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2021
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CCT# 1808371141

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1917841185

Doc# 1917841185 Fee \$88.00

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

EDWARD H. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 06/27/2019 03:47 PM PG: 1 OF 39

The property identified as: PIN: 03-10-400-007-0000

Address:

Street: 600-668 Wheeling Road

Street line 2:

City: Wheeling

State: IL

ZIP Code: 60090

Lender: Americo Financial Life and Annuity Insurance Company

Borrower: RTA Wheeling, LLC and RTA Butterfield, LLC

Loan / Mortgage Amount: \$6,720,000.00

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: AA5A7487-4F9C-4B8B-9E87-CB47A69EEF42

Execution date: 6/27/2019

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MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "**Mortgage**") is made as of the 27th day of June, 2019, by **RTA WHEELING, LLC**, a Delaware limited liability company, whose address is Attention: Michael B. Earl, 2082 Michelson Drive, Suite 400, Irvine, California 92612 and **RTA BUTTERFIELD, LLC**, a Delaware limited liability company, whose address is Attention: Michael B. Earl, 2082 Michelson Drive, Suite 400, Irvine, California 92612 (herein collectively referred to as the "**Borrower**") as mortgagor, in favor of **AMERICO FINANCIAL LIFE AND ANNUITY INSURANCE COMPANY**, whose address is 300 West 11th Street, Kansas City, Missouri 64105 (herein "**Lender**") as mortgagee.

In consideration of the indebtedness herein recited and the trust herein created, Borrower mortgages, warrants, grants, conveys, and assigns to Lender, the following described property located in Wheeling, Cook County, State of Illinois and Mundelein, Lake County, State of Illinois:

All of that real estate described on **Exhibit "A"** attached hereto and incorporated herein by this reference as though fully set forth.

TOGETHER with all buildings, improvements and tenements now or hereafter erected on the property, and all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, rents (subject however to the assignment of rents to Lender herein), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, antennas, trees and plants; all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Mortgage; and all of the foregoing, together with said property are herein referred to as the "**Property**".

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TO SECURE TO LENDER: (a) the repayment of the indebtedness evidenced by Borrower's Promissory Note dated as of this same date (the "**Note**") in the principal amount of Six Million Seven Hundred Twenty Thousand and No/100 Dollars (\$6,720,000.00) with interest thereon, and all renewals, extensions and modifications thereof; (b) the repayment of any future advances, with interest thereon, made by Lender to Borrower prior to the maturity date of the Note, which is June 1, 2034 (herein "**Future Advances**") (see Section 30 hereof for additional provisions relating to Future Advances); (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and (d) the performance of the covenants and agreements of Borrower herein and/or in any other loan document (the Note, this Mortgage and all other agreements given in regard to the Note are collectively referred to herein as the "**Loan Documents**"; the loan described in the Loan Documents is herein the "**Loan**") pertaining to the Note.

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant, convey and assign the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to those exceptions to title which are listed on **Exhibit "B"** attached hereto and incorporated herein by this reference (the "**Permitted Exceptions**").

Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note and all other amounts secured by this Mortgage.

2. **Funds For Taxes, Insurance and Other Charges**

(a) Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly installments of principal or interest are payable under the Note (or on another day designated in writing by Lender), until the Note is paid in full, a sum (herein "**Funds**") equal to one-twelfth (1/12) of (a) the yearly taxes and general or special assessments which may be levied on or assessed against the Property, and (b) the yearly premium installments for fire and other hazard insurance, rent loss or business income insurance and such other insurance covering the Property as Lender may require pursuant to Section 5 hereof. Except as otherwise provided in a written waiver given by Lender, any waiver by Lender of a requirement that Borrower pay such Funds may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Borrower. Lender may require Borrower to pay to Lender, in advance, such other Funds for other taxes, charges, premiums, assessments and impositions in connection with Borrower or the Property which Lender shall reasonably deem necessary to protect Lender's interests (herein "**Other Impositions**"). Unless

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otherwise provided by applicable law, Lender may require Funds for Other Impositions to be paid by Borrower in a lump sum or in periodic installments, at Lender's option.

(b) The Funds shall be held in an institution(s) the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said rates, rents, taxes, assessments, insurance premiums and Other Impositions so long as an Event of Default has not occurred and is not continuing. Lender shall make no charge for so holding and applying the Funds, analyzing said account or for verifying and compiling said assessments and bills, unless Lender pays Borrower interest, earnings or profits on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires interest, earnings or profits to be paid, Lender shall not be required to pay Borrower any interest, earnings or profits on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds in Lender's normal format showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are hereby pledged as additional security for the sums secured by this Mortgage.

(c) If the amount of the Funds held by Lender at the time of the annual accounting thereof shall exceed the amount reasonably deemed necessary by Lender to provide for the payment of taxes, assessments, insurance premiums and Other Impositions, as they fall due, such excess shall be credited to Borrower on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Lender shall be less than the amount reasonably deemed necessary by Lender to pay taxes, assessments, insurance premiums and Other Impositions, as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within ten (10) business days after notice from Lender to Borrower requesting payment thereof.

(d) Upon the occurrence and during the continuance of an Event of Default, Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any Funds held by Lender at the time of application (i) to pay taxes, assessments, insurance premiums and Other Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Mortgage. Upon payment in full of all sums secured by this Mortgage, Lender shall refund to Borrower any Funds held by Lender.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Mortgage shall be applied by Lender in the following order of priority: (i) interest payable on the Note; (ii) principal of the Note, if any; (iii) amounts payable to Lender by Borrower under Section 2 hereof, (iv) interest payable on advances made pursuant to Section 8 hereof; (v) principal of advances made pursuant to Section 8 hereof; and (vi) any other sums secured by this Mortgage in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to Section 8 hereof

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prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this Section 3.

4. **Charges; Liens.** Borrower shall pay prior to delinquency all water and sewer bills, property taxes, general and special assessments, premiums, and Other Impositions attributable to the Property at Lender's option in the manner provided under Section 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof, or in such other manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due for property taxes under this Section 4, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Within twenty (20) days obtaining knowledge of such a filing, Borrower shall discharge any lien which has, or may have, priority over or equality with, the lien of this Mortgage (other than liens for the current year's real estate taxes and special assessments), and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property; provided, however, Borrower may, in accordance with applicable law, contest the lien of any such taxes or claims of suppliers or materialmen, but in such case Borrower agrees to and hereby does indemnify, defend and save Lender harmless from and against any and all claims, assertions (including any assertions of superior priority to this Mortgage), losses, costs, and expenses of any kind whatsoever in connection the taxes or mechanic's liens which Borrower is disputing. Lender shall have the right to impose reasonable requirements on Borrower with regard to any outstanding and unpaid taxes and/or mechanic's liens of which the holder asserts priority over the lien of this Mortgage, including, for example (but not by way of limitation) a requirement that Borrower pledge additional collateral, post security in the form of cash, or a letter of credit, or other such requirement, until the dispute involving such taxes and/or mechanic's liens is fully and finally resolved without jeopardy to the lien of this Mortgage. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Mortgage to be perfected against the Property.

5. **Property Insurance.**

(a) Borrower shall keep, or shall cause the tenant of the Property to keep, the improvements now existing or hereafter erected on the Property, and any fixtures and personal property in which a security interest is granted herein, insured by carriers at all times reasonably satisfactory to Lender against loss covered by the following types of insurance coverages: (i) fire and extended or "all risk" coverage in the full amount of the insurable replacement value of all improvements not including the land; (ii) public liability coverage; (iii) business income coverage and/or rental value coverage, respectively; (iv) vandalism, malicious mischief, and sprinkler leakage coverage, by endorsement; (v) boiler insurance, where applicable, and in amounts related to the exposure; (vi) so called "dram shop" insurance if alcoholic beverages are sold on the Property; and (vii) evidence of flood insurance through the National Flood Insurance Program or evidence satisfactory to Lender that the Property is not within the boundaries of any 100 year (or more frequent) flood plain designated by the National Flood Insurance

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Program and such other hazards, casualties, liabilities and contingencies as Lender shall reasonably require and in such amounts and for such periods as Lender shall reasonably require. All premiums on insurance policies shall be paid, prior to delinquency, at Lender's option, in the manner provided under Section 2 hereof, or by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

(b) All insurance policies and renewals thereof shall be in a form reasonably acceptable to Lender and shall name Lender as an additional insured, with a separation of insureds clause, sometimes also called a "severability of insureds" or "cross-liability" clause, a waiver of subrogation provision, a full replacement cost endorsement and a provision that the Lender should be notified in case of cancellation. Generally the amount of the insurance shall be sufficient to preclude any mortgagor from being a co-insurer of any part of the risk. However, where co-insurance applies, the amount of coverage shall, at all times be maintained in the proper ratio of replacement value specified in the co-insurance clause. An "agreed amount" endorsement shall also be required. Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums, and copies of any insurance policies upon request. At least thirty (30) days prior to the expiration date of a policy(ies), Borrower shall deliver to Lender a renewal policy(ies) in form satisfactory to Lender.

