

Illinois Anti-Predatory  
Lending Database  
Program

Doc#: 2021220273 Fee: \$98.00  
Edward M. Moody  
Cook County Recorder of Deeds  
Date: 07/30/2020 12:17 PM Pg: 1 of 22

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

The property identified as: **PIN:** 18-16-301-009-0000

**Address:**

**Street:** 185 Countryside Plaza

**Street line 2:**

**City:** Countryside

**State:** IL

**ZIP Code:** 60525

**Lender:** MUFG Union Bank, N.A.

**Borrower:** CFT NV Developments, LLC

**Loan / Mortgage Amount:** \$1,365,500.00

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

**Certificate number:** 258E5F10-4C69-4E4D-843B-C7116DC4D80A

**Execution date:** 6/8/2020

# UNOFFICIAL COPY

RECORDING REQUESTED BY:  
**MUFG UNION BANK, N.A.**

AND WHEN RECORDED MAIL TO:

MUFG UNION BANK, N.A.  
Attn: Collateral Management (V01-492)  
P.O. Box 30115  
Los Angeles, CA 90030-0115

Property of Cook County Clerk's Office

---

Space Above This Line For Recorder's Use

**MORTGAGE, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(ILLINOIS)**

**THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Mortgage") is made as of June 8, 2020 by CFT NV DEVELOPMENTS, LLC, a Nevada limited liability company (the "Mortgagor"), whose mailing address is 1120 N. Town Center Dr., Ste. 150, Las Vegas, NV 89144, in favor of MUFG UNION BANK, N.A. (the "Mortgagee"), whose mailing address is P.O. Box 30115, Los Angeles, CA 90030-0115.

**1. MORTGAGE.** For the purpose of securing payment and performance of the Secured Obligations (as defined in the "SECURED OBLIGATIONS" Section below), Mortgagor hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages, warrants, assigns and transfers to Mortgagee, its successors and assigns, all present and future rights, titles, interests, estates, powers and privileges that Mortgagor now has or may hereafter acquire in or to the following property and any interest therein (collectively, the "Mortgaged Property"):

**1.1** The real property located in the County of Cook, State of Illinois, more particularly described in Exhibit "A" attached hereto (the "Real Property");

**1.2** All buildings and other improvements and structures now or hereafter located on the Real Property (collectively, the "Improvements" and together with the Real Property shall sometimes be referred to as "Property");

**1.3** All existing and future leases, subleases, subtenancies, licenses, agreements and concessions relating to the use, occupancy or enjoyment of all or any part of the Property, together with any and all guaranties and other agreements relating to or made in connection with any of the foregoing (individually, a "Lease", and collectively, the "Leases");

**1.4** All rents, issues, income, revenues, royalties, profits, proceeds and earnings now or hereafter payable with respect to or otherwise derived from the ownership, use, management, operation, leasing or occupancy of the Property, including, without limitation, cash or security deposited under any of the

# UNOFFICIAL COPY

Leases to secure the performance by the lessees of their obligations thereunder (collectively, the "Rents");

**1.5** All tenements, hereditaments, appurtenances, privileges, choses in action, options to purchase all or any part of the Property or any interest therein (and any greater estate in the Property now owned or hereafter acquired by Mortgagor pursuant thereto), and other rights and interests now or in the future benefiting or otherwise relating to the Property, including, without limitation, easements, rights-of-way, sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property, development rights, oil, gas or other mineral rights and all royalty, leasehold and other rights of Mortgagor pertaining thereto;

**1.6** All water and water rights pertaining to the Real Property, and shares of stock evidencing the same, and all deposits made with or other security given to utility companies by Mortgagor with respect to the Property;

**1.7** All policies of insurance and all claims, demands or proceeds relating to such insurance or condemnation awards, recoveries or settlements which Mortgagor now has or may hereafter acquire with respect to the Property, including all advance payments of insurance premiums made by Mortgagor with respect thereto;

**1.8** All inventory, furnishings, fixtures, equipment, supplies, construction materials, goods and other articles of personal property, which are now or hereafter owned by Mortgagor and located at, placed upon or about, or affixed or attached to or installed in or on the Property or any part thereof, and used or to be used in connection with or otherwise relating to the Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy thereof, and all accessories, attachments, parts, or repairs of or to any of such property;

**1.9** All (a) accounts, general intangibles, chattel paper, letter of credit rights, deposit accounts, money, investment property, documents, certificates of title and instruments (whether negotiable or nonnegotiable), contract rights, insurance policies, and all rights to payment of any kind relating to or otherwise arising in connection with or derived from the Property or any other part of the Mortgaged Property, (b) accounts, general intangibles and all rights to payment of any kind relating to or otherwise arising in connection with or derived from any Interest Rate Hedge or Swap Contract (each as defined in Section 2 below), (c) refunds, rebates, reserves, deferred payments, deposits, cost savings and payments of any kind due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (individually, a "Governmental Agency"), or (ii) any insurance or utility company, in either case relating to any or all of the Mortgaged Property, (d) refunds, rebates and payments of any kind due from or payable by any Governmental Agency for any taxes, assessments, or governmental or quasi-governmental charges or levies imposed upon Mortgagor with respect to or upon any or all of the Mortgaged Property, and (e) cash collateral accounts maintained pursuant to any of the Loan Documents (as defined in the "Inspections" Section below); and

**1.10** All supporting obligations for, additions, accessions, improvements and accretions to, substitutions and replacements for, and proceeds and products of, any of the foregoing.

**2. SECURED OBLIGATIONS.** Mortgagor makes the grant, conveyance, transfer and assignment set forth in the "MORTGAGE" Section above FOR THE PURPOSE OF SECURING the following obligations (collectively, the "Secured Obligations") in such order of priority as Mortgagee may elect:

**2.1** Payment of all sums at any time owing and the performance of all other obligations arising under those certain promissory notes secured by deed to secure debt, deed of trust or mortgage in the original principal amount of (i) \$903,000.00, (ii) \$1,365,000.00, (iii) \$1,171,000.00, (iv) \$1,365,500.00, (v) \$682,500.00, (vi) \$420,000.00, (vii) \$1,244,250.00, (viii) \$997,500.00, (ix) \$918,750.00, and (x) \$1,312,500.00, which together total indebtedness in the aggregate amount of \$10,380,000.00, each dated of even date herewith executed by CFT NV Developments, LLC, a Nevada limited liability company ("Obligor") to the order of Mortgagee, and any and all modifications, replacements, extensions and

# UNOFFICIAL COPY

renewals thereof (collectively, the "Debt Instrument"), whether hereafter evidenced by the Debt Instrument or otherwise;

**2.2** Payment of interest on such sums according to the terms of the Debt Instrument;

**2.3** Payment of all other sums, including late charges and any attorneys' fees and other advances made by Mortgagee hereunder as hereinafter provided, with interest thereon as hereinafter provided, which are due or payable to Mortgagee under the provisions hereof;

**2.4** Due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement of Mortgagor contained herein, of Obligor in the Debt Instrument or in the Loan Agreement of even date herewith executed by Mortgagor or Obligor ("Loan Agreement"), executed by Mortgagor or Obligor, as the case may be, in connection with the indebtedness evidenced by the Debt Instrument, and all supplements, amendments and modifications thereto and all extensions and renewals thereof, or in any other instrument or document heretofore or hereafter executed by Mortgagor or Obligor having reference to or arising out of the indebtedness evidenced by the Debt Instrument which recites that the obligations thereunder are secured hereby;

**2.5** Payment of such additional sums as may be hereafter borrowed from Mortgagee by Mortgagor or Obligor (or guaranteed by Mortgagor) when evidenced by a debt instrument or instruments (or guaranty or guaranties, as the case may be) which are by the terms thereof (or by the terms of any other instrument executed by Mortgagor or Obligor, as the case may be, in connection therewith) secured by this Mortgage, together with interest and late charges thereon according to the terms of such debt instrument or instruments;

