mortgaged Property consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(3) Until the Indebtedness is paid in full, Mortgagor will not change the state where it is located or change its company name without receiving Mortgagee's prior written consent in accordance with the Loan Agreement.

**11.7 Interest Laws.** It being the intention of Mortgagee and Mortgagor to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note, this Mortgage or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by applicable law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the Indebtedness evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Mortgage or any of the other Loan Documents, then in such event: (a) the provisions of this Section 11.7 shall govern and control; (b) neither Mortgagor nor any other party obligated under the terms of the Note or any of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any



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Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, be (i) applied as a credit against the then outstanding Principal Indebtedness (without Spread Maintenance Premium or other prepayment penalty), accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) interest rate specified in Section 1.2(a) of the Loan Agreement shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Note, this Mortgage and the other Loan Documents shall be deemed to be automatically reformed and modified to reflect such reduction in such interest rate; and (e) neither Mortgagor nor any other party obligated under the terms of the Note or any of the other Loan Documents shall have any action against Mortgagee for any damages whatsoever arising out of the payment or collection of any Excess Interest.

11.8 Other Amounts Secured; Maximum Indebtedness. Mortgagor acknowledges and agrees that this Mortgage secures the entire Loan Amount and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the Principal Indebtedness is repaid in whole or part or Advances are made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Mortgagee in connection with the Loan, all in accordance with the Loan Agreement and other Loan Documents. Under no circumstances, however, shall the total Indebtedness secured hereby exceed two hundred percent (200%) of the aggregate, original principal amount of the Loan. It is agreed that any Advances made by Mortgagee for the benefit of Mortgagor from time to time under this Mortgage or the other Loan Documents and whether or not such Advances are obligatory or are made at the option of Mortgagee, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the Indebtedness secured hereby over all subsequent Liens and encumbrances, including statutory Liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

11.9 Adjustable Mortgage Loan Provision. The Note which this Mortgage secures is an adjustable note on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Note and the Loan Agreement.

11.10 Intentionally Omitted.

11.11 Deed of Trust. If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any Lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any Lien on or security interest in the beneficial interest of such trust.

11.12 Collateral Protection Act. Unless Mortgagor provides Mortgagee with evidence of the insurance required by the Loan Agreement, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property or any other collateral for the

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Indebtedness secured hereby. This insurance may, but need not, protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the Indebtedness secured hereby. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required under this Mortgage or any other Loan Document. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the Indebtedness secured hereby, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 *et. seq.*, Mortgagor hereby acknowledges Mortgagee's right pursuant to this Section 11.12 to obtain collateral protection insurance.

11.13 Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any Tenant or Tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Mortgagee. The failure to join any such Tenant or Tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

11.14 Intentionally Omitted.

11.15 Business Purposes. Mortgagor certifies, represents and warrants to the Mortgagee that the Indebtedness secured by this Mortgage is a "business loan" as provided in 815 ILCS 205/4(1)(c).

## ARTICLE XII

### MISCELLANEOUS

12.1 Intentionally Omitted.

12.2 Performance at Mortgagor's Expense. Mortgagor shall: (i) pay all reasonable legal fees and expenses actually incurred by Mortgagee in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder requested by Mortgagor); (ii) reimburse Mortgagee, within ten (10) days following demand, for all amounts actually expended, advanced, or incurred by Mortgagee to satisfy any obligation of Mortgagor under the Loan Documents, which amounts shall include all actual, out of pocket court costs, reasonable attorneys' fees and expenses (including, without limitation, for trial, appeal, or other proceedings), reasonable fees and expenses of auditors and accountants and other investigation fees and expenses reasonably incurred by Mortgagee in connection with any such matters; and (iii) any and all other actual, out of pocket costs and expenses of performing or

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complying with any and all of Mortgagor's obligations under the Loan Documents. Except to the extent that costs and expenses are included within the definition of "Indebtedness", the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

12.3 Survival of Obligations. Each and all of Mortgagor's obligations under the Loan Documents shall survive the execution and delivery of the Loan Documents and the consummation of the Loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this Section 12.3 shall limit the obligations of Mortgagor as otherwise set forth herein.

