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THIS DOCUMENT PREPARED BY AND
WHEN RECORDED RETURN TO:

Arent Fox LLP
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Washington, DC 20006
Attention: David Martin, Esq.



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Doc# 1922806176 Fee \$88.00

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EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 08/16/2019 04:17 PM PG: 1 OF 24

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AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Instrument") is made as of August 15, 2019, by **MONROE OFFICE LLC**, a Delaware limited liability company ("**Borrower**"), having its principal place of business at 1290 Avenue of Americas, Suite 914, New York, New York 10104, for the benefit of **PACIFIC WESTERN BANK**, a California state-chartered bank (together with its successors and assigns, as the "**Lender**"), with an address at 5404 Wisconsin Avenue, 2nd Floor, Chevy Chase, Maryland 20815.

RECITALS

A. WHEREAS, Borrower and Lender are parties to that certain Loan Agreement dated September 12, 2018 (collectively, as the same may be further modified, amended or restated from time to time, being hereafter referred to as the "**Loan Agreement**"), pursuant to which Lender made a loan to Borrower in the original maximum principal amount of TWENTY-SEVEN MILLION SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS (\$27,700,000.00) (the "**Original Loan**").

B. WHEREAS, in order to secure the payment of indebtedness evidenced by the Note, Borrower executed that certain Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, from Borrower to Lender, dated as of September 18, 2018, and recorded as document number 1825745034 in the land records of Cook County, Illinois (the "**Original Mortgage**").

C. WHEREAS, Borrower has entered into that certain Purchase and Sale Agreement dated June 6, 2019, with Ground Lessor to purchase the fee interest in the Property (the "**Fee Purchase**").

D. WHEREAS, Borrower is requesting that Lender reallocate the unfunded portions of the Loan to, among other things, facilitate the Fee Purchase.

E. WHEREAS, Lender is willing to accommodate such requests, subject to the terms and conditions set forth in that certain First Amendment to Loan Agreement and Omnibus Amendment to Loan Documents (the "**First Amendment**"), which, among other things, reduced the maximum principal amount of the Original Loan to TWENTY-TWO MILLION AND 00/100 DOLLARS (\$22,000,000) (the "**Loan**").

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G. WHEREAS, a condition to Lender consenting to the Fee Purchase is the execution and delivery of this Instrument by Borrower.

AGREEMENT

1. **DEFINITIONS; RECITALS.** Certain terms used in this Instrument are defined below and certain other terms used in this Instrument are defined elsewhere in this Instrument. All capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Loan Agreement. All recitals to this Instrument are hereby incorporated by reference as if expressly set forth herein. The defined terms below shall have the following meanings:

“**Determination Date**” has the meaning given to such term in Section 9.11 of this Instrument.

“**Fixtures**” has the meaning given to such term in the definition of “Mortgaged Property”.

“**IMFL**” means the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as amended from time to time.

“**Improvements**” has the meaning given to such term in the definition of “Mortgaged Property.”

“**Indebtedness**” has the meaning given to such term in Section 3.1 of this Instrument.

“**Leases**” means all leases, licenses, concessions, tenancies, occupancy agreements and other agreements entered into by or on behalf of Borrower (or any predecessor of Borrower, to the extent Borrower or the Mortgaged Property (hereinafter defined) remain subject thereto), whether made before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. § 101 et seq., as the same may be amended from time to time (the “Bankruptcy Code”), demising, leasing or granting rights of possession or use of all or any portion of the Mortgaged Property, together with all modifications, extensions or renewals thereof now existing or hereafter permitted under the Loan Documents.

“**Loan Documents**” means this Instrument, the Loan Agreement, the Note, and all other documents and instruments now and hereafter evidencing or securing the Loan or the obligations secured by this Instrument, as amended, supplemented or otherwise modified from time to time.

“**Mortgaged Property**” means all of Borrower's right, title and interest in the real property described in **Exhibit A**, attached hereto and incorporated herein by reference, together with all buildings and other improvements (collectively, the “**Improvements**”) now or hereafter located thereon, and any and all right, title or interest in any other real property or improvements comprised in such real property, which right, title or interest is acquired by Borrower after the date of this Instrument (such real property, buildings, other Improvements and after-acquired interest being hereinafter collectively referred to as the “**Real Property**”); the Personal Property; all development rights transferred or appurtenant to the Real Property, all easements and other rights now or hereafter made appurtenant to the Real Property; all additions and accretions to the

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Real Property; all fixtures, machinery, equipment, and appliances at any time attached to, or located in or on the Real Property in which Borrower has an interest (collectively, the “**Fixtures**”); all rights in or to existing or future streets or public places; all existing and future minerals, oil, gas and other hydrocarbon substances upon, under or through the Real Property; all water and water rights, pumps and pumping plants, and existing and future water stock relating thereto; all existing and future shares of stock that evidence (or other evidence of) ownership of any part of the foregoing property and all intangible property and rights relating to the foregoing property, or the operation thereof or used in connection therewith, including all options, sales contracts and rights of first refusal of any nature whatsoever, covering all or any portion of such property, together with any deposits or other payments made in connection therewith, existing and future development rights, permits and approvals, air rights and other similar land use permits, approvals or entitlements; and all proceeds of any of the foregoing. Any reference in this Instrument to the “**Mortgaged Property**” shall mean the Mortgaged Property described in this Section, any part thereof, or an interest therein.

“**Obligations**” has the meaning given to such term in Section 3 of this Instrument.

“**Other Obligations**” has the meaning given to such term in Section 3.2 of this Instrument.

