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Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*2035122015\*

Doc# 2035122015 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 12/16/2020 11:03 AM PG: 1 OF 35

The property identified as: **PIN: 32-16-400-019-0000**

**Address:**

**Street:** 290 E Joe Orr Road

**Street line 2:**

**City:** Chicago Hieghts

**State:** IL

**ZIP Code:** 60411

**Lender:** DBR Investments Co Limited

**Borrower:** NM RDY LLC

**Loan / Mortgage Amount:** \$7,150,000.00

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:** 5F01A222-2B5D-4710-953D-F0A004FD5E75

**Execution date:** 12/10/2020

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PREPARED BY AND UPON  
RECORDATION RETURN TO:  
Alston & Bird LLP  
90 Park Avenue  
New York, New York 10016  
Attention: David A. Freedman, Esq.

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**NM RDY, L.L.C.**, as mortgagor

to

**DBR INVESTMENTS CO. LIMITED**, as mortgagee

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

Dated: As of December 10, 2020

Location: 290 E. Joe Orr Road  
Chicago Heights, Illinois

County: Cook

Permanent Index Number: 32-16-400-019-0000, 32-16-400-023-  
0000, and 32-16-400-017-0000

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

This **MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Mortgage**") is made as of this 10<sup>th</sup> day of December, 2020, by **NM RDY, L.L.C.**, a Delaware limited liability company, having its principal place of business at c/o NM Net Lease Partners Manager, L.L.C., 1633 Broadway, 48<sup>th</sup> Floor, New York, New York 10019, Attn: Real Estate Ops, as mortgagor ("**Mortgagor**"), for the benefit of **DBR INVESTMENTS CO. LIMITED**, a Cayman Islands corporation, having an address at 60 Wall Street, 10th Floor, New York, New York 10005, as mortgagee (together with its successors and/or assigns, "**Mortgagee**").

### WITNESSETH:

A. This Mortgage is given to secure a loan (the "**Loan**") in the principal sum of SEVEN MILLION ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$7,150,000.00) or so much thereof as may be advanced pursuant to that certain Loan Agreement dated as of the date hereof between Mortgagor and Mortgagee (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), and evidenced by that certain Promissory Note dated the date hereof made by Mortgagor to Mortgagee (such Note, together with all extensions, renewals, replacements, restatements or modifications thereof, being hereinafter referred to as the "**Note**"). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.

B. Mortgagor desires to secure the payment of the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon and all other sums (including the Prepayment Fee) due to Mortgagee in respect of the Loan and the Loan Documents (the "**Debt**") and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents.

C. This Mortgage is given pursuant to the Loan Agreement, and payment, fulfillment and performance by Mortgagor of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents of even date herewith made by Mortgagor in favor of Mortgagee delivered in connection with this Mortgage (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Assignment of Leases**"), including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Mortgage.

NOW THEREFORE, in consideration of the making of the Loan by Mortgagee and the covenants, agreements, representations and warranties set forth in this Mortgage:

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## ARTICLE I.

### GRANTS OF SECURITY

**Section 1.01 Property Mortgaged.** Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Mortgagee and its successors and assigns, WITH POWER OF SALE, all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following (collectively, the "**Property**");

(a) Land. The real property described in **Exhibit A** attached hereto and made a part hereof (the "**Land**");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Mortgage;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) Easements and Unused Zoning Rights. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, excess or unused zoning floor area development rights, abatements, zoning floor area bonuses, zoning incentives or awards, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, appurtenant to, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Mortgagor, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Mortgagor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants under Leases except to the extent that Mortgagor shall have any right or interest therein;

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(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Mortgagor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accretions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "**Fixtures**" shall not include any property which Tenants are entitled to remove pursuant to Leases except to the extent that Mortgagor shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code), other than Fixtures, which are now or hereafter owned by Mortgagor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (as amended from time to time, the "**Uniform Commercial Code**"), superior in lien to the lien of this Mortgage, and all proceeds and products of any of the above;

(h) Leases and Rents. (i) All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") (collectively, the "**Leases**"), and all right, title and interest of Mortgagor, its successors

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and assigns, therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and (ii) all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**"), and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment and performance of the Obligations, including the payment of the Debt in accordance with the terms of the Loan Documents;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in Taxes or Other Charges charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction;

(l) Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Mortgagee in the Property;

(m) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder;

(n) Intellectual Property. All trade names, trademarks, servicemarks, logos, copyrights, goodwill, URLs or other online media, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Loan Agreement, the Cash Management Agreement, the Clearing Account Agreement or any other Loan Document, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property,

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financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(p) Uniform Commercial Code Property. All accounts, documents, instruments, chattel paper, general intangibles and investment property as the foregoing terms are defined in the Uniform Commercial Code, not otherwise described above;

(q) Minerals. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above Land;

(r) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash or in liquidation or other claims, or otherwise; and

(s) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (r) above.