12.4 Recording and Filing. Mortgagor will cause this Mortgage (requested by the Mortgagee) and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and re-filed in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, documentary stamp taxes, fees, and other charges.

12.5 Notices. All notices or other communications required or permitted to be given pursuant to this Mortgage (or under any applicable law pertaining hereto) shall be in writing and shall be considered as properly given if provided in a manner consistent with the notice provisions in the Loan Agreement.

12.6 Covenants Running with the Land. All obligations of Mortgagor contained in this Mortgage and the other Loan Documents are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property until the Lien of this Mortgage has been fully released by Mortgagee.

12.7 Successors and Assigns. All of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives and all other Persons claiming by, through, or under them.

12.8 No Waiver; Severability. Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Mortgagor or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by Mortgagor or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other Persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.9 Counterparts. To facilitate execution, this Mortgage may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all

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persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Mortgage to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of Mortgagor and Mortgagee. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

**12.10 APPLICABLE LAW. THE PROVISIONS OF THIS MORTGAGE REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF ILLINOIS. ALL OTHER PROVISIONS OF THIS MORTGAGE WILL BE GENERALLY GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS); PROVIDED, HOWEVER, THAT TO THE EXTENT THAT ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING.** Mortgagor, for itself and its successors and assigns, hereby irrevocably: (i) submits to the non-exclusive jurisdiction of the state and federal courts in New York County, New York and Cook County, Illinois (ii) waives, to the fullest extent permitted by law, any objection that it may now or in the future have to the laying of venue of any litigation arising out of or in connection with any of the Loan Documents brought in the applicable state court in New York County, New York and Cook County, Illinois or in the United States District Court for the Southern District of New York and for the Northern District of Illinois; (iii) waives to the extent permitted by applicable law any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum; and (iv) agrees that any legal proceeding against any party to any of the Loan Documents arising out of or in connection with any of the Loan Documents may be brought in one of the foregoing courts. Mortgagor agrees that service of process upon it may be made by certified or registered mail, return receipt requested, at its address specified herein. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Mortgagor acknowledges that these waivers are a material inducement to Mortgagee's agreement to enter into agreements and obligations evidenced by the Loan Documents and that Mortgagee has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in this Section 12.10 are irrevocable, meaning that they may not be modified either orally or in writing, and these waivers apply to any future renewals, extensions, amendments, modifications or replacements in respect of the applicable Loan Document. In connection with any litigation, this Mortgage may be filed as a written consent to a trial by the court.

**12.11 Subrogation.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, Mortgagee shall be subrogated to all of the rights, claims, Liens, title, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, Liens, title, and interests, if any, are not



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waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the Liens and security interests created herein as cumulative security for the repayment of the Indebtedness and the performance and discharge of Mortgagor's other obligations under the Loan Documents.

12.12 Rights Cumulative. Mortgagee shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Mortgaged Property or any portion thereof), and the same, in each case to the extent permitted by applicable law, (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Mortgagor or others obligated for the Indebtedness or any part thereof, or against any one or more of them, or against the Mortgaged Property, at the sole and absolute discretion of Mortgagee, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Mortgagee hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Mortgaged Property.

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

12.14 Loan Agreement. Reference is hereby made to the Loan Agreement. In event of a conflict between the terms and provisions hereof and the Loan Agreement, the Loan Agreement shall govern.

12.15 Construction. All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

12.16 **ENTIRE AGREEMENT; AMENDMENT**. **THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT BETWEEN MORTGAGOR AND MORTGAGEE AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF MORTGAGOR AND MORTGAGEE. THERE ARE NO ORAL AGREEMENTS BETWEEN MORTGAGOR AND MORTGAGEE. THE PROVISIONS OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS MAY BE AMENDED OR WAIVED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY THE RESPECTIVE PARTIES TO SUCH DOCUMENTS.**

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**12.17 WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF OR IN ANY WAY RELATING TO THIS MORTGAGE OR ANY CONDUCT, ACT OR OMISSION OF MORTGAGEE OR MORTGAGOR, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH MORTGAGEE OR MORTGAGOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.**

**12.18 Interest After Sale.** In the event the Mortgaged Property or any part thereof shall be sold upon foreclosure as provided hereunder, to the extent permitted by law, the sum for which the same shall have been sold shall, for purposes of redemption (pursuant to the laws of the state in which the Mortgaged Property is located), bear interest at the Default Rate.

