

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1927645026

Doc# 1927645026 Fee \$88.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 10/03/2019 01:34 PM PG: 1 OF 3:

The property identified as: PIN: 17-16-406-019-0000

Address:

Street: 776 South Dearborn Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60605

Lender: Wintrust Bank

Borrower: Roots Dearborn Real Estate, LLC

Loan / Mortgage Amount: \$6,375,000.00

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

S X
P 35
S
M X
SC
E X
INT AB

Certificate number: 606D5F81-45FF-4705-885C-0421EF2D3ED9

Execution date: 9/27/2019

UNOFFICIAL COPY

This document was prepared by,
and after recording, return to:

Michael D. Burstein
Much Shelist
191 North Wacker Drive
Suite 1800
Chicago, Illinois 60606.1615

Permanent Tax Index Numbers:

17-16-406-019-0000
17-16-406-020-0000
17-16-406-024-0000

Property Address:

776 South Dearborn Street
Chicago, Illinois 60605

This space reserved for Recorder's use only

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

THIS CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS dated as of September 27, 2019 (this "Mortgage"), is executed by **ROOTS DEARBORN REAL ESTATE, LLC**, an Illinois limited liability company (the "Mortgagor"), to and for the benefit of **WINTRUST BANK**, an Illinois banking corporation, its successors and assigns (the "Lender").

RECITALS:

A. Pursuant to the terms and conditions contained in that certain Construction Loan Agreement dated as of even date herewith, executed by and between the Mortgagor, **ROOTS DEARBORN, LLC**, an Illinois limited liability company ("RD"; the Mortgagor and RD are individually and collectively referred to herein as the "Borrower" as the context requires), and the Lender (the "Loan Agreement"), the Lender has agreed to loan to the Borrower the aggregate principal amount of SIX MILLION THREE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$6,375,000.00) (the "Loan"). All initial capitalized terms not otherwise defined herein shall have the meanings given such terms in the Loan Agreement. The Loan shall be evidenced by (i) that certain Promissory Note A of even date herewith (as amended, restated or replaced from time to time, "Note A"), executed by the Borrower and made payable to the order of the Lender in the maximum principal amount of THREE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$3,750,000.00) and due on September 27, 2029 (the "Maturity Date"), and (ii) that certain Promissory Note B of even date

19080032661 MMS 10/3

UNOFFICIAL COPY

herewith (as amended, restated or replaced from time to time, "Note B"; Note A and Note B are collectively referred to herein as the "Note"), executed by the Borrower and made payable to the order of the Lender in the maximum principal amount of TWO MILLION SIX HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$2,625,000.00) and due on September 27, 2020, in each case except as may be accelerated pursuant to the terms of the Note, the Loan Agreement or of any other document or instrument now or hereafter given to evidence or secure the payment of the Note or delivered to induce the Lender to disburse the proceeds of the Loan (the Note and the Loan Agreement, together with such other documents, as amended, restated or replaced from time to time, being collectively referred to herein as the "Loan Documents").

B. A condition precedent to the Lender's extension of the Loan to the Borrower is the execution and delivery by the Mortgagor of this Mortgage.

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

AGREEMENTS:

The Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to the Lender, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as the "Mortgaged Property"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Land (as defined below) and not secondarily:

(a) The real estate located in the County of Cook, State of Illinois and legally described on Exhibit A attached hereto and made a part hereof (the "Land");

(b) All improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or hereafter owned by the Mortgagor and located on, or used in connection with the Land or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of the Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by the Mortgagor or on its behalf (the "Improvements");

(c) All easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of the Mortgagor of, in and to the same;

UNOFFICIAL COPY

(d) All rents, revenues, issues, profits, proceeds, income, royalties, Letter of Credit Rights (as defined in the Uniform Commercial Code of the State of Illinois (the "Code") in effect from time to time), escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Mortgaged Property and/or the businesses and operations conducted by the Mortgagor thereon, to be applied against the Indebtedness (as hereinafter defined); provided, however, that the Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

(e) All interest of the Mortgagor in all leases now or hereafter on the Mortgaged Property, whether written or oral (each, a "Lease", and collectively, the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to the Mortgagor to collect the rentals under any such Lease;

(f) All fixtures and articles of personal property now or hereafter owned by the Mortgagor and forming a part of or used in connection with the Land or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Mortgaged Property, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by the Mortgagor and placed on the Land or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute Goods (as defined in the Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in the Lender, as a secured party, and the Mortgagor, as debtor, all in accordance with the Code;

(g) All of the Mortgagor's interests in General Intangibles, including Payment Intangibles and Software (each as defined in the Code) now owned or hereafter acquired and related to the Mortgaged Property, including, without limitation, all of the Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which the Mortgagor is or may become a party and which relate to the Mortgaged Property; (ii) all obligations and indebtedness owed to the Mortgagor

UNOFFICIAL COPY

thereunder; (iii) all intellectual property related to the Mortgaged Property; and (iv) all choses in action and causes of action relating to the Mortgaged Property;

(h) All of the Mortgagor's accounts now owned or hereafter created or acquired as relate to the Mortgaged Property and/or the businesses and operations conducted thereon, including, without limitation, all of the following now owned or hereafter created or acquired by the Mortgagor: (i) Accounts (as defined in the Code), contract rights book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Mortgagor); (v) Securities, Investment Property, Financial Assets and Securities Entitlements (each as defined in the Code); (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (vii) all warranties, guarantees, permits and licenses in favor of the Mortgagor with respect to the Mortgaged Property (the property, interests and rights described in Subsections (f), (g) and (h) above are collectively referred to herein as the "Collateral"); and

(i) All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Mortgaged Property or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Mortgaged Property or proceeds of any sale, option or contract to sell the Mortgaged Property or any portion thereof.

