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\*2026541069\*

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Doc# 2026541069 Fee \$88.00

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

EDWARD H. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 09/21/2020 02:39 PM PG: 1 OF 38



Report Mortgage Fraud

844-768-1713

#CCHI2003031LD - 1 of 10 OK

The property identified as: PIN: 17-22-107-100-0000

Address:

Street: 51 E. 14th Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60605

Lender: Wintrust Bank, N.A.

Borrower: 1401 S. Wabash, LLC

Loan / Mortgage Amount: \$61,000,000.00

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

Certificate number: 4C037A1D-3DE0-42E6-B835-D6C6507DC4C5

Execution date: 9/14/2020

S Y  
P 38  
S -  
M -  
SC Y  
E -  
INT JA

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PREPARED BY AND AFTER  
RECORDING RETURN TO:

Martin J. Lee  
Greenberg Traurig, LLP  
77 West Wacker Drive, Suite  
3100  
Chicago, Illinois 60601

(For Recorder's Use Only)
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MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING  
AND ASSIGNMENT OF LEASES AND RENTS

By

1401 S. WABASH, LLC, a Delaware limited liability company, as Mortgagor,

for the benefit of

WINTRUST BANK, N.A., a national banking association, as Administrative Agent, as  
Mortgagee

**ATTENTION: COUNTY CLERK - THIS MORTGAGE COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS MORTGAGE SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A MORTGAGE, BUT ALSO AS A FIXTURE FILING COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE MORTGAGOR (DEBTOR) AND MORTGAGEE (SECURED PARTY) ARE SET FORTH IN THIS MORTGAGE.**

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

**THIS MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS** (this "Mortgage") is made as of September 14, 2020, by **1401 S. WABASH, LLC**, a Delaware limited liability company (the "Mortgagor"), as mortgagor, for the benefit of **WINTRUST BANK, N.A.**, a national banking association (in its individual capacity, "Wintrust," and as administrative agent for the Lenders, in such capacity, together with its successors and assigns ("Administrative Agent"), as mortgagee.

### WITNESSETH:

WHEREAS, pursuant to that certain Loan Agreement dated as of the date hereof (together with all renewals, amendments, modifications, increases and extensions thereof, the "Loan Agreement") among 51 E. 14<sup>th</sup> Street Development Corporation, a Delaware corporation ("51 E. 14<sup>th</sup> Street"), and 1419 S. Wabash Development Corporation, a Delaware corporation ("1419 S. Wabash" and together with 51 E. 14<sup>th</sup> Street, individually, collectively, jointly and severally, and together with each of their permitted successors and assigns, the "Borrower"), the financial institutions who are or hereafter become a party to the Loan Agreement (including Wintrust, the "Lenders") and Administrative Agent, Lenders have agreed to make a loan to Borrower in the principal amount of SIXTY ONE MILLION AND 00/100 DOLLARS (\$61,000,000.00) (the "Loan"). The Loan is evidenced by those certain Promissory Notes dated as of even date herewith (collectively, as each is amended, restated, supplemented or otherwise modified from time to time, the "Note") in the aggregate principal amount of SIXTY ONE MILLION AND 00/100 DOLLARS (\$61,000,000.00) from Borrower payable to the order of Lenders.

WHEREAS, Mortgagor is the owner of the fee simple interest in the real property located in Cook County, Illinois and legally described in Exhibit A attached hereto (the "Land").

WHEREAS, Mortgagor and 51 E. 14<sup>th</sup> Street entered into that certain Ground Lease Agreement dated as of January 1, 2018 (the "Ground Lease") encumbering the Land.

WHEREAS, Mortgagor and/or its affiliate(s) own the direct or indirect interest or have a financial interest in Borrower, and Mortgagor will directly benefit from Lenders' making the Loan to Borrower.

WHEREAS, Lenders are not willing to make the Loan, or otherwise extend credit, to Borrower unless Mortgagor provides this Mortgage;

NOW THEREFORE, To secure: (i) the payment when and as due and payable of the principal of and interest on the Loan or so much thereof as may be advanced from time to time,

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and any and all late charges, and all other indebtedness evidenced by or owing under this Mortgage, the Note, the Loan Agreement, any Rate Management Agreement, and all other documents evidencing or securing the Loan (as each may be amended, modified, replaced or restated from time to time, collectively, the "Loan Documents"), together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the payment of all other indebtedness which this Mortgage by its terms secures; and (iii) the performance and observance of the covenants and agreements contained in this Mortgage, the Loan Agreement, the Note and each of the other Loan Documents, and (iv) all obligations and liabilities of the Borrower to Administrative Agent or Lenders under any Rate Management Agreement, if any (all of such indebtedness, obligations and liabilities identified in (i), (ii), (iii) and (iv) above being hereinafter referred to as the "Debt"), the Mortgagor does hereby MORTGAGE and WARRANT unto the Administrative Agent, its successors and assigns, and does hereby grant to Administrative Agent, its successors and assigns a security interest in, all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII, VIII and IX below, all of same being collectively referred to herein as the "Mortgaged Property."

## GRANTING CLAUSE I:

The Land.

## GRANTING CLAUSE II:

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of the Mortgagor now or hereafter acquired in and to any of the foregoing (the "Improvements").

## GRANTING CLAUSE III:

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appurtenances and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by the Mortgagor, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future share of stock respecting water and water rights pertaining to the Land or the Improvements or other evidence of ownership thereof, and the reversions and remainders thereof (the "Appurtenant Rights").

## GRANTING CLAUSE IV:

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TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Mortgagor and forming a part of, or used or obtained for use in connection with, the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (collectively, the "Fixtures"); it being agreed that all of said property owned by the Mortgagor and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Mortgage.

## GRANTING CLAUSE V:

TOGETHER WITH the following (collectively, the "Personal Property"):

All personal property of every nature whatsoever now or hereafter owned by Mortgagor and used in connection with the Land or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Mortgagor in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Mortgagor or on its behalf, including without limitation, any and all Goods, Investment Property, Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit Accounts, Commercial Tort Claims and General Intangibles, each as defined in the Uniform Commercial Code of the State of Illinois (the "Code");

All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Land or Improvements or any portion thereof under the power of eminent domain ("Awards"), any proceeds of any policies of insurance, maintained with respect to the Land or Improvements ("Insurance Proceeds") or proceeds of any sale, option or contract to sell the Land or Improvements or any portion thereof;

Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing; and

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All of the books and records pertaining to the foregoing.

## GRANTING CLAUSE VI:

TOGETHER WITH all right, title and interest which the Mortgagor hereafter may acquire in and to all leases (including the Ground Lease) and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property or any portion thereof, whether written or oral (herein collectively referred to as the "Leases"), and all rents, issues, incomes and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), and all right, title and interest which the Mortgagor now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Mortgagor any statutory rights.