(c) In the event of loss, Borrower shall give written notice to the insurance carrier and to Lender promptly upon becoming aware of the same. Borrower hereby authorizes and empowers Lender, as attorney-in-fact for Borrower, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's reasonable out of pocket expenses incurred in the collection of such proceeds; provided however, that nothing contained in this Section 5 shall require Lender to incur any expense or take any action hereunder. Provided no Event of Default has occurred and is continuing hereunder, all insurance proceeds shall be made available to Borrower for restoration of the Property (or, with respect to business interruption insurance, for the payments of amounts owing under the Loan Documents, when due and payable), subject to the following conditions: (a) proceeds disbursed do not exceed 100% of the costs actually incurred; (b) the proceeds will be disbursed under procedures established by the Lender; which shall include an administrative fee equal to \$500 for every disbursement or partial disbursement of the proceeds; (c) the loan to value ratio of the restored Property as reasonably determined by Lender is not more than 75%; and (d) the projected net operating income from the Property following such repair (less structural/replacement reserves) is sufficient to service the Loan as reasonably determined by Lender. Any net proceeds remaining after the restoration of the Property as contemplated herein shall be either retained by Lender and applied to the debt at Lender's sole and absolute discretion, or returned to Borrower for such purposes as Lender may designate.

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(d) In the event of any casualty to or destruction of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing, such approval not to be unreasonably withheld or conditioned. If the cost to repair or restore the Property is less than \$50,000.00, as determined by the good faith estimate of an independent unrelated general contractor or architect familiar with construction costs in the vicinity of the Property, and if an Event of Default has not occurred and is not continuing, Borrower shall have the right to receive the insurance proceeds and perform the repairs or restoration without the supervision of or involvement of Lender, subject to Lender's right to inspect and approve the final repairs. In all other cases Lender may, at Lender's option, condition disbursement of said proceeds on Borrower's payment into escrow with Lender the full amount of all deductible(s) on the applicable insurance policy(ies), Lender's approval, which approval shall not be unreasonably withheld, conditioned or delayed, of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. Any disbursements approved by Lender shall first disburse the amounts deposited by Borrower for the amount of deductible(s) on applicable insurance policy(ies), and thereafter the insurance proceeds themselves. If the insurance proceeds are applied to the payment of the sums secured by this Mortgage, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in Sections 1 and 2 hereof or change the amounts of such installments. If the Property is sold pursuant to Section 26 hereof or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

6. Preservation and Maintenance of Property; Environmental Covenants.

(a) Borrower (i) shall not commit waste or permit impairment or deterioration of the Property, (ii) shall not abandon or permit the abandonment of the Property, (iii) shall, subject to the provisions of Sections 5 and 11 of this Mortgage, restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its then existing condition, or such other condition as Lender may reasonably approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair (provided any insurance proceeds or condemnations awards which are available shall be made available for repair or restoration as required by Sections 5 and 11 of this Mortgage), (iv) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery, appliances and other personal property on the Property when necessary or appropriate, with items of equal or greater value and utility, (v) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property or any insurer holding any policies respecting the Property or

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any part thereof (except that Borrower shall have the right to contest in good faith any claimed violation of any laws, ordinances, regulations and requirements if Borrower believes in good faith that a citation or claim of such a violation is incorrect, and Borrower fully and timely complies with any final determination which is made as a result of Borrower's efforts to contest the claim of violation; Borrower agrees to defend and indemnify Lender against any claims, losses, damages or liabilities which may accrue as a result of Borrower's contesting of such claimed violations, and to not allow any lease to be terminated or any tenant to abate or suspend rent payments or any other performance of lease obligations during the time period of Borrower's contest of such claim of violation), (vi) if Borrower is not managing the Property, shall provide for professional management of the Property by a professional property manager reasonably satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing, and (vii) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Mortgage or the rights or powers of Lender. Without Lender's prior written consent, which consent shall not be unreasonably withheld, neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement owned by Borrower now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance owned by Borrower in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

(b) In addition to Borrower's covenants and agreements above, Borrower further covenants and agrees that Borrower shall not:

(i) cause or permit the presence, use, generation, manufacture, production, processing, installation, release, discharge, storage (including aboveground and underground storage tanks for petroleum or petroleum products), treatment, handling, or disposal of any Hazardous Materials (as defined below) (excluding the safe and lawful use and storage of quantities of Hazardous Materials customarily used in the operation and maintenance of comparable properties or for normal household purposes) on or under the Property, or in any way affecting the Property or its value, or which may form the basis for any present or future demand, claim or liability relating to contamination, exposure, cleanup or other remediation of the Property; or

(ii) cause or permit the transportation to, from or across the Property of any Hazardous Material (excluding the safe and lawful use and storage of quantities of Hazardous Materials customarily used in the operation and maintenance of comparable properties or for normal household purposes); or

(iii) cause or exacerbate any occurrence or condition on the Property that is or may be in violation of Hazardous Materials Law (as defined below).

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The matters described in (i), (ii) and (iii) above are referred to collectively below as **“Prohibited Activities or Conditions”**.

(c) Except with respect to any matters which have been disclosed in writing by Borrower to Lender prior to the date of this Mortgage, or matters which have been disclosed in an environmental assessment report of the Property received by Lender prior to the date of this Mortgage (which report must be performed by an environmental professional reasonably acceptable to Lender), Borrower represents and warrants that it has not at any time caused or knowingly permitted any Prohibited Activities or Conditions and to its knowledge, no Prohibited Activities or Conditions exist or have existed on or under the Property. Borrower shall take all appropriate steps (including but not limited to appropriate lease provisions) to prevent its employees, agents, and contractors, and all tenants and other occupants on the Property, from causing, permitting or exacerbating any Prohibited Activities or Conditions.

(d) If Borrower has disclosed that Prohibited Activities or Conditions exist on the Property, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Property to so comply with, (1) any program of operations and maintenance (**“O&M Program”**) relating to the Property that is acceptable to Lender with respect to one or more Hazardous Materials (which O&M Program may be set forth in an agreement of Borrower (an **“O&M Agreement”**) and all other obligations set forth in any O&M Agreement, and (2) all Hazardous Materials Laws. Any O&M Program shall be performed by qualified personnel. All costs and expenses of the O&M Program shall be paid by Borrower, including without limitation Lender’s reasonable fees and costs incurred in connection with the monitoring and review of the O&M Program and Borrower’s performance thereunder. If Borrower fails to timely commence or diligently continue and complete the O&M Program and comply with any O&M Agreement, and if such failure continues for a period of twenty (20) days after Borrower has received notice of such failure, then Lender may, at Lender’s option, declare all of the sums secured by this Mortgage to be immediately due and payable, and Lender may invoke any remedies permitted by Section 26 of this Mortgage.

(e) Borrower represents that, except as may be set forth in the loan policy of title insurance issued to Lender, Borrower has not received, and has no knowledge of the issuance of, any written claim, citation or notice of any pending or threatened suits, proceedings, orders, or governmental inquiries or opinions involving the Property that allege the violation of any Hazardous Materials Law (**“Governmental Actions”**).

(f) Promptly after becoming aware of any such items, Borrower shall notify Lender in writing of (i) the occurrence of any Prohibited Activity or Condition on the Property; (ii) Borrower’s actual knowledge of the presence on or under any adjoining property of any Hazardous Materials which can reasonably be expected to have a material adverse impact on the Property or the value of the Property, discovery of any occurrence

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or condition on the Property or any adjoining real property that could reasonably be expected to cause any restrictions on the ownership, occupancy, transferability or use of the Property under Hazardous Materials Law. Borrower shall cooperate with any governmental inquiry, and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activities or Conditions; (iii) any Governmental Action; and (iv) any claim made or threatened by any third party against Borrower, Lender, or the Property relating to loss or injury resulting from any Hazardous Materials. Any such notice by Borrower shall not relieve Borrower of, or result in a waiver of any obligation of Borrower under this Section 6.