**2.6** The obligations of Mortgagor or Obligor under (i) any interest rate swap, forward swap or swaption, or interest rate cap or collar transaction, or similar transaction, heretofore or hereafter entered into between Mortgagor or Obligor and Mortgagee, or any entity controlled by, controlling or under common control with Mortgagee ("Affiliate"), in connection with or for purposes of hedging or mitigating, fully or partially, interest rate risk under any Debt Instrument secured hereby ("Interest Rate Hedge"), and (ii) any other swap, option, forward, spot or similar contract or agreement (or combination thereof) relating to interest rates, foreign currencies or exchange rates, commodities, equities or securities, debt obligations or credit attributes, or other financial or economic measures or quantities, heretofore or hereafter entered into between Mortgagor or Obligor and Mortgagee or any Affiliate ("Swap Contract") that is subject to an instrument or agreement which recites that the obligations thereunder are secured hereby; together with and including in each case (i) and (ii), any and all modifications, replacements, extensions and renewals thereof; and

**2.7** Performance of such future obligations which Mortgagor or Obligor may agree to perform for the benefit of Mortgagee when Mortgagor or Obligor executes a document or documents reciting that such obligations are secured hereby.

**3. AFFIRMATIVE COVENANTS OF MORTGAGOR.** Mortgagor hereby agrees as follows.

**3.1 Performance of Obligations.** To pay, perform, observe and discharge each and every condition, obligation, covenant and agreement for which this Mortgage has been given as security as provided above.

**3.2 Maintenance, Repair and Alterations.** To keep the Mortgaged Property in good condition and repair; not to remove, demolish or substantially alter any of the Improvements without the prior written consent of Mortgagee; to notify Mortgagee in writing of any material damage or destruction to the Mortgaged Property or any portion thereof immediately upon Mortgagor obtaining knowledge of same, whether or not covered by insurance; to complete or restore promptly and in good and workmanlike manner any Improvements which may be constructed, damaged or destroyed on the Real Property and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws, ordinances, regulations, covenants, conditions and restrictions (including, without limitation, the directives of any Governmental Agency) now or hereafter affecting the Mortgaged Property or any part thereof or

# UNOFFICIAL COPY

requiring any alterations, improvements or additions to be made thereon; not to commit or permit any waste or deterioration of the Mortgaged Property; to keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; to perform, in the event all or any portion of the Mortgaged Property constitutes a leasehold estate, each and every obligation of Mortgagor under the terms of the agreements creating such leasehold estate; and not commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation.

### 3.3 Insurance

**(a) Coverage.** To keep Improvements insured at all times against loss or damage with property hazard insurance in an amount at least equal to the full insurable value of the Improvements (including tenant improvements) on a replacement cost basis, as determined by Mortgagee (as such insurable value may change from time to time) and against any other casualty or risk or hazard which in the opinion of Mortgagee should be insured against including, without limitation, earthquake, flood and business interruption (including rent loss and/or extra expense or as appropriate). Mortgagor shall also carry commercial general liability insurance with coverage amounts as determined by Mortgagee (as such coverage amounts may change from time to time). All insurance policies shall (i) be in such form and with such endorsements as may be required by Mortgagee, (ii) provide a lender's loss payable endorsement or be endorsed with a standard non-contributory mortgage clause, as appropriate, in favor of Mortgagee, (iii) be underwritten by insurance providers acceptable to Mortgagee, and (iv) provide Mortgagee at least thirty (30) days' prior notice of cancellation, non-renewal or modification. The policy or policies evidencing all insurance required hereunder (or certificates of such insurance) shall be delivered to and held by Mortgagee. Mortgagor shall pay premiums on such insurance as they become due, and shall not permit any condition to exist on or with respect to the Property which would wholly or partially invalidate any insurance.

**(b) Application of Proceeds.** To pay to Mortgagee, promptly upon Mortgagor's receipt of same, any proceeds received by Mortgagor under any such insurance policy on account of any damage or destruction to the Improvements or any other portion of the Property. Mortgagee shall have the right to join Mortgagor in adjusting any loss covered by any such insurance, and all loss under all such insurance shall be payable directly to Mortgagee, and Mortgagor hereby authorizes and empowers Mortgagee, at Mortgagee's sole option and in Mortgagee's sole discretion as attorney-in-fact for Mortgagor, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Mortgagee's expenses incurred in the collection thereof. If Mortgagee elects not to exercise such right, Mortgagee shall be under no obligation to question the amount of any compensation, award, recovery, settlement, proceeds, damages, claims, rights of action or payments received under any policy of insurance on account of any damage or destruction to the Improvements or any other portion of the Property, and may accept the same in the amount paid. In the event of any damage to or destruction of the Improvements or any other portion of the Property, Mortgagee shall have the option, in its sole discretion, to: (i) apply, in the event Mortgagee determines that the security for the repayment of the indebtedness secured hereby has been impaired on account of such damage or destruction, all or any part of such proceeds to any indebtedness secured hereby in such order as Mortgagee may determine, whether or not such indebtedness is then due, (ii) release all or any part of such proceeds to Mortgagor, or (iii) hold the balance of such proceeds to be used to reimburse Mortgagor for the cost of reconstruction of the Improvements or any other portion of the Property. In the event Mortgagee elects to so hold such insurance proceeds, the Improvements or any other portion of the Property shall be promptly and diligently restored by Mortgagor to the equivalent of their condition immediately prior to such damage, destruction or casualty or to such other condition as Mortgagee may approve in writing, and the disbursement of such insurance proceeds shall be in accordance with disbursement procedures acceptable to Mortgagee. If Mortgagee elects to apply the insurance proceeds to the payment of the sums secured hereby, and after doing so Mortgagee reasonably determines that the remaining security is inadequate to secure the remaining indebtedness, Mortgagor shall, upon written demand from Mortgagee, prepay on principal such amount as will reduce the remaining



# UNOFFICIAL COPY

indebtedness to a balance for which adequate security is present. Moreover, such application shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

**3.4 Taxes.** To (a) pay (unless Mortgagee impounds funds for payment of same, in which event Mortgagee shall pay) prior to delinquency, all real property taxes and assessments, general and special, and all other taxes, assessments and charges of any kind or nature whatsoever, which are imposed upon, assessed against or affect the Mortgaged Property or any part thereof, (b) pay when due all encumbrances, charges or liens of any kind or nature whatsoever, which create or may create a lien upon the Mortgaged Property or any part thereof or any interest therein, whether prior and superior or subject and subordinate to the lien hereof (provided, however that no provision in this Mortgage shall be deemed to permit Mortgagor to allow any liens to be placed or maintained against any portion of the Mortgaged Property except to the extent otherwise expressly permitted by either (i) Section 4.1 hereof, or (ii) the Loan Agreement or the other Loan Documents), and (c) deliver, upon Mortgagee's request, to Mortgagee, within ten (10) days after the date upon which any such tax, assessment, encumbrance, charge or lien is due and payable by Mortgagor, official receipts of the appropriate taxing authority (or other proof satisfactory to Mortgagee) evidencing the payment thereof.