“**Personal Property**” means all “Accounts”, “Cash proceeds”, “Chattel paper”, “Collateral”, “Commercial tort claims”, “Deposit accounts”, “Documents”, “Electronic chattel paper”, “Equipment”, “Fixtures”, “General intangibles”, “Goods”, “Instruments”, “Inventory”, “Investment property”, “Letter-of-credit rights”, “Noncash proceeds”, “Payment intangibles”, “Proceeds”, “Software”, “Supporting Obligations”, and “Tangible chattel paper”, as defined in the Uniform Commercial Code, in which Borrower has any interest, whether currently owned or hereafter acquired, including but not limited to all such property relating to, generated from, arising out of or incidental to the ownership, development, use or operation of the Real Property (whether or not subsequently removed from the Real Property (other than that portion of the Mortgaged Property consisting of the Real Property)), including, without limitation, all of the following relating to, generated from, arising out of or incidental to the ownership, development, use or operation of such Real Property: (i) machinery and tools; (ii) rugs, carpets and other floor coverings; (iii) draperies and drapery rods and brackets, awnings, window shades, venetian blinds and curtains; (iv) lamps, chandeliers and other lighting fixtures; (v) office maintenance and other supplies; (vi) apparatus, appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment; (vii) potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, conduits, compressors, brackets, electrical signs, bulbs, bells, fuel, conveyors, cabinets, lockers, shelving, dishwashers, garbage disposals, washers and dryers; (viii) rights, royalties, Rents, security deposits, advance rentals, revenues, profits and benefits, credit card receipts collected from tenants, license, lease, sublease and concession fees and rentals, service charges, vending machine sales and any other items of revenue, receipts and/or income; (ix) Leases, lease guarantees, contracts, contract rights, franchise agreements, licenses, permits and certificates; (x) deposits, funds, money and deposit accounts; (xi) tenements, hereditaments and appurtenances; (xii) approvals and parcel maps (whether tentative or final), building permits and certificates of

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occupancy; (xiii) names under or by which the Mortgaged Property or any of the Improvements may at any time be operated or known and rights to carry on business under any such names or any variant thereof; (xiv) trademarks, other intellectual property and good will; (xv) management agreements, service contracts, supply contracts or other contracts or agreements; (xvi) warranties; (xvii) water stock; (xviii) shares of stock or other evidence of ownership of any part of the Mortgaged Property or Improvements that is owned by Borrower in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing, maintaining or operating any part of the Mortgaged Property or Improvements; (xix) plans and specifications prepared for construction of Improvements on the Mortgaged Property, or any part thereof, and studies, data and drawings related thereto, including, without limitation, studies, data or reports relating to toxic or hazardous wastes or materials located on the Mortgaged Property, all environmental audits, studies and reports, approvals and agreements, and contracts and agreements of Borrower relating to the aforesaid plans and specifications or to the aforesaid studies, data, reports and drawings or to the construction of Improvements on the Mortgaged Property; (xx) sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into respecting the sale to any purchasers of any part of the Mortgaged Property and other proceeds of the sale thereof; (xxi) damages, royalties and revenue of every kind, nature and description whatsoever that Borrower may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Mortgaged Property; (xxii) deposits made with or other security given to utility companies by Borrower with respect to the Mortgaged Property and/or Improvements; (xxiii) advance payments of insurance premiums made by Borrower with respect to, and all claims or demands with respect to, insurance; (xxiv) negotiable certificates of deposit of Borrower in Lender's possession and all accounts of Borrower maintained with Lender and each deposit account of Borrower assigned or pledged to Lender pursuant to any agreement; (xxv) insurance proceeds (including insurance proceeds for insurance not required under the terms of this Instrument); (xxvi) condemnation awards; (xxvii) causes of action, claims, compensation, awards and recoveries for any damage or injury to the Mortgaged Property and/or Improvements or for any loss or diminution in value of the Mortgaged Property and/or Improvements; (xxviii) books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof; (xxix) guaranties of and security for any of the foregoing; (xxx) all reserve, deposit and impound accounts including without limitation the Reserves (as defined in the Loan Agreement) and all Loan accounts established pursuant to the Loan Agreement either as reserves or accounts for the Loan; (xxxi) all substitutions, renewals, improvements, attachments, accessions, additions and replacements to any of the foregoing; and (xxxii) all "Proceeds" (as such term is defined in the Uniform Commercial Code), collections, insurance proceeds and products of any of the property listed in (i) through (xxxi) above, proceeds of any voluntary or involuntary disposition or claim respecting any part thereof (pursuant to judgment, condemnation award or otherwise) and all documents, instruments, general intangibles, goods, equipment, inventory, chattel paper, monies, accounts, deposit accounts and other personal property that may arise from the sale or disposition of any of the foregoing, all guaranties of and security for any of the foregoing, and all books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof, relating to any of the foregoing. Notwithstanding the foregoing to the contrary, Personal Property excludes any removable

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personal property owned by any occupant or tenant of such Real Property other than Borrower.

“**Real Property**” has the meaning given to such term in the definition of Mortgaged Property.

“**Rents**” means all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or any of its Affiliates, or any of their agents or employees, from any and all sources arising from or attributable to the Mortgaged Property, including all credit card receipts collected from tenants, parking charges, and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Mortgaged Property, service charges, vending machine sales, laundry charges and any other items of revenue, receipts and/or income and proceeds, if any, from business interruption or other loss of income insurance, whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code.

“**Uniform Commercial Code**” means the Uniform Commercial Code as enacted in the State of Illinois, as amended from time to time.

