

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud

844-768-1713



1928417833

Doc# 1928417833 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: 51.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 10/11/2019 09:40 AM PG: 1 OF 18

The property identified as:

PIN: 16-12-218-042-1003

Address:

Street: 2401 W. OHIO STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60612

Lender: GELT FINANCIAL, LLC

Borrower: F&S HOLDINGS LLC

Loan / Mortgage Amount: \$130,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

Certificate number: 4C697A30-525C-447B-AE97-97556CC5A35F

Execution date: 9/27/2019

S Y
P 18
S Y
M
SC
E
INT

UNOFFICIAL COPY

PREPARED BY AND RETURN TO:

The Gibson Law Firm, P.A.
9858 Clint Moore Rd., Cl11 #293
Boca Raton, FL 33496

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

This Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (this "**Mortgage**") is made as of the 27th day of September, 2019, between **F&S Holdings LLC**, an Illinois Limited Liability Company, with its principal office located 450 E. Waterside Drive #2304, Chicago, IL 60601, hereinafter shall be called the Mortgagor, which term as used in every instance shall include the Mortgagor's heirs, executors, administrators, successors, legal representatives and assigns, either voluntary by act of the parties or involuntary by operation of law, and shall denote the singular and/or plural, and the masculine and/or feminine and natural and/or artificial persons, whenever and wherever the context so requires or admits; and **GELT FINANCIAL, LLC**, a Delaware limited liability company, with an address of 5300 West Atlantic Ave, Suite 205, Delray Beach, Florida 33484, hereinafter called the Mortgagee, which term as used in every instance shall include the Mortgagee's successors, legal representatives and assigns.

1. **Grant of Mortgage:** For consideration paid, Mortgagor hereby grants to Mortgagee, with Mortgage Covenants, to secure: (a) the payment of One Hundred Thirty Thousand Dollars and Zero Cents (\$130,000.00) with interest thereon, as provided in the Commercial Promissory Note (the "**Note**") of Mortgagor of even date herewith, payable to the order of Mortgagee; (b) the performance of all covenants and agreements contained in this Mortgage, the Note, a Business Loan Agreement between Mortgagor and Mortgagee of even date herewith and in any other instrument now existing or hereinafter entered into relating to or providing additional security for the loan secured hereby (the "**Loan**"), as they may be amended, modified, restated or replaced (this Mortgage, the Note, and such other instruments are sometimes hereinafter collectively referred to as the "**Loan Documents**"); and (c) the payment and performance of all other debts, covenants and agreements of or by Mortgagor to or for the benefit of Mortgagee now existing or hereafter arising while this Mortgage is still undischarged of record, the land with the buildings and improvements now and in the future located thereon, located in Cook County, Illinois, known as 2401 W. Ohio St., Chicago, IL 60612 (including 542 N. Western Ave., Chicago, IL 60612 and 559 N. Artesian Ave., Chicago, IL 60612) and described as follows (the "**Real Property**"):

See Exhibit "A" attached hereto.

UNOFFICIAL COPY

- a. **Future Advances:** Lender may from time to time, in Lender's discretion, make optional future or additional advances (collectively, "Future Advances") to Borrower, except that at no time shall the unpaid principal balance of all indebtedness secured by the lien of the Mortgage, including Future Advances, be greater than an amount equal to two hundred percent (200%) of the original principal amount of the Promissory Note as set forth on the Loan Documents, plus accrued interest and amounts disbursed by Lender. All Future Advances shall be made, if at all, pursuant to the terms in the Note, Mortgage and/or Loan Documents.

All Future Advances shall be made, if at all, within twenty (20) years after the date of the Mortgage and Promissory Note, or within such lesser period that may in the future be provided by law as a prerequisite for the sufficiency of actual or record notice of Future Advances as against the rights of creditors or subsequent purchasers for value. Borrower shall, immediately upon request by Lender, execute and deliver to Lender a promissory note evidencing each Future Advance together with a notice of such Future Advance in recordable form. All promissory notes evidencing Future Advances shall be secured, *pari passu*, by the lien in this Mortgage, and each reference in this Mortgage shall be deemed to be a reference to all promissory notes.

2. **Security Agreement:** As further security for Mortgagor's obligations, in order to secure the payment of "Liabilities" as defined herein: Mortgagor hereby grants to Mortgagee a security interest in all of Mortgagor's right, title and interest in and to all furniture, fixtures, equipment, furnishings, inventory, appliances, construction materials and machinery now or hereafter located on or intended to be used in connection with the construction, operation, maintenance, use and occupancy of the Real Property, all insurance proceeds including interest payable in connection with any damage or loss to the Mortgaged Property (defined below), all eminent domain awards made with respect to the Mortgaged Property, all warranties, guarantees, licenses, permits, approvals, surveys, plans, service contracts, management agreements, development agreements, parking agreements, operating contracts and any other contracts and agreements relating to the Real Property and/or the construction, use, operation or occupancy thereof, all tradenames and goodwill associated with the construction, use, operation or occupancy of all or any portion of the Real Property, all books and records relating to Mortgagor's construction, use, operation or occupancy of all or any portion of the Real Property, all leases, subleases, rental and other occupancy agreements relating to all or any portion of the Real Property and all rents and income and deposits related thereto, all prepaid premiums or other payments relating to the construction, use, operation or occupancy of all or any portion of the Real Property; and all other personal property of any kind or character as defined in and subject to the provisions of the Uniform Commercial Code in effect from time to time which are now owned or hereafter acquired by Mortgagor which relate to the construction, use, operation or occupancy of all or any portion of the Real Property including, without limitation, all cash (including change funds), cash proceeds, noncash proceeds, inventory, goods, supplies, equipment, commercial tort claims, documents, instruments, general intangibles, chattel paper, electronic chattel paper, accounts, software, letter of credit rights and contract rights (each as defined in the Uniform Commercial Code), and the proceeds of any of the foregoing, all accounts receivable, income, commissions and profits relating to the Mortgaged Property; all rights to use any other name or names which Mortgagor may now or hereafter be entitled to use in connection with the operation of the Real Property or any part hereof or facility thereon (collectively, the "**Personal Property**" or "**UCC Collateral**"). Mortgagor agrees that the foregoing grant of a secured or security interest in the Personal Property shall be deemed to be a portion of the security for payment and performance required of Mortgagor under the Note and under any of the other Loan Documents. Mortgagor agrees that (except in the ordinary course of business and without causing any adverse effect on the value or utility of the Mortgaged Property or Mortgagee's lien thereon) none of the Personal Property shall be sold or removed from the Mortgaged Property without Lender's written consent unless replaced with new articles of at least equal utility and value in which Mortgagee shall, by the terms