TO HAVE AND TO HOLD the Mortgaged Property, unto the Lender, its successors and assigns, in fee simple forever, for the purposes and upon the uses herein set forth together with all right to possession of the Mortgaged Property after the occurrence of any Event of Default; the Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, LIBOR breakage charges, prepayment premium, if any, exit fee, if any, reimbursement obligations, fees and expenses for letters of credit issued by the Lender for the benefit of the Borrower, if any, and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents, and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the obligations and liabilities of the Borrower to the Lender under and pursuant to any Swap Agreement (as defined in the Loan Agreement), (iii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Borrower or any other obligor to or benefiting the Lender which are evidenced

UNOFFICIAL COPY

or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iv) the reimbursement to the Lender of any and all sums incurred, expended or advanced by the Lender pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, any of the other Loan Documents or any Swap Agreements that may evidence any Swap Obligations of the Mortgagor owing at any time to the Lender, or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein (collectively, the "Indebtedness"). Any Swap Obligations owing by the Borrower to the Lender, including without limitation any breakage fees or other amounts as may be necessary to restructure or unwind any Swap Agreement, shall be considered for all purposes to be additional interest on the Indebtedness secured by this Mortgage.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title. The Mortgagor represents, warrants and covenants that (a) the Mortgagor is the holder of the fee simple title to the Mortgaged Property, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of the Lender and as otherwise described on **Exhibit B** attached hereto and made a part hereof (the "Permitted Exceptions"); and (b) the Mortgagor has legal power and authority to mortgage and convey the Mortgaged Property.

2. Mortgagor's Covenants and Agreements.

(a) Payment of Indebtedness. The Mortgagor shall, prior to the expiration of any grace period: (i) pay or cause to be paid the Indebtedness when due, and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by the Mortgagor as provided in the Note, the Loan Agreement, this Mortgage and the other Loan Documents.

(b) Compliance with Loan Agreement. Mortgagor will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

(c) Provisions of Loan Agreement. The proceeds of the Note are to be disbursed by the Lender in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Mortgagor covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Mortgagor for the enforceability of this Mortgage and the Note, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured by this Mortgage; provided, however, that the total Indebtedness shall not in any event exceed two hundred percent of the stated principal amount of the Note.

(d) Construction Loan. The Note evidences a debt created by one or more disbursements made by Lender to Mortgagor to finance the cost of the construction of

UNOFFICIAL COPY

certain improvements upon the Land in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the Code.

3. Payment of Taxes and Assessments. The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Mortgaged Property or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to the Mortgagor's right to contest the same, as provided by the terms hereof; and the Mortgagor will, upon written request, furnish to the Lender duplicate receipts therefor within ten (10) days after the Lender's request.

4. Change in Tax Laws.

(a) If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Lender, the Borrower or the Mortgaged Property, any tax is imposed or becomes due in respect of the Note or this Mortgage (excluding income, excise or franchise taxes imposed upon the Lender, except as provided in Section 4(c) below), or any liens on the Mortgaged Property created thereby, then the Mortgagor shall pay such tax in the manner required by such law.

(b) If any law, statute, rule, regulation, order or court decree effects a deduction from the value of the Mortgaged Property for the purpose of taxation by creating any lien thereon, or imposing upon the Lender any liability for the payment of all or any part of the Taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or deeds of trusts or debts secured by mortgages or deeds of trust or the interest of the Lender in the Mortgaged Property, or the manner of collection of Taxes so as to adversely affect this Mortgage, the Indebtedness, or the Lender, then, and in any such event, the Mortgagor, upon demand by the Lender, shall pay such Taxes, or reimburse the Lender therefor on demand, unless the Lender determines, in the Lender's sole judgment, that such payment or reimbursement by the Mortgagor is unlawful or that the payment might, in the Lender's judgment, constitute usury or render the Indebtedness wholly or partially usurious; in which event the Lender may elect to declare the Indebtedness to be due and payable within the lesser of (i) thirty (30) days after written notice, or (ii) such shorter period as may be required to ensure compliance by Lender with applicable law.

(c) Nothing contained herein shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Lender, excepting only such income, franchise or excise tax which may be levied against the income of the Lender as a complete or partial substitute for Taxes required to be paid by the Mortgagor hereunder.

5. Deposits.

(a) Maintenance Deposits. Mortgagor shall complete the Improvements to be constructed on the Mortgaged Property pursuant to the Loan Agreement, free and clear of

UNOFFICIAL COPY

any and all liens, subject to Section 7. Mortgagor shall not abandon the Mortgaged Property, shall keep and maintain the Mortgaged Property in good condition, repair, maintenance and operating condition free from any waste or misuse, and shall promptly repair and restore any buildings, improvements or structures now or hereafter on the Mortgaged Property which may become damaged or destroyed to their condition prior to any such damage or destruction. Should Mortgagor fail to comply with the foregoing, then at Lender's option in its sole discretion, Mortgagor shall pay to Lender monthly an amount equal to one-twelfth ($1/12^{\text{th}}$) of the annual operating and maintenance costs of the Mortgaged Property as set forth on the most recent operating statement for the Mortgaged Property approved by Lender (the "Maintenance Costs"). No amount so paid to Lender shall be deemed to be trust funds, nor shall any sums paid bear interest. If, at any time, the funds being held by Lender for any Maintenance Costs are exhausted, or if Lender determines, in its sole discretion, that such funds will be insufficient to pay in full any Maintenance Costs when due, Mortgagor shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. If an Event of Default shall occur under the terms of this Mortgage, Lender may, at its option, without being required to do so, apply any deposits on hand to the Indebtedness, in such order and manner as Lender may elect. Other than the construction to be undertaken under the Loan Agreement, without the prior consent of Lender, Mortgagor agrees that it will not construct or expand any improvements on the Mortgaged Property, erect any new improvements nor make any material alterations in any improvements which shall alter the basic structure, decrease the market value or change the existing architectural character of the Mortgaged Property, nor remove or demolish any improvements.