(g) Borrower shall pay promptly the reasonable costs of any environmental audits, studies or investigations (including but not limited to advice of legal counsel) and the removal of any Hazardous Materials from the Property required by Lender as a condition of its consent to any sale or transfer under Section 21 of this Mortgage of all or any part of the Property or any transfer occurring upon a foreclosure or a deed in lieu of foreclosure or any interest therein, or required by Lender following a reasonable determination by Lender that there may be Prohibited Activities or Conditions on or under the Property. If Lender reasonably believes Hazardous Materials exist on the Property in violation of Hazardous Materials Law, or if an Event of Default has occurred, Lender shall have the right, but not the obligation, to perform such environmental investigations or removals that Lender may reasonably deem necessary or appropriate to address or investigate the existence on the Property of a Prohibited Activity or Condition. Borrower authorizes Lender and its employees, agents and contractors to enter onto the Property for the purpose of conducting such environmental audits, studies, investigations and removals as provided in this paragraph (g). Any such reasonable costs and expenses incurred by Lender as provided in this paragraph (g) (including but not limited to fees and expenses of attorneys and consultants, whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become immediately due and payable and shall become additional indebtedness secured by this Mortgage pursuant to Section 8 of this Mortgage.

(h) Borrower shall indemnify, defend and hold harmless Lender and its officers, directors, trustees, employees, and agents from and against all proceedings (including but not limited to Government Actions), claims, damages, penalties, costs and expenses (including without limitation reasonable fees and expenses of attorneys and expert witnesses, investigatory fees, and cleanup and remediation expenses, whether or not incurred within the context of the judicial process), arising directly or indirectly from (i) any breach in any material respect of any representation, warranty, or obligation of Borrower contained in this paragraph 6 or (ii) the presence or alleged presence of Hazardous Materials on or under the Property.

(i) The term "**Hazardous Materials**," for purposes of this Section 6, includes petroleum and petroleum products, flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls, lead, asbestos in any form that is or could become friable, hazardous waste, toxic or hazardous

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substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise including, but not limited to, those materials defined as “hazardous substances,” “extremely hazardous substances,” “hazardous chemicals,” “hazardous materials,” “toxic substances,” “solid waste,” “toxic chemicals,” “air pollutants,” “toxic pollutants,” “hazardous wastes,” “extremely hazardous waste,” or “restricted hazardous waste” by Hazardous Materials Law or regulated by Hazardous Materials Law in any manner whatsoever.

(j) The term “**Hazardous Materials Law**,” for the purposes of this Section 6, means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other binding governmental requirements and any court judgments applicable to Borrower or to the Property relating to industrial hygiene or to environmental or unsafe conditions or to human health including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials, those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property.

(k) The representations, warranties, covenants, agreements, indemnities and undertakings of Borrower contained in this Section 6 shall be in addition to any and all other obligations and liabilities that Borrower may have to Lender under applicable law.

(l) The representations, warranties, covenants, agreements, indemnities and undertakings of Borrower contained in this Section 6 shall continue and survive as long as the environmental liabilities set forth in this Section 6 or in the separate Environmental Indemnity Agreement signed this same date between Borrower and Lender survive, notwithstanding the satisfaction, discharge, release, assignment, termination, subordination or cancellation of the Mortgage or the payment in full of the principal of and interest on the Note and all other sums payable under the Loan Documents or the foreclosure of the Mortgage or the tender or delivery of a deed in lieu of foreclosure or the release of any portion of the Property from the lien of this Mortgage, except with respect to any Prohibited Activities or Conditions or violation of any of the Hazardous Materials Laws which first commences and occurs after the satisfaction, discharge, release, assignment, termination or cancellation of this Mortgage following the payment in full of the principal of and interest on the Note and all other sums payable under the Loan Documents or which first commences or occurs after the actual dispossession from the entire Property of the Borrower and all parties who are responsible hereunder or under the separate Environmental Indemnity Agreement following foreclosure of this Mortgage or acquisition of the Property by a deed in lieu of foreclosure. Nothing in the foregoing sentence shall relieve the Borrower from any liability with respect to any Prohibited Activities or Conditions or any violation of any Hazardous Materials Laws where such Prohibited Activities or Conditions or violation of Hazardous Materials Laws commences

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or occurs, or is present as a result of, any act or omission by any party responsible therefor under this Section 6 or in the separate Environmental Indemnity Agreement signed this same date between Borrower and Lender, or by any person or entity acting on behalf of such a party. In particular but without limitation, Borrower shall be and remain liable to Lender for any contribution liability which may accrue in favor of Lender against Borrower or which may be applicable under any federal, state or local law, ordinance, rule, regulation or requirement relating to environmental condition.

7. **Use of Property.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Mortgage was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

8. **Protection of Lender's Security.**

(a) If Borrower fails to perform the covenants and agreements contained in this Mortgage beyond all applicable notice and cure periods, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender reasonably deems necessary, to protect Lender's interest, including, but not limited to, (i) disbursement of attorney's fees and expenses, (ii) entry upon the Property to make repairs, subject to reasonable prior notice given by Tenant to Landlord, which Landlord agrees to supply to any tenants whose premises would be affected, (iii) procurement of satisfactory insurance as provided in Section 5 hereof, and (iv) if this Mortgage is on a leasehold, exercise of any option to renew or extend the ground lease on behalf of Borrower and the curing of any default of Borrower in the terms and conditions of the ground lease.

(b) Any amounts disbursed by Lender pursuant to this Section 8, with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Note unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this Section 8 shall require Lender to incur any expense or take any action hereunder.

9. **Inspection.** Lender may, subject to the rights of tenants, make or cause to be made reasonable entries upon and inspections of the Property upon reasonable prior

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written notice and during normal business hours. So long as no Event of Default exists, Borrower shall not be required to pay for any such entry or inspection.

10. **Books and Records; Financial Statements.** Borrower shall keep and maintain at all times at Borrower's address stated below, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time and upon prior reasonable notice by Lender. Borrower shall furnish to Lender, within one hundred and twenty (120) days after the end of each calendar year during the term of the Loan, financial statements, prepared on a modified cash basis, on the Borrower and FLT Equity, LLC, a Delaware limited liability company (collectively the "**Responsible Party**"); and on the operations of the Property, including a current rent roll, certified to be true and accurate as of that date. If Borrower has committed a monetary Event of Default hereunder or under any of the Loan Documents, and if Lender so requests, then Borrower and the Responsible Party shall furnish to Lender the Responsible Party's most recently published quarterly global commercial real estate schedule covering the operation of all commercial properties (including vacant land) where the Borrower and/or a Responsible Party is the general partner, member of a limited liability company, or majority shareholder of any owning entity.

11. **Condemnation.** Borrower shall notify Lender, promptly after becoming aware of the same, of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, exercisable upon the occurrence and during the continuance of an Event of Default, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender subject, if this Mortgage is on a leasehold, to the rights of lessor under the ground lease. Borrower authorizes Lender, and Lender shall (so long as no Event of Default exists) to apply such awards, payments, proceeds or damages, after the deduction of Lender's reasonable out of pocket expenses incurred in the collection of such amounts (a) so long as no Event of Default has occurred or is continuing, to restoration or repair of the Property or (b) if an Event of Default has occurred or is continuing, at Lender's option, to restoration or repair of the Property or to payment of the sums secured by this Mortgage, whether or not then due, in the order of application set forth in Section 3 hereof, with the balance, if any, to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to

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in Section 1 and 2 hereof or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may reasonably require.

12. **Borrower and Lien Not Released.** From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or Guarantors (see definition in Section 18), without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Mortgage, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, agrees in writing with Borrower to modify the terms and time of payment of said indebtedness, release from the lien of this Mortgage any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any resubdivision or platting of the Property, consent to any rezoning of the Property or neighboring properties, consent to the issuance of any special use permit or variance under any zoning ordinance, consent to the filing or implementation of any planned unit development district or other restrictions on the Property, consent to a change in the general use of the Property, consent to the granting of any easement, join in any extension or subordination agreement, or agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this Section 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Mortgage and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and reasonable out of pocket attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

13. **Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Mortgage after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage, nor shall Lender's receipt of any awards, proceeds or damages under Section 5 and 11 hereof operate to cure or waive Borrower's default in payment of sums secured by this Mortgage.

14. **Estoppel Certificate.** Borrower shall, within ten (10) days of a written request from Lender, furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Mortgage, the current balance of the loan secured by this

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Mortgage, and to Borrower's knowledge describe any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Mortgage.

15. **Uniform Commercial Code Security Agreement.** This Mortgage is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in all of Borrower's right, title and interest therein as security for the obligations secured hereby. Borrower agrees that Lender may file this Mortgage or a reproduction thereof, in the real estate records or other appropriate index, as a fixture financing statement for any of the items specified above as part of the Property, and Borrower hereby authorizes Lender to do so. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower hereby authorizes Lender to prepare and file any and all financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Lender may require, to perfect a security interest with respect to said items in any public offices or records as Lender may determine, and any such financing statements may describe the collateral as "all assets" or "all personal property" or words of similar import even if such description is broader than the collateral granted in the Loan Documents or may describe the collateral more particularly. Borrower shall pay all out of pocket costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable out of pocket costs and expense of any record searches for financing statements which Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Mortgage, including the covenants to pay when due all sums secured by this Mortgage, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in Section 25 of this Mortgage as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in Section 25 of this Mortgage.