UNOFFICIAL COPY

hereof, obtain a first and prior secured interest. Mortgagor agrees that Mortgagee shall have, in addition to all other rights and remedies hereunder, all rights and remedies of a secured party under the Illinois Uniform Commercial Code, so-called. This Mortgage is intended also to be a security agreement with respect to the Personal Property. This Mortgage shall constitute a "fixture filing" for the purposes of the Uniform Commercial Code. Information concerning the security interest granted herein may be obtained from the parties at the address of the parties set forth herein. The "debtor" is the Mortgagor, the "secured party" is the Mortgagee, the collateral is as described in above and the granting clauses of this Mortgage, and the address of debtor (Mortgagor) and the address of the secured party (Mortgagee) are set forth in this Mortgage.

Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such security agreements, control agreements, consents, written authentications and other documents and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect, continue and preserve Mortgagee's security interest granted hereby or by any of the other Loan Documents. Mortgagee may cause such financing statements, control agreements, consents, written authentications and other documents and such further assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect, continue and preserve such security interest in any and all of the UCC Collateral. In addition, Mortgagor hereby authorizes Mortgagee to cause any financing statement or fixture filing and any amendments or continuations thereof, to be filed or recorded without the necessity of any signature of Mortgagor on such financing statement or fixture filing, or amendment or continuation thereof necessary or desirable, in Mortgagee's judgment, to perfect and preserve Mortgagee's security interest in any and all of the UCC Collateral.

The Real Property and the Personal Property are referred to collectively herein as the "**Property**" or the "**Mortgaged Property**".

That in order to secure the payment of "Liabilities," defined above, Mortgagor has, and by these presents does hereby mortgage to Mortgagee, and does hereby grant to Mortgagee a security interest in and upon the terms and conditions of this Mortgage, all Mortgaged Property, to have and to hold said Mortgaged Property, whether now owner or hereafter acquired and whether now or hereafter existing, together with all the rights, privileges and appurtenances thereunto belonging or in anywise appertaining, unto Mortgagee, its successors and assigns, upon the terms, provisions and conditions herein set forth, forever, and, Mortgagor does hereby bind itself and its successors, legal representatives, heirs and assigns, to warrant and forever defend all and singular the Mortgaged Property unto Mortgagee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Mortgagor hereby grants to Mortgagee and its successors and assigns, a security interest in the Mortgaged Property, and each and every part thereof, and in all proceeds from the sale, lease or other disposition thereof.

This Mortgage, and all rights, titles, interests, liens, security interests, powers, privileges and remedies created hereby or arising hereunder or by virtue hereof, are given to secure ratably and equally the payment and performance of the following indebtedness, obligations and liabilities:

(a) The indebtedness evidenced by the Note, bearing interest at the Note Rate and payable as therein and hereunder specified, and maturing on the Maturity Date as therein and hereunder defined, said Note providing for interest at the Default Rate on past due principal and interest and a Late Charge for past due payments, containing an attorneys' fee clause and containing provisions allowing the holder thereof, at its option, to declare the principal and interest thereof to be due and payable at any time after the occurrence of certain defaults (said Note to include all other promissory notes given in renewal, replacement or extension of all or any part thereof);

UNOFFICIAL COPY

(b) The payment of any and all (i) taxes, charges or assessments which may be imposed by law upon the Premises; (ii) premiums on insurance policies covering the Premises; (iii) expenses incurred in upholding the lien of this Mortgage, including, but not limited to the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage; or (iv) any amount, cost or charge to which Mortgagee becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority; and

(c) Any and all renewals and extensions of all or any part of the indebtedness, obligations and liabilities described or referred to in clauses (a) and (b) preceding.

The term "Liabilities," as used herein, shall mean all of the indebtedness, obligations and liabilities described or referred to in clauses (a), (b) and (c) preceding.

3. **Representations:** Mortgagor warrants and represents that: (a) this Mortgage has been duly authorized, executed and delivered by and on behalf of Mortgagor; (b) the Mortgagor is duly existing and in good standing and has all power, authority and legal right to engage in the transaction contemplated by this Mortgage and the other Loan Documents, (c) the Mortgagor is the actual, record and beneficial owner of a good and marketable title to an indefeasible fee interest in the Premises, subject in all cases to no liens, charges or encumbrances except such as are listed as exceptions to title in the title policy issued by the Title Company (the "Title Report") respecting the Premises, and Mortgagor is the owner of all of the remaining Mortgaged Property, (d) this Mortgage is and will remain a valid and enforceable first lien on the Mortgaged Property, and (e) the execution and delivery of this Mortgage and the other Loan Documents and the carrying out of the transaction contemplated thereby will not conflict with or result in a breach of the terms of any agreement or law or order of any court or governmental body.

4. **Taxes and Assessments:** Mortgagor shall pay or cause to be paid, not later than the last day upon which payment may be made without penalty or interest, all taxes, charges for water, sewer and other municipal services and assessments and any other charges or assessments that might become a lien prior to the lien of this Mortgage, whether or not assessed against Mortgagor or Mortgagee, and whether or not assessed pursuant to authority adopted before or after the date of this Mortgage if applicable or related in any way to the Mortgaged Property, any interest in the Mortgaged Property of Mortgagor or Mortgagee or the debt, obligations or performance secured hereby, or the disbursement or application of the proceeds therefrom (collectively, the "Impositions"), excluding, however, any franchise, inheritance, income or corporation excise tax of Mortgagee.