(b) Tax and Insurance Deposits. The Mortgagor shall deposit with the Lender, on the first day of each month until the indebtedness is fully paid, a sum equal to one-twelfth ($1/12^{\text{th}}$) of one hundred five percent (105.00%) of (a) the most recent ascertainable annual Taxes on the Mortgaged Property and (b) the insurance premiums for the policies of insurance required to be maintained in effect by the Mortgagor pursuant to the terms of the Loan Agreement (the "Premiums"). If requested by the Lender, the Mortgagor shall also deposit with the Lender an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as estimated by the Lender. Such deposits are to be held without allowance of interest and are to be used for the payment of Taxes and Premiums next due and payable when they become due. So long as no Event of Default shall exist, the Lender shall, at its option, pay such Taxes when the same become due and payable (upon submission of appropriate bills therefor from the Mortgagor) or shall release sufficient funds to the Mortgagor for the payment thereof. Lender shall release sufficient funds to pay the Premiums when due to the extent of funds available to do so. If the funds so deposited are insufficient to pay any such Taxes or Premiums for any year (or installments thereof, as applicable) when the same shall become due and payable, the Mortgagor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes and Premiums in full. If the funds so deposited exceed the amount required to pay such Taxes and Premiums for any

UNOFFICIAL COPY

year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of the Lender. The Lender, in making any payment hereby authorized relating to Taxes, 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.

6. Effect of Changes in Laws Regarding Taxation. If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Mortgaged Property from the value thereof for the purpose of taxation or (b) the imposition upon the Lender of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by the Mortgagor, or (c) a change in the method of taxation of mortgages or debts secured by mortgages or the Lender's interest in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness or the holders thereof, then the Mortgagor, upon demand by the Lender, shall pay such Taxes or charges, or reimburse the Lender therefor; provided, however, that the Mortgagor shall not be deemed to be required to pay any income or franchise taxes of the Lender. Notwithstanding the foregoing, if in the opinion of counsel for the Lender it is or may be unlawful to require the Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the Lender may declare all of the Indebtedness to be immediately due and payable.

7. Liens, Contest and Defense of Title.

(a) The Mortgagor shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Mortgaged Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder (except for Permitted Exceptions), whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Mortgage, including liens for labor or materials with respect to the Mortgaged Property ("Mechanic's Liens").

(b) Notwithstanding paragraph (a) of this Section, the Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Mortgaged Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Mortgage; and (ii) within ten (10) days after the Mortgagor has been notified of the filing of any such Mechanic's Liens, the Mortgagor shall have notified the Lender in writing of the Mortgagor's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens, and shall have obtained a title insurance endorsement over such Mechanic's Liens in form and substance reasonably satisfactory to the Lender, insuring the Lender against loss or damage by reason of such Mechanic's Liens; provided that in lieu of such title insurance endorsement the Mortgagor may deposit and keep on deposit with the Lender (or such depository as may be designated by the Lender) a sum of money sufficient, in the judgment of the Lender, to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and

UNOFFICIAL COPY

may be used by the Lender in its sole discretion to protect the priority of this Mortgage. In case the Mortgagor shall fail to maintain such title insurance or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest; then the Lender may, at its option, apply any money and liquidate any securities then on deposit with the Lender (or other depository designated by the Lender) in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon according to any written bill, notice or statement, without inquiring into the amount, validity or enforceability thereof. If the amount of money so deposited shall (in Lender's reasonable judgment) be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then the Mortgagor shall forthwith, upon demand, deposit with the Lender (or other depository designated by the Lender) the sum which shall (in Lender's reasonable judgment, when added to the funds then on deposit with Lender) be necessary to make such payment in full (or such other security as shall be reasonably satisfactory to Lender). If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited shall be applied in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided no Event of Default shall then exist) when the Lender has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with the Lender (or other depository) under this Section 7(b) shall be paid to the Mortgagor, provided that no Event of Default shall then exist.

(c) If the lien and security interest of the Lender in or to the Mortgaged Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, the Mortgagor shall immediately notify the Lender and shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, or any part thereof, and shall file and prosecute such proceedings and take all actions necessary to preserve and protect such title, lien and security interest in and to the Mortgaged Property.

8. Lender's Interest In and Use of Deposits. During the existence of an Event of Default, the Lender may, at its option, apply any monies at the time on deposit pursuant to Section 5 hereof to cure an Event of Default or to pay any of the Indebtedness in such order and manner as the Lender may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, the Mortgagor shall immediately, upon demand by the Lender, deposit with the Lender an amount equal to the amount expended by the Mortgagor from the deposits. When the Indebtedness has been fully paid, any remaining deposits shall be returned to the Mortgagor. Such deposits are hereby pledged as additional security for the Indebtedness and shall not be subject to the direction or control of the Mortgagor. The Lender shall not be liable for any failure to apply to the payment of Taxes any amount so deposited unless the Mortgagor, prior to an Event of Default, shall have requested the Lender in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such Taxes. The Lender shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

UNOFFICIAL COPY

9. Insurance. The Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Mortgaged Property insured against loss or damage by fire and such other hazards as may reasonably be required by the Lender, in accordance with the terms, coverages and provisions described in the Loan Agreement.