2. **GRANT**. Borrower hereby irrevocably and unconditionally mortgages, warrants, grants, conveys, transfers, assigns, remises, releases, and sets over to Lender, its successors and assigns, all present and future rights, titles, interests, estates, powers and privileges that Borrower now has or may hereafter acquire in the Mortgaged Property, as ground lessee or otherwise and any interest therein, together with all right to possession of the Mortgaged Property after the occurrence and during the continuance of any Event of Default. Borrower hereby releases and waives all rights, if any, under and by virtue of the homestead exemption laws of the State of Illinois. TO HAVE AND TO HOLD the Mortgaged Property unto Lender, forever, and Borrower does hereby bind itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Lender against every person lawfully claiming the same or any part thereof; provided, however, that if Borrower shall pay (or cause to be paid) the Obligations as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations on or before the date same are to be performed and discharged, then the liens, security interests, estates, and rights granted by the Loan Documents shall terminate in accordance with the provisions hereof; otherwise the same shall remain in full force and effect. A certificate or other written statement executed on behalf of Lender confirming that the Obligations have not been fully paid, performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

3. **OBLIGATIONS SECURED**. Borrower makes the foregoing grant and assignment for the purpose of securing the following in such order of priority as Lender may determine (the “**Obligations**”):

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3.1 Payment of Loan. Payment to Lender of all present and future indebtedness evidenced by or arising under the Note or the Loan Agreement with respect to the Loan, or under any other Loan Document, together with interest thereon and all other sums due to Lender in respect of the Loan under any Loan Document (including sums added to the principal balance of the Loan in accordance with the terms of any Loan Document, all Protective Advances, Prepayment Premiums, Past Due Charges, and all other charges, fees, costs and expenses payable pursuant any Loan Document) (collectively, the “**Indebtedness**”); and

3.2 Performance Under Loan Documents. Performance by Borrower and the other Borrower Parties of their respective obligations (other than the payment of the Indebtedness) under the Loan Documents or under any Bank Products Agreement to which they are a party (the “**Other Obligations**”)

3.3 Additional Advances. The Loan Agreement contemplates future advances. This Instrument shall also secure any future or additional advances made under the Note, the Loan Agreement or the other Loan Documents.

4. ASSIGNMENT OF LEASES AND RENTS. As further described in that certain Assignment of Leases and Rents by Borrower to Lender dated of even date herewith, Borrower absolutely and unconditionally grants, transfers, sets over and assigns to Lender all of Borrower’s right, title and interest in the Leases and the Rents. Notwithstanding the foregoing and so long as there is no continuing Event of Default, Borrower shall have the right to collect Rents which shall be applied as provided in the Loan Agreement; provided, however, that Borrower shall not, without Lender’s approval, collect Rents from Tenants more than thirty (30) days in advance of the time when the same shall become due except for bona fide security deposits that are not in excess of an amount equal to thirty (30) days of such Tenant’s Rent.

5. SECURITY AGREEMENT; FIXTURE FILING.

5.1 Grant of Security Interest. Borrower hereby grants to Lender a security interest in the Personal Property to secure all of the Obligations. Borrower acknowledges that some of the Mortgaged Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. This Instrument constitutes a security agreement with respect to all personal property in which Lender is granted a security interest hereunder and Lender shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Notwithstanding anything to the contrary contained in this Instrument or any of the Loan Documents, any distributions made by Borrower to its members in compliance with the Loan Documents shall be made free and clear of any lien and shall not constitute Collateral, proceeds or otherwise be subject to the terms of this Instrument or any of the Loan Documents.

5.2 Perfection. Borrower will execute, acknowledge, deliver and cause to be recorded or filed, in the manner and place required by any present or future law, any instrument that may be requested by Lender to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Instrument or the interest of Lender in the Mortgaged Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar

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character, and Borrower shall pay or cause to be paid the costs thereof in accordance with the Loan Agreement. Borrower hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. During the continuance of an Event of Default, Borrower hereby irrevocably constitutes and appoints Lender as the attorney-in-fact of Borrower, coupled with an interest, to execute, deliver and, if appropriate, file with the appropriate filing officer or office any such instruments if Borrower should fail to do so within ten (10) days of written demand by Lender. In addition, Borrower hereby authorizes Lender to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Borrower.

5.3 Place of Business. Borrower maintains a place of business, as set forth as the address of Borrower in Section 8.1 below, and Borrower will notify Lender in writing of any change in its place of business within ten (10) days of such change. Borrower is organized under the laws of the State of Delaware.

5.4 Fixtures. This Instrument is also to be recorded as a "fixture filing" in accordance with Uniform Commercial Code Section 9-502 and covers goods that are or are to become Fixtures. The mailing address of Borrower, as debtor under the Uniform Commercial Code, and Lender, as secured party under the Uniform Commercial Code, respectively, are set forth in the opening paragraph of this Instrument.

6. COVENANTS. Borrower covenants and agrees that:

6.1 Performance of Obligations. Borrower shall promptly pay when due the Indebtedness and shall perform and comply with in a timely manner all Other Obligations in accordance with the applicable Loan Documents.

6.2 Incorporation by Reference. All the covenants, conditions and agreements contained in the Loan Agreement and all and any of the other Loan Documents, are hereby made a part of this Instrument to the same extent and with the same force as if fully set forth herein. In the event of any inconsistency between the provisions of this Instrument or any of the other Loan Documents and the provisions of the Loan Agreement, the provisions of the Loan Agreement shall control.

6.3 Insurance. Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Mortgaged Property as required pursuant to the Loan Agreement.

6.4 Maintenance of Mortgaged Property. Borrower shall cause the Mortgaged Property to be maintained in accordance with the Loan Agreement. The Improvements, the Fixtures and the Personal Property shall not be removed, demolished or materially altered without the consent of Lender, except as expressly provided in the Loan Agreement. Subject to the terms and conditions of the Loan Agreement, Borrower shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be destroyed by any casualty or become damaged, worn or dilapidated or which may be affected by any condemnation.