5. **Insurance:** Mortgagor shall keep the Mortgaged Property and the improvements now existing or hereafter erected on the Mortgaged Property insured against loss by fire and other hazards, casualties and contingencies, including, but not limited to, flood (to the extent as may be required due to the Property's location in a special flood zone), windstorm, and builder's risk completed value coverage, in such amounts and for such periods as may be required by Mortgagee but in no event at an amount in excess of the insurable value of such property, and to pay promptly when due, any premiums on such insurance policies or renewals. All insurance shall have attached thereto loss payable clauses in favor of and in form acceptable to Mortgagee. All insurance policies shall require that written notice be sent to Mortgagee at least thirty (30) days prior to the effective date of the expiration, termination or amendment thereto. At least thirty (30) days prior to the termination or expiration date of all such policies, renewals thereof satisfactory to Mortgagee shall be delivered to Mortgagee. Mortgagor shall deliver to Mortgagee receipts evidencing the payment of all such insurance policies and renewals. In the event of loss, Mortgagor will give immediate notice by mail to Mortgagee and Mortgagee may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and the

UNOFFICIAL COPY

insurance proceeds or any part thereof shall be applied by Mortgagee to the restoration or repair of the property damage. In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. Notwithstanding the foregoing, the obligations of Mortgagor hereunder are modified as set forth in the Loan Agreement.

6. **Maintenance and Alterations:** Mortgagor shall maintain the Mortgaged Property at all times in as good repair and condition as the same now is or may hereafter be put, ordinary wear and tear and damage from casualty expressly not excepted. Mortgagor shall not take any action, or permit any condition or activity, which could diminish the value of the Mortgaged Property or invalidate any insurance required to be provided under this Mortgage. Mortgagor shall not remove or alter any of the improvements, equipment, appliances, furnishings and fixtures currently or hereafter constituting part of the Mortgaged Property and in all events shall promptly replace any such item with an item of equivalent utility and value. Mortgagor shall permit Mortgagee, its agents and employees reasonable opportunity to enter upon the Mortgaged Property after reasonable advance notice for the purpose of inspecting the condition of the Mortgaged Property and determining Mortgagor's compliance with the covenants contained in this Mortgage.

7. **Use and Compliance with Law:** The Mortgagor shall not abandon the Mortgaged Property. The Mortgagor shall not permit any violation of any law, by-law, ordinance, public or private restriction, regulation, order or code affecting the Mortgaged Property or the use thereof or take any action or permit any condition or activity which could invalidate any license or permit needed for the use and occupancy of the Mortgaged Property.

8. **Leases:** Mortgagor shall not hereafter (i) enter into any lease, rental or other occupancy agreement (each a "Lease" and collectively, "Leases"), (ii) modify any existing Lease so as to reduce either the rentals due or the length of the term thereof, or (iii) otherwise permit the occupancy of all or any portion of the Mortgaged Property without the express prior written approval of Mortgagee, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, Mortgagor shall be entitled to enter into residential leases for any portion of the Property, provided in each instance (a) the lessee is an unrelated and unaffiliated third party, (b) the term is not less than 6 nor more than 12 months, (c) lessee is obligated to pay rent at market rates, and (d) Mortgagor collects a security deposit of not less than one month's rent (and holds same in accordance with applicable law). Mortgagor shall observe and perform all obligations imposed upon Mortgagor under any Lease of the Mortgaged Property or any portion thereof.

Mortgagee shall have the right, but not the obligation, to subordinate this Mortgage and its rights hereunder to any Lease of the Mortgaged Property or any portion thereof which is subordinate to this Mortgage, except that Mortgagee shall be entitled to expressly exclude from such subordination Mortgagee's rights to insurance proceeds and eminent domain awards in the event of a loss or casualty or eminent domain taking of the Mortgaged Property or any portion thereof. If Mortgagee executes and records an instrument which purports to effect a partial or complete subordination of this Mortgage to any Lease which is subordinate to this Mortgage, such Lease shall not be terminated by a foreclosure of this Mortgage, but any rights of Mortgagee to insurance proceeds or eminent domain awards which are expressly excluded from such subordination shall remain superior to the rights of the tenant under such Lease.

9. **Compliance With Superfund and Hazardous Waste Laws:** Mortgagor covenants and agrees:

- (a) to strictly comply with the requirements of the following statutes, as amended:

UNOFFICIAL COPY

- (i) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601 et seq.
- (ii) Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.
- (iii) Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136
- (iv) Hazardous Materials Transportation Act, 49 U.S.C. §§1801-1812.
- (v) Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq.
- (vi) Federal Solid Waste Disposal Act, 42 U.S.C. §§6901 et seq.
- (vii) Resource Conservation and Recovery Act, 42 U.S.C. §§6921 et seq.
- (viii) Clean Air Act, 42 U.S.C. §§7401 et seq.
- (ix) Clean Water Act, 33 U.S.C. §§466 et seq. and 33 U.S.C. §§ 1251 et seq.
- (x) Safe Drinking Water Act, 14 U.S.C. §§1401-1450.
- (xi) The United States Department of Transportation Hazardous Materials Table 49 C.F.R. 172.101 et seq.

the regulations promulgated thereunder, and any other applicable federal, state and local laws, rules and regulations now existing or hereafter arising with respect to similar subject matter to or adopted pursuant to the foregoing (collectively, the "Environmental Laws");

- (b) to promptly notify Mortgagee of the presence of any Hazardous Substances in, on, or under the Mortgaged Property.

10. Assignment of Leases and Rents:

(a) As additional security for the obligations secured hereby, the Mortgagor hereby assigns to the Mortgagee all of the Mortgagor's rights under any and all Leases for the use or occupancy of all or any part of the Mortgaged Property, and the right to receive rent or other payments. The assignment of rents and leases contained in this Mortgage is present and absolute and is effective immediately. Notwithstanding the foregoing, until the occurrence of an Event of Default, Mortgagor shall have a revocable license to receive, collect and enjoy the rents accruing from the Mortgaged Property. Mortgagor shall hold a portion of such rents so collected by Mortgagor and any other income and profits sufficient to discharge all current sums then due under the Note, this Mortgage or any of the other Loan Documents, for use in the payment of such sums and, subject to the following sentence, all additional sums received by Mortgagor prior to an Event of Default as rent or otherwise may be paid out and distributed free from this lien or assignment. Upon the occurrence of an Event of Default, the revocable license shall automatically be revoked and thereafter Mortgagee may, at its option, receive and collect all rents as they become due.