10. Condemnation. If all or any part of the Mortgaged Property are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, the provisions of the Loan Agreement shall govern the use of awards and condemnation proceeds.

11. Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Loan Documents, the Mortgagor shall pay such tax in the manner required by any such law. The Mortgagor further agrees to reimburse the Lender for any sums which the Lender may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, the Mortgagor shall not be required to pay any income or franchise taxes of the Lender.

12. Lease Assignment. The Mortgagor acknowledges that, concurrently herewith, the Mortgagor has executed and delivered to the Lender, as additional security for the repayment of the Loan, an Assignment of Leases and Rents (the "Assignment") pursuant to which the Mortgagor has assigned to the Lender interests in the leases of the Mortgaged Property and the rents and income from the Mortgaged Property. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. The Mortgagor agrees to abide by all of the provisions of the Assignment.

13. Effect of Extensions of Time and Other Changes. If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property or having an interest in the Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by the Lender, notwithstanding such extension, variation, release or change.

14. Lender's Performance of Defaulted Acts and Expenses Incurred by Lender. If an Event of Default then exists, the Lender may, but need not, make any payment or perform any act herein required of the Mortgagor in any form and manner deemed expedient by the Lender, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Property or consent to any tax or assessment or cure any default of the Mortgagor in any lease of the Mortgaged Property. All monies paid for any of the purposes herein authorized and all

UNOFFICIAL COPY

expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by the Lender in regard to any tax referred to in Section 11 above or to protect the Mortgaged Property or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by the Mortgagor to the Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by the Lender in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of the Lender's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Mortgaged Property, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Mortgaged Property, shall be so much additional Indebtedness, and shall become immediately due and payable by the Mortgagor to the Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Section shall be immediately due and payable by the Mortgagor to the Lender, and shall be additional Indebtedness evidenced by the Note and secured by this Mortgage. The Lender's failure to act shall never be considered as a waiver of any right accruing to the Lender on account of any Event of Default. Should any amount paid out or advanced by the Lender hereunder, or pursuant to any agreement executed by the Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Mortgaged Property or any part thereof, then the Lender shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

15. Security Agreement.

(a) Grant of Security Interest. Mortgagor hereby grants to Lender a security interest in the property described in Subsections (d), (e), (f), (g), (h) and (i) of the granting clause of this Mortgage (the "Personal Property") to secure repayment of the Indebtedness. This Mortgage 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 Code, as well as all other rights and remedies available at law or in equity.

(b) Perfection. Mortgagor hereby consents to 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 Mortgage 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 character, and Mortgagor shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, actual attorneys' fees and costs (of both in house and outside counsel), incurred by Lender in connection with the preparation and

UNOFFICIAL COPY

acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the delivery of such instruments. Mortgagor hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Mortgagor hereby irrevocably constitutes and appoints Lender as the attorney-in-fact of Mortgagor, to file with the appropriate filing office any such instruments. In addition, Mortgagor hereby authorizes Lender to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Mortgagor.

(c) Place of Business. Mortgagor maintains its chief executive office as set forth as the address of Mortgagor in Section 27 below, and Mortgagor will notify Lender in writing of any change in its place of business within five (5) days of such change.

(d) Fixture Filing. This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code and will be recorded as a "fixture filing" in accordance with the Code.

(e) Representations and Warranties. The Mortgagor represents and warrants that: (i) the Mortgagor is the record owner of the Mortgaged Property; (ii) the Mortgagor's chief executive office is located in the State of Illinois; (iii) the Mortgagor's state of organization is the State of Illinois; (iv) the Mortgagor's exact legal name is as set forth on Page 1 of this Mortgage; (v) Mortgagor is the owner of the Personal Property subject to no liens, charges or encumbrances other than the lien hereof; (vi) the Personal Property will not be removed from the Mortgaged Property without the consent of the Lender; and (vii) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto. The following addresses are the mailing addresses of the Mortgagor, as debtor under the Code, and the Lender, as secured party under the Code, respectively:

| | |
|------------|--|
| Mortgagor: | ROOTS DEARBORN REAL ESTATE LLC 2234 West North Avenue Chicago, Illinois 60647 Attention: Brian Goldberg |
|------------|--|

| | |
|---------|--|
| Lender: | WINTRUST BANK 231 South LaSalle Street, 2nd Floor Chicago, Illinois 60604 Attention: Jason Girardin, Senior Vice President |
|---------|--|

(f) Mortgagor agrees that:

(i) The Mortgagor (being the debtor as that term is used in the Code) is and will be the true and lawful owner of the Mortgaged Property, subject to the

UNOFFICIAL COPY

liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting the Lender and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(ii) The Personal Property is to be used by the Mortgagor solely for business purposes.

(iii) The Personal Property will be kept at the Land and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of the Lender (being the secured party as that term is used in the Code). The Personal Property may be affixed to the Land but not be affixed to any other real estate.

(iv) The only persons having any interest in the Mortgaged Property are the Mortgagor, the Lender and holders of interests, if any, expressly permitted hereby.