**12.19 Exculpation.** Notwithstanding anything appearing to the contrary herein or in any Loan Document, without impairing the obligations of Guarantor under the Guaranty or the Environmental Indemnity Agreement, no Exculpated Person, shall be personally liable for the performance of the obligations of, or in respect of any claims against, any such Exculpated Person arising hereunder or under any Loan Document. No personal judgment shall be sought or obtained against any of the foregoing in connection with the Loan (other than Guarantor under the Guaranty or the Environmental Indemnity Agreement).

***[The Remainder of This Page Is Intentionally Left Blank. Signature Page Follows.]***



**UNOFFICIAL COPY****EXECUTED** as of the date first above written.**MORTGAGOR:****200 WEST ADAMS, LLC**

a Delaware limited liability company

By: 200 West Adams Holding, LLC,  
an Oregon limited liability company  
Its: Sole Member

By: Gerding Edlen Green Cities III, L.P.,  
a Delaware limited partnership  
Its: Sole Member

By: Gerding Edlen Fund Management III, LLC,  
a Delaware limited liability company  
Its: General Partner

By: [Signature]  
Name: Kelly T. Saito  
Title: Manager

STATE OF Oregon )  
 )  
COUNTY OF Multnomah )

SS:

On the 19<sup>th</sup> day of November, 2018, before me, the undersigned, personally appeared Kelly T. Saito, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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 individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



[Signature]  
Notary Public State of Oregon  
My commission expires: 12-10-2021

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## EXHIBIT A

### Land Description

LEGAL DESCRIPTION: Real property in the County of Cook, State of Illinois, described as follows:

#### PARCEL 1:

SUB-LOTS 3, 4, AND 5 IN FIELD AND PERKIN'S SUBDIVISION OF LOTS 5, 6, 7 AND PART OF LOT 8 LYING EAST OF THE EAST LINE OF FRANKLIN STREET IN BLOCK 93 IN SCHOOL SECTION ADDITION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

THE SOUTH 22 FEET 10 INCHES OF LOT 9 IN BOLLES SUBDIVISION OF LOT 4 IN BLOCK 93 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

THAT PART OF THE PRIVATE COURT LYING NORTH OF AND ADJOINING LOT 3 IN FIELD AND PERKINS' SUBDIVISION OF LOTS 5, 6 AND 7 AND PART OF LOT 8 LYING EAST OF THE EAST LINE OF FRANKLIN STREET IN BLOCK 93 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF AND ADJOINING THAT PORTION OF THE VACATED PUBLIC ALLEY AS VACATED BY ORDINANCE OF THE CITY COUNCIL APPROVED APRIL 13, 1984 AND RECORDED MAY 4, 1984 AS DOCUMENT 27072384, IN COOK COUNTY, ILLINOIS.

#### PARCEL 4:

ALL THAT PART OF THE EAST-WEST 20 FOOT PUBLIC ALLEY LYING SOUTH OF THE SOUTH LINE OF LOT 3 IN BLOCK 93 IN SCHOOL SECTION ADDITION TO CHICAGO OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE SOUTH LINE OF LOT 9 IN SUBDIVISION OF LOT 4 IN BLOCK 93 IN SCHOOL SECTION ADDITION AFOREMENTIONED; LYING WEST OF THE WEST LINE OF LOT 5 IN FIELD AND PERKINS' SUBDIVISION OF LOTS 5, 6, 7 AND THAT PART OF LOT 8 LYING EAST OF THE EAST LINE OF SOUTH FRANKLIN STREET ALL IN BLOCK 93 IN SCHOOL SECTION ADDITION AFOREMENTIONED; LYING SOUTH OF THE