## GRANTING CLAUSE VII:

TOGETHER WITH any and all Awards and Insurance Proceeds or proceeds of any sale, option or contract to sell the Mortgaged Property or any portion thereof (provided that no right, consent or authority to sell the Mortgaged Property or any portion thereof shall be inferred or deemed to exist by reason hereof); and the Mortgagor hereby authorizes, directs and empowers the Administrative Agent, at its option, on the Mortgagor's behalf, or on behalf of the successors or assigns of the Mortgagor, to adjust, compromise, claim, collect and receive such proceeds; to give acquittances therefor; and, after deducting expenses of collection, including reasonable attorneys' fees, costs and disbursements, to apply the net proceeds to the extent not utilized for the restoration of the Mortgaged Property as provided in the Loan Agreement hereof, to payment of the Debt, notwithstanding the fact that the same may not then be due and payable or that the Debt is otherwise adequately secured; and the Mortgagor agrees to execute and deliver from time to time such further instruments as may be requested by the Administrative Agent to confirm such assignment to the Administrative Agent of any such proceeds.

## GRANTING CLAUSE VIII:

TOGETHER WITH all rights reserved to or granted to the Mortgagor under the provisions of: (i) the Ground Lease, (ii) any declaration of restrictive covenants and easements now or hereafter affecting the Land or the Mortgaged Property; or (iii) declaration of condominium ownership for the institution of a regime of condominium ownership affecting the Land or the Mortgaged Property or otherwise granted to the developer pursuant to the provisions of applicable law in effect from time to time; or (iv) homeowners' declaration or other declarations affecting the Land or the Mortgaged Property.

## GRANTING CLAUSE IX:

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which the Mortgagor now has or hereafter may acquire of, in and to the Mortgaged Property, or any part thereof, and any and all other property of every

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kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Mortgagor or by anyone on behalf of the Mortgagor to the Administrative Agent;

TO HAVE AND TO HOLD the Mortgaged Property, unto the Administrative Agent, and its successors and assigns, forever; subject, however, to those encumbrances listed in Exhibit B attached hereto (the "Permitted Encumbrances");

UPON CONDITION that, subject to the terms hereof and until the occurrence of an Event of Default hereunder, the Mortgagor shall be permitted to possess and use the Mortgaged Property; and

SUBJECT to the covenants and conditions hereinafter set forth.

PROVIDED, NEVERTHELESS, that if the Borrower shall pay and perform in full when due the Debt and shall duly and timely perform and observe all of the covenants and conditions herein and in the other Loan Documents required to be performed and observed by the Borrower, then the Administrative Agent shall execute and deliver to the Mortgagor such instruments as may be reasonably requested by the Mortgagor which are sufficient to release this Mortgage.

THE MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Representations of Mortgagor. Mortgagor hereby represents and warrants to the Administrative Agent as follows:

(a) Mortgagor: (i) is a limited liability company duly formed and validly existing under the laws of the State of Delaware and has complied with all conditions prerequisite to its doing business in the State of Illinois; (ii) has the power and authority to own its property and to carry on its business as now being conducted; (iii) is qualified to do business in every jurisdiction in which the nature of its business or its property makes such qualification necessary; and (iv) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

(b) Mortgagor has good and marketable title to an indefeasible estate in the Mortgaged Property, subject to no liens, charges or encumbrances, other than the Permitted Encumbrances; that it has good, right and lawful authority to mortgage the Mortgaged Property in the manner and form herein provided; that this Mortgage is and shall remain a valid and enforceable lien on the Mortgaged Property subject only to the Permitted Encumbrances; that Mortgagor and its successors and assigns shall defend the same and the priority of this lien forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the Land.

(c) Mortgagor has and shall maintain title to the collateral for the Loan, including any additions or replacements thereto, free of all security interests, liens and encumbrances, other than the security interest hereunder.

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(d) No person who owns twenty percent (20.00%) or more of the equity interests in the Mortgagor, or otherwise controls the Mortgagor or any of its subsidiaries, is listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, and the proceeds of the Loan will not violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

(e) The Ground Lease is in full force and effect and unmodified.

(f) All rents (including additional rents and other charges) under the Ground Lease have been paid to the extent they were payable prior to the date hereof.

(g) There is no existing default under the provisions of the Ground Lease or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of the Mortgagor or 51 E. 14<sup>th</sup> Street to be observed and performed.

## 2. Mortgagor's Covenants.

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

(b) Repair/Maintenance. Mortgagor shall: (i) promptly repair, restore, replace or rebuild any portion of the Mortgaged Property which may be damaged or destroyed whether or not Insurance Proceeds are available (in accordance with the Loan Agreement) or sufficient for that purpose; (ii) keep the Mortgaged Property in good condition and repair, free from waste; (iii) pay all operating costs and expenses of the Mortgaged Property when due; (iv) comply with all legal requirements applicable to all or any portion of the Mortgaged Property, or the use and occupancy, thereof (subject to the right of the Mortgagor to contest the enforceability or applicability of any such legal requirements in good faith, diligently and at its expense by appropriate proceedings which shall not subject the Administrative Agent or any Lender to any risk of civil or criminal liability and which shall operate during the pendency thereof to prevent the imposition or foreclosure of any lien upon, or any interference with the availability, use or occupancy of, the Mortgaged Property or any part thereof), and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to all or any portion of the Mortgaged Property or the use and occupancy thereof; (v) refrain from any action, and correct any condition known to the Borrower, which would materially increase the risk of fire or other hazard to the Mortgaged Property or any portion thereof; and (vi) cause the Mortgaged Property to be managed in a competent and professional manner.

(c) Alteration of Mortgaged Property. Except as otherwise set forth in the Loan Agreement, without the prior written consent of the Administrative Agent, the Mortgagor



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shall not cause, suffer or permit: (i) any material alteration of the Mortgaged Property, except as required by any applicable legal requirement or as otherwise contemplated by the Loan Agreement; (ii) any change in the zoning classification or intended use or occupancy of the Mortgaged Property, including without limitation any change which would increase any fire or other hazard; (iii) any change in the identity of the Mortgagor or the person or entity responsible for managing the Mortgaged Property; or (iv) any modification of the licenses, permits, privileges, franchises, covenants, conditions or declarations of use applicable to the Mortgaged Property, except as required to operate the Mortgaged Property in the manner required hereunder.

(d) Compliance with Laws. The Mortgagor shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Mortgaged Property or any part thereof.

(e) Ground Lease.

(i) Mortgagor will at all times promptly and faithfully keep and perform all the covenants and conditions contained in the Ground Lease to be kept and performed and in all respects conform to and comply with the terms and conditions of the Ground Lease and further covenants that Mortgagor will not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, will impair or tend to impair the security of this Mortgage or will be grounds for declaring a forfeiture of the Ground Lease.

(ii) Mortgagor will furnish to Lender, upon demand, proof of payment of all items which are required to be paid by the Mortgagor under the Ground Lease.

(iii) Mortgagor will not modify, extend or in any way alter the terms of the Ground Lease or cancel or surrender the Ground Lease or waive, execute, condone or in any way release or discharge the Ground Lessor thereunder of or from the obligations, covenants, conditions and agreements by Ground Lessor to be done and performed; and Mortgagor does by these presents expressly release, relinquish and surrender unto the Administrative Agent all Mortgagor's right, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of the Ground Lease, and any attempt to exercise any such right without the written authority and consent thereto of the Administrative Agent shall be void and of no force and effect.

(iv) That Mortgagor will give to Administrative Agent immediate notice of any default under the Ground Lease or of the receipt by Mortgagor of any notice of default from the 51 E. 14<sup>th</sup> Street under the Ground Lease and that Mortgagor will permit forthwith the Administrative Agent or its representative at all reasonable times to make investigation or examination concerning the performance by Mortgagor of the covenants of the Ground Lease.