(v) No Financing Statement (other than Financing Statements showing the Lender as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Mortgaged Property or any proceeds thereof is on file in any public office except pursuant hereto; and the Mortgagor, at its own cost and expense, upon demand, will furnish to the Lender such further information and will execute and deliver to the Lender such financing statements and other documents in form satisfactory to the Lender and will do all such acts as the Lender may reasonably request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Mortgaged Property as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefitting the Lender and no other party, and liens and encumbrances (if any) expressly permitted hereby; and the Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by the Lender to be desirable. The Mortgagor hereby irrevocably authorizes the Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto, without the signature of the Mortgagor that (i) indicate the Personal Property (A) is comprised of all assets of the Mortgagor or words of similar effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or (B) as being of an equal or lesser scope or within greater detail as the grant of the security interest set forth herein, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether the Mortgagor is an organization, the type of organization and any organizational identification number issued to the Mortgagor, and (B) in the case

UNOFFICIAL COPY

of a financing statement filed as a fixture filing or indicating Mortgaged Property as as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Mortgaged Property relates. The Mortgagor agrees to furnish any such information to the Lender promptly upon request. The Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by the Lender in any jurisdiction prior to the date of this Mortgage. In addition, the Mortgagor shall make appropriate entries on its books and records disclosing the Lender's security interests in the Mortgaged Property.

(vi) During the existence of an Event of Default hereunder, the Lender shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as the Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Mortgaged Property or any part thereof may be situated and remove the same therefrom (provided that if the Personal Property is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Lender shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to the Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations, as provided in the Code. The Lender may render the Mortgaged Property unusable without removal and may dispose of the Personal Property on the Land. The Lender may require the Mortgagor to assemble the Collateral and make it available to the Lender for its possession at a place to be designated by the Lender which is reasonably convenient to both parties. The Lender will give the Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of the Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. The Lender may buy at any public sale. The Lender may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Mortgaged Property. If the Lender so elects, the Personal Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by the Lender, shall be applied against the Indebtedness in such order or manner as the Lender shall select. The Lender will account to the Mortgagor for any surplus realized on such disposition.

(vii) The Mortgagor hereby agrees that: (i) where Collateral is in possession of a third party, the Mortgagor will join with the Lender in notifying

UNOFFICIAL COPY

the third party of the Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of the Lender; (ii) the Mortgagor will cooperate with the Lender in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and (iii) until the Indebtedness is paid in full, Mortgagor will not change the state where it is located or change its name or form of organization without giving the Lender at least thirty (30) days prior written notice in each instance.

16. Restrictions on Transfer.

(a) The Mortgagor, without the prior written consent of the Lender, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

(i) The Mortgaged Property or any part thereof or interest therein, excepting only sales or other dispositions of Collateral ("Obsolete Collateral") no longer useful in connection with the operation of the Mortgaged Property, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

(ii) Any shares of capital stock of a corporate Borrower, a corporation which is a general partner or managing member/manager in a partnership or limited liability company Borrower, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this Subsection (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System);

(iii) All or any part of the managing member or manager interest, as the case may be, in a limited liability company Borrower or a limited liability company which is a general partner of a partnership Borrower;

(iv) All or any part of the general partner or joint venture interest, as the case may be, of a partnership Borrower or a partnership which is a manager of a limited liability company Borrower or the conversion of a partnership Borrower to a corporation or limited liability company; or

(v) If there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or shareholder, as applicable, which directly or indirectly controls the day to day operations and management of the Borrower or any Guarantor (as

UNOFFICIAL COPY

defined in the Note) that is not a natural person and/or owns a controlling interest in the Borrower or any Guarantor that is not a natural person;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section shall not apply (i) to liens securing the Indebtedness; (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Mortgaged Property, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, or (iv) to leases permitted by the terms of the Loan Documents, if any.

(b) In determining whether or not to make the Loan, the Lender evaluated the background and experience of the Borrower and its members in owning and operating property such as the Mortgaged Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Mortgaged Property which is the Lender's security for the Note. The Borrower and its members are well experienced in borrowing money and owning and operating property such as the Mortgaged Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. The Mortgagor recognizes that the Lender is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. The Mortgagor further recognizes that any secondary junior financing placed upon the Mortgaged Property (i) may divert funds which would otherwise be used to pay the Note; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force the Lender to take measures and incur expenses to protect its security; (iii) would detract from the value of the Mortgaged Property should the Lender come into possession thereof with the intention of selling same; and (iv) would impair the Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by the Lender would be necessary to clear the title to the Mortgaged Property. In accordance with the foregoing and for the purposes of (a) protecting the Lender's security, both of repayment and of value of the Mortgaged Property; (b) giving the Lender the full benefit of its bargain and contract with the Borrower; (c) allowing the Lender to raise the interest rate and collect assumption fees; and (d) keeping the Mortgaged Property free of subordinate financing liens, the Mortgagor agrees that if this Section is deemed a restraint on alienation, that it is a reasonable one.

17. Events of Default; Acceleration. Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

UNOFFICIAL COPY

(a) The Borrower fails to pay (i) any installment of principal or interest payable pursuant to the terms of the Note when due, or (ii) any other amount payable to Lender under the Note, this Mortgage or any of the other Loan Documents within five (5) days after written notice from Lender; or, if another period is specified in any such Loan Document, the period specified therein; or

(b) The Borrower fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by the Borrower under the Note, this Mortgage or any of the other Loan Documents and not specifically described in this Section or in the Default section of any other Loan Document; provided, however, that if such failure by its nature can be cured, then so long as the continued operation, safety and value of the Mortgaged Property, and the priority, validity and enforceability of the liens created by this Mortgage or any of the other Loan Documents, are not impaired, threatened or jeopardized, then Mortgagor shall have a period (the "Cure Period") of thirty (30) days after the Mortgagor obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period; provided further that if such failure by its nature can be cured but cannot be cured by the payment of money and the Mortgagor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate; or

(c) the occurrence of a Prohibited Transfer; or

(d) the occurrence of an Event of Default under the Loan Agreement or any of the other Loan Documents.