16. **Leases of the Property.** Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the Property or any part thereof. Borrower, at Lender's request, shall furnish Lender with executed copies of all leases, subleases, assignments, letter agreements, consents, amendments, modifications, extension or renewal agreements and any other documents relating to such leases, which are now existing or hereafter made, of all or any part of the Property. Borrower shall not, without Lender's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), modify, amend, terminate or cancel any lease. All leases hereafter entered into by Borrower will be in form and substance subject to the prior written approval of Lender,

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which approval shall not be unreasonably withheld, conditioned or delayed, but shall otherwise be at the discretion of Lender. Notwithstanding the above, however, Lender's prior written approval shall not be required with respect to leases which (i) are for less than fifteen percent (15%) of the total rentable square footage of the buildings on the Property, (ii) have been negotiated at arm's length upon market terms, and (iii) provide for a term of five (5) years or less. All leases of the Property (or subordination, nondisturbance and attornment agreements executed in connection therewith) shall specifically provide that such leases are subordinate to this Mortgage; that the tenant shall attorn to Lender upon the Lender's acquiring any interest in the Property by foreclosure, deed in lieu of foreclosure or otherwise; that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; and that Lender may, at Lender's option, accept or reject such attornment. Borrower shall not, without Lender's prior written consent, which will not be unreasonably withheld, conditioned or delayed, (i) execute, modify, amend, surrender, release a guarantor of, or terminate, either orally or in writing, any lease now existing or hereafter made of all or any part of the Property in excess of fifteen percent (15%) of the total rentable square footage of the buildings on the Property, (ii) permit an assignment or sublease of such a lease or of any part of the premises thereunder, or (iii) request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Mortgage. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) notify Lender thereof and of the amount of said set-offs, and (iii) within ten (10) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

Upon Lender's request, Borrower shall assign to Lender, by written instrument satisfactory to Lender, all leases now existing or hereafter made of all or any part of the Property and all security deposits made by tenants in connection with such leases of the Property. Upon assignment by Borrower to Lender of any leases of the Property, and upon and during the continuance of an Event of Default, Lender shall have all of the rights and powers possessed by Borrower prior to such assignment and Lender shall have the right to modify, extend or terminate such existing leases and to execute new leases, in Lender's sole discretion.

17. **Remedies Cumulative.** Each remedy provided in this Mortgage is distinct and cumulative to all other rights or remedies under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

18. **Acceleration in Case of Borrower's Insolvency.** It shall be an Event of Default under Section 25 hereunder if Borrower voluntarily files a petition under the federal Bankruptcy Code, as such Code may from time to time be amended, or under any

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similar or successor federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act; or files an answer in an involuntary proceeding admitting insolvency or inability to pay debts; or if Borrower fails to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower within ninety (90) days after the same are filed; or if Borrower acquiesces in any plan of reorganization or arrangement or assignment for the benefit of creditors; if Borrower is generally unable to pay its debts as they become due; or if a trustee or receiver is appointed for Borrower or any part of Borrower's property or any part of the property of any guarantor of the Loan or any liabilities or potential liabilities under the Loan Documents (hereinafter a "**Guarantor**"), unless appointed at the direction of Lender; or if the Property shall become subject to the jurisdiction of a federal bankruptcy court or similar state court in any debtor relief or insolvency proceedings; or if Borrower or any Guarantor shall make an assignment for the benefit of creditors; or if there is an attachment, execution or other judicial seizure of any portion of Borrower's or a Guarantor's assets and such seizure is not discharged within thirty (30) days; or if any of the Property or all or a substantial part of the assets of the Borrower or any Guarantor is attached, seized, subjected to a writ or distress warrant or are levied upon, unless the same is released or dismissed within thirty (30) days. In any of such events, Lender may, at Lender's option, declare all of the sums secured by this Mortgage to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by Section 25 of this Mortgage. Any reasonable out of pocket attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other events described above shall be additional indebtedness of Borrower secured by this Mortgage pursuant to Section 8 hereof.

19. **Transfers of the Property or Beneficial Interests in Borrower; Assumption.**

(a) Upon the (i) sale, transfer, conveyance, assignment, or encumbrance (other than as set forth in the Permitted Exceptions and otherwise as expressly permitted under the terms hereof) of all or any part of the Property, or any interest therein, or any stock, partnership, membership, beneficial or other ownership interests in Borrower (other than limited partnership interests, if Borrower is a limited partnership); (ii) execution of any lease which gives the lessee any option to purchase the Property or any part thereof; or (iii) commencement of any notice, action, or procedures which, if completed, would result in the Property being converted to a condominium or cooperative form of ownership without the prior written consent of Lender (any of such transfers is herein a "**Prohibited Transfer**"), Lender may, at Lender's option, declare all of the sums secured by this Mortgage to be immediately due and payable, and Lender may invoke any remedies permitted by Section 25 of this Mortgage. Notwithstanding the above, Borrower may sell one of the two properties securing the Loan, subject to the following: (i) one-hundred percent (100%) of the net proceeds of such sale are transferred to Lender to pay down the Loan, (ii) there is no material adverse change in the financial condition of the Property subsequent to the requested collateral release; and (iii) provided that any partial

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prepayment of the Loan shall be subject to the payment of the applicable prepayment premium set forth in Section 2 of the Note.

(b) Notwithstanding anything to the contrary in the Loan Documents, Lender agrees to allow a one-time transfer of the Property and assumption of the Loan under the conditions described herein, provided that there is no Event of Default by Borrower under the Loan Documents. Lender's conditions of consent are the following: (1) the payment by Borrower to Lender of a transfer fee equal to one percent (1%) of the then outstanding principal balance of the Note; (2) satisfactory financial condition and real estate ownership/management expertise of the proposed transferee, in Lender's reasonable discretion; (3) the reimbursement of all the Lender's reasonable expenses, including legal fees; (4) a maximum loan to value (LTV) ratio of sixty percent (60%) to be verified by an updated MAI appraisal; (5) a minimum debt service coverage ratio of 1.50x; (6) the permitted transferee and such principals of permitted transferee, as Lender may request, assuming all obligations of Borrower and the Responsible Parties under the Loan Documents, including, without limitation, the Environmental Indemnity Agreement with the same degree of recourse liability as Borrower and subject to the same exculpatory provisions; (7) Lender's receipt of the purchase and sale contract and copies of the proposed transfer documentation; and (8) a property management agreement satisfactory to Lender.

(c) Notwithstanding the foregoing or anything to the contrary in the Loan Documents, the principals of Borrower shall be permitted, so long as there is no outstanding Event of Default hereunder, to (A) make intra-party transfers of ownership interests between themselves, provided that the Gregory A. Fowler Living Trust or an entity controlled by the Gregory A. Fowler Living Trust and/or Gregory A. Fowler continues to own at least a 51% interest in Borrower and remains the managing or co-managing member of Borrower, and (B) make inter-party transfers of ownership interests to outside parties, provided that the Gregory A. Fowler Living Trust and/or Gregory A. Fowler or an entity controlled by the Gregory A. Fowler Living Trust and/or Gregory A. Fowler continues to own at least a 51% interest in Borrower and remains the managing or co-managing member of Borrower, and (C) make unlimited inter-party transfers for estate planning purposes to immediate family members, or entities controlled by immediate family members of the settlor of the Gregory A. Fowler Living Trust (where the immediate family members are determined to be parents, spouses, siblings or children). Any of the above transfers of ownership interests in Borrower shall be conditioned upon (1) the permitted transfer(s) assuming all obligations of the original Responsible Parties, including but not limited to the exculpation provisions of the Loan Documents; and (2) the Property being managed and leased by an entity reasonably satisfactory to Lender. Any transfers permitted by this paragraph shall not relieve the Borrower or the principals and/or Guarantors from their obligations under the Loan Documents.

20. Successors and Assigns Bound; Joint and Several Liability; Agents; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower,

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subject to the provisions of Section 19 hereof. All covenants and agreements of Borrower shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

21. **Governing Law; Severability.** This Mortgage shall be governed by the law of the State of Illinois (“**Applicable Law**”). In the event that any provision of this Mortgage or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Mortgage and the Note are declared to be severable. In the event that any Applicable Law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in this Mortgage or in the Note, whether considered separately or together with other charges levied in connection with this Mortgage and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Lender in excess of the amounts payable to Lender pursuant to such charges as reduced shall be applied by Lender to reduce the principal of the indebtedness evidenced by the Note. For the purpose of determining whether any Applicable Law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all indebtedness which is secured by this Mortgage or evidenced by the Note and which constitutes interest, as well as all other charges levied in connection with such indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by Applicable Law, such allocation and spreading shall be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

22. **Waiver of Statute of Limitations.** To the full extent permitted by law, Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or any other obligation secured by this Mortgage.

