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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1922022038

Doc# 1922022038 Fee \$88.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 08/08/2019 11:26 AM PG: 1 OF 33

The property identified as: **PIN: 17-34-421-102-0000**

Address:

Street: 3753-55 South Cottage Grove Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60653

Lender: The Chicago Community Loan Fund

Borrower: Arches Retail Development LLC

Loan / Mortgage Amount: \$5,400,000.00

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



Next North National Title
222 N. LaSalle
Chicago, IL 60601

Certificate number: 24843869-73AD-4226-BD7E-E15CA641C850

Execution date: 8/7/2019

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**MORTGAGE AND SECURITY AGREEMENT
WITH ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

Dated as of August 7, 2019,

from

ARCHES RETAIL DEVELOPMENT LLC,
an Illinois limited liability company

to

THE CHICAGO COMMUNITY LOAN FUND,
an Illinois not-for-profit corporation

This instrument was prepared by and
when recorded return to:

Natasha R. Serafin, Esq.
Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (as may be amended, restated, supplemented or otherwise modified from time to time, this "*Mortgage*") is dated as of August 7, 2019, by and between **ARCHES RETAIL DEVELOPMENT LLC**, an Illinois limited liability company with its principal place of business at 4030 S. Cottage Grove Avenue, Chicago, Illinois 60653 ("*Mortgagor*") and **THE CHICAGO COMMUNITY LOAN FUND**, an Illinois not-for-profit corporation with its principal place of business at 29 E. Madison Street, Suite 1700, Chicago, Illinois 60602 ("*Mortgagee*"):

WITNESSETH THAT:

WHEREAS, Mortgagor is justly and truly indebted to Mortgagee in the principal sum of Five Million Four Hundred Thousand and No/100 Dollars (\$5,400,000.00) (i) pursuant to that certain Loan Agreement dated of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the "*Loan Agreement*"), by and among Mortgagor, as a borrower, ARD Sponsor, LLC, an Illinois limited liability company, as a borrower, and Mortgagee, as Lender and (ii) as evidenced by that certain Secured Note bearing even date herewith and payable to the order of Mortgagee whereby Mortgagor promises to pay said principal sum together with interest thereon prior to maturity at the rate of six and 25/100 percent (6.25%) interest per annum (simple interest) (and after maturity until paid, or in the event of default and not cured, at the rate of twelve percent (12%) interest per annum) at the times therein provided, with a final maturity of all principal and interest not required to be sooner paid on May 1, 2022 (such secured note and any and all notes issued in renewal thereof or in substitution or replacement therefor being hereinafter referred to as the "*Note*"). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Loan Agreement or in Appendix A hereto.

NOW, THEREFORE, to secure (i) the payment of the principal and premium, if any, of and interest on the Note as and when the same becomes due and payable (whether by lapse of time, acceleration or otherwise) and all advances now or hereafter evidenced thereby, (ii) the payment of all other indebtedness, obligations and liabilities which this Mortgage secures pursuant to any of its terms and (iii) the observance and performance of all covenants and agreements contained herein or in the Note or in any other instrument or document at any time evidencing or securing any of the foregoing or setting forth terms and conditions applicable thereto (all of such indebtedness, obligations and liabilities described in clauses (i), (ii) and (iii) above being hereinafter collectively referred to as the "*indebtedness hereby secured*"), Mortgagor hereby grants, bargains, sells, conveys, mortgages, warrants, assigns, and pledges unto Mortgagee, its successors and assigns, and grant to Mortgagee, its successors and assigns, a continuing security interest in, all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI and VII below, all of the same being collectively referred to herein as the "*Mortgaged Premises*":

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GRANTING CLAUSE I

That certain real estate lying and being in City of Chicago, County of Cook and State of Illinois more particularly described in Schedule I attached hereto and made a part hereof.

GRANTING CLAUSE II

All buildings and improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials intended for construction, reconstruction, alteration and repairs of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, and all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever now or hereafter attached to or contained in or used or useful in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including but not limited to all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, and sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance and protection of the said real estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said real estate, buildings or improvements in any manner, and all proceeds thereof; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and, for the purpose of this Mortgage, to be real estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a security agreement under the provisions of the UCC for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor as debtor to Mortgagee as secured party, securing the indebtedness hereby secured. The addresses of Mortgagor (debtor) and Mortgagee (secured party) appear at the beginning hereof.

GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil, and water rights belonging or in any wise appertaining to the property described in the Granting Clause I above and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or

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accruing (including all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof, or under any contracts or options for the sale of all or any part of, said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees, not as a limitation or condition hereof, but as a personal covenant available only to Mortgagor, that until an Event of Default (as hereinafter defined) shall occur giving Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive (but not more than thirty (30) days in advance) and enjoy such rents.

GRANTING CLAUSE IV

All judgments, awards of damages, settlements and other compensation heretofore or hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power of right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively, the "*Condemnation Awards*").

GRANTING CLAUSE V

All property and rights, if any, which are by the express provisions of this Mortgage required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter be subjected to the lien hereof by Mortgagor or by anyone on Mortgagor's behalf.

GRANTING CLAUSE VI

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

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GRANTING CLAUSE VII

ALL proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance.

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, warranted, pledged and assigned, and in which a security interest is granted, or intended so to be, unto Mortgagee, its successors and assigns, forever; *provided, however*, that this Mortgage is upon the express condition that if the principal of and interest on the Note and all sums from time to time advanced thereon shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed and all commitments contained in the Loan Agreement to extend credit thereunder shall have terminated, then this Mortgage and the estate and rights hereby granted shall cease and this Mortgage shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

It is expressly understood and agreed that the indebtedness hereby secured will in no event exceed two hundred percent (200%) of (i) the total face amount of the Note plus (ii) the total interest which may hereafter accrue under the Note on such face amount plus (iii) any fees, costs or expenses which may be payable hereunder.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

SECTION 1. PAYMENT OF THE INDEBTEDNESS.

The indebtedness hereby secured will be promptly paid as and when the same becomes due.

SECTION 2. FURTHER ASSURANCES.

Mortgagor will execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purpose of this Mortgage and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the Granting Clauses hereof or intended so to be.

SECTION 3. OWNERSHIP OF MORTGAGED PREMISES.

Mortgagor covenants and warrants that it is lawfully seized of and has good and marketable title to the Mortgaged Premises free and clear of all liens, charges and encumbrances except those exceptions to title listed on Schedule II attached hereto (the "*Permitted Exceptions*") and Mortgagor has good right, full power and authority to convey, transfer and mortgage the same to Mortgagee for the uses and purposes set forth in this Mortgage; and Mortgagor will warrant and forever defend the title to the Mortgaged Premises subject to the Permitted Exceptions against all claims and demands whatsoever.