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(v) Mortgagor will promptly deposit with the Administrative Agent an exact copy of any notice, communication, plan, specification, petition, complaint, pleading or other instrument or document received or given by Mortgagor in any way relating to or affecting the Ground Lease which may concern or affect the estate of the Mortgagor in or under the Ground Lease or in the real estate thereby demised.

(vi) If Mortgagor fails to fully perform and comply with all agreements, covenants, terms and conditions imposed upon or assumed by it as tenant under the Ground Lease and such failure continues beyond any applicable cure period, the Administrative Agent may (but shall not be obligated to) take any action Administrative Agent deems necessary or desirable to prevent or to cure any default by it in the performance of or compliance with any of its covenants or obligations under the Ground Lease. Upon receipt by Administrative Agent from 51 E. 14<sup>th</sup> Street of any written notice of default by the Mortgagor thereunder, Administrative Agent may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof be questioned or denied by Mortgagor or by any party on its behalf. Mortgagor hereby expressly grants to Administrative Agent, and agrees that Administrative Agent shall have, the absolute and immediate right to enter in and upon the Mortgaged Property or any part thereof to such extent and as often as Administrative Agent in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default. Administrative Agent may pay and expend such sums of money as Administrative Agent in its sole discretion deems necessary for any such purpose, and Mortgagor hereby agrees to pay to Administrative Agent, immediately and without demand, all such sums so paid and expended by Administrative Agent, together with interest thereon, from the date of each such payment at the Default Rate. All sums so paid and expended by Administrative Agent and the interest thereon, shall be added to and be secured by the lien of this Mortgage. For the purpose of curing any such default, the Administrative Agent may (but shall be under no obligation to) do any act or execute any document in the name of the Mortgagor or as its attorney-in-fact, as well as in the name of the Administrative Agent. Mortgagor hereby irrevocably appoints the Administrative Agent its true and lawful attorney-in-fact in its name or otherwise to do any and all acts and to execute any and all documents which may be necessary or in the opinion of the Administrative Agent desirable to preserve any rights of the Administrative Agent and Lenders in, to or under the Ground Lease, or any sublease including, without limitation, the right to effectuate a renewal of the Ground Lease and to exercise any purchase option or right of termination thereunder or to preserve any rights of Mortgagor whatsoever in respect of any part of the Mortgaged Property. In the event of any conflict between the provisions in this subsection and the other provisions of this Mortgage, the provisions of this subsection shall govern.

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### 3. Liens, Contest and Defense of Title.

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

(b) Notwithstanding paragraph (a) of this Section, the Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Mortgaged Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Mortgage; and (i) within ten (10) days after the Mortgagor has been notified of the filing of any such Mechanic's Liens, the Mortgagor shall have notified the Administrative Agent in writing of the Mortgagor's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens and within thirty (30) days thereafter shall have obtained a title insurance endorsement over such Mechanic's Liens in form and substance reasonably satisfactory to the Administrative Agent, insuring the Administrative Agent against loss or damage by reason of such Mechanic's Liens, provided that in lieu of such title insurance endorsement the Mortgagor may deposit and keep on deposit with the Administrative Agent (or such depository as may be designated by the Administrative Agent) a sum of money sufficient, in the judgment of the Administrative Agent, to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and may be used by the Administrative Agent in its sole discretion to protect the priority of this Mortgage. In case the Mortgagor shall fail to maintain such title insurance or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest; then the Administrative Agent may, at its option, apply any money and liquidate any securities then on deposit with the Administrative Agent (or other depository designated by the Administrative Agent) in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon according to any written bill, notice or statement, without inquiring into the amount, validity or enforceability thereof. If the amount of money so deposited shall (in Administrative Agent's reasonable judgment) be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then the Mortgagor shall forthwith, upon demand, deposit with the Administrative Agent (or other depository designated by the Administrative Agent) the sum which shall (in Administrative Agent's reasonable judgment, when added to the funds then on deposit with Administrative Agent) be necessary to make such payment in full (or such other security as shall be reasonably satisfactory to Administrative Agent). If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited shall be applied in full payment of such Mechanic's Lien or that part thereof then

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unpaid, together with all interest thereon (provided no Event of Default shall then exist) when the Administrative Agent has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with the Administrative Agent (or other depository) under this Section 3(b) shall be paid to the Mortgagor, provided that no Event of Default shall then exist. Notwithstanding the foregoing and provided Mortgagor deposits the funds as set forth above with Administrative Agent (which funds will be released promptly after the bond is issued covering the Mechanic's Lien provided no Event of Default shall then exist), Mortgagor will have the right to proceed to bond over such Mechanic's Lien in accordance with Illinois Statutes 770 ILCS 60/38.

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

#### 4. Payment and Contest of Taxes.

(a) The Mortgagor shall pay or cause to be paid when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Mortgaged Property, or any part thereof, or any interest therein, or any income or revenue therefrom, or any obligation or instrument secured hereby, and all installments thereof (collectively, the "Taxes"), on or before the date such Taxes are due, except to the extent Administrative Agent makes payments with Mortgagor's deposits under Section 23 hereof; and the Mortgagor shall discharge any claim or lien relating to Taxes upon the Mortgaged Property. The Mortgagor shall provide the Administrative Agent with copies of paid receipts for Taxes, if requested by the Administrative Agent, within ten (10) days after being requested to do so by the Administrative Agent.

(b) Notwithstanding paragraph (a) of this Section, the Mortgagor may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any such Taxes, provided that: (i) no Event of Default has occurred; (ii) such proceeding shall stay the collection of the applicable Taxes from Mortgagor and from the Mortgaged Property or Mortgagor shall have paid all of the applicable Taxes under protest; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder; (iv) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost so long as the contest is being pursued; and (v) Mortgagor shall have deposited with Administrative Agent adequate reserves for the payment of the applicable Taxes, together with all interest and penalties thereon, unless Mortgagor has paid all of the applicable Taxes under protest, or Mortgagor shall have furnished such other security as may be accepted by Administrative Agent, in its sole and absolute

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discretion, to insure the payment of any contested Taxes, together with all interest and penalties thereon. If the Mortgagor fails to prosecute such contest with reasonable diligence, or fails to maintain sufficient funds as herein above provided, the Administrative Agent may, at its option, liquidate any securities and apply the monies then on deposit with the Administrative Agent (or other depository), in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon according to any written bill, notice or statement, without inquiry as to the amount, validity or enforceability thereof. If the amount of money and any such security so deposited shall (in the Administrative Agent's reasonable judgment) at any time be insufficient for the payment in full of such Taxes, together with all penalties and interest which are or might become due thereon, the Mortgagor shall forthwith, upon demand, either deposit with the Administrative Agent (or other depository designated by the Administrative Agent) a sum (or such other security as shall be reasonably satisfactory to the Administrative Agent) which when added to the funds then on deposit, shall (in the Administrative Agent's reasonable judgment) be sufficient to make such payment in full, or, if the Administrative Agent (or other depository) has applied funds so deposited on account of such Taxes, restore such deposit to an amount satisfactory to the Administrative Agent. After final disposition of such contest and upon the Mortgagor's written request and delivery to the Administrative Agent of an official bill for such Taxes, the Administrative Agent (or other depository) shall liquidate any securities and apply the monies, if any, then on deposit under this Section 4 to the payment of such Taxes or that part thereof then unpaid and the balance, if any, in excess of the amount required to be on deposit with the Administrative Agent (or other depository) under Section 23 hereof shall be refunded to the Mortgagor after such final disposition, provided that no Event of Default shall then exist.