(b) Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney with full power of substitution and with full power for Mortgagee in its own name and capacity or in the name and capacity of Mortgagor, from and after the occurrence of an Event of Default, to demand, collect, receive and give complete acquittance for any and all rents, and at Mortgagee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Mortgagor or otherwise, which Mortgagee may deem necessary or desirable in order to collect and enforce the payment of the rents. Upon written notice that an Event of Default has occurred and remains outstanding, tenants or other occupants of the Mortgaged Property are hereby expressly authorized and directed to pay any and all amounts due Mortgagor pursuant to the leases, rental or other occupancy agreements to Mortgagee or such nominee as Mortgagee may designate in writing delivered to and received by such tenants who are expressly relieved of any and all duty, liability or obligation to Mortgagor in respect of all payments so made.

UNOFFICIAL COPY

(c) From and after the occurrence of an Event of Default, Mortgagee is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to collect the rents assigned hereunder, either by itself or through a receiver, including the right of Mortgagee or its designee to enter upon the Mortgaged Property, or any part thereof, with or without force and with or without process of law and take possession of all or any part of the Mortgaged Property together with all personal property, fixtures, documents, books, records, papers and accounts of Mortgagor relating thereto, and may exclude the Mortgagor, its agents and servants, wholly therefrom; Mortgagor hereby consents to the appointment of such receiver; Mortgagor hereby grants full power and authority to Mortgagee to exercise all rights, privileges and powers herein granted at any and all times after service of a notice exercising the powers granted herein, without further notice to Mortgagor, with full power to use and apply all of the rents herein assigned to the payment of the costs of managing and operating the Mortgaged Property and to any obligations secured by this Mortgage or any other liability of Mortgagor to Mortgagee, including, but not limited to, the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring buildings or other improvements, and to the payment of attorneys' fees, costs and expenses incurred in connection with the enforcement of this Mortgage, and to principal and interest and other payments due from Mortgagor to Mortgagee under the Note, this Mortgage and any of the other Loan Documents, all in such order as Mortgagee may determine. Mortgagee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the leases, rental or other occupancy agreements and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Mortgagor in the leases, rental or other occupancy agreements, provided Mortgagee may, at its sole option, institute any legal or equitable action which Mortgagee in its sole discretion, deems desirable to collect any or all of the rents.

(d) Following the occurrence of an Event of Default, Mortgagee may perform any or all obligations of Mortgagor under any of the Leases or this Mortgage and take such actions as Mortgagee deems appropriate to protect its security interest including without limitation (i) appearing in any action or proceeding affecting any of the Leases or the Mortgaged Property; (ii) executing new Leases and modifying, terminating or canceling existing Leases; (iii) collecting, modifying and compromising any rents payable under the Leases; (iv) enforcing any of the Leases, including, if necessary, evicting lessees; and (v) any other remedies permitted Mortgagee under applicable law. The foregoing are in addition to the remedies afforded Mortgagee under any of the other Loan Documents or in law or equity, by statute or otherwise, all of which rights are reserved by Mortgagee. It is further understood that the assignment of the leases contained in this Mortgage shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Property, or parts thereof, upon Mortgagee, nor shall it operate to make Mortgagee liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Mortgaged Property by any lessee under any of the Leases or any other person, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any lessee, licensee, employee or stranger.

(e) Nothing herein shall be construed as constituting the Mortgagee a mortgagee in possession of the Mortgaged Property in the absence of Mortgagee taking actual possession of the Mortgaged Property.

(f) Whenever reference is made in this Mortgage to a lease, lessee tenancy or tenant, such reference shall be deemed to include a sublease, sublessee sub tenancy or subtenant, as the case may be.

UNOFFICIAL COPY

11. **Casualties and Takings:** If the Mortgaged Property or any part thereof shall be damaged or destroyed by fire or other hazard insured against, or if the Mortgaged Property or any portion thereof or interest therein shall be taken by eminent domain, Mortgagor shall promptly give written notice thereof to Mortgagee and promptly take such action as is required to collect any applicable insurance proceeds or any eminent domain award. No settlement on account of any loss, damage or taking shall be made without the participation, if Mortgagee elects to participate, and the prior written consent of Mortgagee. If, in Mortgagee's sole judgment, Mortgagor is not proceeding promptly to settle such claims in a manner satisfactory to Mortgagee or, if there has occurred an Event of Default which has not been waived in writing by Mortgagee, Mortgagee may settle any claims with the insurers or taking authority and Mortgagee is hereby irrevocably appointed attorney-in-fact for Mortgagor to settle such claims and to collect and endorse any checks issued in the name of Mortgagor. Any proceeds from insurance or awards for such taking, as the case may be, shall be payable directly to Mortgagee and at Mortgagee's sole option, shall be applied to the indebtedness secured by this Mortgage, or released by Mortgagee to Mortgagor for repair and reconstruction of the Mortgaged Property upon such terms and conditions as Mortgagee may require in its sole discretion in order to insure the lien-free completion of the repair and reconstruction of the Mortgaged Property to a condition at least as favorable as the condition of the Mortgaged Property existing as of the date of the casualty or taking.