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SECTION 4. POSSESSION.

Provided no Event of Default has occurred and is continuing hereunder, Mortgagor shall be suffered and permitted to remain in full possession, enjoyment and control of the Mortgaged Premises, subject always to the observance and performance of the terms of this Mortgage.

SECTION 5. PAYMENT OF TAXES.

Mortgagor shall pay before any penalty attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof, and shall, upon written request, exhibit to Mortgagee official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall have been commenced, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law) by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, conducted in good faith and with due diligence and if Mortgagor shall have furnished such security, if any, as may be required in the proceedings or reasonably requested by Mortgagee.

SECTION 6. PAYMENT OF TAXES ON NOTE, MORTGAGE OR INTEREST OF MORTGAGEE.

Mortgagor agrees that if any tax, assessment or imposition upon this Mortgage or the indebtedness hereby secured or the Note or the interest of Mortgagee in the Mortgaged Premises or upon Mortgagee by reason of or as a holder of any of the foregoing (including, without limitation, corporate privilege, franchise and excise taxes, but only to the extent such tax assessment or imposition is directly related to this Mortgage and excepting therefrom any income tax on interest payments on the principal portion of the indebtedness hereby secured imposed by the United States or any state) is levied, assessed or charged, then, unless all such taxes are paid by Mortgagor to, for or on behalf of Mortgagee as they become due and payable (which Mortgagor agrees to do upon demand of Mortgagee, to the extent permitted by law), or Mortgagee is reimbursed for any such sum advanced by Mortgagee, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee upon thirty (30) days' notice to Mortgagor, notwithstanding anything contained herein or in any law heretofore or hereafter enacted, including any provision thereof forbidding Mortgagor from making any such payment. Mortgagor agrees to exhibit to Mortgagee, upon request, official receipts showing payment of all taxes and charges which Mortgagor is required to pay hereunder.

SECTION 7. RECORDATION AND PAYMENT OF TAXES AND EXPENSES INCIDENT THERETO.

Mortgagor will cause this Mortgage, all mortgages supplemental hereto and any financing statement or other notice of a security interest required by Mortgagee at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required

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by law for the recording and filing or for the rerecording and refiling of a mortgage, security interest, assignment or other lien or charge upon the Mortgaged Premises, or any part thereof, in order fully to preserve and protect the rights of Mortgagee hereunder and, without limiting the foregoing, Mortgagor will pay or reimburse Mortgagee for the payment of any and all taxes, fees or other charges incurred in connection with any such recordation or rerecording, including any documentary stamp tax or tax imposed upon the privilege of having this Mortgage or any instrument issued pursuant hereto recorded.

SECTION 8. INSURANCE.

Mortgagor will, at its expense, maintain insurance coverages as provided in the Loan Agreement and keep all buildings, improvements, equipment and other property now or hereafter constituting part of the Mortgaged Premises insured against loss or damage by fire, lightning, windstorm, explosion and such other risks as are usually included under extended coverage policies, or which are usually insured against by owners of like property, in amount sufficient to prevent Mortgagor or Mortgagee from becoming a co-insurer of any partial loss under applicable policies and in any event not less than the then full insurable value (actual replacement value without deduction for physical depreciation) thereof, as determined at the request of Mortgagee and at Mortgagor's expense by the insurer or insurers or by an expert approved by Mortgagee, all under insurance policies payable, in case of loss or damage, to Mortgagee, such rights to be evidenced by the usual standard non-contributory form of mortgage clause to be attached to each policy. Mortgagor shall not carry separate insurance concurrent in kind or form and contributing in the event of loss, with any insurance required hereby. Mortgagor shall also obtain and maintain such other insurance with respect to the Mortgaged Premises in such amounts and against such insurable hazards as Mortgagee from time to time may reasonably require. In the event of foreclosure, Mortgagor authorizes and empowers Mortgagee to effect insurance upon the Mortgaged Premises in amounts as provided in the Loan Agreement for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor to cancel any or all existing insurance policies.

UNLESS MORTGAGOR PROVIDES MORTGAGEE WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS MORTGAGE, MORTGAGEE MAY PURCHASE INSURANCE AT MORTGAGOR'S EXPENSE TO PROTECT MORTGAGEE'S INTERESTS IN THE MORTGAGED PREMISES. THIS INSURANCE MAY, BUT NEED NOT, PROTECT MORTGAGOR'S INTERESTS IN THE MORTGAGED PREMISES; THE COVERAGE PURCHASED BY MORTGAGEE MAY NOT PAY ANY CLAIMS THAT MORTGAGOR MAKES OR ANY CLAIM THAT IS MADE AGAINST MORTGAGOR IN CONNECTION WITH THE MORTGAGED PREMISES. MORTGAGOR MAY LATER CANCEL ANY SUCH INSURANCE PURCHASED BY MORTGAGEE, BUT ONLY AFTER PROVIDING MORTGAGEE WITH EVIDENCE THAT MORTGAGOR HAS OBTAINED INSURANCE AS REQUIRED BY THIS MORTGAGE. IF MORTGAGEE PURCHASES INSURANCE FOR THE MORTGAGED PREMISES, MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES THAT MORTGAGEE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE INDEBTEDNESS HEREBY SECURED. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE MORTGAGOR MAY BE ABLE TO OBTAIN ON ITS OWN.

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SECTION 9. DAMAGE TO OR DESTRUCTION OF MORTGAGED PREMISES.

(a) *Notice.* In case of any material damage to or destruction of the Mortgaged Premises or any part thereof, Mortgagor shall promptly give written notice thereof to Mortgagee, generally describing the nature and extent of such damage or destruction.

(b) *Restoration.* In case of any damage to or destruction of the Mortgaged Premises or any part thereof, Mortgagor, whether or not the insurance proceeds, if any, received on account of such damage or destruction shall be sufficient for the purpose, at Mortgagor's expense, will promptly commence and complete (subject to unavoidable delays occasioned by strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions and similar causes beyond the reasonable control of Mortgagor) the restoration, replacement or rebuilding of the Mortgaged Premises as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

(c) *Adjustment of Loss.* Mortgagor hereby authorizes Mortgagee, at Mortgagee's option, to adjust and compromise any losses under any insurance afforded, but unless Mortgagee elects to adjust the losses as aforesaid, said adjustment and/or compromise shall be made by Mortgagor, subject to final approval of Mortgagee in the case of losses exceeding Ten Thousand Dollars (\$10,000.00).