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6.5 Change of Name, Identity or Structure. Except as may be permitted under the terms and conditions of the Loan Agreement, Borrower shall not change Borrower's name, identity (including its trade name or names) or its corporate, partnership or other structure. Borrower hereby authorizes, prior to or contemporaneously with the effective date of any change in Borrower's name or identity (including its trade name or names), any financing statement or amendment to financing statement required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the written request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Mortgaged Property, and representing and warranting that Borrower does business under no other trade name. In addition, in the event the instrument conveying title to Borrower in and to any portion of the Mortgaged Property contains an error in the name of Borrower, upon written request of Lender, Borrower agrees to execute and record, within thirty (30) calendar days following written request from Lender, any documents reasonably requested by Lender to clarify or correct Borrower's name in the real property records of the county in which such portion of the Mortgaged Property is located. In the event Borrower shall fail to execute and record any such documents within the time period set forth in the preceding sentence, Borrower hereby grants Lender permission to file a corrective instrument in the county records where such portion of the Mortgaged Property is situated reflecting Borrower's correct name in accordance with applicable law, and further grants Lender a limited power of attorney coupled with an interest to execute on Borrower's behalf, in Borrower's name, and/or record in the real property records, any corrective instrument relating to Borrower's name.

7. DEFAULT PROVISIONS.

7.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, and in addition to such other rights (but subject to any mandatory legal requirements) as may be available under any other Loan Document or under applicable law:

7.1.1 Acceleration. Lender may declare the Indebtedness 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.

7.1.2 Uniform Commercial Code. Lender shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the Uniform Commercial Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of the Uniform Commercial Code for reasonable notification shall be met by mailing written notice to Borrower at its address set forth in Section 8.1 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Personal Property, may be sold as a single parcel if Lender elects. Borrower hereby agrees that if Lender demands or attempts to take possession of the Personal Property or any portion thereof in exercise of its rights and remedies hereunder, Borrower will promptly turn over and deliver possession thereof to Lender, and Borrower authorizes, to the extent Borrower may now or hereafter lawfully grant such authority and subject to the rights of tenants under their Leases, Lender, its

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employees and agents, and potential bidders or purchasers to enter upon the Real Property or any other office, building or property where the Personal Property or any portion thereof may at the time be located (or believed to be located) and Lender may, subject to the rights of tenants under their Leases, and in each case, in a commercially reasonable manner, (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Real Property and sell, convey or transfer the same. The actual, reasonable expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute additional Obligations hereunder and shall be payable within thirty (30) days after written demand, with interest thereon at the Default Rate until paid pursuant to the terms and conditions of the Loan Documents.

7.1.3 Termination of License. Lender may terminate Borrower's right and license to collect the Rents (provided, however, in the event such Event of Default shall no longer exist, said license shall automatically be reinstated to Borrower), and either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property or any part thereof and do any acts which it deems reasonably necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or any part thereof or interest therein, make, modify, enforce, cancel or accept the surrender of any Lease, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, without limitation, reasonable attorneys' fees, upon any indebtedness secured hereby, all in such order as Lender may reasonably determine. The entering upon and taking possession of all or any portion of the Mortgaged Property, the collection of such Rents and the application thereof as aforesaid, or any of such acts, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Mortgaged Property or the collection, receipt and application of Rents, Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon the occurrence of any Event of Default. Failure of Lender at any time, or from time to time, to collect the Rents shall not in any manner affect the subsequent enforcement of Lender of the right to collect the same.

7.1.4 Judicial Foreclosure of Mortgage. Lender may commence an action to foreclose this Instrument as a mortgage, or specifically enforce any of the covenants hereof.

7.1.5 Foreclosure. Lender may foreclose the lien hereof and/or exercise any right, power or remedy provided in this Instrument or any of the other Loan Documents in accordance with the IMFL. In the event of a foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the

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purchaser at such sale or to take such other steps as Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies. In any suit to foreclose the lien hereof, to the extent permitted by law, 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 Lender for appraisers' fees, reasonable attorneys' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Borrower's obligations hereunder, the protection of the Mortgaged Property and the maintenance of the lien of this Instrument, including the reasonable fees of any attorney employed by Lender in any litigation or proceeding affecting this Instrument, the Note, or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be due and payable by Borrower within ten (10) Business Days after written demand from Lender, with interest thereon until paid at the Default Rate and shall be secured by this Instrument.

(a) In the event foreclosure proceedings are filed by Lender, all expenses incident to such proceeding, including, but not limited to, reasonable attorneys' fees and costs, shall be paid by Borrower and secured by this Instrument and by all of the other Loan Documents securing all or any part of the Obligations. The Obligations secured by this Instrument, including, without limitation, interest at a per annum rate equal to the Default Rate, any prepayment charge, fee or premium required to be paid under the Loan Agreement in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Lender under the Loan Documents, may be bid by Lender in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Lender or its assigns may become the purchaser of the Mortgaged Property or any portion thereof.

(b) Lender may, by following the procedures and satisfying the requirements prescribed by applicable law, foreclose on only a portion of the Mortgaged Property and, in such event, said foreclosure shall not affect the lien of this Instrument on the remaining portion of the Mortgaged Property foreclosed.

(c) Upon sale of the Mortgaged Property at any foreclosure, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Obligations. In determining such credit bid, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Mortgaged Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Mortgaged Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Mortgaged Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to

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carry the Mortgaged Property prior to resale, costs of resale (e.g. commissions, reasonable attorneys' fees, and taxes), costs of any hazardous substances, clean up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Mortgaged Property; (iv) the fact of additional collateral, for the Obligations; and (v) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Borrower acknowledges and agrees that: (A) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (B) this paragraph does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (C) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Borrower and Lender; and (D) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Mortgaged Property.

7.1.6 Personal Property. The remedies in this Section 7 are available under and governed by the real property laws of Illinois and are not governed by the personal property laws of Illinois.