## 5. Change in Tax Laws.

(a) If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Administrative Agent, the Mortgagor or the Mortgaged Property, any tax is imposed or becomes due in respect of the Note or this Mortgage (excluding income, excise or franchise taxes imposed upon the Administrative Agent, except as provided in Section 5(c) below), or any liens on the Mortgaged Property created thereby, then the Mortgagor shall pay such tax in the manner required by such law.

(b) If any law, statute, rule, regulation, order or court decree effects a deduction from the value of the Mortgaged Property for the purpose of taxation by creating any lien thereon, or imposing upon the Administrative Agent any liability for the payment of all or any part of the Taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or deeds of trusts or debts secured by mortgages or deeds of trust or the interest of the Administrative Agent in the Mortgaged Property, or the manner of collection of Taxes so as to adversely affect this Mortgage, the Debt, or the Administrative Agent, then, and in any such event, the Mortgagor, upon demand by the Administrative Agent, shall pay such Taxes, or reimburse the Administrative Agent therefor on demand, unless the Administrative Agent determines, in the Administrative Agent's sole judgment, that such payment or reimbursement by the Mortgagor is unlawful or that the payment might, in the Administrative

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Agent's judgment, constitute usury or render the Debt wholly or partially usurious; in which event the Administrative Agent may elect to declare the Debt to be due and payable within the lesser of: (i) ninety (90) days after written notice; or (ii) such shorter period as may be required to ensure compliance by Administrative Agent with applicable law.

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

6. Insurance Coverage. For so long as this Mortgage is in effect, Mortgagor shall continuously maintain policies of insurance in accordance with the provisions of the Loan Agreement and all other Loan Documents.

7. The Administrative Agent's Performance of the Mortgagor's Obligations.

(a) Upon the occurrence of an Event of Default hereunder, the Administrative Agent may, but without any obligation to do so, upon simultaneous notice to the Mortgagor, make any payment or perform any act which the Mortgagor is required to make or perform hereunder or under any other Loan Document (whether or not the Mortgagor is personally liable therefor) in any form and lawful manner deemed expedient to the Administrative Agent, including without limitation, the right to enter into possession of the Mortgaged Property, or any portion thereof, and to take any action (including without limitation the release of any information regarding the Mortgaged Property, the Mortgagor and the obligations secured hereby) which the Administrative Agent deems necessary or desirable in connection therewith, all at the sole cost and expense of the Mortgagor. The Administrative Agent, in addition to any rights or powers granted or conferred hereunder but without any obligation to do so, may complete construction of, rent, operate, and manage the Mortgaged Property, or any part thereof, including payment of management fees and other operating costs and expenses, of every kind and nature in connection therewith, so that the Mortgaged Property shall be operational and usable for their intended purposes. All monies paid, and all reasonable expenses paid or incurred in connection therewith, including but not limited to reasonable costs of surveys, evidence of title, court costs and attorneys' fees and expenses and other monies advanced by the Administrative Agent to protect the Mortgaged Property and the lien hereof, to complete construction of, rent, operate and manage the Mortgaged Property or to pay any such operating costs and expenses thereof or to keep the Mortgaged Property operational and usable for their intended purposes shall be so much additional Debt, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate.

(b) The Administrative Agent, in making any payment, may do so according to any written bill, notice, statement or estimate, without inquiry into the amount, validity or enforceability thereof.

(c) Nothing contained herein shall be construed to require the Administrative Agent to advance or expend monies for any purpose mentioned herein, or for any other purposes.

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## 8. Security Agreement.

(a) Grant of Security Interest. Mortgagor hereby grants to Administrative Agent a security interest in the Mortgaged Property to secure the Debt. This Mortgage constitutes a security agreement with respect to all Mortgaged Property in which Administrative Agent is granted a security interest hereunder, and Administrative Agent shall have all of the rights and remedies of a secured party under the Code, as well as all other rights and remedies available at law or in equity.

(b) Perfection. Mortgagor hereby consents to any instrument that may be requested by Administrative Agent to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Mortgage or the interest of Administrative Agent in the Mortgaged Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Mortgagor shall pay or cause to be paid: (i) all filing and recording taxes and fees incident to each such filing or recording; (ii) all expenses, including without limitation, actual attorneys' fees and costs (of both in house and outside counsel), incurred by Administrative Agent in connection with the preparation and acknowledgement of all such instruments; and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the delivery of such instruments. Mortgagor hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Mortgagor hereby irrevocably constitutes and appoints Administrative Agent as the attorney-in-fact of Mortgagor, to file with the appropriate filing office any such instruments. In addition, Mortgagor hereby authorizes Administrative Agent to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Mortgagor.

(c) Place of Business. Mortgagor maintains its chief executive office as set forth as the address of Mortgagor in Section 28 below, and Mortgagor will notify Administrative Agent in writing of any change in its place of business within five (5) days of such change.

(d) Fixture Filing. This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code and will be recorded as a "fixture filing" in accordance with the Code with respect to the items of Mortgaged Property which are or may become fixtures relating to the Land. The addresses of Mortgagor (Debtor) and Administrative Agent (Secured Party) are set forth in Section 28 of this Mortgage. Mortgagor hereby directs that Administrative Agent shall cause to be recorded in the county in which the Land is located, as well as with the applicable offices of the State of Illinois, such financing statements and fixture filings as shall be necessary in order to perfect and preserve the priority of Administrative Agent's lien upon the Mortgaged Property.

(e) Representations and Warranties. The Mortgagor represents and warrants that: (i) the Mortgagor is the record owner of the Mortgaged Property; (ii) the Mortgagor's chief executive office is located in the State of Illinois; (iii) the Mortgagor's state of incorporation is the State of Delaware; (iv) the Mortgagor's exact legal name is as set forth on

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Page 1 of this Mortgage; (v) the Mortgagor's organizational identification number issued by the Delaware Secretary of State is 6514833; (vi) Mortgagor is the owner of the Personal Property subject to no liens, charges or encumbrances other than the lien hereof, (vii) the Personal Property will not be removed from the Mortgaged Property without the consent of the Administrative Agent unless replaced with comparable Personal Property of equal or greater value, and (viii) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto.

9. Restrictions on Transfer. For the purpose of protecting the Administrative Agent's security, and keeping the Mortgaged Property free from subordinate financing liens, the Mortgagor agrees that it, the members of Mortgagor, and the members, partners or stockholders of any entity controlling, directly or indirectly, Mortgagor, will not:

(a) sell, assign, transfer, hypothecate, grant a security interest in or convey title to: (i) the Mortgaged Property or any part thereof; or (ii) any ownership interest in Mortgagor, or (iii) any ownership interest in any entity controlling, directly or indirectly, Mortgagor; or

(b) obtain any financing, all or a part of which, will be secured by: (i) the Mortgaged Property; (ii) any ownership interest in Mortgagor; or (iii) any ownership interest in any entity controlling, directly or indirectly; or

(c) convert the Mortgagor from one type of legal entity into another type of legal entity, without, in each instance, the Administrative Agent's prior written consent. Any violation of this Section 9 shall be deemed a "Prohibited Transfer."