**3.5 Condemnation.** Mortgagor, upon obtaining knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property or any portion thereof, shall immediately notify Mortgagee of such fact in writing. Mortgagee shall have the right, but not the obligation, to participate in any such proceedings, to control same and to be represented therein by counsel of its choice at Mortgagor's expense, and Mortgagor shall deliver, or cause to be delivered, to Mortgagee such instruments as may be requested by it from time to time to permit such participation. All compensation, awards, recoveries, settlement, proceeds, damages, claims, rights of action and payments to which Mortgagor may become entitled to on account of such proceedings shall be paid to Mortgagee. Any sums so collected by Mortgagee shall first be applied to reimburse Mortgagee for all costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection of such sums, and the balance shall be applied, in the event Mortgagee determines that the security for the repayment of the indebtedness secured hereby has been impaired on account of such condemnation, to any indebtedness secured hereby in such order as Mortgagee may determine, whether or not such indebtedness is then due. Any surplus remaining after payment and satisfaction of any indebtedness secured hereby shall be paid to Mortgagor as its interest may then appear. If Mortgagee elects to apply the condemnation proceeds to the payment of the sums secured hereby, and after doing so Mortgagee reasonably determines that the remaining security is inadequate to secure the remaining indebtedness, Mortgagor shall, upon written demand from Mortgagee, prepay on principal such amount as will reduce the remaining indebtedness to a balance for which adequate security is present. Such application shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Mortgagee shall be under no obligation to question the amount of any compensation, awards, recoveries, settlement, proceeds, damages, claims, rights of action or payments received in any such condemnation proceeding, and may accept the same in the amount paid.

**3.6 CC&Rs.** To promptly and completely observe, perform and discharge each and every condition, obligation, covenant and agreement affecting the Property, whether the same is prior and superior or subject and subordinate hereto, including, without limitation, if the Property is or will be a condominium, community apartment or part of a planned development project, each and every provision to be performed by Mortgagor under any declaration of covenants, conditions and restrictions or the like pertaining thereto.

**3.7 Actions Affecting Mortgaged Property.** To appear in and defend, at Mortgagor's expense, any action or proceeding purporting to affect the Mortgaged Property, the security hereof or the rights or powers of Mortgagee hereunder; and to pay all costs and expenses incurred by Mortgagee, including attorneys' fees, in any such action or proceeding in which Mortgagee may appear and in any suit brought by Mortgagee to foreclose this Mortgage or to exercise the power of sale hereunder.

**3.8 Actions by Mortgagee to Preserve Mortgaged Property.** Should Mortgagor fail to perform any of its obligations under this Mortgage, then Mortgagee, in its discretion, without obligation to do so and

# UNOFFICIAL COPY

without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereunder, may make or do the same. In connection therewith, and without limiting its general powers, Mortgagee shall have and is hereby given the right, but not the obligation: (a) to enter upon and take possession of the Mortgaged Property or any part thereof, (b) to make additions, alterations, repairs and improvements to the Mortgaged Property or any part thereof which Mortgagee may consider necessary or proper to keep the Mortgaged Property in good condition and repair, (c) to commence, maintain, appear and participate in any action or proceeding affecting or which may affect, or which is necessary to protect, the security hereof or the rights or powers of Mortgagee hereunder, (d) to pay, purchase, contest or compromise any encumbrance, claim, charge or lien which in the judgment of Mortgagee may affect or appears to affect the security of this Mortgage or which create or may create a lien upon the Mortgaged Property or any part thereof or interest therein, whether prior and superior or subject and subordinate to the lien hereof, and (e) in exercising such powers, to pay necessary expenses incurred in connection therewith, to employ counsel and other consultants, and to pay such counsel's or consultants' fees and expenses. Immediately upon demand therefor by Mortgagee, Mortgagor shall pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, together with interest thereon according to the terms of the Debt Instrument, and all such sums shall be secured by this Mortgage.

**3.9 Inspections.** Mortgagee, through its agents, representatives or employees, is authorized to enter at any reasonable time upon or in any part of the Property for the purpose of (a) inspecting same, and (b) performing any of the acts it is authorized to perform hereunder or under the terms of this Mortgage, the Debt Instrument, the Loan Agreement, any guaranty thereof and any other instrument or agreement given to evidence or further secure the payment and performance of any obligation secured hereby (collectively, the "Loan Documents"). In the case of a request to transfer the Mortgaged Property or any part thereof in accordance with the terms hereof, Mortgagor shall pay all appraisal fees and related expenses incurred by Mortgagee in evaluating such request.

**3.10 Books and Records.** Mortgagor shall keep and maintain, or cause to be kept and maintained, proper and accurate books, records and accounts of the Mortgaged Property and of its own financial affairs to permit the preparation of financial statements therefrom. Mortgagee, through its agents, representative or employees, shall have the right, from time to time, at any time and at all times, during normal business hours, to examine, copy and audit such books, records and accounts. If the Property is at any time used for commercial or residential income purposes, Mortgagor shall deliver to Mortgagee, upon request, certified financial statements and profit-and-loss statements for Mortgagor and the Mortgaged Property prepared in accordance with generally accepted accounting principles.

**3.11 Personal Property.** Mortgagor shall not remove from the Property any Personal Property (as defined in the "SECURITY AGREEMENT" Section below) except in the ordinary course of business and then only if such removed property is replaced with similar property of comparable quality.

**3.12. Flood Regulations.** Notwithstanding any provision in this Mortgage to the contrary, in no event shall any Building (as defined in the applicable Flood Insurance Regulations (as herein defined)) or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Regulations) be deemed to be included in the definition of Mortgaged Property hereunder, and no such Building or Manufactured (Mobile) Home is hereby intended to be encumbered by the lien or operation of this Mortgage. As used herein, the term "**Flood Insurance Regulations**" shall mean, collectively, the following applicable laws (as any of the same may now or hereafter be in effect, and/or any successor statute thereto, and/or as any of the same may be amended or re-codified from time to time, together with any and all regulations now or hereafter promulgated in connection therewith): (i) the National Flood Insurance Act of 1968; (ii) the Flood Disaster Protection Act of 1973; (iii) the National Flood Insurance Reform Act of 1994 (amending 42 USC 4001, et. seq.); and (iv) the Flood Insurance Reform Act of 2004.

# UNOFFICIAL COPY

## 4. NEGATIVE COVENANTS OF MORTGAGOR. Mortgagor hereby agrees as follows:

**4.1 Other Financing.** Mortgagor shall not create or permit to continue in existence any mortgage, pledge, security interest, lien, charge or encumbrance of any kind upon the Mortgaged Property or any part thereof or any interest therein except for: (a) the lien of this Mortgage, (b) liens for taxes and assessments not yet delinquent, and (c) such other liens or charges as are specifically approved in writing by Mortgagee. Mortgagor shall, at Mortgagor's expense, take all action necessary to promptly secure releases of all liens and encumbrances which in the opinion of Mortgagee are or may be prior and superior to Mortgagee's security interest.

## 4.2 Transfers.

**(a) Transfer of Mortgaged Property.** Mortgagor shall not, directly or indirectly, sell, convey, assign, further encumber, transfer, alienate or otherwise dispose of the Mortgaged Property or any part thereof or any interest therein, including, without limitation, air rights or development rights, whether voluntarily, involuntarily, by operation of law or otherwise, or lease, sublease, license or other grant of third party interests in all or any portion thereof or an undivided interest therein, or enter into an agreement so to do, without the prior written consent of Mortgagee. Any consent by Mortgagee permitting a transaction otherwise prohibited under this Section shall not constitute a consent or waiver of any right of Mortgagee to withhold or condition its consent on any subsequent occasion to a transaction not otherwise expressly permitted by the provisions hereof.

**(b) Transfer of Beneficial Interest.** Without limiting the provisions of the subsection above, the occurrence of the following events, without Mortgagee's prior written consent, shall be deemed to constitute an unpermitted transfer of the Mortgaged Property: the issuance, sale, conveyance, transfer, disposition or encumbering, or the entering into of any agreement relating thereto, either voluntarily, involuntarily, by operation of law or otherwise, with respect to (i) more than ten percent (10%) in the aggregate at any time or over time of any class of the currently issued outstanding stock of or membership interest in Mortgagor, if a closely-held corporation or limited liability company, (ii) the beneficial interest in Mortgagor, if a trust, or (iii) a change of any general partner or joint venturer of Mortgagor, if a partnership or joint venture. For purposes of this subsection, "closely-held corporation" shall mean any corporation not listed on a national or regional stock exchange.