7.1.7 Appointment of Receiver. To the extent permitted by applicable law, Lender shall, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Borrower or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to applicable law of all or any part of the Mortgaged Property and the Rents, with such power as the court making such appointment shall confer, and Borrower 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 Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Borrower or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all Rents 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. Borrower agrees to promptly deliver to any such receiver all Leases, Rents, documents, financial data and other information requested by such receiver in connection with the Mortgaged Property and, without limiting the foregoing, Borrower hereby authorizes Lender to deliver to any such receiver any or all of the Leases, Rents, documents, data and information in Lender's possession relating to the Mortgaged Property.

7.1.8 Taking Possession, Collecting Rents, Etc. Upon written demand by Lender, Borrower shall surrender to Lender and Lender may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as "mortgagee in possession" or receiver as provided by applicable law, and Lender, in its discretion, personally, by its agents or attorneys or pursuant to court order as "mortgagee in possession" or receiver as provided by applicable law may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Borrower relating thereto, and may exclude Borrower and any agents and servants thereof wholly

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therefrom and may, on behalf of Borrower, or in its own name as Lender and under the powers herein granted exercised in a commercially reasonable manner:

(a) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the Rents of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Borrower;

(b) cancel or terminate any Lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;

(c) elect to disaffirm any Lease or sublease of all or any part of the Mortgaged Property made subsequent to this Instrument in violation of the Loan Agreement;

(d) extend or modify any then existing Leases and make new Leases of all or any part of the Mortgaged Property, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(e) make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Lender, to insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all Rents therefrom;

(f) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of taxes, premiums and other charges applicable to the Mortgaged Property, or in reduction of the Obligations in such order and manner as Lender shall select; and

(g) receive and collect the Rents personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and Borrower agrees to consent to a receiver if this is believed necessary or desirable by Lender to enforce its rights under this subsection. The collection of Rents by Lender shall in no way waive the right of the Lender to foreclose this Instrument in the event of any said Event of Default.

Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any Personal Property

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therein, to manage, operate, conserve and improve the same, and to collect the Rents, shall be in addition to all other rights or remedies of Lender hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Borrower promises to pay within ten (10) days after written demand, together with interest thereon at the Default Rate until paid. Lender shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any Rents actually received by Lender. Without taking possession of the Mortgaged Property, Lender may, in the event the Mortgaged Property becomes vacant or is abandoned and there is a continuing Event of Default, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute additional Obligations payable within ten (10) days after written demand, with interest thereon at the Default Rate until paid.

The remedies in this Section 7.1.8 are in addition to other remedies available to Lender and the exercise of the remedies in this subsection shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to Lender.

7.1.9 Exercise Other Rights and Remedies. To exercise or invoke any and all other rights and remedies as may be available to Lender now or hereafter at law or in equity.

7.1.10 Indemnity. Borrower hereby agrees to indemnify, defend, protect and hold harmless Lender and their employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, lease or consumption of any of the Mortgaged Property, or any part thereof, or as a result of the Lender seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property, except from such liabilities, claims or obligations that result from the gross negligence or willful misconduct of Lender, its employees, officers or agents, as determined in a non-appealable ruling of a court of competent jurisdiction. In no event, shall Borrower be obligated to indemnify Lender, its employees, officers or agents with respect to any matters first arising from and after the date on which Lender or any Lender acquires title and has assumed possession and control of the Mortgaged Property through power of sale, foreclosure of deed in lieu of foreclosure or otherwise (the "**Transfer Date**"); provided, however, that Borrower shall bear the burden of proof that such matter (A) resulted from an act or omission that occurred subsequent to the Transfer Date; (B) did not occur as a result of any action of any Borrower Party or Affiliate in, on under or near the Mortgaged Property; and (C) did not occur as a result of any conditions which occurred prior to the Transfer Date.

To the extent permitted by law, no action taken, or right or remedy invoked, by Lender under this Section 7.1 including the appointment of a receiver for the Mortgaged Property, or the entry into possession of the Mortgaged Property, or any part thereof, by such receiver, or otherwise, shall be deemed to make Lender a "mortgagee in possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property, or the use, occupancy, enjoyment or operation of all or any part thereof. In no event shall Lender be required to accept a

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cure of any default beyond the applicable grace, notice and cure periods provided in the Loan Documents, if any, notwithstanding any statement or provision to the effect that rights or remedies are available while an Event of Default “exists”, “continues” or is “outstanding”, or during the “existence” or “continuation” of an Event of Default (or any similar statement or provision) in any of the Loan Documents, or anything else in the Loan Documents.

7.2 Payment of Costs, Expenses and Attorneys' Fees. All reasonable costs and expenses actually incurred by Lender pursuant to this Section 7 (including court costs and reasonable paralegals' and attorneys' fees and costs of both in house and outside counsel, incurred before and at trial, at all tribunal levels, whether or not suit is instituted, and in any bankruptcy proceedings, including, without limitation, reasonable paralegals' and attorneys' fees and costs of both in house and outside counsel incurred in connection with any judicial or nonjudicial foreclosure of this Instrument or the other Loan Documents, or in connection with both judicial and nonjudicial foreclosure, if Lender shall elect to pursue each such remedy whether concurrently or independently) shall be secured by this Instrument, and shall bear interest at the Default Rate, from the date of expenditure until such sums have been paid. Lender shall be entitled to bid, at any sale of the Mortgaged Property held pursuant to Section 7.1.5 above, the amount of all such costs, expenses, and interest in addition to the amount of all other Obligations by a credit bid as the equivalent of cash.

7.3 Protective Advances.

7.3.1 All Protective Advances shall be additional Obligations, shall have the benefit of all applicable provisions of the IMFL, and shall be due and payable in accordance with the Loan Agreement.