Notwithstanding the foregoing, the following shall not constitute Prohibited Transfers: (x) Leases entered into in accordance with the Loan Documents; or (y) transfers of indirect ownership interests in Mortgagor made exclusively for legitimate estate planning purposes provided that: (1) Guarantor continues to control the Mortgagor; and (2) the transferee does not cause Borrower to violate Section 7.18 of the Loan Agreement.

10. Events of Default. Each of the following shall constitute an "Event of Default" under this Mortgage:

(a) The occurrence of an Event of Default under and as defined in the Loan Agreement;

(b) Failure by Mortgagor to perform or cause to be performed any obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor contained in this Mortgage and not specifically referred to elsewhere in this Section 10; provided, however, that if such failure by its nature can be cured, then so long as the priority, validity and enforceability of the liens created by this Mortgage, the Loan Agreement, or any of the other Loan Documents and the value of the Property is not impaired, threatened or jeopardized, then Mortgagor shall have a period ("Cure Period") of thirty (30) days after Mortgagor receives written notice of such failure to cure the same and an Event of Default



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shall not be deemed to exist during the Cure Period (provided, however, such period shall be limited to ten (10) days if such failure can be cured by the payment of money), provided further that if Mortgagor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than ninety (90) days in the aggregate; and

- (c) The occurrence of any violation of Section 9 above.

Notwithstanding the foregoing or anything in the other Loan Documents to the contrary, the cure periods set forth in this Mortgage are provided without duplication of any other cure periods set forth in the other Loan Documents, and in the event that multiple cure periods apply under the Loan Documents such cure periods shall run concurrently and not consecutively.

11. Remedies. Upon the occurrence of an Event of Default (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument), and in addition to such other rights as may be available under any other Loan Document or under applicable law, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Administrative Agent may declare the outstanding principal balance of the Note and all unpaid indebtedness of Borrower hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind; provided, however, if the Event of Default is under Section 8(e) of the Loan Agreement, all unpaid indebtedness of Mortgagor hereby secured shall be immediately due and payable without any action by Administrative Agent.

(b) Uniform Commercial Code. Administrative Agent shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address set forth in Section 28 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Personal Property, may be sold as a single parcel if the Administrative Agent elects. The Mortgagor hereby agrees that if the Administrative Agent demands or attempts to take possession of the Personal Property or any portion thereof in exercise of its rights and remedies hereunder, the Mortgagor will promptly turn over and deliver possession thereof to the Administrative Agent, and the Mortgagor authorizes, to the extent the Mortgagor may now or hereafter lawfully grant such authority, the Administrative Agent, its employees and agents, and potential bidders or purchasers to enter upon the Mortgaged Property or any other office, building or property where

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the Personal Property or any portion thereof may at the time be located (or believed to be located) and the Administrative Agent may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional Debt and shall be payable upon demand with interest at the Default Rate.

(c) Foreclosure. Administrative Agent may proceed to protect and enforce the rights of Administrative Agent hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Debt in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., as from time to time amended (the "Act"), and all other expenditures and expenses which may be paid or incurred by or on behalf of Administrative Agent and Lenders for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Administrative Agent may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and Rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Administrative Agent and Lenders in any litigation or proceedings affecting this Mortgage, the Note or the Mortgaged Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Debt and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid.

(d) Appointment of Receiver. Administrative Agent shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Property and the Rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver

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may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, Rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) Taking Possession, Collecting Rents, Etc. Upon demand by Administrative Agent, Mortgagor shall surrender to Administrative Agent and Administrative Agent may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Administrative Agent, in its discretion, personally, by its agents or attorneys, in each case pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Administrative Agent and under the powers herein granted:

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

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Mortgagor to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage without Administrative Agent's prior written consent;

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

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

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of Taxes, insurance premiums and other charges applicable to the Mortgaged Property, or in reduction of the Debt in such order and manner as Administrative Agent shall select, in its sole discretion; and

(vii) receive and collect the Rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Mortgagor agrees to consent to a receiver if it is believed necessary or desirable by the Administrative Agent to enforce its rights under this subsection. The collection of Rents, issues, profits or revenues of the Mortgaged Property by the Administrative Agent shall in no way waive the right of the Administrative Agent to foreclose this Mortgage in the event of any said Event of Default.

Nothing herein contained shall be construed as constituting Administrative Agent a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any Personal Property therein, to manage, operate, conserve and improve the same, and to collect the Rents, issues and profits thereof, shall be in addition to all other rights or remedies of Administrative Agent hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Mortgagor promises to pay upon demand together with interest thereon at the Default Rate. Administrative Agent shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any Rents actually received by Administrative Agent. Without taking possession of the Mortgaged Property, Administrative Agent may, in the event the Mortgaged Property become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Debt payable upon demand with interest thereon at the Default Rate.

(f) Indemnity. The Mortgagor hereby agrees to indemnify, defend, protect and hold harmless the Administrative Agent and its employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, or lease of any of the Mortgaged Property, or any part thereof, or as a result of the Administrative Agent seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property;

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provided, however, that the foregoing indemnity shall not extend to such liabilities, claims or obligations as result from the gross negligence or intentional misconduct of the Administrative Agent, its employees, officers or agents.

## 12. Compliance with Illinois Mortgage Foreclosure Law.

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

(b) If any provision of this Mortgage shall grant to Administrative Agent any rights or remedies upon the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Administrative Agent under the Act in the absence of said provision, Administrative Agent shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Administrative Agent to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Sections 11(c) or 14 of this Mortgage, shall be added to the Debt and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid or shall be included in the judgment of foreclosure.

13. Waiver of Right to Redeem - Waiver of Appraisement, Valuation, Etc. Mortgagor shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such Moratorium Laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Administrative Agent may determine in its sole discretion. Administrative Agent shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Administrative Agent so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Administrative Agent with the amount payable to Administrative Agent out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Debt, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Act, or residential real estate, as defined in Section 5/15-1219 of the Act. To the fullest extent permitted by law, Mortgagor, on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged

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Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives any and all rights of redemption and reinstatement pursuant to Sections 5/15-1601, 5/15-1602 and 5/15-1603 of the Act.

14. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Administrative Agent for appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as Administrative Agent may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, and reasonable attorneys' fees, all of which expenditures shall become so much additional Debt which Mortgagor agrees to pay and all of such expenditures shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

15. Protective Advances.

(a) Advances, disbursements and expenditures made by Administrative Agent for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Mortgage, constitute "Protective Advances":

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

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

(iii) advances by Administrative Agent in settlement or compromise of any claims asserted by claimants under any prior liens;

(iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504(d)(2) and

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5/15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against the Administrative Agent for the enforcement of this Mortgage or arising from the interest of the Administrative Agent hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

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

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

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

(viii) expenses incurred and expenditures made by Administrative Agent for any one or more of the following: (A) premiums for casualty and liability insurance paid by Administrative Agent whether or not Administrative Agent or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (B) repair or restoration of damage or destruction in excess of available Insurance Proceeds or condemnation awards; (C) payments required or deemed by Administrative Agent to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Property; or (E) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

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

(c) 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)(5) of Section 5/15-1302 of the Act.