12. **Other Security Interests:** Mortgagor shall not permit, without the prior written consent of Mortgagee which may be withheld in its sole discretion, the creation or continued existence, whether by voluntary action, operation of law or otherwise, of any security interest in or other encumbrance on the Mortgaged Property other than the lien for unpaid real estate taxes and betterment assessments prior to the commencement of interest and penalties thereon. Mortgagor shall notify Mortgagee promptly of the existence of and the terms of any encumbrance or security interest affecting any portion of the Mortgaged Property and any lease of personal property or equipment to be used by Mortgagor exclusively at or in connection with the operation of the Real Property, whether now existing or hereafter arising. Mortgagor shall make all payments that become due to any lessor of such personal property or equipment, and, at the request of Mortgagee, shall assign to Mortgagee, upon Mortgagee's request, all of its right, title and interest in and to any and all agreements evidencing such lease. Mortgagor hereby grants Mortgagee full power and authority as attorney-in-fact of Mortgagor to make, execute, acknowledge and deliver such assignments. Mortgagor represents that no security interest or lease of personal property or equipment presently exists.

13. **UCC Representations:** Mortgagor warrants that on the date of this Mortgage, Mortgagor's principal place of business is the address set forth on the first page of this Mortgage and Security Agreement, and that Mortgagor's only other place of business is at the Mortgaged Property. Mortgagor agrees to maintain complete and accurate records listing and describing the Personal Property and promptly notify Mortgagee in writing of any change in the location of same, and to deliver such records to Mortgagee from time to time upon request of Mortgagee.

14. **Transfers and Encumbrances:** Mortgagor acknowledges that the identities of Mortgagor and its managers and members are of material importance to Mortgagee. Therefore, except as otherwise provided in the Note, unless Mortgagee's express prior written consent has been obtained, which consent may be withheld in Mortgagee's sole discretion, Mortgagor shall not suffer or permit a transfer of or change, whether effected by voluntary act or by operation of law, in the direct or indirect, legal or beneficial ownership of: (a) the Mortgaged Property or any portion thereof, or (b) any ownership interest in Mortgagor. Mortgagor shall not grant, suffer, or permit the placing of any mortgage, pledge, security interest or other lien on the Mortgaged Property or any portion thereof or on any ownership interest in Mortgagor or its managers or members, or any easement, right of way, covenant or condition whether voluntary or involuntary on the Mortgaged Property or any portion thereof or interest therein, other than the lien of this Mortgage without obtaining Lender's prior written approval, and in the event of any involuntary lien, same

UNOFFICIAL COPY

shall be removed or bonded over within thirty (30) days after the placement thereof. Mortgagee may, without notice to Mortgagor, deal with Mortgagor's successor or successors in interest with reference to this Mortgage and the debt secured hereby in the same manner as with Mortgagor without in any way releasing, discharging or modifying Mortgagor's liability or obligations with respect to this Mortgage or the debt secured hereby. No transfer of any interest in any part of the Mortgaged Property or interest therein shall operate to release, discharge, modify, change or affect the original liability of Mortgagor, nor the priority of this Mortgage either in whole or in part.

15. Mortgagee's Right to Cure and Expenses: Upon at least five (5) days prior written notice to Mortgagor, the Mortgagee shall be entitled, but not obligated, to cure any failure of the Mortgagor to perform its obligations under this Mortgage and to commence, intervene in or otherwise participate in any legal or equitable proceeding which in the Mortgagee's sole judgment affects the Mortgaged Property or any rights created or secured by this Mortgage or any obligation secured hereby. No such prior written notice need be given in the event of an emergency or after an Event of Default. If the Mortgagee shall become involved in any action or course of conduct with respect to the Note, this Mortgage, any of the other Loan Documents, the Mortgaged Property or other security for the debt or obligations secured hereby in order to protect its interest therein or cure any default of the Mortgagor hereunder, the Mortgagor shall, on demand, reimburse the Mortgagee for all charges, costs and expenses reasonably incurred by the Mortgagee in connection therewith, including, without limitation, reasonable attorneys' fees and additional fees to compensate the Mortgagee for overhead and personnel salaries and wages attributable to undertaking such actions or conduct, together with interest thereon from the date incurred until paid at an interest rate equal to the rate of interest specified in the Note to be in effect after there has been an Event of Default and the principal sum has been declared due and payable, but in no event higher than the highest rate permitted by law. This Mortgage shall secure any advances and costs made and/or incurred by the Mortgagee to and/or for the benefit of the Mortgagor, as entitled hereunder or under the other Loan Documents. Nothing herein contained shall be considered as limiting the amounts that shall be secured hereby when advanced to protect the security given hereunder in accordance with covenants contained in this Mortgage or any other agreement securing the Note.

16. Events of Default: Each of the following shall constitute an "Event of Default":

- (a) failure to pay any sum due under the Note when due in accordance with its terms;
- (b) breach of any one or more of the covenants, conditions or agreements in any Loan Document or in any other mortgage, debt or obligation of or from Mortgagor to Mortgagee or in any other mortgage or instrument which constitutes a lien on all or any part of the Mortgaged Property, in each case, if such breach remains uncured after the expiration of any applicable notice or cure period;
- (c) breach of any covenant, without notice or cure period, as applicable, unless a notice or cure period is specifically set forth in such Sections and such breach remains uncured after the expiration of any such notice or cure period;
- (d) breach of any covenant, condition or agreement contained in this Mortgage which remains uncured for a period in excess of thirty (30) days after notice thereof; provided that in the case of any breach which is susceptible to cure but cannot reasonably be cured within thirty (30) days, so long as Mortgagor promptly commences such cure, such breach remains susceptible to cure, and Mortgagor diligently pursues such cure to completion, such breach shall not be deemed to create an Event of Default hereunder unless remaining uncured ninety (90) days after such notice;
- (e) failure of Mortgagor to cause to be dismissed any proceeding against Mortgagor under any law relating to bankruptcy, reorganization, insolvency or relief of debtors, within sixty (60) days

UNOFFICIAL COPY

from the date on which Mortgagor receives notice that such proceeding was filed or instituted, or the filing or other institution of a proceeding by Mortgagor under any such law;