7.3.2 This Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Instrument is recorded.

7.3.3 All Protective Advances shall apply to and be included in:

- (a) determination of the amount of the Obligations at any time;
- (b) the Indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional Indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (c) application of income in the hands of any receiver or mortgagee in possession;
and
- (d) computation of any deficiency judgment pursuant to applicable law.

7.4 Remedies Cumulative; No Waiver. All rights and remedies of Lender hereunder and under the other Loan Documents are cumulative and not alternative, and are in addition to all rights and remedies otherwise provided by law, and any or all of such rights and remedies shall be concurrent and may be pursued singly, successively or together against Borrower, any Borrower Party, the Mortgaged Property, any other collateral securing the Obligations, or any

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other Persons who are, or may become liable for all or any part of the Obligations, and any other funds, property or security held by Lender for the payment hereof, or otherwise, at the sole and absolute discretion of Lender. No exercise of any right or remedy by Lender shall constitute a waiver of any other right or remedy. No delay or omission by Lender to exercise any right, power or remedy hereunder shall impair any such right or remedy, or be construed as a waiver of any Event of Default, or any acquiescence therein. By accepting payment of any part of the Indebtedness after its due date or later performance of any Obligation, Lender shall not waive its right against any Person obligated directly or indirectly under the Loan Agreement, this Instrument or any other Loan Document, or on any Obligation, either to require prompt payment when due of all other Indebtedness or to declare an Event of Default for failure to make such prompt payment or render such performance; and Lender's acceptance of partial payment of any portion of the Indebtedness after its due date (which may be applied to such outstanding payment obligations as Lender may elect, notwithstanding Borrower's instructions to the contrary), or acceptance of partial performance of any Obligation in default, shall not cure such payment failure or default, or affect any notice of an Event of Default or sale heretofore given or recorded, unless such notice is expressly revoked in writing by Lender.

7.5 Releases, Extensions, Modifications and Additional Security. Without affecting the liability of any person for payment of the Indebtedness, or the lien or priority of this Instrument or any other Loan Document upon the Mortgaged Property, Lender may, in its sole and absolute discretion, from time to time, with or without notice, do one or more of the following: release the liability of any person for the payment of all or any portion of the Indebtedness; make any agreement or take any action extending the maturity or otherwise altering the terms or increasing the amount of all or any portion of the Indebtedness; and accept additional security, or release all or a portion of the Mortgaged Property and other security held to secure the Indebtedness. If Lender holds any other or additional security for the payment of the Indebtedness or performance of any Other Obligation, then any sale or foreclosure of such security during the existence of any Event of Default, in the sole discretion of Lender, may be prior to, subsequent to, or contemporaneous with, any sale or foreclosure hereunder and any property in which Lender holds a security interest may be sold as a unit with the Mortgaged Property.

7.6 Waiver of Right to Redeem - Waiver of Appraisal, Valuation, Etc. Borrower shall not and will not apply for or avail itself of any appraisal, valuation, 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 Instrument, but hereby waives the benefit of such laws to the extent permitted under applicable law. Borrower 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 Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this Instrument, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as Lender may determine. Lender shall have the right to become the purchaser at any sale made under or by virtue of this Instrument and Lender so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Lender with the amount payable to Lender out of the net proceeds of such sale. In the event of any such sale, the Indebtedness, if not previously due, shall be and become

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immediately due and payable without demand or notice of any kind. Borrower represents and warrants that the Loan is made for business, commercial, investment or other similar purposes and not for personal, consumer, family, household, educational, agricultural or other similar use, and such Loan will not be used for personal, consumer, family, educational, household, agricultural or other similar use. To the fullest extent permitted by law, Borrower, on behalf of Borrower, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Instrument, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to applicable law (including, without limitation, any rights of redemption and reinstatement pursuant to the IMFL), and (ii) any and all rights of reinstatement.

7.7 Illinois Mortgage Foreclosure Law. It is the express intention of Lender and Borrower that the rights, remedies, powers and authorities conferred upon Lender pursuant to this Instrument shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the IMFL and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Instrument is deemed inconsistent with any provision in the IMFL, the provisions of the IMFL shall take precedence over the provisions of this Instrument, but shall not invalidate or render unenforceable any other provision of this Instrument that can be construed in a manner consistent with the IMFL. If any provision of this Instrument shall grant to Lender any rights or remedies upon any Default hereunder which are more limited than the rights that would otherwise be vested in Lender under IMFL in the absence of said provision, Lender shall be vested with the rights granted in IMFL to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Instrument, shall be added to the indebtedness secured by this Instrument or by the judgment of foreclosure.

8. MISCELLANEOUS.

8.1 Notices. All notices, consents, approvals, requests or other communications required or permitted hereunder shall be sent in the manner and to the addresses of the party(ies) as required under Section 7.1 of the Loan Agreement.

8.2 Time of the Essence. Time is of the essence with respect to this Instrument, and each representation, warranty, covenant and condition hereunder.

8.3 Successors and Assigns; Lender as Lender. This Instrument and all provisions hereof shall be binding upon and enforceable against the Borrower and its assigns and other successors. This Instrument and all provisions hereof shall inure to the benefit of the Lender, their successors and assigns and any holder or holders, from time to time, of the Obligations, or any interest therein. Notwithstanding anything to the contrary in this Instrument, if the Obligations are held by more than one holder, the parties agree that Lender shall act as agent for the pro rata benefit of such holders.

8.4 Amendments. This Instrument may be amended at any time and from time to time only by an amendment in writing executed by Lender and Borrower.