**(c) Transfer of Duties.** Mortgagor shall not transfer or delegate the duties of managing the Property under any management agreement, if any, to any person, firm, corporation, partnership, limited liability company or other entity without the prior written consent of Mortgagee.

## 5. ASSIGNMENT OF RENTS AND PERFORMANCE OF LEASES.

**5.1 Assignment of Rents and Leases.** Mortgagor hereby irrevocably absolutely and unconditionally assigns and transfers to Mortgagee all of Mortgagor's right, title and interest in and to the Leases and the Rents and gives to and confers upon the Mortgagee the right, power and authority to collect such Rents; provided, however, that so long as no Event of Default (as defined in the "Events of Default" Section below) has occurred and is continuing, Mortgagor shall have the right under a revocable license granted hereby to collect and receive all Rents as trustee for the benefit of Mortgagee and to apply the amounts so collected first to the payment of costs and expenses associated with the ownership maintenance, operation and leasing of the Property, including, principal, interest and all other amounts required to be paid under the Loan Documents, before using or applying such Rents for any other purpose, and, provided further, that Mortgagor's license to collect such Rents shall terminate and cease automatically upon the occurrence of any such Event of Default without the necessity of any notice or other action whatsoever by Mortgagee. No Rents or such other income shall be distributed or paid to Mortgagor, unless such costs and expenses which are then due have been paid in full and to the extent such distributions or payments to Mortgagor are expressly permitted by the Loan Agreement and other Loan Documents. Thereafter, so long as no Event of Default has occurred or would occur per the Loan Documents from the making of any such distribution or payment, the balance may be distributed to



# UNOFFICIAL COPY

Mortgagor. If an Event of Default has occurred and is continuing, Mortgagor's right to collect and receive the Rents under the license granted hereby shall immediately cease and the license shall be revoked automatically and, pursuant to the "Termination of License" Section below, Mortgagee shall have the sole right, with or without taking possession of the Property, to collect all Rents. The assignment of the Rents is an absolute assignment from the Mortgagor to the Mortgagee and not merely the passing of a security interest. The Mortgagor irrevocably appoints the Mortgagee its true and lawful attorney-in-fact, at the option of the Mortgagee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of the Mortgagor or the Mortgagee, for all such Rents and apply the same to the Secured Obligations. Mortgagee may retain and apply the Rents toward payment of the Secured Obligations in such order, priority and proportions as the Mortgagee, in its discretion, shall deem proper, or to the operation, maintenance and repair of the Property, and irrespective of whether the Mortgagee shall have commenced a foreclosure of this Mortgage or shall have applied or arranged for the appointment of a receiver.

**5.2 Negative Covenants Regarding Leases.** Mortgagor shall not, without the prior written consent of Mortgagee, (a) cancel, terminate or consent to the surrender of any Lease, if the Property is used for commercial purposes, (b) modify or in any way alter the terms of any Lease, (c) release any lessee or guarantor from any obligations or conditions to be performed by any lessee or guarantor under any Lease, if the Property is used for commercial purposes, (d) collect any Rent from any lessee for a period of more than one (1) month in advance, or (e) execute any further assignment of any of its right, title and interest in the Leases and the Rents.

**5.3 Affirmative Covenants Regarding Leases.** Mortgagor shall (a) observe, perform and discharge each and every obligation, term, covenant, condition and agreement of Mortgagor under the Leases, (b) enforce the performance of each and every obligation, term, covenant, condition and agreement in the Leases to be performed by any lessee or guarantor thereof, (c) keep the Property leased at a good and sufficient rental and on such other terms and conditions as are reasonably acceptable to Mortgagee, (d) execute and deliver to Mortgagee upon demand, at any time and from time to time, any and all assignments and other instruments which Mortgagee may deem advisable to carry out the true purposes and intent of the assignment set forth in the "Assignment of Rents and Leases" Section above, and (e) at the request of Mortgagee, cause any or all tenants under a Lease to execute a subordination, nondisturbance and attornment agreement and estoppel certificate in form and substance satisfactory to Mortgagee, if the Property is used for commercial purposes.

**6. SECURITY AGREEMENT.** This Mortgage shall constitute a security agreement as that term is used in the Uniform Commercial Code as adopted in the state in which the Property is located (the "UCC") and Mortgagor hereby pledges and grants to Mortgagee, as additional collateral for the Secured Obligations, a security interest in all of the property described in the "MORTGAGE" Section above which may be personal property (collectively, the "Personal Property"). Mortgagor shall procure any documents, including, without limitation, mortgagee or landlord waivers or subordination agreements, in form and substance satisfactory to Mortgagee, with respect to any and all Personal Property (or fixtures which are a part of the Mortgaged Property), deliver to Mortgagee any instrument, mark any chattel paper, give any notice and take any other actions which are necessary or desirable to perfect or to continue the perfection and priority of the security interest created hereunder, or to protect the Personal Property or fixtures against the rights, claims or interests of third parties, and to pay all costs incurred in connection therewith. Mortgagor hereby appoints Mortgagee as Mortgagor's true attorney-in-fact, coupled with an interest, to perform (but without any obligation to do so) any of the foregoing acts should Mortgagor fail to do so, irrevocable until such time as the Secured Obligations have been indefeasibly satisfied, to be exercised from time to time and at any time by Mortgagee following an Event of Default hereunder. Notwithstanding anything to the contrary contained in this Mortgage, Mortgagor agrees that Mortgagor is, and shall be deemed to be, the "debtor" as that term is defined in the UCC, and that Mortgagee is, and shall be deemed to be, the "secured party" as that term is defined in the UCC, and Mortgagee shall have all of the rights and remedies of a secured party under the UCC as well as any and all other rights and remedies available under the Loan Documents, at law, in equity, or otherwise. Mortgagor, upon demand of Mortgagee, shall assemble the Personal Property and make it available to Mortgagee at the Property or a place which is reasonably convenient to Mortgagee, and Mortgagee's expense in retaking, holding, preparing for sale, selling or the like shall be borne by Mortgagor, such expenses to include Mortgagee's

# UNOFFICIAL COPY

attorneys' fees incurred in connection therewith. Mortgagor agrees not to change Mortgagor's name or state of organization or residence, as the case may be, without Mortgagee's prior written consent.

## 7. EVENTS OF DEFAULT AND REMEDIES.

**7.1 Events of Default.** Any of the following events shall, at Mortgagee's option, constitute an event of default (an "Event of Default") hereunder:

(a) **Failure to Pay.** The failure of Mortgagor or Obligor to pay when due any installment of principal or interest under the Debt Instrument or any other sum as provided in any Loan Document or any other instrument or agreement secured hereby, whether at maturity, by acceleration or as part of a prepayment or otherwise;

(b) **Failure to Perform.** The failure of Mortgagor or Obligor to promptly and completely observe or perform any term, condition, covenant, agreement or obligation contained in this Mortgage, any other Loan Document or any other instrument or agreement secured hereby, and the continuation of such failure following the expiration of any applicable notice, cure or grace period, if any, provided for therein or herein;

(c) **Failure to Comply.** The failure of Mortgagor to comply with any term, condition, covenant, agreement, law, ordinance or regulation now or hereafter affecting the Mortgaged Property or any part thereof, or

(d) **Other Defaults.** The occurrence of any "default" or "event of default" under any of the other Loan Documents (as defined therein) or any other instrument or agreement secured hereby.