23. **Waiver of Marshalling.** Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Mortgage and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

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24. **Assignment of Rents and Proceeds; Appointment of Receiver; Lender in Possession.**

(a) As part of the consideration for the indebtedness evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in the payments, proceeds, rents and revenues of the Property, regardless of to whom the payments, proceeds, rents and revenues of the Property are payable. The assignment of Rents is intended as security for the obligations secured by this Mortgage, and, upon recording of this Mortgage, shall immediately perfect the security interest in the Rents in Lender and shall not require any further action by Lender to be perfected as to any subsequent purchaser, mortgagee, or assignee of any interest in the Property. Borrower hereby authorizes Lender or Lender's agents to collect the aforesaid payments, proceeds, rents and revenues and hereby directs each tenant of the Property or party to any contract to pay such payments, proceeds, rents and revenues to Lender or Lender's agents; provided, however, that prior to the occurrence and during the continuance of an Event of Default, Borrower shall collect and receive all rents, payments, proceeds and revenues of the Property as trustee for the benefit of Lender and Borrower, shall apply the rents, payments, proceeds and revenues so collected to the sums secured by this Mortgage in the order provided in Section 3 hereof with the balance, so long as no Event of Default has occurred and is continuing, to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents and revenues constitutes an absolute assignment and not an assignment for additional security only. Upon the occurrence and during the continuance of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents, payments, proceeds and revenues of the Property as specified in this Section 24 as the same become due and payable, including but not limited to rents, payments, proceeds and revenues then due and unpaid, and all such rents, payments, proceeds and revenues shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only; provided, however, that the written notice by Lender to Borrower of the existence of an Event of Default shall contain a statement that Lender exercises its rights to such rents, payments, proceeds and revenues. Borrower agrees that during the continuance of an Event of Default, each tenant, occupant or contracting party related to the Property shall make such rents, payments, proceeds and revenues payable to, and shall pay such rents, payments, proceeds and revenues to, Lender or Lender's agents on Lender's written demand to each such tenant, occupant or contracting party therefor, such notice to be delivered to each tenant, occupant or contracting party personally, by mail or by delivering such demand to an appropriate location, without any liability on the part of said tenant, occupant or contracting party to inquire further as to the existence of a default by Borrower.

(b) Borrower hereby covenants that Borrower has not executed any prior assignment of said rents, payments, proceeds and revenues (except in connection with prior loans which have been satisfied in full), that Borrower has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which

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would prevent Lender from exercising its rights under this Section 24, and that at the time of execution of this Mortgage there has been no anticipation or prepayment of any of the rents, payments, proceeds and revenues of the Property for more than one (1) month prior to the due dates of such rents, payments, proceeds and revenues. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents, payments, proceeds and revenues of the Property more than one (1) month prior to the due dates of such rents, payments, proceeds and revenues. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents, payments, proceeds and revenues of the Property as Lender may from time to time request.

(c) Upon the occurrence and during the continuance of an Event of Default under this Mortgage, Lender may in person, by agent or by a court appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, occupancy agreements or contracts, the collection of all rents, payments, proceeds and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach (beyond all applicable notice and cure periods) of any covenant or agreement of Borrower in this Mortgage, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property as determined by the court.

(d) All rents, payments, proceeds and revenues collected during the continuance of an Event of Default under this Mortgage shall be applied first to the reasonable out of pocket costs, if any, of taking control of and managing the Property and collecting the rents, payments, proceeds and revenues, including, but not limited to, reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor, owner or landlord of the Property and then to the sums secured by this Mortgage. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents, payments, proceeds and revenues actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Section 24.

(e) If the rents, payments, proceeds and revenues of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, payments, proceeds and revenues, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Mortgage pursuant to Section 8 hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower

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requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

(f) Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents, payments, proceeds and revenues of the Property shall terminate at such time as this Mortgage ceases to secure indebtedness held by Lender.

25. Events of Default; Acceleration; Remedies.

(a) Each of the following shall constitute an “Event of Default” for purposes of this Mortgage:

(i) Borrower fails to pay, (A) in the case of an installment of principal or interest payable pursuant to the terms of the Note, within five (5) days after the date when any such payment is due in accordance with the terms hereof or thereof, (B) in the case of any other amount payable to Lender under the Note, this Mortgage or any of the other Loan Documents, within five (5) days following written notice from Lender that such payment is due;

(ii) Borrower fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by the Borrower under the Note, this Mortgage or any of the other Loan Documents within fifteen (15) days after Borrower obtains actual knowledge of such failure or receives written notice of such failure; provided, if such default cannot reasonably be cured within such fifteen (15) day period, such fifteen (15) day period shall be extended for such additional period as may be required for Borrower to cure such default provided Borrower commences to cure such failure during the fifteen (15)-day period and is diligently and in good faith attempting to effect such cure, up to one hundred eighty (180) days after the notice of default. If Borrower continues to use its best efforts to cure the non-monetary default, Lender shall extend such one hundred eighty (180) days in Lender’s reasonable discretion;

(iii) the existence of any inaccuracy or untruth in any material respect in any certification, representation or warranty contained in Borrower’s initial application for the Loan, in this Mortgage, or any of the other Loan Documents or of any statement or certification as to facts delivered to the Lender by Borrower or any Guarantor;

(iv) the occurrence of any event described in Section 18 hereof;

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(v) the dissolution, termination or merger of the Borrower or any Guarantor or the occurrence of the death or declaration of legal incompetency of any of the individuals who are Guarantors, unless within the ninety (90)-day period immediately following such death or declaration of legal incompetency (i) Borrower provides Lender with a substitute guarantor whose creditworthiness and real estate experience and skills are comparable to those of the original Guarantor and who is otherwise acceptable to the Lender in the Lender's sole discretion, and (ii) such substitute guarantor executes a guaranty in favor of the Lender in form and substance substantially similar to the existing guaranty and otherwise satisfactory to the Lender; or

(vi) the occurrence of a Prohibited Transfer as defined in Section 19 above, except as may be permitted herein.

(b) If an Event of Default occurs, the Lender may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to the Borrower, with interest thereon accruing at the Default Rate from the date of such Event of Default until paid.

(c) Lender shall be entitled to recover judgment against Borrower before, after or during any proceedings for the foreclosure of this Mortgage, and the right of Lender to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of Lender's remedies under this Mortgage. In case of proceedings against Borrower in insolvency or bankruptcy, or any proceedings for Borrower's reorganization or involving the liquidation of Borrower's assets, then Lender shall be entitled to prove the whole amount of principal and interest due upon the Note and other Indebtedness to the full amount thereof, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Property. However, in no case shall Lender receive from the aggregate amount of the proceeds of the sale of the Property and the proceeds of any other actions a greater amount than the amount of the Indebtedness due from Borrower, including all principal, interest, and reimbursements which constitute parts of the Indebtedness.

(d) During all times during which an Event of Default exists, Lender shall have the following rights and remedies:

(i) Lender may declare the entire principal amount of the Note then outstanding, together with accrued and unpaid interest thereon, and all other items of Indebtedness hereunder, to be due and payable immediately, even if the same are not then due and payable.

(ii) Regardless of whether Lender accelerates the Indebtedness as authorized above, Lender in person or by agent may (i) enter upon, take possession of, manage and operate the Property; (ii) make or enforce (or if the same be subject to modification or cancellation, modify or cancel) any or all of the

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Leases and Contracts (the capitalized terms as used in this Section 25 shall have the same meanings as such terms are used in the Assignment of Rents, Leases and Profits recorded simultaneously herewith) upon such terms or conditions as Lender deems proper; (iii) sign new Leases and Contracts in the name of Lender or Borrower, evict existing tenants, and fix or modify rents and payments under Contracts; (iv) make repairs and alterations and do any acts which Lender deems proper to protect the security hereof; (v) without taking possession, in its own name or in the name of Borrower, sue for or otherwise collect and receive the Rents and Profits, including those past due and unpaid. During the time of Lender's actions as permitted herein, Lender shall collect the Rents and Profits of the Property and apply the same, less the costs and expenses of operation and collection (including reasonable attorneys' fees and expenses), to the Indebtedness, in such order as Lender may determine.