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

(i) determination of the amount of Debt at any time;

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(ii) indebtedness found due and owing to the Administrative Agent in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(iv) application of income in the hands of any receiver or mortgagee in possession; and

(v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Act.

16. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property or of any sale of property pursuant to Section 11(c) hereof shall be distributed in the following order of priority: first, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 11(c) and Section 14 hereof; second, to all items, other than principal and interest evidenced by the Note, which under the terms hereof constitute Debt with interest thereon as herein provided; third, to all unpaid interest on the Note; fourth, to all unpaid principal on the Note; fifth, to whomsoever shall be lawfully entitled to the same.

17. Rights Cumulative.

(a) Each right, power and remedy herein conferred upon the Administrative Agent is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by the Administrative Agent.

(b) By accepting payment of any sums secured by this Mortgage after the due date thereof, by accepting performance of any of the Mortgagor's obligations hereunder after such performance is due, or by making any payment or performing any act on behalf of the Mortgagor which the Mortgagor was obligated but failed to perform or pay, the Administrative Agent shall not waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of the Mortgagor's obligations under this Mortgage, the Note, and all other Loan Documents. No waiver or modification of any of the terms of this Mortgage shall be binding on the Administrative Agent unless set forth in writing signed by the Administrative Agent and any such waiver by the Administrative Agent of any Event of Default by the Mortgagor under this Mortgage shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If the Administrative Agent holds any additional security for any of the obligations secured hereby,



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it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Mortgaged Property or any portion thereof.

(c) No act or omission by the Administrative Agent shall release, discharge, modify, change or otherwise affect the liability of Mortgagor under the Note, this Mortgage, or any of the other Loan Documents, or any other obligation of the Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude the Administrative Agent from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Mortgage or any of the other Loan Documents except as expressly provided in an instrument or instruments executed by the Administrative Agent. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Administrative Agent in the exercise of any right, power or remedy accruing hereunder or under any of the other Loan Documents or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to the Administrative Agent by this Mortgage is not required to be given.

## 18. Successors and Assigns; Assignment.

(a) This Mortgage and each and every provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person having an interest therein) and shall inure to the benefit of the Administrative Agent and its successors and assigns.

(b) All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Mortgaged Property or any portion thereof becomes vested in a person or persons other than the Mortgagor, the Administrative Agent may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Debt in the same manner as with the Mortgagor without in any way releasing or discharging the Mortgagor from its obligations hereunder. The Mortgagor will give immediate written notice to the Administrative Agent of any conveyance, transfer or change of ownership of the Mortgaged Property, but nothing in this Section shall vary or negate the provisions of Section 9 hereof.

(c) The rights and obligations of Mortgagor under this Mortgage may not be assigned and any purported assignment by Mortgagor shall be null and void. Administrative Agent and Lenders shall have the right to sell, assign or transfer portions of its right, title and/or interest in and to this Mortgage and the other Loan Documents (including the sale of participation interests therein), without the consent or approval of Mortgagor, and Mortgagor agrees to cooperate in all respects with Administrative Agent in connection therewith, including, without limitation, the execution of all documents and instruments reasonably requested by Administrative Agent or such transferee provided that such documents and instruments do not

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materially adversely affect any of Mortgagor's duties or obligations under this Mortgage and the other Loan Documents.

19. Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel, Letter; Corrective Documents.

(a) The Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as the Administrative Agent shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto the Administrative Agent all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired. Without limitation of the foregoing, the Mortgagor will assign to the Administrative Agent, upon request, as further security for the Debt, its interest in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments reasonably satisfactory to the Administrative Agent, but no such assignment shall be construed as a consent by the Administrative Agent to any agreement, contract, license or permit or to impose upon the Administrative Agent any obligations with respect thereto.

(b) From time to time, the Mortgagor will furnish, within ten (10) days after request from the Administrative Agent, a written and duly acknowledged statement of the amount due under the Note and this Mortgage and whether any alleged offsets or defenses exist against the Debt.

(c) The Mortgagor and the Administrative Agent shall, at the request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by the Administrative Agent or the Mortgagor, as the case may be, to correct such defect, error or omission.

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

21. Governing Law. The validity, enforcement and interpretation of this Mortgage shall for all purposes be governed by and construed in accordance with the laws of the State of Illinois, without reference to the conflicts of law principles of that State, and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws.

22. Business Loan.

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(a) The Mortgagor declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and that to the extent the provisions of the Illinois Interest Act (815 ILCS §205/4(l)) apply, the Debt constitutes business loans to a corporation which come within the purview of 815 ILCS §205/4(l)(a), as well as loans secured by a mortgage on real estate which comes within the purview of 815 ILCS 205/4(1)(l), and the Loan is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et seq.

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

23. Escrow Deposit. Upon Administrative Agent's request after the occurrence and continuance of an Event of Default, and without limiting the effect of Sections 4 and 5 hereof, the Administrative Agent may require that the Mortgagor pay to the Administrative Agent on the first business day of each calendar month an amount equal to one-twelfth (1/12th) of what the Administrative Agent estimates is necessary to pay, on an annualized basis, (1) all Taxes, and (2) all premiums for the insurance policies required pursuant to the Loan Agreement ("Premiums") and to enable the Administrative Agent to pay same at least thirty (30) days before the Taxes would become delinquent and the Premiums are due, and, on demand, from time to time shall pay to the Administrative Agent additional sums necessary to pay the Premiums and Taxes. No amounts so paid shall be deemed to be trust funds, but may be commingled with the general funds of the Administrative Agent, and no interest shall be payable thereon. In the event that the Mortgagor does not pay such sums for Premiums and Taxes, then the Administrative Agent may, but shall not be obligated to, pay such Premiums and Taxes and any money so paid by the Administrative Agent shall constitute additional Debt hereunder and shall be payable by Mortgagor to Administrative Agent on demand with interest thereon from the date of disbursement by Administrative Agent at Default Rate until repaid to Administrative Agent. If an Event of Default occurs, the Administrative Agent shall have the right, at its election, to apply any amounts so held under this Section 23 against all or any part of the Debt, or in payment of the Premiums or Taxes for which the amounts were deposited. The Mortgagor will furnish to the Administrative Agent bills for Taxes and Premiums not less than thirty (30) days before Taxes become delinquent and such Premiums become due.

24. Assignment of Leases and Other Agreements Affecting the Mortgaged Property. In order to further secure payment of the Debt and the observance, performance and discharge of the Mortgagor's obligations under the Loan Documents, the Mortgagor hereby assigns to the Administrative Agent all of the Mortgagor's right, title, interest and estate in, to and under all of the Leases and sales contracts now or hereafter affecting the Mortgaged Property or any part thereof (the "Sales Contracts") and in and to all of the Rents and Profits (defined as all rents, income, issues and profits arising from any Leases, Sales Contracts or other agreements affecting the use, enjoyment or occupancy of the Mortgages Property now or hereafter made affecting the

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Mortgaged Property or any portion thereof), as more particularly described in that certain Assignment of Leases and Rents dated as of even herewith from Mortgagor to and for the benefit of Administrative Agent. Unless and until an Event of Default occurs, the Mortgagor shall be entitled to collect the Rents and Profits (except as otherwise provided in this Mortgage) as and when they become due and payable. Neither these assignments nor Administrative Agent's enforcement of the provisions of these assignments (including the receipt of the Rents) will operate to subordinate the lien of this Mortgage to any of the rights of any tenant or contract purchaser of all or any part of the Mortgaged Property, or to subject Administrative Agent to any liability to any such tenant or contract purchaser for the performance of any obligations of Mortgagor under any such Lease or Sales Contract unless and until Administrative Agent agrees to such subordination or assumes such liability by an appropriate written instrument.