(e) **Cross Default.** The occurrence of any default in the observance, performance or discharge of any condition, obligation, covenant or agreement contained in, or any Event of Default under, any of the following:

(i) The Debt Instrument, any deeds to secure debt, deeds of trust or mortgages securing repayment of the Debt Instrument, the Loan Agreement, any other Loan Document, or any other instrument or document executed by Obligor having reference to, arising out of or relating to any indebtedness evidenced by the Debt Instrument which recites that it is secured by this Mortgage or any mortgage or deed of trust (other than this Mortgage) securing the Debt Instrument; and

(ii) Any promissory note, deed to secure debt, deed of trust, mortgage or other instrument or document at any time executed by Obligor for the benefit of Mortgagee which recites that it is cross-defaulted with this Mortgage or any other Loan Document and provides that a default thereunder shall also be a default under this Mortgage or any other Loan Document.

**7.2 Remedies.** Upon the occurrence of any Event of Default, Mortgagee may, at its option, declare all indebtedness secured hereby, and the same shall thereupon become, immediately due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Mortgagee may, at its option:

(a) **Termination of License.** Terminate Mortgagor's right and license to collect the Rents, and either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property or any part thereof, in its own name or in the name of Mortgagor, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or any part thereof or interest therein, make, modify, enforce, cancel or accept the surrender of any Lease, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged

# UNOFFICIAL COPY

Property, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, upon any indebtedness secured hereby, all in such order as Mortgagee may determine. The entering upon and taking possession of all or any portion of the Mortgaged Property, the collection of such Rents and the application thereof as aforesaid, or any of such acts, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Mortgaged Property or the collection, receipt and application of Rents, Mortgagee shall be entitled to exercise every right provided for in any of the Loan Documents or by law in equity or otherwise upon occurrence of any Event of Default, including the right to exercise the power of sale as hereby granted. Failure of Mortgagee at any time, or from time to time, to collect the Rents or do any of the foregoing shall not in any manner affect the subsequent enforcement of Mortgagee of the right to collect the same or to otherwise exercise any such other right or remedy.

**(b) Appointment of Receiver.** As a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Mortgaged Property or the interest of Mortgagor therein, to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided in this Mortgage and shall continue as such and exercise all such powers until the later of (i) the date of confirmation of sale of the Mortgaged Property, (ii) the disbursement of all proceeds of the Mortgaged Property collected by such receiver and the payment of all expenses incurred in connection therewith, and (iii) the termination of such receivership with the written consent of Mortgagee or pursuant to an order by a court of competent jurisdiction.

**(c) UCC Remedies.** Exercise any and all remedies available to a secured party under the UCC in such order and in such manner as Mortgagee, in its sole discretion, may determine; provided, however, that the expenses of retaking, holding, preparing for sale or the like, shall include reasonable attorneys' fees and other expenses of Mortgagee and be secured by this Mortgage.

**(d) Judicial Foreclosure; Specific Performance.** Commence an action to foreclose this Mortgage by judicial foreclosure or accept any deed in lieu of foreclosure, or specifically enforce any of the covenants hereof in accordance with all applicable laws.

**(e) Other Remedies.** Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing all or any portion of the obligations secured hereby, or provided by law. Upon the occurrence of an Event of Default hereunder, Mortgagee may proceed in any sequence to exercise its rights hereunder with respect to all or any portion of the Mortgaged Property and all or any portion of the Personal Property, and to exercise its rights under the "SECURITY AGREEMENT" Section above with respect to all or any portion of the Personal Property in accordance with the provisions of the UCC.

**7.3 Remedies Not Exclusive; Waiver.** No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Mortgagee, or to which Mortgagee may be otherwise entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee. If there exists additional security for the obligations secured hereby, Mortgagee, at its sole option, and without limiting or affecting any of the rights or remedies hereunder, may exercise any of the rights or remedies to which it may be entitled hereunder either concurrently with whatever rights it may have in connection with such other security or in such order and in such manner as Mortgagee may deem fit without waiving any rights with respect to such other security.

# UNOFFICIAL COPY

## 8. NONBORROWER MORTGAGOR.

**8.1 Authority of Mortgagee.** If Mortgagor is not an obligor under the Debt Instrument (hereinafter, "Nonborrower Mortgagor"), then Nonborrower Mortgagor, together with the Obligor, each hereby authorizes Mortgagee to perform any of the following acts at any time and from time to time, all without notice to Nonborrower Mortgagor or the Obligor, and without affecting Mortgagee's rights or Nonborrower Mortgagor's or the Obligor's obligations under this Mortgage: (a) alter any terms of the Debt Instrument or any part of it, including renewing, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the rate of interest on, the Debt Instrument or any part of it, (b) take and hold security for the Debt Instrument, accept additional or substituted security for the Debt Instrument, and subordinate, exchange, enforce, waive, release, compromise, fail to perfect, sell or otherwise dispose of any such security, (c) apply any security now or later held for the Debt Instrument in any order that Mortgagee in its sole discretion may choose, and direct the order and manner of any sale of all or any part of it and bid at any such sale, (d) release Obligor of its liability for the Debt Instrument or any part of it, and (e) substitute, add or release any one or more obligors, guarantors or endorsers of the Debt Instrument. For purposes of this Section, all references to the Debt Instrument shall also include any instrument or agreement executed by Obligor currently with or subsequent to the date of this Mortgage which is secured by this Mortgage in accordance with the terms hereof. For purposes of Section 7 above and this Section 8, all references to "Debt Instrument" shall also be deemed to include all instruments, documents and agreements evidencing or governing any Interest Rate Hedge or Swap Contract.

**8.2 Waivers of Nonborrower Mortgagor.** Nonborrower Mortgagor, together with the Obligor, each hereby waives: (a) any right it may have to require Mortgagee to proceed against Obligor or any other Person, proceed against or exhaust any security held from Obligor or any other Person, or pursue any other remedy in Mortgagee's power to pursue, (b) any defense based on any legal disability of Obligor or any other Person, any discharge or limitation of the liability of Obligor or any other Person to Mortgagee, whether consensual or arising by operation of law or any bankruptcy reorganization, receivership, insolvency, or debtor-relief proceeding, or from any other cause, or any claim that Nonborrower Mortgagor's obligations exceed or are more burdensome than those of Obligor or any other Person, (c) all presentments, demands for performance, notices of nonperformance, protests, notice of protest, notices of dishonor, notices of acceptance of this Mortgage and of the existence, creation or incurring of new or additional indebtedness of Obligor or any other Person, and demands and notices of every kind, (d) any defense based on or arising out of any defense that Obligor or any other Person may have to the payment or performance of the Secured Obligations or any part thereof, and (e) all rights of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including any claim or right of subrogation under the Bankruptcy Code (Title 11 of the U.S. Code) or any successor statute, all rights to enforce any remedy that the Mortgagee may have against Obligor or any other Person, and all rights to participate in any security now or later held by Mortgagee for the Debt Instrument. Nonborrower Mortgagor, together with the Obligor, each understands that if Mortgagee forecloses on any other mortgage or deed of trust (other than this Mortgage) securing the Secured Obligations, Nonborrower Mortgagor may then otherwise (but for the waivers set forth herein) have a defense preventing Mortgagee from thereafter enforcing Mortgagee's rights and remedies against the Mortgaged Property. This defense, which could otherwise (but for the waivers set forth herein), arise because the foreclosure sale under such other mortgage could eliminate Nonborrower Mortgagor's right of subrogation against the Obligor or other Persons, and therefore Nonborrower Mortgagor would be unable to obtain reimbursement from Obligor or such other Persons. Nonborrower Mortgagor, together with the Obligor, each specifically waives this defense and all rights and defenses that Nonborrower Mortgagor or the Obligor may have because the Secured Obligations are secured by real property. This means, among other things: (i) Mortgagee may exercise any rights or remedies which Mortgagee has or may have against the Mortgaged Property without first foreclosing on any real or personal property collateral pledged by Obligor or any other obligor under any of the Loan Documents; and (ii) if Mortgagee forecloses or otherwise realizes on any real property collateral pledged by Obligor or any other Person: (A) the amount of the Secured Obligations may be reduced only by the price for which the collateral is sold and actually received by Mortgagee at the foreclosure sale or other realization event, even if the collateral is worth more than the sale price; (B) Mortgagee may exercise its rights and remedies against