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

18. Foreclosure; Expense of Litigation.

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, the Lender shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et. sq.) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, the Lender is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as the Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) 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 the Lender for reasonable attorneys' fees,

UNOFFICIAL COPY

appraisers' 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 the 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 Section and such other expenses and fees as may be incurred in the enforcement of the Mortgagor's obligations hereunder, the protection of said Mortgaged Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Lender in any litigation or proceeding affecting this Mortgage, 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 immediately due and payable by the Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

19. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as the Lender may determine in its sole and absolute discretion.

20. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by the Lender, appoint a receiver for the Mortgaged Property in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not and the Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Mortgaged Property (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when the Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during said period, including, to the extent permitted by law, the right to lease all or any portion of the Mortgaged Property for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

21. Lender's Right of Possession in Case of Default. At any time after an Event of Default has occurred, the Mortgagor shall, upon demand of the Lender, surrender to the Lender

UNOFFICIAL COPY

possession of the Mortgaged Property. The Lender, in its discretion, may, with process of law, 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 relating thereto, and may exclude the Mortgagor and its employees, agents or servants therefrom, and the Lender may then hold, operate, manage and control the Mortgaged Property, either personally or by its agents. The Lender shall have 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 avails, rents, issues, and profits of the Mortgaged Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, the Lender shall have full power to:

(a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same;

(b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

(c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of 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 the Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) make all necessary or proper repairs, 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 hereof, and to receive all rents, issues, deposits, profits, and avails therefrom;

(e) 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 Indebtedness in such order and manner as Lender shall select, in its sole discretion; and

(f) receive and collect the rents, issues, profits and revenues of the Mortgaged Property 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 the Mortgagor agrees to consent to a receiver if it is believed necessary or desirable by the Lender to enforce its rights under this Subsection. The collection of rents, issues, profits or revenues of the Mortgaged Property by the Lender shall in no way waive the right of the Lender to foreclose this Mortgage in the event of any said Event of Default.

UNOFFICIAL COPY

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 therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, 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 or under the other Loan Documents. 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 Mortgagor promises to pay upon demand together with interest thereon at the Default Rate. Lender shall not be liable to account to Mortgagor 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 become vacant or are abandoned, 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 so much additional Indebtedness payable upon demand with interest thereon at the Default Rate.

22. Application of Income Received by Lender. The Lender, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Mortgaged Property to the payment of or on account of the following, in such order as the Lender may determine:

(a) to the payment of the operating expenses of the Mortgaged Property, including cost of management and leasing thereof (which shall include compensation to the Lender and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized,

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Mortgaged Property; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

23. Compliance with Illinois Mortgage Foreclosure Law.

(a) If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to the Lender (including the Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 20 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in the Lender or in such receiver under the Act in the absence of said provision, the Lender and such receiver shall

UNOFFICIAL COPY

be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Sections 14, 18 or 31 of this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

24. Rights Cumulative. Each right, power and remedy herein conferred upon the Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Lender, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of the Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

25. Lender's Right of Inspection. The Lender and its representatives shall have the right to inspect the Mortgaged Property and the books and records with respect thereto at all reasonable times upon not less than twenty four (24) hours prior notice to the Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

26. Release Upon Payment and Discharge of Mortgagor's Obligations. The Lender shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by the Lender in connection with the execution of such release.

27. Notices Any notices, communications and waivers under this Mortgage shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by overnight express carrier, addressed in each case as follows:

| | |
|---------------|--|
| To the Lender | WINTRUST BANK 231 South LaSalle Street, 2nd Floor Chicago, Illinois 60604 Attention: Jason Girardin, Senior Vice President |
|---------------|--|

| | |
|-----------------|--|
| With a copy to: | MUCH SHELIST, P.C. 191 North Wacker Drive, Suite 1800 Chicago, Illinois 60606.1615 Attention: Michael D. Burstein |
|-----------------|--|

UNOFFICIAL COPY

To the Mortgagor: ROOTS DEARBORN REAL ESTATE, LLC
 2234 West North Avenue
 Chicago, Illinois 60647
 Attention: Brian Goldberg

With copy to: ROBERT E. MOLLOY
 2234 West North Avenue
 Chicago, Illinois 60647

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next Business Day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third Business Day following the day sent or when actually received.

28. Waiver of Right to Redeem - Waiver of Appraisal, Valuation, Etc.
 Mortgagor 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 Mortgage, but hereby waives the benefit of such Moratorium 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 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 the Lender may determine in its sole discretion. 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 outstanding principal amount of the Loan and the other Indebtedness, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Act, or residential real estate, as defined in Section 5/15-1219 of the Act. To the fullest extent permitted by law, Mortgagor, on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, 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 Section 5/15-1601(b) of the Act, and (ii) any and all rights of reinstatement.

29. Protective Advances.

(a) Advances, disbursements and expenditures made by Lender for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related

UNOFFICIAL COPY

proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Mortgage, constitute "Protective Advances":

(b) all advances by Lender in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

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

(d) advances by Lender in settlement or compromise of any claims asserted by claimants under any prior liens;

(e) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of this Mortgage or arising from the interest of the Lender hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(f) Lender's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(g) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(h) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act; and

(i) expenses incurred and expenditures made by Lender for any one or more of the following: (A) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (B) repair or restoration of damage or destruction in excess of available Insurance Proceeds or condemnation awards; (C) payments required or deemed by Lender to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement

UNOFFICIAL COPY

agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Property; (E) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

(j) All Protective Advances shall be so much additional Indebtedness, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(k) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (f)(5) of Section 5/15-1302 of the Act.

(l) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in the:

- (i) determination of the amount of Indebtedness at any time;
- (ii) indebtedness now due and owing to the 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;
- (iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (iv) application of income in the hands of any receiver or mortgagee in possession; and
- (v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Act.