AND, without limiting any of the other provisions of this Mortgage, to the extent permitted by applicable law, Mortgagor expressly grants to Mortgagee, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Land or not, shall for the purposes of this Mortgage be deemed conclusively to be real estate and mortgaged hereby.

Notwithstanding the foregoing, with respect to the security interest granted herein pursuant to Section 1.01(h), (i), (j), (k) and (r), Mortgagor and Mortgagee acknowledge that, provided no Event of Default has occurred and is continuing, any such awards, proceeds, funds or other credits received related to such matters shall be held, maintained and disbursed in accordance with the express terms and conditions set forth in the Loan Agreement and the other Loan Documents.

**Section 1.02 Assignment of Rents**. Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases, the Cash Management Agreement, and Section 7.01(j) of this Mortgage, Mortgagee grants to Mortgagor a revocable license to collect, receive, use and enjoy the Rents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

**Section 1.03 Security Agreement**. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Mortgage, Mortgagor hereby grants to Mortgagee, as security for the Obligations, a security interest in the Fixtures, the Equipment, the Personal Property and the other property constituting the Property

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to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "*Collateral*"). If an Event of Default shall occur and be continuing, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee after the occurrence and during the continuance of an Event of Default, Mortgagor shall, at its expense, assemble the Collateral and make it available to Mortgagee at a convenient place (subject to the rights of existing Tenants under any Lease at the Property, at the Land if tangible property) reasonably acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all actual, out-of-pocket expenses, including reasonable attorneys' fees and costs reasonably incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law or the Loan Agreement, constitute reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. The principal place of business of Mortgagor (Debtor) is as set forth on page one hereof and the address of Mortgagee (Secured Party) is as set forth on page one hereof.

**Section 1.04 Fixture Filing.** Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Mortgage, and this Mortgage, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement naming Mortgagor as the Debtor and Mortgagee as the Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. The organizational identification number of Mortgagor is 85-3065180.

## CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay and perform the Obligations (including the payment of the Debt) at the time and in the manner provided in this Mortgage, the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Mortgagor's obligation to indemnify and hold harmless Mortgagee pursuant to the provisions hereof shall survive any such payment or release.



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## ARTICLE II.

### DEBT AND OBLIGATIONS SECURED

**Section 2.01 Obligations.** This Mortgage and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Obligations, including, but not limited to, the Debt.

**Section 2.02 Other Obligations.** This Mortgage and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (collectively, the "*Other Obligations*"):

- (a) the performance of all other obligations of Mortgagor contained herein;
- (b) the performance of each obligation of Mortgagor contained in the Loan Agreement and in each other Loan Document; and
- (c) the performance of each obligation of Mortgagor contained in any renewal, extension, amendment, modification, consolidation, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

**Section 2.03 Debt and Other Obligations.** Mortgagor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "*Obligations.*"

**Section 2.04 Intentionally Omitted.**

**Section 2.05 Loan Repayment and Defeasance.** Upon the Debt being indefeasibly paid in full pursuant to the terms of the Loan Documents, this Mortgage will be satisfied and discharged of record by Mortgagee prior to the Maturity Date only in accordance with the terms and provisions set forth in the Loan Agreement.

## ARTICLE III.

### MORTGAGOR COVENANTS

Mortgagor covenants and agrees that throughout the term of the Loan:

**Section 3.01 Payment of Debt.** Mortgagor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Mortgage.

**Section 3.02 Incorporation by Reference.** All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note, and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage (or to cause the same) to the Property, pay Taxes and Other Charges, and comply in all material respects with Legal Requirements, in accordance with the Loan Agreement, and (ii) agrees that with respect to those items described in

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Sections 1.01(h), (i), (j), (k) and (r), any such awards, proceeds, funds or other credits received related to Insurance Proceeds and Awards shall be settled, held, maintained, applied and/or disbursed in accordance with the express terms and conditions set forth in the Loan Agreement and the other Loan Documents.

**Section 3.03 Performance of Other Agreements.** Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by Mortgagor pursuant to the Loan Agreement, any other Loan Document subject to and to the extent required under the terms of the Loan Agreement, and any other agreement or recorded instrument affecting or pertaining to the Property, and any amendments, modifications or changes thereto subject to any applicable notice and/or grace periods provided therein.