# UNOFFICIAL COPY

the Mortgaged Property even if Mortgagee, by foreclosing or otherwise realizing upon on any real or personal property collateral pledged by Obligor or any other Person, has destroyed any right Nonborrower Mortgagor may have otherwise had (but for the waivers set forth herein) to collect from Obligor or any such other obligor; and (C) Nonborrower Mortgagor, together with the Obligor, each hereby acknowledges and agrees that appraisal of the Mortgaged Property is hereby waived (or not) at the option of Mortgagee (in Mortgagee's sole discretion), such option to be exercised at the time judgment is rendered in any foreclosure hereof or any power of sale hereunder or any other remedial action in connection herewith, including any acceptance by Mortgagee of a deed in lieu of other remedies. This is an unconditional and irrevocable waiver of any rights and defenses Nonborrower Mortgagor, together with the Obligor, each may have otherwise had (but for the waivers set forth herein) because the Secured Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure or similar laws in other states.

**8.3 Obligor's Financial Condition.** Nonborrower Mortgagor assumes full responsibility for keeping informed of Obligor's or any such other obligor financial condition and business operations and all other circumstances affecting Obligor's ability to pay and perform its obligations to Mortgagee, and agrees that Mortgagee shall have no duty to disclose to Nonborrower Mortgagor any information which Mortgagee may receive about Obligor's or any such other obligor financial condition, business operations or any other circumstances bearing on Obligor's or any such other obligor ability to perform.

**8.4 Dispute Resolution.** This Mortgage hereby incorporates any alternative dispute resolution agreement previously, concurrently or hereafter executed between Nonborrower Mortgagor and Mortgagee.

**8.5 Adequate Consideration.** Nonborrower Mortgagor, together with the Obligor, each hereby acknowledges and agrees that it will receive substantial and valuable consideration and economic and business benefit from the extensions of credit by Mortgagee to the Obligor pursuant to the Loan Documents.

**9. SITE VISITS, APPRAISALS, OBSERVATION AND TESTING.** Mortgagee, through its agents, representatives or employees, is authorized to enter at any reasonable time upon or any part of the Property for the purpose of performing appraisals, observing the condition thereof, taking and removing soil, groundwater or other material samples, and conducting tests on any part thereof. Mortgagor agrees to cooperate with Mortgagee and its agents, representatives or employees (and use best efforts to cause the tenants on the Property to cooperate with same) in permitting access to the Property and in obtaining samples, operating and other relevant information for the Property. Mortgagee shall have no obligation or duty to do so, however, and no site visit, observation or testing by Mortgagee shall impose any liability on Mortgagee. In no event shall any site visit, observation or testing by Mortgagee be a representation that Hazardous Substances (as defined below) are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation or testing by Mortgagee. Mortgagee owes no duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. Mortgagee shall (a) give Mortgagor reasonable notice to avoid interfering with Mortgagor's use of the Property in exercising any rights provided for in this Section, and (b) reimburse Mortgagor for the cost of repair of any physical injury to the Property caused by Mortgagee in exercising such rights. For purposes of this Section, "Hazardous Substance" means any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or which is or becomes similarly designated, classified or regulated under any federal, state or local law, regulation or ordinance.

## 10. MISCELLANEOUS.

**10.1 Governing Law.** THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS MORTGAGE (AND UNDER THE OTHER LOAN DOCUMENTS IN ACCORDANCE WITH THEIR TERMS) SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH

# UNOFFICIAL COPY

THE INTERNAL LAW OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO THE CONFLICTS-OF-LAW RULES AND PRINCIPLES OF SUCH STATE. MORTGAGOR AND MORTGAGEE FURTHER ACKNOWLEDGE, AGREE AND STIPULATE THAT THE STATE OF CALIFORNIA HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES INVOLVED IN THIS TRANSACTION AND TO THE UNDERLYING TRANSACTIONS SECURED BY THIS MORTGAGE. NOTWITHSTANDING THE FOREGOING, THE PARTIES FURTHER AGREE THAT:

(a) THE PROCEDURES GOVERNING THE ENFORCEMENT BY MORTGAGEE OF PROVISIONAL REMEDIES AGAINST MORTGAGOR DIRECTLY RELATING TO THE PROPERTY ENCUMBERED HEREBY, INCLUDING, BY WAY OF ILLUSTRATION BUT NOT LIMITATION, ANY SUCH ACTIONS FOR REPLEVIN, FOR CLAIM AND DELIVERY OF PROPERTY, OR FOR THE APPOINTMENT OF A RECEIVER, SHALL BE GOVERNED BY THE LAWS OF ILLINOIS; AND

(b) THE LAW OF ILLINOIS SHALL APPLY TO THE EXTENT, BUT ONLY TO THE EXTENT, NECESSARY IN ORDER TO CREATE, PERFECT AND FORECLOSE THE SECURITY INTERESTS, LIENS AND ASSIGNMENTS OF RENTS AND LEASES ARISING UNDER THIS MORTGAGE; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL IN ANY EVENT BE CONSTRUED TO PROVIDE THAT THE SUBSTANTIVE LAW OF ILLINOIS SHALL APPLY TO THE OBLIGATIONS AND INDEBTEDNESS SECURED BY THIS MORTGAGE OR EVIDENCED BY THE LOAN DOCUMENTS, WHICH ARE AND SHALL CONTINUE TO BE GOVERNED BY THE SUBSTANTIVE LAW OF THE STATE OF CALIFORNIA. IN SUCH CONNECTION, THE PARTIES FURTHER AGREE THAT:

(i) MORTGAGEE MAY ENFORCE ITS RIGHTS UNDER THE LOAN DOCUMENTS (INCLUDING WITHOUT LIMITATION TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO SUE MORTGAGOR, TO COLLECT ANY OUTSTANDING INDEBTEDNESS OR TO OBTAIN A JUDGMENT AGAINST MORTGAGOR IN CALIFORNIA, ILLINOIS OR ANY OTHER STATE FOR ANY DEFICIENCY PRIOR TO OR FOLLOWING FORECLOSURE) IN ACCORDANCE WITH THE TERMS THEREOF. IF MORTGAGEE OBTAINS A DEFICIENCY JUDGMENT IN A STATE OTHER THAN ILLINOIS, THEN MORTGAGEE SHALL HAVE THE RIGHT TO ENFORCE SUCH JUDGMENT IN ILLINOIS AS WELL AS IN ANY OTHER STATE; AND

(ii) ANY LAWS OF ILLINOIS RELATING TO USURY, ANTI-DEFICIENCY, ONE FORM OF ACTION, SECURITY-FIRST OR ANY SIMILAR MATTERS SHALL BE INAPPLICABLE TO THE OBLIGATIONS AND INDEBTEDNESS SECURED BY THIS MORTGAGE AND TO THE ENFORCEMENT OR REALIZATION BY MORTGAGEE OF ITS RIGHTS AND REMEDIES RELATING THERETO, INCLUDING (i) MORTGAGEE'S RIGHT TO OBTAIN A DEFICIENCY JUDGMENT EITHER PRIOR TO OR FOLLOWING FORECLOSURE OR (ii) MORTGAGEE'S RIGHT TO FORECLOSE ON THE PROPERTY JUDICIALLY OR NONJUDICIALLY FOLLOWING ANY EXERCISE OR ENFORCEMENT OF ANY OTHER RIGHTS OR REMEDIES OF MORTGAGEE.