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SOUTH LINE OF LOT 5 IN FIELD AND PERKINS' SUBDIVISION AFOREMENTIONED; LYING WEST OF THE WEST LINE OF LOT 4 IN FIELD AND PERKINS' SUBDIVISION AFOREMENTIONED; LYING NORTH OF THE NORTH LINE OF THE EAST-WEST PRIVATE COURT NORTH OF AND ADJOINING LOTS 2 AND 3 IN FIELD AND PERKINS' SUBDIVISION AFOREMENTIONED AND LYING EAST OF THE NORTHWARDLY EXTENSION OF THE WEST LINE OF LOT 3 IN FIELD AND PERKINS' SUBDIVISION AFOREMENTIONED; SAID VACATED PART OF THE PUBLIC ALLEY BEING FURTHER DESCRIBED AS THE EAST 48 FEET, MORE OR LESS, OF THE EAST-WEST 20 FOOT PUBLIC ALLEY IN THE BLOCK BOUNDED BY WEST MONROE STREET, WEST ADAMS STREET, SOUTH FRANKLIN STREET, SOUTH FRANKLIN STREET, AND SOUTH WELLS STREET.

## PARCEL 5:

THE SOUTH 22 FEET 10 INCHES OF THAT PART OF ORIGINAL LOT 4 LYING WEST OF THE WEST LINE OF THE SUBDIVISION OF ORIGINAL LOT 4 AND EAST OF THE EAST LINE OF ORIGINAL LOT 3 (SAID EAST LINE OF LOT 3, BEING ALSO THE EAST LINE OF THE 10 FOOT PRIVATE ALLEY) IN BLOCK 93 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## SAID PARCELS 1 THROUGH 5 BEING ALSO DESCRIBED AS FOLLOWS:

LOTS 3, 4 AND 5, FIELD AND PERKIN'S SUBDIVISION OF LOTS 5, 6, 7 AND THAT PART OF LOT 8 LYING EAST OF THE EAST LINE OF FRANKLIN STREET, ALL IN BLOCK 93 SCHOOL SECTION ADDITION TO CHICAGO, PART OF LOT 9, BOLLES SUBDIVISION OF LOT 4 IN BLOCK 93 SCHOOL SECTION ADDITION TO CHICAGO, PART OF LOT 4, BLOCK 93, SCHOOL SECTION ADDITION TO CHICAGO, PART OF THE PRIVATE COURT LYING NORTH OF AND ADJACENT TO SAID LOT 3, FIELD AND PERKIN'S SUBDIVISION AND LYING SOUTH OF AND ADJACENT TO THAT PORTION OF THE VACATED PUBLIC ALLEY VACATED BY DOCUMENT NUMBER 27072384, AND PART OF THE VACATED ALLEY VACATED BY SAID DOCUMENT NO. 27072384, CITY OF CHICAGO, COOK COUNTY, ILLINOIS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 4; THENCE NORTH 89 DEGREES 41 MINUTES 00 SECOND WEST, 128.27 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 32 SECONDS EAST, 199.39 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 21 SECONDS EAST, 36.98 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 27 SECONDS EAST, 22.83 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 28 SECONDS EAST, 91.25 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 222.46 FEET TO THE POINT OF BEGINNING.

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TOGETHER WITH THE RIGHTS GRANTED FOR THE MAINTENANCE OF WINDOWS AND THE WEST WALL OF THE 200 WEST ADAMS BUILDING AS MORE FULLY SET FORTH IN PARTY WALL ABROGATION AND LICENSE AGREEMENT DATED APRIL 10, 1996 RECORDED DECEMBER 2, 1996 AS DOCUMENT NUMBER 96908320, IN THE OFFICE OF THE RECORDER OF DEEDS FOR COOK COUNTY, ILLINOIS.

PIN: 17-16-209-007-0000

200 West Adams  
Chicago, IL 60601

17-16-209-009

17-16-209-010

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COOK COUNTY  
RECORDER OF DEEDS

Office