- (f) the insolvency of Mortgagor; or
- (g) the material inaccuracy of any statement, representation or warranty made by Mortgagor to Mortgagee in this Mortgage;
- (h) if Mortgagor or any interest in Mortgagor is pledged, hypothecated, levied upon, encumbered or transferred (by operation of law or otherwise), in any manner, without the prior written consent of Mortgagee;
- (i) if the Premises or any interest in the Premises, or any part thereof is pledged, hypothecated, levied upon, encumbered or transferred (by operation of law or otherwise) in any manner without the prior written consent of Mortgagee;
- (j) if title to the Premises or any portion thereof or any interest therein is vested in any other party pursuant to any proceeding or other action by exercise of the right of condemnation, nationalization, seizure, confiscation, requisition or eminent domain;
- (k) if (except as permitted by Paragraph 6) the Mortgagor shall fail to pay any installment of any assessment against the Mortgaged Property for local improvements heretofore or hereafter laid, which assessment is or may become payable in annual or periodic installments and is or may become a lien on the Mortgaged Property; or
- (l) if any Federal tax lien is filed against the Mortgagor, any Guarantor or the Mortgaged Property and the same is not discharged of record within thirty (30) days after the same is filed; or
- (m) if (except as specifically provided to the contrary in above) without the consent of the Mortgagee (which consent in any and all circumstances may be withheld in the sole and absolute discretion of the Mortgagee) any part of the Mortgaged Property or any interest of any nature whatsoever therein or any interest of any nature whatsoever in the Mortgagor or any Guarantor (whether partnership, membership interest, stock, equity, beneficial, profit, loss or otherwise) is in any manner, by operation of law or otherwise, whether directly or indirectly, voluntary or involuntary, further encumbered, sold, transferred, assigned or conveyed; or,
- (n) if without the consent of the Mortgagee any Improvement or the Equipment (except for the normal replacement of the Equipment) is removed, demolished or materially altered, or if the Mortgaged Property is not kept in good condition and repair; or
- (o) if on application of the Mortgagee two or more fire insurance companies lawfully doing business in the State of Illinois refuse to issue Policies; or
- (p) if (except as specifically provided to the contrary in above) without the consent of the Mortgagee any Leases are made, canceled or modified or if any portion of the Rents is paid for a period of more than one (1) month in advance (except for estimated taxes and operating expenses required to be paid in advance under a Lease) or if any of the Rents are further assigned; or
- (q) if any representation or warranty of the Mortgagor, or of any person (together with such person's executors, administrators, legal representatives, successors and assigns, "Guarantor")

UNOFFICIAL COPY

guaranteeing payment of the Debt or any portion thereof, or of operating expenses of the Mortgaged Property or guaranteeing performance by the Mortgagor of any of the terms of this Mortgage made herein or in any such guaranty (the "Guaranty"), or in any certificate, report, financial statement or other instrument furnished in connection with the making of the Note, this Mortgage, or any such Guaranty, shall prove false or misleading in any material respect; or

(r) if the Mortgagor or any Guarantor shall make an assignment for the benefit of creditors; or

(s) if there shall be an Event of Default under any other Loan Document

During the continuance of any Event of Default, Mortgagee, without notice or presentment, each of which are hereby waived by Mortgagor, subject to any cure period required by applicable law, if any, may, declare the entire debt secured hereby, together with all interest including interest at the default rate and prepayment charges to which Mortgagee would be entitled under the Note or by law if the Note were voluntarily prepaid in full, shall be due and payable, and Mortgagee shall have the right to foreclose or cause to be foreclosed the lien of this Mortgage for such indebtedness or part thereof and/or to exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the laws of the state applicable to mortgages or deeds of trust affecting property within the state (the "Lien Laws") or as are otherwise available at law including, without limitation, all rights and remedies available to a secured party under the Uniform Commercial Code. In the event of a sale of all or any part of the Mortgaged Property as the result of the exercise by Mortgagee of remedies for an Event of Default, pursuant to the powers and rights granted Mortgagee under this Mortgage or otherwise, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies. Mortgagor agrees that the requirement of the Uniform Commercial Code with respect to personal property that a secured party give a debtor reasonable notice of any proposed sale or disposition of the collateral shall be met if such notice is given to Mortgagor at least ten (10) days before the time of such sale or disposition.

During the continuance of any Event of Default, or upon or after Acceleration, Mortgagee may:

(a) institute an action of judicial foreclosure on this Mortgage or institute other proceedings according to law for the foreclosure hereof, and may prosecute the same to judgment, execution and sale for the collection of the obligations secured hereby, and all interest with respect thereto, together with all taxes and insurance premiums advanced by Mortgagee and other sums payable by Mortgagor hereunder, and all fees, costs and expenses of such proceedings, including reasonable attorneys' fees and expenses;

(c) take such steps to protect and enforce its rights, whether by action, suit or proceeding in equity or at law, for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect; and

(d) exercise in respect of the Mortgaged Property consisting of personal property or fixtures, or both, all of the rights and remedies available to a secured party upon default under the applicable provisions of the Uniform Commercial Code in effect in the State of Illinois

17. **Expense of Litigation:** In any foreclosure, to the extent not prohibited by the Lien Laws, there shall be allowed and included as additional indebtedness secured by this Mortgage and for which Mortgagor shall be obligated, all expenditures and expenses which may be paid or incurred by or on behalf

UNOFFICIAL COPY

of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended in the future) 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 Mortgagee may deem necessary, whether to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such foreclosure the true condition of the title to or the value of the Mortgaged Property, or otherwise. All expenditures and expenses of the nature mentioned in this paragraph and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the liens, rights, powers and authority granted pursuant to this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting the this Mortgage, the Note, the other Loan Documents or the Mortgaged Property, including appellate, probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceedings or threatened suit or proceeding shall be immediately due and payable by Mortgagor upon demand, with interest accruing at the default rate set forth in the Note until paid, and shall be secured by this Mortgage.