(d) *Application of Insurance Proceeds.* Net insurance proceeds received by Mortgagee under the provisions of this Mortgage or any instruments supplemental hereto or thereto or under any policy or policies of insurance covering the Mortgaged Premises or any part thereof shall first be applied toward the payment of the amount owing on the indebtedness hereby secured in such order of application as Mortgagee may elect whether or not the same may then be due or be otherwise adequately secured; *provided, however,* that solely in the event of a casualty loss and so long as no Event of Default has occurred or continues to occur, Mortgagee shall release up to \$250,000 of the proceeds thereof (or such greater amount as agreed upon by Mortgagee in its sole and reasonable discretion) for use in restoring the Mortgaged Premises or any part thereof for or on behalf of Mortgagor in lieu of applying said proceeds to the indebtedness hereby secured. If Mortgagor fails to request that insurance proceeds be applied to the restoration of the improvements or if Mortgagor makes such a request but fails to complete restoration within a reasonable time, Mortgagee shall have the right, but not the duty, to restore or rebuild said Mortgaged Premises or any part thereof for or on behalf of Mortgagor in lieu of applying said proceeds to the indebtedness hereby secured and for such purpose may do all necessary acts, including using funds deposited by Mortgagor as aforesaid and advancing additional funds for the purpose of restoration, all such additional funds to constitute part of the indebtedness hereby secured payable upon demand with interest at the rate of interest the Note bears.

SECTION 10. EMINENT DOMAIN.

Mortgagor acknowledges that the Condemnation Awards have been assigned to Mortgagee, and pursuant thereto, Mortgagee is hereby irrevocably authorized to collect and receive, and to give appropriate receipts and acquittances therefor, and at Mortgagee's option, to apply the same toward the payment of the amount owing on account of the indebtedness hereby

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secured in such order of application as Mortgagee may elect and whether or not the same may then be due and payable or otherwise adequately secured; *provided, however*, that a Condemnation Award in respect of any taking of a portion (but not all or any material portion) of the Mortgaged Premises shall be made available for the restoration of such Mortgaged Premises in the same manner and subject to the same conditions as are imposed on the release of insurance proceeds set forth in Section 9(d) hereof as if the Mortgaged Premises so taken were destroyed and the Condemnation Award for such taking was actually insurance proceeds in respect of the Mortgaged Premises so deemed as having been destroyed. In the event that any proceeds of a Condemnation Award shall be made available to Mortgagor for restoring the Mortgaged Premises so taken, Mortgagor hereby covenants to promptly commence and complete such restoration of the Mortgaged Premises as nearly as possible to its value, condition and character immediately prior to such taking. Mortgagor covenants and agrees that Mortgagor will give Mortgagee immediate notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further covenants and agrees to make, execute and deliver to Mortgagee, at any time or times upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding.

SECTION 11. CONSTRUCTION, REPAIR, WASTE, ETC.

Mortgagor agrees (i) that no building or other improvement on the Mortgaged Premises and constituting a part thereof shall be altered, removed or demolished (except for repairs and improvements to any tenant work) nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the consent of Mortgagee and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, Mortgagor covenants that the same will be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrance thereon or reservation of title thereto; (ii) to permit, commit or suffer no waste, impairment or deterioration of the Mortgaged Premises or any part thereof; (iii) to keep and maintain said Mortgaged Premises and every part thereof in good repair and condition; (iv) to effect such repairs as Mortgagee may reasonably require and from time to time to make all needful and proper replacements and additions so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed; (v) to comply with all statutes, orders, requirements or decrees relating to the Mortgaged Premises by any federal, state or municipal authority; (vi) to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Mortgaged

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Premises or any part thereof and not to initiate or acquiesce in any changes to or terminations of any of the foregoing or of zoning classifications affecting the use to which the Mortgaged Premises or any part thereof may be put without the prior written consent of Mortgagee; and (vii) to make no material alterations in or improvements or additions to the Mortgaged Premises except as required by governmental authority or as required in the normal course of operating the Mortgaged Property or as otherwise permitted by Mortgagee in its reasonable discretion.

SECTION 12. LIENS AND ENCUMBRANCES.

Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created or to remain and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for this Mortgage and the Permitted Exceptions set forth on Schedule H attached hereto.

SECTION 13. RIGHT OF MORTGAGEE TO PERFORM MORTGAGOR'S COVENANTS, ETC.

If Mortgagor fails to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the interest rate applicable to the Note on such date shall constitute so much additional indebtedness hereby secured and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee in making any payment authorized under this Section 13 relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof. Mortgagee, in performing any act hereunder, shall be the sole judge in its reasonable discretion of whether Mortgagor is required to perform same under the terms of this Mortgage.

SECTION 14. AFTER-ACQUIRED PROPERTY.

Any and all property hereafter acquired which is of the kind or nature herein provided, or intended to be and become subject to the lien hereof, shall ipso facto, and without any further conveyance, assignment or act on the part of Mortgagor, become and be subject to the lien of this Mortgage, as fully and completely as though specifically described herein; but nevertheless Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

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SECTION 15. INSPECTION BY MORTGAGEE.

Mortgagee and any participant in the indebtedness hereby secured shall have the right to inspect the Mortgaged Premises at all reasonable times, and access thereto shall be permitted for that purpose.

SECTION 16. FINANCIAL REPORTS.

Mortgagor will furnish to Mortgagee such information and data with respect to the financial condition, business affairs and operations of Mortgagor and the Mortgaged Premises as required by the Loan Agreement and as may be reasonably requested (all such information and data to be prepared in accordance with generally accepted accounting principles or other accounting methods approved by Lender consistently applied), such information and data to be prepared and certified by independent public accountants satisfactory to Mortgagee if so requested by Mortgagee not more often than annually.

SECTION 17. SUBROGATION.

Mortgagor acknowledges and agrees that Mortgagee shall be subrogated to any lien discharged out of the proceeds of the loan evidenced by the Note or out of any advance by Mortgagee hereunder, irrespective of whether or not any such lien may have been released of record.

SECTION 18. EVENTS OF DEFAULT.

Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) the occurrence and continuance of an Event of Default as defined in the Loan Agreement or the other Loan Documents; or

(b) default for more than thirty (30) days in the observance or compliance with any terms or provisions of this Mortgage or the Note or of any other instrument or document securing the Note or relating thereto; *provided, however*, that if the curing of such default cannot be accomplished with due diligence within said 30-day period, Mortgagor commences to cure such default promptly after such receipt of notice thereof from Mortgagee and thereafter diligently and continuously prosecutes the cure of such default, and the extension of the period for effecting a cure will not result in any material impairment of the Mortgaged Premises, any portion thereof, the value thereof or the Mortgagee's lien thereon, then such period of 30 days shall be extended for such period as Mortgagor needs to cure the default; *provided further, however*, such extended cure period shall not be applicable to any default which may be cured by the payment of money, and the period for curing such default shall not extend beyond one hundred twenty (120) calendar days; or

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(c) any representation or warranty made by Mortgagor herein or in any other instrument or document securing the Note or relating thereto or in any statement or certificate furnished by it pursuant hereto or thereto proves to be untrue in any material respect as of the date of issuance or making thereof; or

(d) the Mortgaged Premises or any part thereof shall be sold, transferred, or conveyed, whether voluntarily or involuntarily, by operation of law or otherwise, except for sales intended to repay the indebtedness hereby secured in full or sales of obsolete, worn out or unusable fixtures or personal property which are concurrently replaced with similar fixtures or personal property at least equal in quality and condition to those sold and owned by Mortgagor free of any lien, charge or encumbrance other than the Permitted Exceptions; or

(e) any indebtedness secured by a lien or charge on the Mortgaged Premises or any part thereof is not paid when due or proceedings are commenced to foreclose or otherwise realize upon any such lien or charge or to have a receiver appointed for the property subject thereto or to place the holder of such indebtedness or its representative in possession thereof; or

(f) Mortgagor shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, which is not dismissed within ninety (90) days of the order for relief, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in part (i) hereof; or

(g) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for Mortgagor or any substantial part of any of its property, or a proceeding described in Section 18(f)(iv) shall be instituted against Mortgagor, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of forty-five (45) days; or

(h) any event occurs or condition exists which is specified as an event of default in any other instrument or document securing the Note or relating thereto; or

(i) any financial or other information submitted to the Mortgagee proves untrue in any material respect, which is not promptly corrected within five (5) days of the submission; or

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(j) the Mortgaged Premises is abandoned; *provided, however*, the Mortgaged Premises are vacant, and for the purposes hereof, remaining vacant shall not be considered an Event of Default hereunder.

For the purposes of this Mortgage, the Mortgaged Premises shall be deemed to have been sold, transferred or conveyed in the event that more than fifty percent of the equity interest in Mortgagor shall be sold, transferred or conveyed, whether voluntarily or involuntarily, subsequent to the date hereof whether in one or a series of related or unrelated transactions.

SECTION 19. REMEDIES.

When any Event of Default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument and of the adequacy of the security for the Note) and in addition to such other rights as may be available under applicable law, but subject at all times to any mandatory legal requirements:

(a) *Acceleration.* Mortgagee may, by written notice to Mortgagor, declare the Note and all unpaid indebtedness hereby secured, including any interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) *UCC.* Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the UCC, have all the rights, options and remedies of a secured party under the UCC, including, without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said UCC for reasonable notification shall be met by mailing written notice to Mortgagor at its address above set forth at least ten (10) days prior to the sale or other event for which such notice is required. The costs and expenses of retaking, selling, and otherwise disposing of said property, including attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional indebtedness hereby secured and shall be payable upon demand with interest at the interest rate applicable to the Note at the time the expense is incurred.

(c) *Foreclosure.* Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage.

(d) *Appointment of Receiver.* Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed of all or any part of the

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Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) *Taking Possession, Collecting Rents, Etc.* Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof, as permitted under applicable law, and manage, operate, insure, repair and improve the same and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Premises. Mortgagee may also take possession of, and for these purposes use, any and all personal property contained in the Mortgaged Premises and used in the operation, rental or leasing thereof or any part thereof. Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues and profits of the Mortgaged Premises or any part thereof (and for such purpose Mortgagor does hereby irrevocably constitute and appoint Mortgagee its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, Mortgagor irrevocably acknowledging that any payment made to Mortgagee hereunder shall be a good receipt and acquittance against Mortgagor to the extent so made) and to apply the same to the reduction of the indebtedness hereby secured. The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any receiver's fees, counsels' fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be so much additional indebtedness hereby secured which Mortgagor promises to pay upon demand together with interest at the rate applicable to the Note at the time such expenses are incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the rate applicable to the Note at the time such expenses are incurred.

SECTION 20. WAIVER OF RIGHT TO REDEEM FROM SALE.

Mortgagor shall not and will not apply for or avail itself of any stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the

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benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this Mortgage, the whole of the Mortgaged Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this Mortgage and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Note and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor hereby waives any and all rights of redemption prior to or from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

SECTION 21. COSTS AND EXPENSES OF FORECLOSURE.

In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, environmental auditors' fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, all of which expenditures shall become so much additional indebtedness hereby secured which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the rate applicable to the Note at the time of expenditure.

SECTION 22. APPLICATION OF PROCEEDS.

The proceeds of any foreclosure sale of the Mortgaged Premises or of any sale of property pursuant to Sections 19(b) and (c) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 19(b), (c) and 21 hereof; Second, to all other items which under the terms hereof constitute indebtedness hereby secured in addition to that evidenced by the Note with interest thereon as herein provided; Third, to all principal of and interest on the Note with any overplus to whomsoever Mortgagee shall reasonably determine to be lawfully entitled to the same.

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SECTION 23. DEFICIENCY DECREE.

If at any foreclosure proceeding the Mortgaged Premises shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall not be entitled to the entry of a deficiency decree against Mortgagor and against the property of Mortgagor for the amount of such deficiency. Notwithstanding anything herein contained to the contrary, Mortgagor, its members and its or their successors or assigns shall have no personal liability for any deficiency in the amount owed to Mortgagee, and Mortgagee shall look solely to the Mortgaged Premises for satisfaction of the indebted hereby secured or such other obligations secured by the Mortgage, the Loan Agreement, the Note and/or other Loan Documents.

SECTION 24. MORTGAGEE'S REMEDIES CUMULATIVE—NO WAIVER.

No remedy or right of Mortgagee shall be exclusive of but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute or otherwise. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

SECTION 25. MORTGAGEE PARTY TO SUITS

If Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee shall incur any costs or expenses in preparation for the commencement of any foreclosure proceedings or for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Mortgagor agrees to pay to Mortgagee, immediately and without demand, all reasonable costs, charges, expenses and attorneys' fees incurred by Mortgagee in any such case, and the same shall constitute so much additional indebtedness hereby secured payable upon demand with interest at the rate per annum applicable to the Note at the time of expenditure.