**10.2 Severability.** In the event any one or more of the provisions contained in this Mortgage, in the Debt Instrument or in any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein to the greatest extent practicable.

**10.3 Amendment.** This Mortgage cannot be modified, waived, discharged or terminated orally, but only by a written instrument signed by the party against whom enforcement of the modification, waiver, discharge or termination is asserted.

# UNOFFICIAL COPY

**10.4 Waiver of Remedies.** By accepting payment of any amount secured hereby after its due date, or an amount which is less than the amount then due, or the performance of any obligation required hereunder after the date required for such performance, Mortgagee does not waive its rights either to require prompt payment or performance when due of all other amounts or obligations so secured, or to declare a default as herein provided for the failure to so pay or perform.

**10.5 No Implied Waiver.** No waiver by Mortgagee of any default or breach or Event of Default by Mortgagor hereunder shall be implied from any omission by Mortgagee to take action on account thereof if it persists or is repeated, and no express written waiver shall affect any default or breach or Event of Default other than the default or breach or Event of Default identified in the written waiver and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Mortgagee to or of any act by Mortgagor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. No delay or omission of Mortgagee in the exercising of any right or remedy available upon an Event of Default shall impair such right or remedy or any other right or remedy nor shall the same be construed to be a waiver of any Event of Default or any acquiescence therein, and no custom or practice which may develop between Mortgagor and Mortgagee during the term hereof shall be deemed a waiver of or any way affect the right of Mortgagee to insist upon the performance by Mortgagor of the obligations secured hereby in strict accordance with the terms hereof or of any other Loan Document.

**10.6 Release.** If the Secured Obligations shall have been indefeasibly repaid in cash and in full in accordance with the terms of this Mortgage, the Debt Instrument, and the other Loan Documents, or if Mortgagor has satisfied conditions for release of this Mortgage as provided by the terms of the Loan Agreement, and if Mortgagor shall well and truly perform each and every of the obligations to be performed and discharged in accordance with the terms of this Mortgage, the Debt Instrument and the other Loan Documents, and Mortgagee shall have no further obligation to make advances under and pursuant to the provisions hereof or in the other Loan Documents, then this Mortgage shall be released by Mortgagee.

**10.7 Notices.** Whenever Mortgagee or Mortgagor shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage, each such notice, demand, request or other communication (including communications by telegraph, telex or telecommunication facilities providing facsimile transmission) shall be in writing and shall be effective only if the same is delivered by personal service, mailed (postage prepaid, return receipt requested), or telegraphed, telexed or transmitted addressed to the address set forth herein. Any such notice if so mailed shall be deemed to have been received by the addressee on the third day following the date of such mailing. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

**10.8 Reserved.**

**10.9 Certain Actions of Mortgagee.** At any time or from time to time without liability therefor and without notice, upon written request of Mortgagee, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Mortgage upon the remainder of the Mortgaged Property, Mortgagee may (a) partially discharge this Mortgage as to any part of the Mortgaged Property, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

**10.10 Successor Mortgagee.** Mortgagee acting alone may, from time to time, by written instrument executed and acknowledged by Mortgagee, mailed to Mortgagor and recorded in the county in which the Property is located, substitute a successor or successors to the Mortgagee named herein or acting hereunder.

# UNOFFICIAL COPY

**10.11 Successors and Assigns.** This Mortgage applies to and shall be binding on and inure to the benefit of all parties to this Mortgage and their respective successors and assigns; provided, however, that: (i) no assignment of this Mortgage may be made by Mortgagor without first obtaining Mortgagee's prior written consent, and any such assignment made without first obtaining such consent shall be deemed void ab initio; and (ii) no assignment of this Mortgage by Mortgagor, even if first consented to in writing by Mortgagee, shall be deemed to release Mortgagor from Mortgagor's obligations hereunder.

**10.12 Interpretation.** In this Mortgage, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. The word "include(s)" means "include(s) without limitation," and the word "including" means "including, but not limited to." No listing of specific instances, items or matters shall in any way limit the scope or generality of any language in this Mortgage.

**10.13 Joint and Several Liability.** All obligations of each Mortgagor hereunder shall be joint and several.

**10.14 Headings.** Headings are for convenience only and are not intended as a limitation on the content of the paragraph following or as an aid to the construction thereof.

**10.15 Waiver.** To the fullest extent permitted by law, Mortgagor waives the pleading of any statute of limitations as a defense to any and all obligations secured by this Mortgage.

**10.16 Merger.** No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Mortgaged Property unless Mortgagee consents to such merger in writing.

**10.17 In-House Counsel Fees.** Whenever Mortgagor is obligated to pay or reimburse Mortgagee for any attorneys' fees, those fees shall include the allocated cost for the services of in-house counsel.

**10.18 Request for Notice.** Mortgagor hereby requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at the address set forth herein or at such other address as Mortgagor may designate pursuant to this Section. That address is also the mailing address of Mortgagor as debtor under the UCC. Mortgagee's address given herein is the address for Mortgagee as secured party under the UCC.

**10.19 Fixture Filing; Financing Statement.** This Mortgage shall be effective as a financing statement filed as a fixture filing pursuant to the UCC, as amended or recodified from time to time, covering any portion of the Mortgaged Property which now is or later may become a fixture attached to the Property and is to be filed for record in the real estate records of Cook County, Illinois. This Mortgage constitutes a financing statement filed pursuant to the UCC, as amended or recodified from time to time, covering any portion of the Mortgaged Property which now is or later may be deemed to constitute Personal Property. The "debtor" is Mortgagor, and the "secured party" is Mortgagee. Debtor's/Mortgagor's principal place of business and address is as set forth in the first paragraph of this Mortgage, and the address of secured party/Mortgagee is as set forth in the first paragraph of this Mortgage. A description of the real property is set forth in Exhibit A to this Mortgage.

**10.20 Counterparts.** This Mortgage and each other Loan Document (other than the Debt Instrument) may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

## 11. STATE-SPECIFIC PROVISIONS.

**11.1 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Section 11 and the other terms and conditions of this Mortgage, the terms and conditions of this Section 11 shall control and be binding.

**11.2 Use of Proceeds.** Mortgagor hereby covenants, represents and agrees that all of the proceeds of the Loan secured by this Mortgage will be used solely for business purposes and in furtherance of the



# UNOFFICIAL COPY

regular business affairs of Mortgagor, and the entire liabilities and obligations evidenced by the Loan Documents and secured by this Mortgage: (a) constitute a business loan which comes within the purview of 815 ILCS 205/4 as amended; (b) constitute "a loan secured by a mortgage on real estate," within the purview and operation of 815 ILCS 205/4(1)(l); and (c) is an exempt transaction under the Truth-in-Lending Act, 15 U.S.C., §1601 et seq.

**11.3 Future Advances.** This Mortgage is given for the purpose of securing loan advances which Mortgagee may make to or for Mortgagor pursuant and subject to the terms and provisions of the Loan Documents, and Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 5/15-1302(b)(1) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101, et seq., Illinois Compiled Statutes) (the "IMFL"), Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made pursuant to the terms and provisions of the Loan Documents, whether such loans and advances are made as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of Mortgagee or otherwise (but not advances or loans made more than 20 years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage. The lien of this Mortgage shall be valid as to all obligations under the Loan Documents, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Property is located. This Mortgage shall be valid and shall have priority over all subsequent liens and encumbrances, including statutory liens except taxes and assessments levied on the Property, to the extent of the maximum amount secured hereby.