(iii) Upon request of Lender, Borrower shall assemble and make available to Lender at the Property any of the personal property which has been removed from the Property. The entering upon and taking possession of the Property, the collection of any Rents and Profits, and the application of the same as provided herein, shall not operate to cure or waive any default previously or subsequently occurring, or affect any notice of default delivered by Lender hereunder, or invalidate any act done pursuant to any such notice.

(iv) Notwithstanding possession of the Property by Lender or a receiver, and the collection, receipt and application of Rents and Profits as described above, Lender shall be entitled to exercise every right contained in this Mortgage or by law upon or after the occurrence of a default. Any of the actions described herein may be taken by Lender either in person or by agent, with or without bringing any action, and may be taken regardless of whether any notice of default or election to sell has been given hereunder, and without regard to the adequacy of the security for the Indebtedness.

(v) Lender may, at its option, bring an action in any court of competent jurisdiction to foreclose this instrument or to enforce any of the covenants and agreements hereof. In addition to other remedies provided herein, Lender shall have such remedies allowed or provided under the laws of the State of Illinois and of the United States.

(e) All of the remedies of Lender hereunder or otherwise provided by law shall be concurrent and cumulative, and may be exercised together or independently. Expenses incurred by Lender, including reasonable attorneys' fees and expenses, shall be additions to the Indebtedness secured hereby. The rights and powers in this Section shall be irrevocable and shall continue after sale hereunder if Borrower continues to have any redemption rights with respect to the Property (to the extent redemption rights are permitted hereunder).

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(f) The failure of Lender to exercise its right to accelerate the maturity of the Indebtedness or to exercise any remedies hereunder in any one or more instances, or acceptance by Lender of partial payments, shall not constitute a waiver of any default or extend or affect the grace period, if any, provided herein. Lender shall continue to have all of its remedies as long as an Event of Default exists. Acceleration of maturity, once claimed hereunder by Lender, may, at the option of Lender, be rescinded by written acknowledgment to that effect to Borrower by Lender, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity, nor extend or affect the grace period, if any.

(g) No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Property shall affect, in any manner or to any extent, the lien of this Mortgage upon the Property, and any liens, rights, powers and remedies of Lender shall continue unimpaired as before.

(h) In exercising the remedies herein described or taking any of the actions which are authorized herein, Lender will be acting solely and exclusively as agent for Borrower in attempting to realize the maximum return from the Property and in attempting to obtain payment to Lender of the amounts which Lender is to receive pursuant to the Note. The parties acknowledge that in so doing, Lender will not be or be deemed to be an "owner" or "operator" of the Property under any environmental statute, law, regulation or ordinance, and will not be assuming any obligations of Borrower to fully comply with all such statutes, laws, regulations or ordinances, as more particularly described in this Mortgage. Borrower will specifically defend and indemnify Lender against any such liability, cost, loss or expense to the extent and on the terms set forth in Section 6 above.

(i) If the Lender, at its option, shall set aside any declared acceleration of maturity of the Note, the terms and provisions therein stated and the covenants, terms and conditions in the Note and this Mortgage shall revive and continue with the same force and effect as if such acceleration had not occurred.

(j) The purchaser at any foreclosure sale hereunder may disaffirm any easement granted or rental or lease contract made in violation of any provision of this Mortgage, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement and rental or lease contract.

(k) Upon the occurrence of any Event of Default hereunder, Borrower shall have the right to seek *ex parte* the immediate appointment by any court of competent jurisdiction of a receiver for the Property and the business of Borrower in connection therewith and of the rents and profits arising therefrom, which receiver shall be entitled to immediate possession of the entire Property, whether or not occupied by Borrower. Lender shall be entitled to the appointment of such a receiver *ex parte* as a matter of right without consideration of the value of the Property or other security for the amounts due Lender or the solvency of any person or corporation liable for the payment of such

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amounts. If Borrower is then in possession of the Property or any portion thereof, Borrower shall immediately upon the appointment of such receiver, vacate the Property or such portion thereof, as the case may be, or pay a reasonable rental for the use thereof, during such receivership, to be agreed upon between said receiver and Borrower or to be fixed by the court in which said receiver shall have been appointed; and the relationship between said receiver and Borrower shall be that of landlord and tenant. Such receiver shall have the right to collect the rents and profits and proceeds from the Property, to complete the construction of any structures or improvements in progress thereon, to rent the Property or any part thereof, to operate any business rights as may be granted by the thereon, and to exercise such other rights as may be granted by the court pending such proceedings, and up to the time of redemption or issuance of a Sheriff's Deed. Rents and profits shall be applied to the costs and expenses of the receiver and the expenses of the receivership, including costs of construction, and the balance to the indebtedness secured hereby. Such receiver shall have the power to borrow money from any persons, including Lender, for expenses of operating, preserving, maintaining, and caring for the Property, completing the construction in progress of any improvements or structures in or upon the Property, and all such borrowed sums together with interest thereon, whether expanded or not, shall be added to the indebtedness secured by this Mortgage. Such borrowed money may be expended by the receiver for the aforesaid purposes during any redemption period, and upon any redemption any unexpended amounts of such borrowed money shall be credited on the redemption price of the Property. At Lender's option a receiver may be appointed for only a portion of (rather than all of) the Property.

26. **Illinois Mortgage Foreclosure Law.** It is the intention of the Borrower and Lender that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "**Mortgage Act**") 735 ILCS 5/15-1101, et seq. and with respect to such Mortgage Act, Borrower agrees and covenants that:

(a) Borrower and Lender shall have the benefit of all the provisions of the Mortgage Act, including, to the extent provided by law, all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Mortgage Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provisions as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Lender shall continue in Lender as judgment creditors or mortgagee until confirmation of sale;

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(c) Except as varied by a court of law, all advances, disbursements and expenditures made or incurred by Lender before and during a foreclosure, and before and after a 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 purpose of preserving or restoring the Property, preserving the lien of the Mortgage or priority thereof, or enforcing the Mortgage, in addition to those otherwise authorized by this Mortgage or other Loan Documents or by the Mortgage Act (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the Mortgage Act. All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default. 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 5/15-1302 of the Mortgage Act.

(d) In addition to any provision of this Mortgage authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1702 of the Mortgage Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, and duties as provided for in Sections 5/15-1701, 5/15-1703 and 5/15-1704 of the Mortgage Act; and

(e) Borrower acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Mortgage Act or residential real estate as defined in Section 5/15-1219 of the Mortgage Act. As provided by law and pursuant to Section 5/15-1601(b) of the Mortgage Act, Lender hereby waives any and all right of redemption.

27. **Nonrecourse.** Subject to the provisions of subsections (a) and (b) below, the liability of the Borrower and FLT Equity, LLC, a Delaware limited liability company (the "**Responsible Parties**") under the Note and Loan Documents shall be limited to, and satisfied from, the Property and the proceeds thereof, the rents and all other income arising from the Property, and any other assets of Borrower related to the Property (collectively referred to as the "**Collateral**") which are given as collateral for this Note. However, nothing contained in this paragraph shall (i) preclude Lender from foreclosing the lien of this Mortgage or from enforcing any of its rights or remedies under the Loan Documents, or (ii) limit the right of Lender to name Borrower as a party defendant in any action brought under the Note, this Mortgage, the Loan Documents or any related agreements so long as execution on any judgment is limited to the Collateral, or (iii) prohibit Lender from pursuing all of its rights and remedies against any guarantor (except as set forth in subsections (a) and (b) below), if any.

(a) Notwithstanding the above, the Lender shall have the right to pursue recourse liability against the Borrower and the Responsible Parties, jointly, severally, and

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unconditionally, for all actual losses, costs, expenses, liabilities, claims and assertions suffered by Lender in the event that any of the following events occur, through either the act or omission of Borrower or any principal of Borrower:

(i) any obligations for environmental liabilities arise as set forth in the Environmental Indemnity Agreement dated this same date;

(ii) failure or refusal of Borrower to allow Lender to inspect the Property or the books, records and contracts of Borrower affecting the Property;

(iii) failure or refusal of Borrower to fully and timely complete any construction, refurbishments or other improvements to the Property which Borrower is obligated to furnish or complete under the terms of any leases;

(iv) removal from the Property of any personal property which is a part of the Collateral, unless such items of personal property are replaced by similar or equal items of the same or greater value or unless permitted or required by the terms of a lease approved by Lender; or

(v) Borrower or any party on its behalf makes any claim in any legal proceeding, formal or informal, that the Note or any of the Loan Documents are invalid or unenforceable, unless such claim is made in good faith and has a substantial factual basis.