SECTION 26. MODIFICATIONS NOT TO AFFECT LIEN.

Mortgagee, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may in its discretion release any part of the Mortgaged Premises or any person liable for any of the indebtedness hereby secured, may extend the time of payment of any of the indebtedness hereby secured and may grant waivers or other indulgences with respect hereto and thereto, and may agree with Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the indebtedness hereby secured (including modifications in the rates of interest

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applicable thereto), without in any way affecting or impairing the liability of any party liable upon any of the indebtedness hereby secured or the priority of the lien of this Mortgage upon all of the Mortgaged Premises not expressly released, and any party acquiring any direct or indirect interest in the Mortgaged Premises shall take same subject to all of the provisions hereof.

SECTION 27. NOTICES.

Unless otherwise specified therein, all notices, requests, demands, consents, waivers and other communications to be given under any Loan Document shall be in writing and shall be served either personally, by deposit with a reputable overnight courier with the charges prepaid, by personal delivery, or by registered or certified United States mail, with return receipt required and with postage prepaid, addressed to Mortgagor or to Mortgagee at the address first written above or at such other address designated by such parties by notice to the others. Any such notices, requests, demands, consents, waivers or other communication shall be deemed to have been given upon delivery or on the date that acceptance of delivery is rejected except that any notice of change of address shall not be effective until actually received.

SECTION 28. ENVIRONMENTAL MATTERS.

(a) *Representations and Warranties.* Mortgagor represents and warrants that: (i) Mortgagor and the Mortgaged Premises comply in all material respects with all applicable Environmental Laws; (ii) Mortgagor has obtained all governmental approvals required for its operations and the Mortgaged Premises by any applicable Environmental Law; (iii) Mortgagor has not, and has no knowledge of any other person who has, caused any Release, threatened Release or disposal of any Hazardous Material at, on, about, or off the Mortgaged Premises in any material quantity and, to the knowledge of Mortgagor, the Mortgaged Premises is not adversely affected by any Release, threatened Release or disposal of a Hazardous Material originating or emanating from any other property; (iv) the Mortgaged Premises does not contain and to Mortgagor's knowledge has not contained any: (1) underground storage tank, (2) material amounts of asbestos-containing building material, (3) any landfills or dumps, (4) hazardous waste management facility as defined pursuant to RCRA or any comparable state law, or (5) site on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law; (v) Mortgagor has not used a material quantity of any Hazardous Material and has conducted no Hazardous Material Activity at the Mortgaged Premises; (vi) Mortgagor has no material liability for response or corrective action, natural resource damage or other harm pursuant to CERCLA, RCRA or any comparable state law; (vii) Mortgagor is not subject to, has no notice or knowledge of and is not required to give any notice of any Environmental Claim involving Mortgagor or the Mortgaged Premises, and there are no conditions or occurrences at the Mortgaged Premises which could reasonably be anticipated to form the basis for an Environmental Claim against Mortgagor or the Mortgaged Premises; (viii) the Mortgaged Premises is not subject to any, and Mortgagor has no knowledge of any imminent, restriction on the ownership, occupancy, use or transferability of the Mortgaged Premises in connection with any (1) Environmental Law or (2) Release, threatened Release or disposal of a Hazardous Material; and (ix) there are no conditions or circumstances at the Mortgaged Premises which pose an unreasonable risk to the environment or the health or safety of persons.

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(b) *Covenants.* Mortgagor shall at all times do the following: (i) comply in all material respects with, and maintain the Mortgaged Premises in compliance in all material respects with, all applicable Environmental Laws; (ii) require that each tenant and subtenant, if any, of the Mortgaged Premises or any part thereof comply in all material respects with all applicable Environmental Laws; (iii) obtain and maintain in full force and effect all material governmental approvals required by any applicable Environmental Law for operations at the Mortgaged Premises; (iv) cure any material violation by it or at the Mortgaged Premises of applicable Environmental Laws; (v) not allow the presence or operation at the Mortgaged Premises of any (1) landfill or dump or (2) hazardous waste management facility or solid waste disposal facility as defined pursuant to RCRA or any comparable state law; (vi) not manufacture, use, generate, transport, treat, store, release, dispose or handle any Hazardous Material at the Mortgaged Premises except in the ordinary course of its or any of its tenants' business; (vii) within ten (10) business days notify Mortgagee in writing of and provide any reasonably requested documents upon learning of any of the following in connection with Mortgagor or the Mortgaged Premises: (1) any material liability for response or corrective action, natural resource damage or other harm pursuant to CERCLA, RCRA or any comparable state law; (2) any material Environmental Claim; (3) any material violation of an Environmental Law or material Release, threatened Release or disposal of a Hazardous Material; (4) any restriction on the ownership, occupancy, use or transferability arising pursuant to any (x) Release, threatened Release or disposal of a Hazardous Substance or (y) Environmental Law; or (5) any environmental, natural resource, health or safety condition, which could reasonably be anticipated to have a Material Adverse Effect; (viii) conduct at its expense any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any material Release, threatened Release or disposal of a Hazardous Material as required by any applicable Environmental Law, (ix) abide by and observe any restrictions on the use of Mortgaged Premises imposed by any governmental authority as set forth in a deed or other instrument affecting Mortgagor's interest therein; (x) promptly provide or otherwise make available to Mortgagee any reasonably requested environmental record concerning the Mortgaged Premises which Mortgagor possesses or can reasonably obtain; (xi) perform, satisfy, and implement any operation or maintenance actions required by any governmental authority or Environmental Law, or included in any no further action letter or covenant not to sue issued by any governmental authority under any Environmental Law; and (xii) from time to time upon the reasonable written request of Mortgagee, timely provide at Mortgagor's expense a report of an environmental assessment of reasonable scope, form and depth (including, where appropriate, invasive soil or groundwater sampling) by a consultant reasonably acceptable to Mortgagee as to any matter for which notice is provided pursuant to the above requirements or which may reasonably be believed by Mortgagee to form the basis of a material Environmental Claim in connection with the Mortgaged Premises. If such a requested environmental report is not delivered within sixty (60) days after receipt of Mortgagee's request, then Mortgagee may arrange for the same, and Mortgagor hereby grants to Mortgagee and its representatives access to the Mortgaged Premises and a license to undertake such an assessment (including, where appropriate, invasive soil or groundwater sampling). The reasonable costs of any assessment arranged for by Mortgagee pursuant to this provision shall be payable by Mortgagor on demand and added to the indebtedness hereby secured.