**11.4 Maximum Principal Indebtedness.** Notwithstanding any provision contained herein to the contrary, the liabilities and obligations secured by this Mortgage shall not exceed an amount equal to 200% of the face amount of the Loan.

**11.5 Illinois Mortgage Foreclosure Law.** It is the intention of Mortgagor and Mortgagee that, notwithstanding anything in this Mortgage to the contrary, enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the IMFL, the provisions of the IMFL 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 IMFL and with respect to the IMFL:

(a) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the IMFL, including, to the extent provided by law, all amendments thereto which may become effective from time to time after the date hereof;

(b) Without limiting the generality of the foregoing, all expenses incurred by the Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure;

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

(d) All advances, disbursements and reasonable expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale or other exercise of its rights or remedies, and, where applicable, after sale, and during the pendency of any related proceedings authorized by this Mortgage or

# UNOFFICIAL COPY

by the IMFL (collectively, "Protective Advances"), shall have the benefit of all applicable provisions of the IMFL. All Protective Advances shall be additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after an Event of Default under the terms of the Note. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the IMFL. 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 IMFL, apply to and be included in:

- (i) determination of the amount of indebtedness secured by this Mortgage at any time;
  - (ii) the indebtedness found due and owing to Mortgagee 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 amount deductible from sale proceeds pursuant to Section 5/15-1512 of the IMFL;
  - (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 Sections 5/15-1508 and Section 5/15-1511 of the IMFL.
- (e) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the IMFL, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 5/15-1701, 5/15-1702 and 5/15-1704 of the IMFL;
- (f) Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the IMFL or residential real estate as defined in Section 5/15-1219 of the IMFL; and
- (g) Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by 735 ILCS 5/15-1601 or other applicable law or replacement statutes.

**11.6 Collateral Protection Act.** Pursuant to the terms of the Collateral Protection Act, 815 ILCS 180/1 et seq., Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by the Loan Agreement in accordance with the terms hereof, Mortgagee may, with written notice to Mortgagor (of at least fifteen (15) Business Days, unless Mortgagee has a reasonable good faith belief that one of the insurance policies is not in full force and effect) purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Property, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing

# UNOFFICIAL COPY

Mortgagee with evidence that Mortgagor has obtained the insurance as required under this Mortgage. If Mortgagee purchases insurance for the Property, the Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the obligations secured hereby. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.

**11.7 Maturity Date; Interest Rate.** The maturity date of the Note is June 1, 2030. The interest rate of the Note is a variable rate.

**11.8 Subordination of Property Manager's Lien and Broker's Lien.** At the request of Mortgagee, Mortgagor shall cause any property manager of the Property, on its own behalf and on behalf of any party claiming by, through or under such property manager, to subordinate the lien, if any, that such property manager may have on the Property for the payment of property management fees or other compensation due such property manager for management of the Property to be subordinated to the lien of the Mortgage. In addition, at the request of Mortgagee, Mortgagor shall cause any broker (as defined in the Real Estate License Act of 2000, 225 ILCS 454/1 et seq.) engaged by Mortgagor for the purpose of selling, leasing or otherwise conveying an interest in the Property to enter into a subordination agreement with Lender, in recordable form, whereby such broker, on its own behalf and on behalf of any party claiming by, through or under such broker, subordinates present and future lien rights to the lien of this Mortgage.

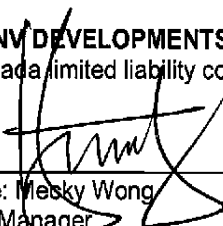
[SIGNATURE PAGE FOLLOWS]

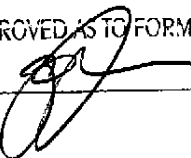
# UNOFFICIAL COPY

Mortgagor has caused this Mortgage to be executed as of the day and year first above written.

**MORTGAGOR:**

**CFT NV DEVELOPMENTS, LLC,**  
a Nevada limited liability company

By:   
Name: Mesky Wong  
Title: Manager

APPROVED AS TO FORM  
BY: 

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT "A" DESCRIPTION OF REAL PROPERTY

This Exhibit "A" is attached to that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated June 8, 2020 executed by CFT NV Developments, LLC, a Nevada limited liability company, as Mortgagor.

### LEGAL DESCRIPTION:

#### PARCEL 1:

THAT PART OF THE NORTH THREE QUARTERS OF LOT 11 IN SCHOOL TRUSTEE SUBDIVISION OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 12 EAST, OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, SAID POINT BEING 50.00 FEET WEST OF THE EAST LINE OF LOT 11 AND 257.08 FEET SOUTH OF THE NORTH LINE OF LOT 11; THENCE SOUTH ALONG A LINE WHICH IS PARALLEL TO AND 50.00 FEET WEST OF THE EAST LINE OF LOT 11, BEARING SOUTH 0 DEGREES 00' 00" WEST, A DISTANCE OF 135.00 FEET TO A POINT; THENCE WEST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF THE NORTH THREE QUARTERS OF LOT 11, BEARING NORTH 89 DEGREES 45' 58" WEST, A DISTANCE OF 200.00 FEET TO A POINT; THENCE NORTH ALONG A LINE PARALLEL TO THE EAST LINE OF LOT 11, BEARING NORTH 0 DEGREES 00' 00" EAST, A DISTANCE OF 135.00 FEET TO A POINT; THENCE EAST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF THE NORTH THREE QUARTERS OF LOT 11, BEARING SOUTH 89 DEGREES 45' 58" EAST, A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING.

#### PARCEL 2:

TOGETHER WITH THOSE RIGHTS AND EASEMENTS CONSTITUTING RIGHTS IN REAL PROPERTY CREATED DEFINED AND LIMITED BY THAT CERTAIN COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT BY AND BETWEEN SIMON PROPERTY GROUP (ILLINOIS), L.P., AN ILLINOIS LIMITED PARTNERSHIP, AND ANDREW JINCHAN CHERNG AND PEGGY TSIANG CHERNG; CO-TRUSTEE OF THE CHERNG FAMILY TRUST DATED OCTOBER 30, 1987, AGREEMENT DATED JANUARY 18, 2005 AND RECORDED JANUARY 24, 2005 AS DOCUMENT NUMBER 0502403136, IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS.

#### STREET ADDRESS

185 Countryside Plaza  
Countryside, IL 60525

PERMANENT INDEX NUMBER:

x 18-16-301-009-0000

# UNOFFICIAL COPY

## California All-Purpose Certificate of Acknowledgment

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

State of California

County of Los Angeles

s.s.

On May 26, 2020 before me, Josefina Huang, Notary Public  
Name of Notary Public, Title

personally appeared Micky Wong  
Name of Signer (1)

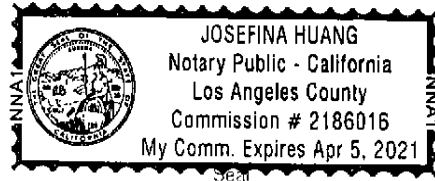
Name of Signer (2)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

[Signature]  
Signature of Notary Public



### OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

### Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of #343 Mortgage

containing \_\_\_\_\_ pages, and dated \_\_\_\_\_

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-fact
- Corporate Officer(s) \_\_\_\_\_  
Title(s)

- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: \_\_\_\_\_

representing: \_\_\_\_\_  
Name(s) of Person(s) Entity/Inst. Signer is Representing

Additional Information	
<b>Method of Signer Identification</b>	
Proved to me on the basis of satisfactory evidence:	
<input type="checkbox"/> form(s) of identification	<input type="checkbox"/> credible witness(es)
Notarial event is detailed in notary journal on:	
Page # _____	Entry # _____
Notary contact: _____	
Other	
<input type="checkbox"/> Additional Signer	<input type="checkbox"/> Signer(s) Thumbprints(s)
<input type="checkbox"/> _____	