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8.5 Rules of Construction. When the identity of the parties or other circumstances make appropriate, the neuter gender shall include the feminine and masculine, and the singular number shall include the plural. Specific enumeration of rights, powers and remedies of Lender and of acts which it may do and of acts Borrower must do or not do shall not exclude or limit the general. The headings of each Section are for information and convenience and do not limit or construe the contents of any provision hereof. The provisions of this Instrument shall be construed as a whole according to their common meaning, not strictly for or against any party and consistent with the provisions herein contained, in order to achieve the objectives and purposes of these grants. The use in this Instrument (including any Schedule or Exhibit hereto) of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter; the use herein of the words "costs" or "expenses" shall include the cost of title evidence and reasonable fees and costs of attorneys for Lender (both in house and outside counsel); and the use herein of the word "prompt", or "immediately" in any form, or words of similar import, when used with reference to any notice required to be given or act to be undertaken by Borrower shall mean notice given or act performed not later than five (5) Business Days after the occurrence of the specified event for which notice or action is required, unless another time period is made expressly applicable. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Instrument shall refer to this Instrument as a whole and not to any particular provision of this Instrument.

8.6 Severability. If any term of this Instrument, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Instrument, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Instrument shall be valid and enforceable to the fullest extent permitted by law.

8.7 Governing Law. THIS INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS), AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA.

8.8 Venue. EACH OF BORROWER AND LENDER (BY ACCEPTANCE OF THIS INSTRUMENT ON BEHALF OF LENDER) HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND (WITH RESPECT TO BORROWER) ITS MORTGAGED PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF: (i) THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND (ii) ANY FEDERAL OR STATE COURT IN OR HAVING JURISDICTION WITH RESPECT TO THE COUNTY IN WHICH THE MORTGAGED PROPERTY IS LOCATED, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INSTRUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN

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RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURTS. EACH OF BORROWER AND LENDER (BY ACCEPTANCE OF THIS INSTRUMENT ON BEHALF OF LENDER) AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS INSTRUMENT SHALL AFFECT ANY RIGHT THAT LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS INSTRUMENT AGAINST BORROWER OR ITS MORTGAGED PROPERTY IN THE COURTS OF ANY JURISDICTION.

8.9 Late Charges; Default Rate; Prepayment; Variable Rate. The Loan Agreement contains provisions imposing a late charge and past due rate of interest if payments are not timely made, and prepayment restrictions and premiums as more particularly described in the Loan Agreement. The Loan bears interest at a variable rate of interest.

8.10 Waiver of Jury Trial. BORROWER AND, BY ITS ACCEPTANCE OF THIS INSTRUMENT, LENDER, EACH HEREBY (i) EXPRESSLY, KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION ARISING UNDER THIS INSTRUMENT OR IN ANY WAY CONNECTED WITH OR INCIDENTAL TO THE DEALINGS OF THE PARTIES WITH RESPECT TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND (ii) AGREE AND CONSENT THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT SUCH PARTIES MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES TO THE WAIVER OF THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY.

8.11 Release Upon Payment and Discharge of Obligations. Upon irrevocable payment and discharge of all of the Indebtedness (other than contingent liabilities under indemnification obligations as to which there is no outstanding claim), this instrument, including the security interests granted herein, shall terminate and be of no further force or effect and Lender shall, upon the request of Borrower, execute a release of this Instrument and the lien hereof by proper instrument.

8.12 Counterparts. This Instrument may be executed in any number of counterparts, all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Receipt of an executed signature page to this Instrument by facsimile or other electronic transmission shall constitute effective delivery thereof.

8.13 Further Assurances. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall from time to time reasonably require, for the better assuring, conveying, assigning,

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transferring and confirming unto Lender the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Instrument, or for filing, registering or recording this Instrument and, on demand, will execute and deliver, and hereby authorizes Lender after the occurrence of an Event of Default to execute in the name of Borrower to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Mortgaged Property, in each case so long as the same does not increase any Borrower Parties' Obligations or decrease any Borrower Parties' rights as set forth in the Loan Documents.

8.14 Maximum Indebtedness. This Instrument is given to secure a term loan but also secures future advances as defined and authorized under applicable Illinois statutes, including, without limitation, 735 ILCS 5/15-1207 and 735 ILCS 5/15-1302, and it shall secure not only presently existing indebtedness under the Loan Agreement and the other Loan Documents but also future advances that constitute Obligations (whether such advances are obligatory or to be made at the option of Lender, or otherwise) as are made within twenty years (or the maximum period permitted by applicable law, whichever is longer) from the date of this Instrument, to the same extent and with the same priority as if such future advances were made on the date of the execution of this Instrument and without regard as to whether or not there is any advance made at the time of execution of this Instrument and without regard as to whether or not there is any indebtedness outstanding at the time any advance is made. This Instrument secures all present and future Obligations; provided, however, notwithstanding anything in the Loan Documents to the contrary, the maximum principal amount which may be secured hereby is Fifty-Five Million Four Hundred Thousand and 00/100 (\$55,400,000.00); plus interest thereon, and any disbursements made by Lender for the payment of taxes, special assessments, or insurance on the Mortgaged Property, with interest on such disbursements, provided, however, that the foregoing limitation shall apply only to the maximum amount of the lien created by this Instrument, and it shall not in any manner limit, affect or impair any grant of any other security interest or other right in favor of the Lender under the provisions of the Loan Agreement or under any of the other Loan Documents at any time executed by Borrower. To the fullest extent permitted by applicable law, the lien of this Instrument, as to all such sums so advanced, shall have priority over all subsequent liens and encumbrances, including statutory liens (excepting solely taxes and assessments levied on the Mortgaged Property).