25. Inspection of Mortgaged Property and Records. The Administrative Agent and its representatives and agents shall have the right to inspect the Mortgaged Property and all books, records and documents relating thereto at all reasonable times, after giving reasonable notice to the Mortgagor, and access thereto, subject to the rights of tenants pursuant to Leases. The Administrative Agent shall use reasonable efforts to avoid disturbing business operations on the Mortgaged Property during such inspections. The Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Mortgaged Property and permit the Administrative Agent or its agents to examine such books and records and all supporting vouchers and data at any time and from time to time on request at its offices at the address hereinafter identified or at such other location as may be mutually agreed upon.

26. Financial Statements. The Mortgagor represents and warrants that the financial statements for the Mortgagor and the Mortgaged Property previously submitted to the Administrative Agent are true, complete and correct in all material respects, disclose all actual and contingent liabilities of the Mortgagor or relating to the Mortgaged Property and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of the Mortgagor or the Mortgaged Property from the dates of said financial statements through the date hereof. The Mortgagor and Colin M. Kihnke, an individual ("Guarantor"), shall furnish to the Administrative Agent such financial information regarding the Mortgagor, the Guarantor, and the Mortgaged Property as the Administrative Agent may from time to time reasonably request and as otherwise set forth in the Loan Agreement and in the Guaranty (as defined in the Loan Agreement).

27. Environmental Matters. Concurrently herewith, Mortgagor and Guarantor shall execute and deliver an Environmental Indemnity Agreement in form satisfactory to Administrative Agent (as amended, restated, supplemented or otherwise modified from time to time, the "Environmental Indemnity Agreement"). The performance of the covenants, undertakings and obligations of the indemnitors under the Environmental Indemnity Agreement are not secured by this Mortgage, such covenants, undertakings and obligations being personal to Mortgagor and Guarantor, and shall survive the foreclosure of this Mortgage and repayment of the Debt.

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28. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth below in this Section or as such party may from time to time designate by written notice to the other parties. Either party by notice to the other in the manner provided herein may designate additional or different addresses for subsequent notices or communications:

To Administrative Agent: Wintrust Bank, N.A.  
231 S. LaSalle Street, 2<sup>nd</sup> Floor  
Chicago, Illinois 60604  
Attention: Brian Cullen

With copy to: Greenberg Traurig, LLP  
77 West Wacker Drive, Suite 3100  
Chicago, Illinois 60601  
Attention: Michael T. Fishman

To Mortgagor: 1401 S. Wabash, LLC  
c/o CMK Companies, Ltd.  
225 West Ohio Street, 6<sup>th</sup> Floor  
Chicago, Illinois 60654  
Attention: Colin M. Kihuke

With copy to: Schain, Banks, Kenny & Schwartz, Ltd.  
Three First National Plaza  
70 West Madison Street, Suite 3300  
Chicago, Illinois 60602  
Attention: David O'Keefe

29. Releases.

(a) Upon payment in full of all sums due under the Note and this Mortgage and the other of the Loan Documents, the Administrative Agent shall, upon the request of, and at the cost of, the Mortgagor, execute a proper release of this Mortgage.

(b) The Administrative Agent may, regardless of consideration, cause the release of any part of the Mortgaged Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of the Mortgaged Property not so released.

30. [Reserved].

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31. Indemnification by the Mortgagor. The Mortgagor shall protect and indemnify the Administrative Agent and the Lenders from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against the Administrative Agent, the Lenders or their members, partners, stockholders, directors, officers, agents or employees by reason of: (a) ownership of the Mortgaged Property or any interest therein, or receipt of any Rents or other sum therefrom; (b) any accident to, injury to or death of persons or loss of or damage to Mortgaged Property occurring on or about the Mortgaged Property or the adjoining sidewalks, curbs, vaults or vault space, if any, streets or ways; (c) any failure on the part of the Mortgagor or any Guarantor of the Note to perform or comply with any of the terms, covenants, conditions and agreements set forth in this Mortgage, the Note, any of the other Loan Documents, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Mortgagor, or any Guarantor of the Note, or any other persons directly or indirectly liable for the payment of the Debt; (d) any failure on the part of the Mortgagor to perform or comply with: (i) any other agreement executed by the Mortgagor or any Guarantor of the Note; or (ii) any requirement of law; (e) payment of sums for the protection of the lien and security interest of the Administrative Agent in and to the Mortgaged Property; (f) performance of any labor or services or the furnishing of any materials or other Mortgaged Property in respect of the Mortgaged Property or any part thereof for construction or maintenance or otherwise; or (g) any action brought against the Administrative Agent or any Lender attacking the validity, priority or enforceability of this Mortgage, the Note, any other Loan Document, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Mortgagor or any other persons directly or indirectly liable for the payment of the Debt. Any amounts payable to the Administrative Agent and Lenders under this paragraph shall bear interest at the Default Rate and shall be secured by this Mortgage. In the event any action, suit or proceeding is brought against the Administrative Agent, Lenders or their members, partners, stockholders, directors, officers, agents or employees by reason of any such occurrence, the Mortgagor, upon the request of the Administrative Agent and at Mortgagor's sole expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Mortgagor and approved by the Administrative Agent. Such obligations under this paragraph shall survive the termination, satisfaction or release of this Mortgage.

32. OFAC Covenant. Mortgagor shall ensure, and cause each of its subsidiaries to ensure, that: (i) no person who owns twenty percent (20.00%) or more of the equity interests in the Mortgagor, or otherwise controls the Mortgagor or any of its subsidiaries is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the OFAC, the Department of the Treasury or included in any Executive Orders; (ii) the proceeds of the Loan do not violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto; and (iii) it shall comply, and cause each of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

33. Miscellaneous.

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- (a) Time is of the Essence. Time is of the essence of this Mortgage.
- (b) Captions and Pronouns. The captions and headings of the various Sections of this Mortgage are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.
- (c) Future Advances; Maximum Indebtedness. This Mortgage is granted to secure not only existing indebtedness, but also future advances made pursuant to or as provided in the Loan Documents, whether such advances are obligatory or to be made at the option of Administrative Agent, or otherwise, to the same extent as if such future advances were made on the date of execution of this Mortgage, although there may be no advance made at the time of execution hereof, and although there may be no indebtedness outstanding at the time any advance is made. Notwithstanding anything in this Mortgage to the contrary, the maximum principal amount of the indebtedness secured by this Mortgage shall not exceed \$122,000,000.00, plus all costs of enforcement and collection of this Mortgage and the other Loan Documents, including reasonable attorney's fees, plus the total amount of any advances made pursuant to the Loan Documents to protect the collateral and the security interest and lien created hereby, or the priority thereof, together with interest on all of the foregoing as provided in the Loan Documents.
- (d) The Mortgagor Not a Joint Venturer or Partner. The Mortgagor and the Administrative Agent acknowledge and agree that in no event shall the Administrative Agent or any Lender be deemed to be a partner or joint venturer with the Mortgagor. Without limitation of the foregoing, the Administrative Agent shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Debt, or otherwise.
- (e) Replacement of the Note. Upon notice to the Mortgagor of the loss, theft, destruction or mutilation of the Note, the Mortgagor will cause Borrower to execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any of the Loan Documents to the Note shall be deemed to refer to such replacement note.
- (f) Waiver of Consequential Damages. The Mortgagor covenants and agrees that in no event shall the Administrative Agent or any Lender be liable for consequential damages, whatever the nature of a failure by the Administrative Agent or Lenders to perform their obligation(s), if any, under the Loan Documents, and the Mortgagor hereby expressly waives all claims that it now or may hereafter have against the Administrative Agent and Lenders for such consequential damages.