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(c) Mortgagee reserves the right to conduct an environmental audit prior to foreclosing on the Mortgaged Premises. Mortgagee reserves the right to forbear from foreclosing in its own name if to do so may expose it to undue risk (in the Mortgagee's sole discretion). In the event that, following a foreclosure in respect to the Mortgaged Premises, the Mortgagee acquires title to any portion of such property or takes any managerial action of any kind in regard thereto in order to carry out any fiduciary or trust obligation for the benefit of another, which in the Mortgagee's sole discretion may cause the Mortgagee to be considered an "owner or operator" under the provisions of CERCLA or other applicable laws, or otherwise cause the Mortgagee to incur liability under CERCLA or any other federal, state or local law, the Mortgagee reserves the right, instead of taking such action, to assign its interests hereunder or to arrange for the transfer of the title or control of the asset to a court appointed receiver.

(d) Mortgagor hereby agrees to indemnify, defend (with counsel of the Indemnified Parties' choosing) and hold harmless Mortgagee and its assignees, shareholders, officers, directors, employees, agents, attorneys in fact, and affiliates (collectively, "*Indemnified Parties*") harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders judgments, remedial actions, requirements and enforcement actions of any kind and all costs and expenses incurred in connection therewith (including, without limitation, attorneys' fees and expenses), arising directly or indirectly, in whole or in part, from (A) the presence of hazardous substances on, under, or from the Mortgaged Premises, whether prior to or during the term hereof, (B) any activity carried on or undertaken in or off any of the Mortgaged Premises, whether prior to or during the term hereof, and whether by Mortgagor or any predecessor in title, employee, agent, contractor, or subcontractor of Mortgagor or any other person at any time occupying or present on the Mortgaged Premises, in connection with the handling, treatment, removal, storage, decontamination, clean up, transportation, or disposal of any hazardous substances at any time located or present on or under such Mortgaged Premises, or (C) any contamination of the Mortgaged Premises or natural resources arising in connection with the generation, use, handling, storage, transportation, or disposal of any hazardous substance by Mortgagor or any employee, agent, contractor, or subcontractor of Mortgagor while such persons are acting within the scope of their relationship with Mortgagor, irrespective of whether any such activities were or will be undertaken in accordance with applicable requirements of law, with the foregoing indemnity surviving satisfaction of the secured indebtedness, the termination of the Indenture and the release of the liens created hereby.

SECTION 29. DIRECT AND PRIMARY SECURITY; LIENS ABSOLUTE.

The lien and security interest herein created and provided for stand as direct and primary security for the Note as well as for any of the other indebtedness hereby secured. No application of any sums received by Mortgagee in respect of the Mortgaged Premises or any disposition thereof to the reduction of the indebtedness hereby secured or any part thereof shall in any manner entitle Mortgagor to any right, title or interest in or to the indebtedness hereby secured or any collateral or security therefor, whether by subrogation or otherwise, unless and until all indebtedness hereby secured has been fully paid and satisfied and all commitments of Mortgagee to extend credit to Mortgagor shall have expired. Mortgagor acknowledges and agrees that the lien and security interest hereby created and provided for are absolute and unconditional and

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shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee or any other holder of any of the indebtedness hereby secured, and without limiting the generality of the foregoing, the lien and security hereof shall not be impaired by any acceptance by Mortgagee or any other holder of any of the indebtedness hereby secured of any other security for or guarantors upon any of the indebtedness hereby secured or by any failure, neglect or omission on the part of Mortgagee or any other holder of any of the indebtedness hereby secured to realize upon or protect any of the indebtedness hereby secured or any collateral or security therefor. The lien and security interest hereof shall not in any manner be impaired or affected by (and Mortgagee, without notice to anyone, is hereby authorized to make from time to time) any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any of the indebtedness hereby secured, or of any collateral or security therefor, or of any guaranty thereof, or of any instrument or agreement setting forth the terms and conditions pertaining to any of the foregoing. In order to realize hereon and to exercise the rights granted Mortgagee hereby and under applicable law, there shall be no obligation on the part of Mortgagee or any other holder of any of the indebtedness hereby secured at any time to first resort for payment to any guaranty of any of the indebtedness hereby secured or any portion thereof or to resort to any other collateral, security, property, liens or any other rights or remedies whatsoever, and Mortgagee shall have the right to enforce this Mortgage irrespective of whether or not other proceedings or steps seeking resort to or realization upon or from any of the foregoing are pending.

SECTION 30. RECOVERY LIMITATION.

Notwithstanding anything in this Mortgage to the contrary, the right of recovery against Mortgagor under this Mortgage shall not exceed the lowest amount which would render Mortgagor's obligations under this Mortgage void or voidable under applicable law, including fraudulent conveyance law.

SECTION 31. GOVERNING LAW.

The creation of this Mortgage, the perfection of the lien and security interest in the Mortgaged Premises, and the rights and remedies of Mortgagee with respect to the Mortgaged Premises shall be governed by and construed in accordance with the internal laws of the State of Illinois without regard to principles of conflicts of law.

SECTION 32. ILLINOIS SPECIFIC PROVISIONS.

(a) *Waiver of Right of Redemption and Reinstatement.* Without limiting the generality of Section 20 hereof, the waiver by Mortgagor of its rights of redemption and reinstatement in such Section includes the waiver of such rights as provided under 735 ILCS § 5/15-1601 and 735 ILCS § 5/15-1602.

(b) *Business Loan Recital/Statutory Exemption.* (i) Mortgagor acknowledges and agrees that (i) the proceeds of the Loan will be used in conformance with subparagraph (1)(l) of

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Section 4 of “An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money,” approved May 24, 1879, as amended (815 ILCS § 205/4(1)(l)); (ii) the indebtedness secured hereby has been incurred by Mortgagor solely for business purposes of Mortgagor and/or Mortgagor’s investment or profit, as contemplated by said Section 4; (iii) the indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (iv) the secured indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et seq.*, and has been entered into solely for business purposes of Mortgagor and Mortgagor’s investment or profit, as contemplated by said section.

(ii) Without limiting the generality of anything contained herein, Mortgagor acknowledges and agrees that the transaction of which this Mortgage is part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201 (1992)) or residential real estate (as defined in 735 ILCS § 5/15-1219 (1992)).