- (a) **Adverse Actions/Attorneys' Fees and Costs:** In the event of litigation, arbitration or any other action, adverse or otherwise, or proceeding between the parties to interpret or enforce this Mortgage, Loan Documents, or any part thereof or otherwise arising out of or relating to this Mortgage, the prevailing party shall be entitled to recover its costs related to any such action or proceeding and its reasonable fees of attorneys, accountants and expert witnesses incurred by such party in connection with any such action or proceeding. The prevailing party shall be deemed to be the party which obtains substantially the relief sought by final resolution, compromise or settlement, or as may otherwise be determined by order of a court of competent jurisdiction in the event of litigation, an award or decision of one or more arbitrators in the event of arbitration, or a decision of a comparable official in the event of any other action or proceeding. Every obligation to indemnify under this Mortgage includes the obligation to pay reasonable fees of attorneys, accountants and expert witnesses incurred by the indemnified party in connection with matters subject to indemnification.

18. Application of Proceeds of Foreclosure Sale: Subject to the provisions of the Lien Laws, the proceeds obtained from any foreclosure shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which may, under the terms of the Loan Documents, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein or therein provided and all other secured indebtedness including the principal and interest and other sums (including prepayment premiums) remaining unpaid on the Note; and third, any surplus to any party entitled thereto as their rights may appear or as may be dictated by the Lien Laws.

19. Appointment of Receiver; Mortgagee in Possession: Upon, or at any time after, the occurrence of an Event of Default, Mortgagee shall have the right, at its sole election and in accordance with the Lien Laws, to appoint a receiver for the Mortgaged Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Mortgaged Property or whether the Mortgaged Property shall be then occupied as a homestead or not, and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents during the pendency of such foreclosure, and during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any period of redemption, including, to the extent permitted by the Lien Laws,

UNOFFICIAL COPY

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.

20. Mortgagee's Right of Possession in Case of Default: At any time after an Event of Default has occurred, Mortgagor shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Mortgaged Property. Mortgagee, in Mortgagee's discretion, may enter upon and take and maintain possession of all or any part of the Mortgaged Property, as mortgagee in possession or otherwise, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Mortgaged Property, either personally or by Mortgagee's agents. Mortgagee shall have full power to use such measures, legal or equitable, as Mortgagee in Mortgagee's discretion may deem proper or necessary to enforce the payment or security of the rents, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent.

21. Application of Deposits After Default: After the occurrence of an Event of Default, Mortgagee may apply toward the debt secured hereby any deposit, payment or any sum due from Mortgagee to Mortgagor or to any Obligor without first enforcing any other rights of Mortgagee against any Obligor or against the Mortgaged Property.

22. Collection of Accounts: After an Event of Default, Mortgagee may require that payments on accounts be made directly to Mortgagee and shall have full power to collect, compromise, endorse, sell or otherwise deal with the accounts or proceeds thereof and to perform the terms of any contract in order to create accounts in Mortgagee's name or in the name of Mortgagor with respect to the business conducted at the Real Property.

23. Further Assurances: Mortgagor agrees to execute and cause to be filed or recorded, and hereby appoints Mortgagee its duly authorized attorney-in-fact, with full power of substitution and with authority to execute, file and record on behalf of Mortgagor, all instruments from time to time reasonably deemed by Mortgagee to be necessary or appropriate to evidence further the obligations of Mortgagor pursuant to this Mortgage or secured by this Mortgage, or to secure further to Mortgagee the security intended to be provided by this Mortgage, including, without limitation, UCC financing statements and continuation statements.

24. Notices: Any notice, demand or other communication under this Mortgage shall be in writing and shall be deemed to be delivered on the earliest of: (a) the date received, or (b) two (2) business days after the date deposited in a United States Postal Service depository, postage prepaid, sent registered or certified mail, return receipt requested, or (c) one (1) business day after being sent by recognized overnight or priority delivery service (such as Federal Express) addressed to the party to receive the same at the address of such party set forth at the beginning of this Mortgage, or at such other address as may be designated in a notice delivered or mailed as herein provided.

Any notice to Borrower provided for in this Mortgage shall be given as outlined above, to Borrower at his designated mailing address of 450 E. Waterside Drive #2304, Chicago, IL 60601.

25. Waivers: No course of dealing by Mortgagee and no forbearance on the part of Mortgagee or extension of the time for the payment of the debt secured hereby or any other indulgence given by Mortgagee shall operate to release, discharge, modify, change or affect the original liability of Mortgagor nor affect Mortgagee's rights later to take such action with respect thereto, and no waiver as to any one default shall affect Mortgagee's rights as to any other default. To the extent permitted under the Lien Laws, Mortgagor shall not, and will not, apply for, avail itself of, insist upon or plead or in any manner claim or take advantage of any appraisal, homestead, valuation, stay, extension or exemption laws, or any so

UNOFFICIAL COPY

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 laws. Mortgagor, for itself and all who may claim through or under Mortgagor, waives any and all right to have the property and estates comprising the Mortgaged Property marshaled 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. Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, from sale pursuant to a foreclosure of this Mortgage on behalf of Mortgagor, and each and every person claiming by, through or under Mortgagor.

26. Estoppel Certificates: Within five (5) business days after any request by Mortgagee, from time to time, Mortgagor will furnish to Mortgagee a duly acknowledged estoppel certificate stating the amount of the debt secured by this Mortgage, either that no offsets or defenses exist against the indebtedness secured by this Mortgage or, if such offsets or defenses are alleged to exist, the nature and extent thereof, and such other information concerning the indebtedness secured hereby or the Mortgaged Property as Mortgagee may reasonably specify and request. Failure of Mortgagor to specify offsets or defenses shall be conclusively deemed to be Mortgagor's acknowledgement that no such offsets or defenses exist.

27. Compliance with Lien Laws: If any provision in this Mortgage shall be inconsistent with any provision of the Lien Laws, the provisions of the Lien Laws 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 Lien Laws. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a Mortgagee in possession) or a receiver any powers, rights or remedies which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Lien Laws in the absence of such provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Lien Laws to the full extent permitted by law.