30. Contests. Notwithstanding anything to the contrary herein contained, the Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Mortgaged Property or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Mortgaged Property (each, a "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

(a) The Mortgagor shall forthwith give notice of any Contested Lien to the Lender at the time the same shall be asserted;

UNOFFICIAL COPY

(b) The Mortgagor shall either pay under protest or deposit with the Lender the full amount (the "Lien Amount") of such Contested Lien; together with such amount as the Lender may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment the Mortgagor may furnish to the Lender a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to the Lender;

(c) The Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Mortgaged Property, and shall permit the Lender to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of the Lender's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);

(d) The Mortgagor shall pay each such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to the Mortgagor, or (ii) forthwith upon demand by the Lender if, in the opinion of the Lender, and notwithstanding any such contest, the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if the Mortgagor shall fail so to do, the Lender may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Lender to obtain the release and discharge of such liens; and any amount expended by the Lender in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that the Lender may in such case use and apply monies deposited as provided in Subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

31. Expenses Relating to Note and Mortgage.

(a) The Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, the Lender's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided the Mortgagor shall not be required to pay any income or franchise taxes of the Lender), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. The Mortgagor recognizes that, during the term of this Mortgage, the Lender:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which the Lender shall be a party by reason of the Loan Documents

UNOFFICIAL COPY

or in which the Loan Documents or the Mortgaged Property are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, the Lender's taking possession of and managing the Mortgaged Property, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with the Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Mortgaged Property, the assumption of liability for any of the Indebtedness or the transfer of the Mortgaged Property in lieu of foreclosure; or

(vi) May enter into negotiations with the Mortgagor or any of its agents, employees or attorneys pertaining to the Lender's approval of actions taken or proposed to be taken by the Mortgagor which approval is required by the terms of this Mortgage.

(b) All expenses, charges, costs and fees described in this Section shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by the Mortgagor forthwith upon demand.

32. Statement of Indebtedness. The Mortgagor, within seven days after being so requested in writing by the Lender, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

33. Further Instruments. Upon the written request of the Lender, the Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

34. Additional Indebtedness Secured. All persons and entities with any interest in the Mortgaged Property or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note, any of the other Loan

UNOFFICIAL COPY

Documents or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by the Lender to operate, manage or maintain the Mortgaged Property or to otherwise protect the Mortgaged Property or the lien of this Mortgage.

35. Indemnity. The Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against the Lender in the exercise of the rights and powers granted to the Lender in this Mortgage, and the Mortgagor hereby expressly waives and releases any such liability, except to the extent resulting from the gross negligence or willful misconduct of the Lender. The Mortgagor shall indemnify and save the Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "Claims"), of whatever kind or nature which may be imposed on, incurred by or asserted against the Lender at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which the Lender may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Mortgaged Property; and (c) the ownership, leasing, use, operation or maintenance of the Mortgaged Property, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Mortgaged Property to the Lender in accordance with the terms of this Mortgage; provided, however, that the Mortgagor shall not be obligated to indemnify or hold the Lender harmless from and against any Claims directly arising from the gross negligence or willful misconduct of the Lender. All costs provided for herein and paid for by the Lender shall be so much additional Indebtedness and shall become immediately due and payable upon demand by the Lender and with interest thereon from the date incurred by the Lender until paid at the Default Rate.

36. Compliance with Environmental Laws. Concurrently herewith the Borrower and the Guarantors have executed and delivered to the Lender that certain Environmental Indemnity Agreement dated as of the date hereof (the "Indemnity") pursuant to which the Borrower and the Guarantors have indemnified the Lender for environmental matters concerning the Mortgaged Property, as more particularly described therein. The provisions of the Indemnity are hereby incorporated herein and this Mortgage shall secure the obligations of the Mortgagor thereunder.

37. Subrogation. If any part of the Indebtedness is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then by advancing the monies to make such payment, the Lender shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

38. Business Loan.

(a) The Mortgagor declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and that the loan is exempt from interest limitations pursuant to the provisions of 815 ILCS 205/4 and is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et seq.

UNOFFICIAL COPY

(b) All rights, remedies and powers provided by this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Mortgage are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable under the provisions of any applicable law.

39. Miscellaneous.

(a) Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against the Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of the Lender, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Invalidity of Provisions. In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the Mortgagor and the Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

(c) 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. NOTWITHSTANDING THE FOREGOING, AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CRATED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDING TO THE LAWS OF THE STATE OF ILLINOIS. Whenever possible, each provision of this Mortgage and any other statement, instrument or transaction contemplated hereby or relating hereto shall be interpreted in such manner as to be effective and valid under such applicable law, but, if any provision of this Mortgage or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage or any other statement, instrument or transaction contemplated hereby or relating hereto.

(d) Municipal Requirements. The Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Mortgaged Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and the Mortgagor hereby assigns to the Lender any and all rights to give consent for all or any portion of the Mortgaged Property or any interest therein to be so used. Similarly, no building or other improvement on the Mortgaged Property shall rely on any premises not subject to the lien

UNOFFICIAL COPY

of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by the Mortgagor which would result in a violation of any of the provisions of this Subsection shall be void.