(c) *Maximum Principal Amount.* This Mortgage shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. This Mortgage also secures any and all future obligations and indebtedness arising under or in connection with this Mortgage, which future obligations and indebtedness shall have the same priority as if all such future obligations and indebtedness were made on the date of execution hereof. Nothing in this Section 32 or in any other provision of this Mortgage shall be deemed an obligation on the part of the Mortgagee to make any future advances of any sort. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage shall secure (in addition to any Loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Mortgagee in connection with the indebtedness to be secured hereby and which are to be reimbursed by Mortgagor under the terms of this Mortgage; *provided, however*, that in no event shall the total amount of Loan proceeds disbursed plus such additional amounts exceed One Million Dollars (\$1,000,000.00).

(d) *Mortgagee in Possession.* In addition to any provision of the Mortgage authorizing Mortgagee to take or be placed in possession of the Mortgaged Premises, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with 735 ILCS §§ 5/15-1701 and 5/15-1702 of the Illinois Code of Civil Procedure, to be placed in possession of the Mortgaged Premises or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in the Mortgage, all powers, immunities, and duties as provided for in 735 ILCS §§ 5/15-1701 and 5/15-1703 of the Illinois Code of Civil Procedure.

(e) *Illinois Mortgage Foreclosure Act.* It is the express intention of Mortgagee and Mortgagor that the rights, remedies, powers and authorities conferred upon Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Illinois Code of Civil Procedure and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provisions in this Mortgage are deemed inconsistent with any provision in the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or

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render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Illinois Code of Civil Procedure.

(f) *Collateral Protection Act.* Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows:

Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or any of the other Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Premises or any other collateral for the indebtedness. This insurance may, but need not, protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Premises or any other collateral for the indebtedness. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by the Mortgage, the Loan Agreement or any of the other Loan Documents. If Mortgagee purchases insurance for the Mortgaged Premises or any other collateral for the indebtedness, Mortgagor will be responsible for the costs of that insurance, including interest in any other charge that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

If any conflict or inconsistency exists between the above provisions in this Section 32 and the remainder of this Mortgage, this Section 32 shall govern.

SECTION 33. PARTIAL INVALIDITY.

All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

SECTION 34. SUCCESSORS AND ASSIGNS.

Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not. If more than one party signs this instrument as Mortgagor, then the term "Mortgagor" as used herein shall mean all of such parties, jointly and severally.

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SECTION 35. HEADINGS.

The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

SECTION 36. CHANGES, ETC.

This instrument and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

[SIGNATURE PAGE TO FOLLOW]

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IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed and sealed the day and year first above written.

**ARCHES RETAIL DEVELOPMENT LLC, an
Illinois limited liability company**

By: *Joseph A. Williams*
Name: JOSEPH A. WILLIAMS
Its: Managing Member

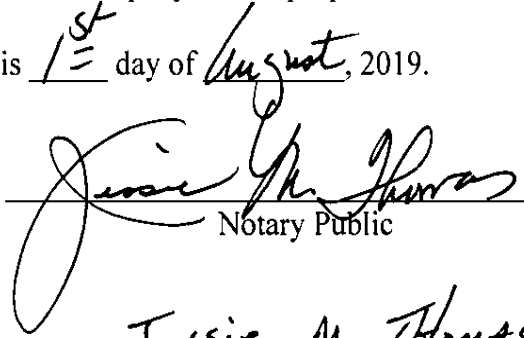
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STATE OF ILLINOIS)
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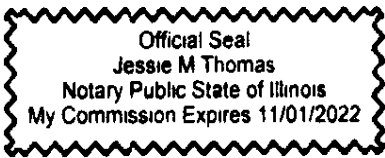
The undersigned, a Notary Public in and for said County in the State aforesaid, does hereby certify that Joseph A. Williams, as Managing Member of **ARCHES RETAIL DEVELOPMENT LLC**, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said company for the purposes therein set forth.

Given under my hand and notarial seal this 1st day of August, 2019.



Notary Public

(Notary Seal)



Jessie M. THOMAS

(Type or Print Name)

My Commission Expires:

November 1, 2022

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APPENDIX A

DEFINED TERMS

“*CERCLA*” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.*, and any future amendments.

“*Condemnation Awards*” shall have the meaning ascribed to it in Granting Clause IV hereof.

“*Environmental Claim*” means any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim (whether administrative, judicial or private in nature) arising (a) pursuant to, or in connection with an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Material, (c) from any abatement, removal, remedial, corrective or response action in connection with a Hazardous Material, Environmental Law or order of a governmental authority, or (d) from any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

“*Environmental Law*” means any current or future Legal Requirement pertaining to (a) the protection of health, safety and the indoor or outdoor environment, (b) the conservation, management or use of natural resources and wildlife, (c) the protection or use of surface water or groundwater, (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, unthreatened Release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Material, or (e) pollution (including any Release to air, land, surface water or groundwater), and any amendment, rule, regulation, order or directive issued thereunder.

“*Hazardous Material*” means any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or material which is hazardous or toxic, and includes, without limitation, (a) asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof) and (b) any material classified or regulated as “hazardous” or “toxic” or words of like import pursuant to an Environmental Law.

“*Hazardous Material Activity*” means any activity, event or occurrence involving a Hazardous Material, including, without limitation, the manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation, handling of or corrective or response action to any Hazardous Material.

“*indebtedness hereby secured*” shall have the meaning ascribed to it in the preambles.

“*Legal Requirement*” means any treaty, convention, statute, law, regulation, ordinance, license, permit, governmental approval, injunction, judgment, order, consent decree or other requirement of any governmental authority, whether federal, state, or local.

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"Loan Agreement" shall have the meaning ascribed to it in the preambles.

"Material Adverse Effect" means any change or effect that individually or in the aggregate is or is reasonably likely to be materially adverse to (a) the assets, business, operations, income, condition (financial or otherwise) or prospects of Mortgagor, (b) the lien of any mortgage, deed of trust or other security agreement covering the Mortgaged Premises or any part thereof, (c) the ability of Mortgagor to perform its obligations under this Mortgage or under any loan agreement, promissory note or any other instrument or document evidencing or securing any indebtedness hereby secured or setting forth terms and conditions applicable thereto or otherwise relating thereto, or (d) the condition or fair market value of the Mortgaged Premises.

"Moratorium Laws" shall have the meaning ascribed to it in Section 20 hereof.

"Mortgage" shall have the meaning ascribed to it in the opening paragraph.

"Mortgaged Premises" shall have the meaning ascribed to it in the preambles.

"Mortgagee" shall have the meaning ascribed to it in the opening paragraph.

"Mortgagor" shall have the meaning ascribed to it in the opening paragraph.

"Note" shall have the meaning ascribed to it in the preambles.