28. Rights Cumulative; Modification: Each right, power and remedy conferred upon Mortgagee in this Mortgage is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy set forth in this Mortgage or any other Loan Documents, or otherwise so existing, may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, 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 Mortgagee 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 default or acquiescence therein. This Mortgage cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

29. Interpretation and Binding Effect: The validity and interpretation of this Mortgage and of all other documents evidencing or securing the Loan shall be construed in accordance with the laws of the State of Illinois. In case any provision of the Note, this Mortgage, or any instrument executed by any person or organization in connection therewith shall be found unenforceable or invalid for any reason, such provision shall be deemed modified to the extent necessary to be enforceable or if such modification is not practicable, such provision shall be deemed deleted from this Mortgage or such other instrument. This Mortgage may not be amended, modified or changed, nor shall any waiver of any provisions hereof be effective, except by an instrument signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought. The headings of Sections and Paragraphs shall be ignored in interpreting this Mortgage. The word "Mortgagor" as used herein means Mortgagor named herein, whether one or several, and also means any subsequent owner or owners of all or any part of the Mortgaged Property. All of the covenants and agreements of Mortgagor herein contained shall be binding

UNOFFICIAL COPY

upon Mortgagor, its heirs, executors, administrators, successors and assigns and shall be joint and several if more than one person constitute Mortgagor. The word "**Mortgagee**" as used herein means Mortgagee named herein and any subsequent holder or holders of this Mortgage.

30. **Loan Documents.** In the event of any conflict between any provision of this Mortgage and any provision of the Note, Loan Agreement or other Loan Documents and such provisions cannot logically be interpreted to supplement each other, then the more restrictive provision shall control.

31. **Waiver of Jury Trial:** THE MORTGAGOR, BEING AN EXPERIENCED PARTICIPANT IN REAL ESTATE VENTURES, AND HAVING CONSULTED WITH COUNSEL OF THE MORTGAGOR'S CHOOSING, HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING: (I) BROUGHT BY MORTGAGOR, THE MORTGAGEE, ANY OBLIGOR, OR ANY THIRD PARTY RELATING TO (A) THE LOAN SECURED, IN PART, HEREBY, OR (B) ANY OF THE OTHER LOAN DOCUMENTS; OR (II) TO WHICH THE MORTGAGEE IS A PARTY (WHETHER SUCH CASE OR CONTROVERSY IS INITIATED BY OR AGAINST THE MORTGAGEE OR IN WHICH THE MORTGAGEE IS JOINED AS A PARTY LITIGANT). THE MORTGAGOR HEREBY AGREES THAT THIS MORTGAGE CONSTITUTES A WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY. THE MORTGAGOR ACKNOWLEDGES THAT ITS WAIVER OF TRIAL BY JURY HAS BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY THE ASSIGNOR, AND ONLY AFTER CONSULTATION WITH SOPHISTICATED LEGAL COUNSEL OF THE MORTGAGOR'S OWN CHOOSING, AS PART OF A BARGAINED-FOR LOAN TRANSACTION. MORTGAGOR ACKNOWLEDGES THAT NO REPRESENTATIVE, EMPLOYEE, AGENT OR COUNSEL OF MORTGAGEE HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE MORTGAGEE WOULD NOT, IN THE EVENT OF ANY SUCH ACTION, PROCEEDING OR LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

32. **Subordination of Fees.** The terms and conditions of all arrangements whereby Mortgagor, any guarantor, or any person, partnership, corporation, limited liability company or other entity related to or controlled by or under common control with Mortgagor or any guarantor or in which Mortgagor, any guarantor, or any member or manager of Mortgagor has a substantial interest, is or may be entitled to fees or commissions with respect to the Mortgaged Property shall be disclosed to Mortgagee and subordinated to this Mortgage delivery pursuant to a subordination agreement satisfactory to Mortgagee.

33. **Jurisdiction:** Mortgagor hereby consents to the non-exclusive personal jurisdiction of the federal and state courts located in the State of Illinois, in any and all actions between Mortgagor and Mortgagee arising under or in connection with this Mortgage, the Loan or any of the Loan Documents and waives any and all objections it may have as to venue in such courts. Mortgagor further agrees that a summons and complaint commencing an action or proceeding in any of such courts shall be properly served and shall confer personal jurisdiction if served as provided in Section 24 hereof or as otherwise provided under applicable law.

**The remainder of this page is intentionally blank.
Signatures are located on the following pages.**

UNOFFICIAL COPY

IN WITNESS WHEREOF, the said Mortgagor has hereunto signed and sealed these presents as of the day and year first above written.

F&S HOLDINGS LLC, Borrower

By: [Signature]
Faraz Iyob, Member

ACKNOWLEDGEMENT

STATE OF Illinois

:
: SS.:

COUNTY OF Cook

This instrument was acknowledged before me on September 27, 2019 by Faraz Iyob, as Member of F&S Holdings LLC.

(SEAL)



[Signature]
Signature of Notary Public

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

UNIT NO. 2401-NE AND 542 IN OHIO WEST LOFTS CONDOMINIUM, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

LOTS 1, 2, 3 AND 4 IN BLOCK 1 (EXCEPT THEREFROM THAT PART LYING EAST OF A LINE 50 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN) IN GAGE AND MCKEY'S SUBDIVISION OF BLOCK 9 IN WRIGHT AND WEBSTER'S SUBDIVISION OF THE NORTH EAST ¼ OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS,

WHICH SURVEY IS ATTACHED AS EXHIBIT "B" TO THE DECLARATION OF CONDOMINIUM RECORDED MAY 28, 1992 AS DOCUMENT 92369446, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS.

STREET ADDRESS: 2401 W. OHIO ST., CHICAGO, IL 60612 & 542 N. WESTERN AVE., CHICAGO, IL 60612

PIN(S): 16-12-218-042-1003 (542) & 16-12-218-042-1004 (2401-NE)

PARCEL 2:

THE NORTH 17.75 FEET OF THE EAST 20 FEET OF LOTS 34, 35, 36 AND 37, TAKEN AS A TRACT, EXCEPT THE NORTH 8.5 FEET THEREOF, IN BLOCK 1 IN GAGE AND MCKEY'S SUBDIVISION OF BLOCK 9 IN WRIGHT AND WEBSTER'S SUBDIVISION IN SECTION 12, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

STREET ADDRESS: 559 N. ARTESIAN AVE, CHICAGO, ILLINOIS 60612

PIN: 16-12-218-054-0000