(b) Lender shall also have the right to pursue full recourse liability against the Borrower and the Responsible Parties, jointly, severally, and unconditionally, for the entire amount of the Loan, including any and all amounts due under the Note, this Mortgage or under any of the Loan Documents, as if the provisions in this paragraph above had never been included in the Note, in the event that any of the following events occur, through either the act or omission of Borrower or any principal of Borrower:

(i) Borrower or any other Responsible Party makes or is discovered to have made any fraudulent statements or willful misrepresentations in connection with Borrower's loan application to Lender, or in any reports or information furnished by Borrower to Lender (regardless of any actual damage suffered thereby);

(ii) Borrower files a petition in bankruptcy, whether voluntary or collusive involuntary (and not dismissed within ninety (90) days and not filed by Lender), or a petition or answer seeking any reorganization, arrangement, composition, liquidation, dissolution, or similar relief under the bankruptcy laws of the United States or under any other similar federal, state, or other statute relating to relief from indebtedness, or a receiver, trustee, or liquidator is approved with respect to the Borrower, the Property (or any part thereof), or the Collateral, other than as appointed by Lender; or Borrower asserts any objection or purported

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defense to any effort of Lender to lift any automatic stay or other injunction imposed as a result of any filing by Borrower under the federal Bankruptcy Code or any state insolvency or similar law; or Borrower attempts, in bad faith, to delay, enjoin, stay or otherwise hinder any foreclosure proceedings, whether judicial or nonjudicial, under this Mortgage or other documents affecting the Collateral, or any other enforcement proceedings under any remedial provisions under any of the other Loan Documents if such action is taken by Borrower, or its affiliates, in bad faith;

(iii) Borrower misapplies or misappropriates any proceeds or income from the Property or any Collateral, or of other funds of the Borrower, to purposes other than the ordinary and usual expenses of the Property including repayment of this Loan provided that the ordinary and usual expenses of the Property shall include distributions to the members, partners or other equity owners of Borrower provided that no Event of Default exists under the Note or any of the Loan Documents and such distributions are permitted under Borrower's operating agreement, partnership agreement or other governing document and are not prohibited by any terms of any of the Loan Documents. It shall not be a violation of this clause if Borrower did not have the legal right to make payments in the ordinary course of business because of a bankruptcy, receivership or similar judicial proceeding, limiting Borrower's ability to direct the disbursement of such sums;

(iv) Borrower makes an unpermitted sale or transfer of the Property or an interest therein, or commits any other default under the due-on-sale or due-on-encumbrance provisions set forth in the Mortgage or any Loan Document;

(v) Borrower fails or refuses to timely pay in full, before the same become delinquent, all real estate taxes, installments of special assessments, insurance premiums, water or sewer rents (if applicable) or mortgage insurance premiums (if applicable), if Lender has waived its right to require the escrowing of amounts for such payments pursuant to Section 2 of the Mortgage; or

(vi) Borrower fails to complete the critical property-specific capital expenditures in accordance with Section 34 of this Mortgage.

(c) Borrower fails or refuses to apply any insurance proceeds, condemnation awards or other amounts received or held by Borrower in connection with casualty damage to or destruction of the Property, or received in connection with a taking of any part of the Property by eminent domain, to any purposes other than the repair or replacement of the Property so damaged or taken, unless such other application of funds is required by the terms of any lease approved by Lender or permitted under the Loan Documents, or unless Lender consents in writing.

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All of the events described in subsections (a) and (b) above are hereafter called the “Exceptions to Non-Recourse.”

28. **Cure Periods; Default Interest Rate; Late Charges.** Borrower shall have the notice and cure rights, as applicable, set forth in Section 25(a), to cure any other performance defaults under the Note, this Mortgage or any other Loan Document. There shall be no cure period applicable to a default in the final payment or any prepayment premium due under the Note. If Borrower fails to cure the defaults within the applicable grace period, if any, then interest on the unpaid principal balance of the Note and all accrued interest thereon shall be collected at the Default Interest Rate as defined in the Note, but in no event shall such rate of interest exceed the maximum rate of interest allowed under applicable law. In the event any monthly installment of interest due on the Note is not paid in full within five (5) calendar days from its due date, Borrower shall, in addition to all other provisions hereof, pay a late fee equal to five percent (5%) of the overdue monthly installment.

29. **Release.** Upon payment of all sums secured by this Mortgage, Lender shall release the lien of this Mortgage at the cost of Borrower, if permitted by applicable law.

30. **Future Advances; Disclosures.** Upon request of Borrower, Lender, at Lender's option so long as this Mortgage secures indebtedness held by Lender, may make advances of additional funds (herein “Future Advances”) to Borrower. Any and all Future Advances (if any), with interest thereon, shall be secured by this Mortgage unless the parties shall agree otherwise in writing. This Mortgage secures not only existing indebtedness and advances made contemporaneously with the execution hereof, but also Future Advances, whether obligatory, or optional, or both, to the same extent as if such Future Advances were made contemporaneously with the execution of this Mortgage, even if no advance is made at the time of the execution of this Mortgage and even if no indebtedness is outstanding at the time any advance is made.

31. **Waiver of Jury Trial.** TO THE EXTENT PERMISSIBLE UNDER ILLINOIS LAW, BORROWER AND THE RESPONSIBLE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE LOAN EVIDENCED BY THIS MORTGAGE OR ANY OF THE LOAN DOCUMENTS. THIS PROVISION IS MATERIAL INDUCEMENT FOR LENDER'S EXTENDING CREDIT TO BORROWER. BORROWER ACKNOWLEDGES THAT THIS PROVISION HAS BEEN EXPRESSLY BARGAINED FOR BY LENDER AS PART OF THE LOAN AND THAT, BUT FOR BORROWER'S AGREEMENT THERETO, LENDER WOULD NOT HAVE MADE THE LOAN FOR THE TERM AND WITH THE INTEREST RATE PROVIDED HEREIN.

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32. **Notices.** Except for any notice required under Applicable Law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage or in the Note shall be given by personal delivery or by mailing such notice by certified mail addressed to Borrower at Borrower's address stated below or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by personal delivery or by mailing such notice by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. A duplicate copy of any notices delivered by personal delivery shall also be sent by certified mail, return receipt requested. Any notice provided for in this Mortgage or in the Note shall be deemed to have been received by Borrower or Lender (a) on the next business day after personal delivery thereof, in the case of a personal delivery supported by the sworn affidavit of the person making the personal delivery, or (b) on the third (3rd) following business day after mailing thereof, in the case of a notice mailed by certified mail, return receipt requested.

If to the Borrower:

RTA Wheeling, LLC; RTA Butterfield, LLC
 Attention: Michael B. Earl
 2082 Michelson Drive
 Suite 400
 Irvine, California 92612
 mearl@trinity-pm.com

With a copy to:

Nancy Dubonnet, Esq.
 Nancy Dubonnet APC
 2082 Michelson Drive
 Suite 450
 Irvine, California 92612
 nancy@dubonnet.law

If to Lender:

Americo Financial Life and Annuity Insurance Company
 300 West 11th Street
 Kansas City, MO 64105
 Attention: Commercial Mortgage Department

With a copy to:

Thomas M. Higgins, III
 Lathrop & Gage, LLP
 2345 Grand Avenue

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Suite 2800
Kansas City, Missouri 64108

33. **Counterparts.** This document may be executed in multiple counterparts, each of which shall constitute an original and all of which taken together shall constitute one and same agreement binding upon the parties, notwithstanding that all the parties are not signatories to the same counterpart.

34. **Capital Expenditures.** Borrower shall, within the first twenty-four (24) months of the Loan Term, and subject to force majeure delays, make the following long-term improvements to the Property (collectively referred to as the “**Capital Expenditures**”), and the amounts expended for each such Capital Expenditure shall generally approximate the amounts shown below:

(a) Wheeling:

(i) Tear off and replace the roof, including gutter, masonry tuckpointing, and replacing windows and doors: \$800,000

(ii) Asphalt Milling and heavy patching: \$204,585

(iii) In addition, Borrower agrees to spend \$214,126 on Tenant Improvements for the Wheeling Property within the first thirty-six (36) months of the Loan Term (the “**TI Period**”). If, upon expiration of the TI Period, Borrower has spent less than \$214,126, the difference between the amount actually spent and \$214,126 must be spent on non-Tenant Improvement Capital Expenditures, including those listed in subsections (a)(i) and (ii) above.