"Permitted Exceptions" shall have the meaning ascribed to it in Section 1 hereof.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 *et seq.*, and any future amendments.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migration, dumping, or disposing into the indoor or outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks or other receptacles containing or previously containing any Hazardous Material.

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SCHEDULE I

LEGAL DESCRIPTION

The land is described as follows:

PARCEL 1

LOT 1 IN OAKWOOD SHORES TERRACE SUBDIVISION BEING A SUBDIVISION OF PART OF LOT 66 IN ELLIS' EAST OR SECOND ADDITION TO CHICAGO, TOGETHER WITH THAT PART OF LOTS 6 TO 14, INCLUSIVE, IN ASSESSOR'S DIVISION OF LOTS 63, 64 AND 65 IN ELLIS' EAST OR SECOND ADDITION TO CHICAGO, TAKEN AS A TRACT, IN THE SOUTHEAST QUARTER OF SECTION 34 AND FRACTIONAL SECTION 36, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MAY 8, 2014 AS DOCUMENT NUMBER 1412829051.

PARCEL 2

A PERPETUAL, NON-EXCLUSIVE EASEMENT FOR CONSTRUCTION AND USE OF A SHARED PARKING LOT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CREATED BY AND DESCRIBED AND DEFINED IN SHARED PARKING LOT AGREEMENT MADE BY AND BETWEEN THE BOARD OF EDUCATION OF THE CITY OF CHICAGO, THE PUBLIC BUILDING COMMISSION OF CHICAGO, OAKWOOD SHORES TERRACE ASSOCIATES LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP, AND ARCHES RETAIL DEVELOPMENT, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, DATED AS OF MARCH 7, 2012 AND RECORDED MARCH 9, 2012 AS DOCUMENT 1206945086, ON, OVER, ACROSS AND UNDER THE PREMISES DESCRIBED AS FOLLOWS:

THAT PART OF LOTS 4, 5, 6, 14 AND 15 TAKEN AS A TRACT, IN ASSESSOR'S DIVISION OF LOTS 63, 64 AND 65 IN ELLIS' EAST OR SECOND ADDITION TO CHICAGO, IN THE SOUTHEAST QUARTER OF SECTION 34 AND FRACTIONAL SECTION 35, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF EAST 38TH STREET, BEING ALSO THE NORTH LINE OF MADDEN WELLS SUBDIVISION, WITH THE EAST LINE OF THE 80 FOOT WIDE SOUTH COTTAGE GROVE AVENUE; THENCE NORTH 69 DEGREES 56 MINUTES 33 SECONDS EAST, ALONG THE NORTH LINE OF EAST 38TH STREET, AFORESAID, 260.00 FEET; THENCE NORTH 19 DEGREES 58 MINUTES 00 SECONDS WEST, 196.58 FEET; THENCE NORTH 69 DEGREES 56 MINUTES 33 SECONDS EAST, 78.39 FEET TO THE WEST LINE OF THE 66 FOOT WIDE SOUTH ELLIS AVENUE; THENCE NORTH 22 DEGREES 04 MINUTES 47 SECONDS WEST, ALONG THE WEST LINE OF SOUTH ELLIS AVENUE, AFORESAID, 20.66 FEET TO THE SOUTHEAST CORNER OF SAID LOT 6; THENCE NORTH 22

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DEGREES 04 MINUTES 47 SECONDS WEST, ALONG THE WEST LINE OF SOUTH ELLIS AVENUE, AFORESAID, 3.36 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 69 DEGREES 56 MINUTES 33 SECONDS WEST, 337.50 FEET TO THE EAST LINE OF SOUTH COTTAGE GROVE AVENUE, AFORESAID; THENCE NORTH 19 DEGREES 58 MINUTES 00 SECONDS WEST, ALONG THE EAST LINE OF SOUTH COTTAGE GROVE AVENUE, AFORESAID, 53.92 FEET; THENCE NORTH 69 DEGREES 56 MINUTES 33 SECONDS EAST, 203.00 FEET; THENCE SOUTH 20 DEGREES 03 MINUTES 27 SECONDS EAST, 40.30 FEET; THENCE NORTH 69 DEGREES 56 MINUTES 33 SECONDS EAST, 133.42 FEET TO THE WEST LINE OF SOUTH ELLIS AVENUE; THENCE SOUTH 24 DEGREES 31 MINUTES 02 SECONDS EAST, ALONG SAID WEST LINE, 7.50 FEET; THENCE SOUTH 22 DEGREES 04 MINUTES 47 SECONDS EAST, ALONG SAID WEST LINE, 11.55 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3

PERPETUAL, NON-EXCLUSIVE EASEMENTS FOR SUPPORT; INGRESS AND EGRESS; USE, MAINTENANCE, REPAIR AND REPLACEMENT OF RETAIL PROJECT FACILITIES AND SHARED AREAS AND FACILITIES; USE OF MIXED USE PROJECT PARKING SPACES; AND ENCROACHMENTS, APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 CREATED BY AND DESCRIBED AND DEFINED IN RECIPROCAL EASEMENT AND OPERATING AGREEMENT MADE BY AND BETWEEN OAKWOOD SHORES TERRACE ASSOCIATES LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP, AND ARCHES RETAIL DEVELOPMENT, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, DATED AS OF MARCH 7, 2012 AND RECORDED MARCH 9, 2012 AS DOCUMENT 1206645085, IN, ON, OVER, UNDER AND ACROSS THE PREMISES DESCRIBED AS FOLLOWS:

LOT 2 IN OAKWOOD SHORES TERRACE SUBDIVISION BEING A SUBDIVISION OF PART OF LOT 66 IN ELLIS' EAST OR SECOND ADDITION TO CHICAGO, TOGETHER WITH THAT PART OF LOTS 6 TO 14, INCLUSIVE, IN ASSESSOR'S DIVISION OF LOTS 63, 64 AND 65 IN ELLIS' EAST OR SECOND ADDITION TO CHICAGO, TAKEN AS A TRACT, IN THE SOUTHEAST QUARTER OF SECTION 34 AND FRACTIONAL SECTION 36, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MAY 8, 2014 AS DOCUMENT NUMBER 1412829051.

PROPERTY INDEX NUMBER: 17-34-421-102-0000

COMMONLY KNOWN AS: 3753-55 SOUTH COTTAGE GROVE AVENUE, CHICAGO, ILLINOIS 60653

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SCHEDULE II

PERMITTED EXCEPTIONS

The exceptions set forth on Schedule B to that certain Commitment for Title Insurance issued by Near North National Title LLC, as commitment number IL1905653.

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**COOK COUNTY
RECORDER OF DEEDS**