(e) Litigation. Mortgagor, at its sole cost and expense, shall appear in and defend any dispute, action, suit or proceeding purporting to relate to or affect the Note, the Loan Agreement or the security therefor, including, without limitation, this Mortgage or the Mortgaged Property. If any action or proceeding relating to or affecting the Note, this Mortgage, the Loan Agreement or the Mortgaged Property is commenced or threatened, to which action or proceeding lender is made a party, or in which it becomes necessary or desirable, in Lender's reasonable opinion, to defend or uphold, or to consider defending or upholding, the lien of this Mortgage, or to protect the Mortgaged Property or any part thereof, or to exercise, or to obtain the right to exercise, any of Lender's rights, powers and remedies hereunder, including, without limitation, any foreclosure or commencement of foreclosure proceedings, probate proceedings and bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceedings, or with respect to which Lender otherwise incurs costs or expenses, all sums paid by lender in order to determine the merits thereof, to establish or defend the rights and liens of this Mortgage, to protect the Mortgaged Property or any part thereof and to exercise, or to obtain the right to exercise, any of Lender's rights, powers and remedies hereunder, and/or otherwise incurred by Lender in connection therewith (including, without limitation, attorneys' fees and costs and allowances prior to trial, at trial and on appeal) and whether suit be brought or not, and whether or not Lender prevails therein, shall be paid, upon demand, to Lender by Mortgagor, together with interest thereon at the Interest Rate from the date incurred, and any such sum or sums shall be secured thereby.

(f) Adjustable Rate Note. The Note secured by this Mortgage provides for adjustments in its Interest Rate from time to time in accordance with its terms. Reference is made to the Note for the time, terms and conditions of the adjustments in the Interest Rate. Such times, terms and conditions are incorporated herein by reference.

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

(h) Option of Lender to Subordinate. At the option of the Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Mortgaged Property upon the

UNOFFICIAL COPY

execution by the Lender of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Mortgaged Property are situated.

(i) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Lender a mortgagee-in-possession in the absence of the actual taking of possession of the Mortgaged Property by the Lender pursuant to this Mortgage.

(j) Relationship of Lender and Mortgagor. The Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of the Mortgagor or of any lessee, operator, concessionaire or licensee of the Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, the Lender shall not be deemed to be such partner, joint venturer, agent or associate on account of the Lender becoming a mortgagee-in-possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of the Mortgagor and the Lender hereunder is solely that of debtor/creditor.

(k) Time of the Essence. Time is of the essence of the payment by the Mortgagor of all amounts due and owing to the Lender under the Note and the other Loan Documents and the performance and observance by the Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

(l) No Merger. The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Mortgaged Property, and if the Lender acquires any additional or other interest in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by the Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(m) Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to TWELVE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$12,750,000.00); provided, however, in no event shall the Lender be obligated to advance funds in excess of the face amount of the Note.

(n) CONSENT TO JURISDICTION. **MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS SECURITY INSTRUMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF LENDER INITIATES SUCH ACTION, ANY COURT IN WHICH LENDER SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. MORTGAGOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH**

UNOFFICIAL COPY

JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY LENDER IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO MORTGAGOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS SECURITY INSTRUMENT. MORTGAGOR WAIVES ANY CLAIM THAT COOK COUNTY, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD MORTGAGOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, MORTGAGOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY LENDER AGAINST MORTGAGOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY LENDER OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY LENDER OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

(o) WAIVER OF JURY TRIAL. MORTGAGOR HEREBY ACKNOWLEDGES THAT THE TIME AND EXPENSE REQUIRED FOR TRIAL BY JURY OF ANY CONTROVERSY RELATED IN ANY WAY TO THIS MORTGAGE WOULD EXCEED THE TIME AND EXPENSE REQUIRED FOR A BENCH TRIAL, AND HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY AND WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF LENDER.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Mortgagor has executed and delivered this Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents the day and year first above written.

ROOTS DEARBORN REAL ESTATE, LLC, an Illinois limited liability company

By: **GOLDBERG MANAGEMENT EXPERTS, LLC**, an Illinois limited liability company, its Manager

By:  _____
Brian Goldberg, its Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Brian Goldberg, the Manager of **GOLDBERG MANAGEMENT EXPERTS, LLC**, an Illinois limited liability company, in its capacity as Manager of **ROOTS DEARBORN REAL ESTATE, LLC**, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

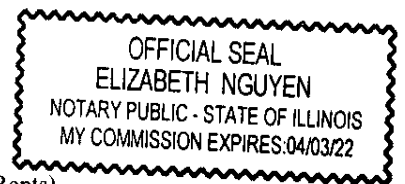
GIVEN under my hand and notarial seal this 27th day of September, 2019.



Notary Public

My Commission Expires:

(Signature Page to Construction Mortgage,
Security Agreement, Fixture Filing and Assignment of Leases and Rents)



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF LAND

PARCEL 1:

THE SOUTH 1/2 OF LOT 18, EXCEPT THAT PART TAKEN FOR DEARBORN STREET, IN BLOCK 126 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE NORTH 1/2 OF LOT 19, EXCEPT THAT PART TAKEN FOR DEARBORN STREET, IN BLOCK 126 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE SOUTH 1/2 OF LOT 19, EXCEPT THAT PART TAKEN FOR DEARBORN STREET, IN J. C. GOODHUE'S SUBDIVISION OF BLOCK 126 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS OF REAL ESTATE:

776 South Dearborn Street
Chicago, Illinois 60605

PERMANENT TAX INDEX NUMBERS:

17-16-406-019-0000
17-16-406-020-0000
17-16-406-024-0000

UNOFFICIAL COPY

EXHIBIT B

PERMITTED EXCEPTIONS

THE FOLLOWING ARE THE PERMITTED TITLE EXCEPTIONS PURSUANT TO PRO FORMA LOAN POLICY NO. 19000032661 ISSUED BY STEWART TITLE GUARANTY COMPANY:

EXCEPTIONS 3, 6 AND 9 AS SET FORTH ON SCHEDULE B, PART I, TOGETHER WITH EXCEPTIONS 1 AND 2 AS SET FORTH ON SCHEDULE B, PART II.

COOK COUNTY
RECORDER OF DEEDS

Exhibit B-1

9846504