(b) Mundelein:

(i) Asphalt Repair: \$65,000

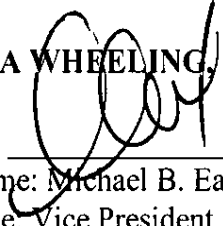
(c) As each item of Capital Expenditure is completed, Borrower shall notify Lender of the same, and shall supply Lender with (i) proof of completion of such item of Capital Expenditure; (ii) an invoice or invoices showing the amount which is owing for the Capital Expenditure, which shall include a copy of any contract or purchase order with a contractor or vendor performing the work or supplying the equipment or materials represented by an item of Capital Expenditure, describing the item of the Capital Expenditure; (iii) a written statement of the Borrower that the item of Capital Expenditure has been fully completed; and (iv) a full waiver of mechanic’s liens from the contractor or vendor performing the work represented by the Capital Expenditure or furnishing the equipment or materials therefor, plus a similar full waiver of mechanic’s liens for all subcontractors or vendors utilized by such contractor.

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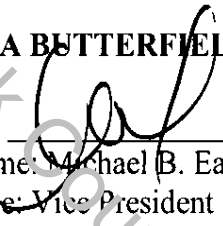
IN WITNESS WHEREOF, Borrower has executed this Mortgage or has caused the same to be executed by its representatives hereunto duly authorized.

BORROWER:

RTA WHEELING, LLC

By: 
Name: Michael B. Earl
Title: Vice President

RTA BUTTERFIELD, LLC

By: 
Name: Michael B. Earl
Title: Vice President

PREPARED BY AND RETURN TO.
LATHROP GAGE LLP
ATTN: PAUL LEWIS
2345 GRAND BLVD, SUITE 2200
KANSAS CITY, MISSOURI 64108

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

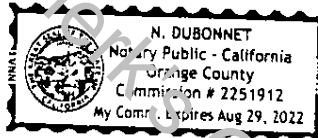
STATE OF CALIFORNIA)
) §
COUNTY OF ORANGE)

On June 14 2019, before me, N. Dubonnet, a Notary Public, personally appeared Michael B. Earl, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ *[Handwritten Signature]*



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

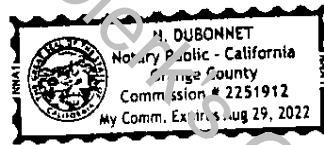
STATE OF CALIFORNIA)
) §
COUNTY OF ORANGE)

On June 19, 2019, before me, N. Dubonnet, a Notary Public, personally appeared Michael B. Earl, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature 



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Exhibit "A" Legal Description of Property

Tract I – Wheeling

The South 400 feet of Block 3 (except the West 495 feet thereof and except the East 15.25 feet thereof) in Herzog's First Industrial Subdivision of part of the East 1/2 of Section 10, Township 42 North, Range 11, East of the Third Principal Meridian, and part of the West 1/2 of Section 11, Township 42 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois on December 13, 1955 as document number LR1639763 and Certificate of Correction thereof registered December 14, 1956 as document number LR1713481, in Cook County, Illinois.

600-668 Wheeling Road
Wheeling, IL 60090
03-10-400-007-0000

Tract II – Mundelein

LOTS 9, 10, 11 AND 12 IN BUTTERFIELD "60" UNIT 3, BEING A SUBDIVISION IN SECTION 5, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 10, 1970 AS DOCUMENT 1473371 IN BOOK 48 OF PLATS, PAGES 20 AND 21 IN LAKE COUNTY, ILLINOIS.

Cook County Clerk's Office

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Exhibit "B" Permitted Exceptions to Title

Tract I – Wheeling

2. 1. Taxes for the year(s) 2018 and 2019
2019 taxes are not yet due or payable.
- 1A. Note: 2018 first installment was due March 1, 2019
Note: 2018 final installment not yet due or payable

Item tax#	Pd	Year	1st Inst	Stat
03-10-400-007-0000	1 of 1	2018	\$131,876.53	Paid

3. Existing unrecorded leases and all rights thereunder of the lessees and of any person or party claiming by, through or under the lessees.
4. Easement in, upon, under, over and along the platted areas of the Land to install and maintain all equipment for the purpose of serving the Land and other property with gas service together with right of access to said equipment, as created by Grant to Northern Illinois Gas Company recorded December 8, 1980 as document 25696252.

Affects a strip of Land 10 feet in width lying 5 feet on either side of the gas main installed and indicated in red on the exhibit 'A' thereto attached.
5. Easement for public utilities, and drainage over, upon and under the South 10 feet of the Land as shown in Plat of Subdivision filed as document LR1632762.
6. Electric Facilities Agreement between Glenview State Park known as Trust Number 1938, and the Commonwealth Edison Company, its successors and assigns, an easement for public utilities purposes to install electric facilities in and upon the property as shown on Exhibit 'A' thereto attached. The company shall have the right to operate, maintain, repair, renew, replace and remove its installed facilities, filed December 5, 1980 as document LR3192422.
7. Notice of Fire Alarm Equipment Installed and Owned by Chicago-Metropolitan Fire Prevention Company recorded October 25, 2013 as document number 1329854020.

Tract II – Mundelein

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2. **PROFORMA NOTE: WE SHOULD BE PROVIDED EVIDENCE THAT THE 2018 1ST INSTALLMENT TAXES HAVE BEEN PAID.**

Taxes for the years 2018 and 2019.

Taxes for the year 2019 are not yet due or payable.

Permanent tax no. 15-05-105-005, 1 of 4, affects Lot 9.

2018 1st installment in the amount of \$5,162.51 is paid.

2018 2nd installment in the amount of \$5,162.51 is update September 6, 2019

Permanent tax no. 15-05-105-006, 2 of 4, affects Lot 10.

2018 1st installment in the amount of \$8,853.21 is paid.

2018 2nd installment in the amount of \$8,853.21 is due September 6, 2019.

Permanent tax no. 15-05-105-007, 3 of 4, affects Lot 11.

2018 1st installment in the amount of \$9,835.22 is paid.

2018 2nd installment in the amount of \$9,835.22 is due September 6, 2019.

Permanent tax no. 15-05-105-008, 4 of 4, affects Lot 12.

2018 1st installment in the amount of \$9,501.67 is paid.

2018 2nd installment in the amount of \$9,501.67 is due September 6, 2019.

3. Existing unrecorded leases and all rights thereunder of the lessee; and of any person or party claiming by, through or under the lessees.
4. Easement for public utilities, sewer, water and drainage purposes over the East 25 feet of the said Lots as shown on plat of said subdivision and shown on ALTA/NSPS Land Title Survey dated January 28, 2019, prepared by JLH Surveying Inc., as Job No. 19-687-101.

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5. Building line 25 feet West of the East Line of said Lots as shown on plat of said subdivision and shown on ALTA/NSPS Land Title Survey dated January 28, 2019, prepared by JLH Surveying Inc., as Job No. 19-687-101.
6. Easement over the North and West 15 feet of Lot 9 and the West 15 feet of Lots 10, 11 and 12 for the purpose of installing and maintaining all equipment necessary to serve the subdivision and other land with telephone, gas and electric service, together with the right to overhang aerial service wires and the right of access to such wires, as created by Grant to the Illinois Bell Telephone Company, North Shore Gas Company and the Commonwealth Edison Company, and their respective successors and assigns and as shown on the plat of subdivision recorded September 10, 1970 as document 1473371 and shown on ALTA/NSPS Land Title Survey dated January 28, 2019, prepared by JLH Surveying Inc., as Job No. 19-687-101.
7. Easement for highway purpose over the East 10 feet of said Lots as shown on plat of said subdivision and shown on ALTA/NSPS Land Title Survey dated January 28, 2019, prepared by JLH Surveying Inc., as Job No. 19-687-101.
8. Easement for public utilities and drainage purposes over the North and West 15 feet of Lot 9, the West 15 feet of Lots 10 to 12, both inclusive, as shown on the plat of said subdivision and shown on ALTA/NSPS Land Title Survey dated January 28, 2019, prepared by JLH Surveying Inc., as Job No. 19-687-101.
9. Legend contained on the plat of subdivision as follows:

Only one entrance to Butterfield Road South of Lot 8.

Entrance shown on ALTA/NSPS Land Title Survey dated January 28, 2019, prepared by JLH Surveying Inc., as Job No. 19-687-101.

Note: It appears Lots 9, 10, 11 and 12 taken as a tract are the Lots referred to.
10. A perpetual easement and right of way for the purpose of installing, laying, constructing, renewing, operating, repairing and maintaining underground mains, pipes, drainage and other equipment required or convenient for drainage purposes in, upon, under, along and across the South 25 feet of Lot 12 and those portions of the East 25 feet of Lots 11 and 12 and of the West 15 feet of Lots 11 and 12 that are North of said South 25 feet of Lot 12 for the benefit of certain Lots in said subdivision as granted by an instrument dated April 15, 1975 and recorded June 20, 1975 as document 1714318 and shown on ALTA/NSPS Land Title Survey dated January 28, 2019, prepared by JLH Surveying Inc., as Job No. 19-687-101.