8.15 Business Loan Recital/Statutory Exemption. Without limiting the generality of anything contained herein, Borrower covenants and agrees that:

- (a) all of the proceeds of the Note secured by this Instrument will be used solely for business purposes and in furtherance of the regular business affairs of Borrower;
- (b) the entire principal obligation secured hereby constitutes (A) a "business loan" as that term is used in, and for all purposes of the Illinois Interest Mt, Section 815 ILCS 205/4(I)(c), and (B) "a loan secured by a mortgage on real estate" within the purview and operation of Section 815 ILCS 205/4(1X1); and

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(c) the transaction of which this Instrument is a part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201) or residential real estate (as defined in 735 ILCS 5/15-1219).

8.16 Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows:

Unless Borrower provides Lender with evidence of the insurance coverage required by this Instrument, the Loan Agreement or any of the other Loan Documents, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Mortgaged Property or any other collateral for the Obligations. This insurance may, but need not protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property or any other collateral for the Obligations. Borrower may later cancel any insurance purchased by Lender but only after Borrower provides to Lender evidence that Borrower has obtained insurance as required by this Instrument, the Loan Agreement or any of the other Loan Documents. If Lender purchases insurance for the Mortgaged Property or any other collateral for the Obligations, Borrower will be responsible for the costs of that insurance, including, without limitation, interest and reasonable, out-of-pocket expenses of Lender that Lender may lawfully impose in connect with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total outstanding balance of the indebtedness secured by this Instrument. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.

8.17 Expenses; Receiver, Additional Waivers.

(a) All reasonable expenses incurred by Lender to the extent reimbursable under Sections 15-1510(b) and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Instrument, shall be added to the indebtedness secured by this Instrument or by the judgment of foreclosure.

(b) In addition to any provision of this Instrument 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 5/15-1701 and 5/15-1702 of the Foreclosure 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 Instrument, all rights, powers, immunities and duties, as provided for in Sections 5/15-1701 and 5/15-1703 of the Foreclosure Act.

(c) BORROWER SHALL NOT AND WILL NOT APPLY FOR OR AVAIL ITSELF OF ANY APPRAISEMENT, VALUATION, 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 INSTRUMENT, BUT HEREBY WAIVES THE BENEFIT OF SUCH LAWS. BORROWER FOR ITSELF AND ALL WHO MAY CLAIM THROUGH OR UNDER IT WAIVES ANY AND ALL RIGHT TO HAVE THE PROPERTY AND ESTATES

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COMPRISING THE PROPERTY MARSHALLED UPON ANY FORECLOSURE OF THE LIEN HEREOF AND AGREES THAT ANY COURT HAVING JURISDICTION TO FORECLOSE SUCH LIEN MAY ORDER THE PROPERTY SOLD AS AN ENTIRETY. IN THE EVENT OF ANY SALE MADE UNDER OR BY VIRTUE OF THIS INSTRUMENT, THE WHOLE OF THE MORTGAGED PROPERTY MAY BE SOLD IN ONE PARCEL AS AN ENTIRETY OR IN SEPARATE LOTS OR PARCELS AT THE SAME OR DIFFERENT TIMES, ALL AS LENDER MAY DETERMINE. LENDER SHALL HAVE THE RIGHT TO BECOME THE PURCHASER AT ANY SALE MADE UNDER OR BY VIRTUE OF THIS INSTRUMENT AND LENDER SHALL BE ENTITLED TO CREDIT BID THE INDEBTEDNESS OR ANY PORTION THEREOF IN LENDER'S SOLE DISCRETION.

(d) BORROWER, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS INSTRUMENT, HEREBY IRREVOCABLY WAIVES PURSUANT TO 735 ILCS 5/15-1601 OF THE FORECLOSURE ACT ANY AND ALL RIGHTS OF REINSTATEMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15 1602) AND REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS INSTRUMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15 1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT.

8.18 Amendment and Restatement. This Mortgage is given in amendment, restatement, renewal and extension (and not in novation, extinguishment or satisfaction) of the Original Mortgage and secures the obligations of Borrower to repay the Note.

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EXHIBIT A

Legal Description

Parcel 1:

That part of original Lot 1 in Block 120 in School Section Addition to Chicago, described as follows: Beginning at a point on the West line of said Lot, 59 feet North of the Southwest corner thereof, running thence East parallel with the South line of said Lot, 90 feet more or less to the East line of said Lot; thence North on the East line of said Lot to a point 115 feet South of the Northeast corner thereof; thence West to a point on the West line of said Lot, 115 feet South of the Northwest corner thereof and thence South along said West line to the point of beginning in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, otherwise described as:

Lot 11 in County Clerk's Division of Block 120, aforesaid; all in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

The North 43 feet of Lot 1 in Block 120 in School Section Addition to Chicago otherwise described as:

Lot 7 in County Clerk's Division of Block 120, aforesaid; also The 24 feet South of and adjoining the North 43 feet of Lot 1 in Block 120 in School Section Addition to Chicago otherwise described as follows:

Lot 8 in County Clerk's Division of Block 120, aforesaid; all in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3:

The 24 feet South of and adjoining the North 67 feet of Lot 1 in Block 120 in School Section Addition to Chicago otherwise described as:

Lot 9 in County Clerk's Division of Block 120, aforesaid; all in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 4:

The 24 feet South of and adjoining the North 91 feet of Lot 1 in Block 120 in School Section Addition to Chicago otherwise described as:

Lot 10 in County Clerk's Division of Block 120, aforesaid; all in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 5:

The North 50 feet of the South 59 feet of Lot 1 in Block 120 in School Section Addition to Chicago otherwise described as:

Lot 12 in County Clerk's Division of Block 120, aforesaid; all in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Address: 79 W. Monroe Street, Chicago, IL 60603

PIN: 17162120010000 & 17162120060000 (17-14-212-001; -002; -003; -004; -005; -006)

Exhibit A