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(g) After Acquired Mortgaged Property. The lien hereof will automatically attach, without further act, to all after-acquired Mortgaged Property attached to and/or used in connection with or in the operation of the Mortgaged Property or any part thereof.

(h) Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then the Administrative Agent may, at its option declare the Debt immediately due and payable.

(i) Interpretation of Agreement. Should any provision of this Mortgage require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Mortgage, including, without limitation, all Exhibits attached to this Mortgage.

(j) Joint and Several Obligations; Counterparts. If this Mortgage is executed by more than one Mortgagor, (i) the obligations and liabilities of Mortgagor under this Mortgage shall be joint and several and shall be binding upon and enforceable against each Mortgagor and their respective successors and assigns, and (ii) this Mortgage may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Mortgage.

(k) Effect of Extensions and Amendments. If the payment of the Debt, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Administrative Agent, notwithstanding any such extension, variation or release.

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

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



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and the lien hereof shall not merge in to the title to the Mortgaged Property and this Mortgage may be foreclosed as if owned by a stranger to the title.

(n) Complete Agreement. This Mortgage, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Mortgagor and the Administrative Agent.

34. JURISDICTION AND VENUE. MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF ADMINISTRATIVE AGENT INITIATES SUCH ACTION, ANY COURT IN WHICH ADMINISTRATIVE AGENT SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. MORTGAGOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY ADMINISTRATIVE AGENT IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO MORTGAGOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. MORTGAGOR WAIVES ANY CLAIM THAT COOK COUNTY, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD MORTGAGOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, MORTGAGOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY ADMINISTRATIVE AGENT AGAINST MORTGAGOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY ADMINISTRATIVE AGENT OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY ADMINISTRATIVE AGENT OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

35. WAIVER OF JURY TRIAL. MORTGAGOR AND ADMINISTRATIVE AGENT HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG MORTGAGOR AND ADMINISTRATIVE AGENT

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ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN MORTGAGOR AND ADMINISTRATIVE AGENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO ADMINISTRATIVE AGENT TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

36. ADDITIONAL WAIVERS. MORTGAGOR EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY ADMINISTRATIVE AGENT ON THIS MORTGAGE, ANY AND EVERY RIGHT IT MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING, OR (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH SUIT, ACTION OR PROCEEDING MUST BE CONSOLIDATED WITH THE PROCEEDING BROUGHT BY ADMINISTRATIVE AGENT.

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

38. Provisions of Loan Agreement. The proceeds of the Note are to be disbursed by the Administrative Agent in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Mortgagor covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Mortgagor for the enforceability of this Mortgage and the Note, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured by this Mortgage in accordance with Section 33(c) hereof.

39. Insurance Disclosure. The following notice is provided pursuant to paragraph (3) of 815 ILCS 180/10: Unless the Mortgagor provides evidence of the insurance coverage required by the Loan Documents, the Administrative Agent may purchase such insurance at the Mortgagor's expense to protect the Administrative Agent's interests in the Mortgaged Property. This insurance may, but need not, protect the Mortgagor's interests. The coverage that the Administrative Agent purchases may not pay any claim that the Mortgagor may make or any claim that is made against the Mortgagor in connection with the Mortgaged Property. The Mortgagor may later cancel any insurance purchased by the Administrative Agent, but only after providing evidence that the Mortgagor has obtained insurance as required by the Loan Documents. If the Administrative Agent purchases insurance for the Mortgaged Property, the Mortgagor will be responsible for the costs of that insurance, including the insurance premium,

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interest and any other charges that the Administrative Agent may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Debt. The costs of the insurance may be more than the cost of insurance that the Mortgagor may be able to obtain on the Mortgagor's own.

**[The remainder of this page is left blank intentionally]**

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be duly executed and delivered as of the day and year first above written.

**MORTGAGOR:**

**1401 S. WABASH, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: Colin M. Kihnke  
Title: Authorized Signatory

STATE OF COOK )  
                          )     SS:  
COUNTY OF ILLINOIS )

I, Janet Robinson a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **Colin M. Kihnke**, Authorized Signatory of 1401 S. Wabash, LLC, a Delaware limited liability company, and personally known to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Authorized Signatory he signed and delivered the said instrument pursuant to authority of said corporation as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

WITNESS MY HAND and Notary seal this 31 day of August 2020.

Notary Public \_\_\_\_\_  
My commission expires:



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## EXHIBIT A

### LEGAL DESCRIPTION

PARCEL 1:

Lots 9, 10, and 11 (except the South 20 feet of Lot 11) in Block 16 in Herrington's Addition to Chicago in the Northwest Fractional Quarter of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

Lots 5, 6, 7 and 8 in Block 16 in Herrington's Addition to Chicago, in the Northwest fractional quarter of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

ADDRESS: 51 E. 14<sup>th</sup> STREET, CHICAGO, IL

PIN: 17-22-107-100-0000

Exhibit A

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## EXHIBIT B

### PERMITTED ENCUMBRANCES

1. Taxes not yet due and payable.
2. Rights of tenants as tenants only without any rights or options to purchase all or any portion of the property.
3. Terms, conditions and provisions contained in the Easement and Operating Agreement dated April 24, 2019 and recorded April 24, 2019 as Document Number 1911416065, between 1401 S. Wabash, LLC and 1415 S. Wabash, LLC.
4. Terms, conditions and provisions contained in the Amenities Easement and Use Agreement dated October 4, 2019 and recorded December 18, 2019 as Document Number 1935217107, between 1401 S. Wabash, LLC and 1415 S. Wabash, LLC.
5. The following noted on the plat of survey by Gremley and Biedermann dated July 16, 2020, number 2020-28036-001:
  - a. Encroachment of the building located on the land south and adjoining, onto the land by .08 to .14 feet, of the vents on said building by .41 to .64 feet and of the window coping by .28 feet;
  - b. Encroachment of the concrete corner of the building onto public property west and adjoining by .18 feet and of the concrete base of the building by .10 to .13 feet and of the building overhead by .18 feet;
  - c. Encroachment of the building located mainly on the land onto public property north and adjoining by .03 feet;
  - d. Encroachment of the concrete base of the building located on the land onto public property east and adjoining by .22 feet; and
  - e. Encroachment of the overhead door attached to the building on the land onto public property east and adjoining by 1.88 feet and 1.29 feet.

Exhibit B