## ARTICLE IV.

### OBLIGATIONS AND RELIANCES

**Section 4.01 Relationship of Mortgagor and Mortgagee.** The relationship between Mortgagor and Mortgagee is solely that of debtor and creditor, and Mortgagee has no fiduciary or other special relationship with Mortgagor, and no term or condition of any of the Loan Agreement, the Note, this Mortgage or the other Loan Documents shall be construed so as to deem the relationship between Mortgagor and Mortgagee to be other than that of debtor and creditor.

**Section 4.02 No Reliance on Mortgagee.** The general partners, members, principals and (if Mortgagor is a trust) beneficial owners of Mortgagor, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Mortgagor and Mortgagee are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Mortgagor is not relying on Mortgagee's expertise, business acumen or advice in connection with the Property.

**Section 4.03 No Mortgagee Obligations.**

(a) Notwithstanding the provisions of Subsections 1.01(h) and (m) or Section 1.02, Mortgagee is not undertaking the performance of (i) any obligations under the Leases, or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee pursuant to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Mortgagee.

**Section 4.04 Reliance.** Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Mortgage and the other Loan Documents, Mortgagee is expressly and primarily relying on the truth and accuracy of the warranties and representations

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set forth in Article 3 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Mortgagee; that such reliance existed on the part of Mortgagee prior to the date hereof; that the warranties and representations are a material inducement to Mortgagee in making the Loan; and that Mortgagee would not be willing to make the Loan and accept this Mortgage in the absence of the warranties and representations as set forth in Article 3 of the Loan Agreement.

## ARTICLE V.

### FURTHER ASSURANCES

**Section 5.01 Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of Mortgagee in the Property. Mortgagor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Mortgage, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do.

**Section 5.02 Further Acts, Etc.** Upon Mortgagee's written request, Mortgagor will, at the sole cost of Mortgagor (subject, however, to the terms of the Loan Agreement), and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, or for complying with all Legal Requirements. Mortgagor, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements to evidence more effectively the security interest of Mortgagee in the Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this Section 5.02 which power of attorney will be exercisable upon the occurrence and during the continuance of

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an Event of Default, provided that such further acts, conveyances, assignments, notices of assignment, transfers or assurances shall not increase Mortgagor's obligations or liabilities in any material respect or decrease Mortgagor's rights hereunder or under the Loan Documents in any material respect.

## **Section 5.03 Changes in Tax, Debt, Credit and Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Property, Mortgagor will pay the tax, with interest and penalties thereon, if any. If Mortgagee is advised by counsel chosen by it that the payment of tax by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then Mortgagee shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable in accordance with the terms and conditions of the Loan Agreement (but no prepayment fee or premium shall be owed in connection with any such repayment).

(b) Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law and the claim, credit or deduction cannot be fully, finally and lawfully waived by Mortgagor, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable in accordance with the terms and conditions of the Loan Agreement (but no prepayment fee or premium shall be owed in connection with any such repayment).

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Mortgage, or any of the other Loan Documents or shall impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

## **ARTICLE VI.**

### **DUE ON SALE/ENCUMBRANCE**

**Section 6.01 Mortgagee Reliance.** Mortgagor acknowledges that Mortgagee has examined and relied on the experience of Mortgagor and its general partners, members, principals and (if Mortgagor is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for the payment and performance of the Obligations, including the repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the payment and/or performance of the Obligations, including the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Property.

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**Section 6.02 No Transfer.** Mortgagor shall not permit or suffer any Transfer to occur except in accordance with the terms of the Loan Agreement.

## ARTICLE VII.

### RIGHTS AND REMEDIES UPON DEFAULT

**Section 7.01 Remedies.** Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner if and to the extent permitted under applicable law, Mortgagee being hereby expressly granted the power to foreclose this Mortgage and sell the Property at public auction and convey the same to the purchaser in fee simple;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Mortgage for the balance of the Obligations not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof, all as may be required or permitted by law; and, without limiting the foregoing:
- (e)
  - (i) In connection with any sale or sales hereunder, Mortgagee shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Mortgagee shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;
  - (ii) Mortgagee shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under

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applicable law; and if Mortgagee so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Mortgagee and Mortgagee is hereby authorized and empowered to conduct any such sale of any Real Property, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to Real Property;

(iii) Should Mortgagee elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Mortgagee has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of the Real Property, Mortgagee shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property, each as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Mortgagor, Mortgagee at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Mortgagee may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale; and

(iv) If the Property consists of several lots, parcels or items of property, Mortgagee shall, subject to applicable law (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Mortgagee designates. Any Person, including Mortgagor or Mortgagee, may purchase at any sale hereunder. Should Mortgagee desire that more than one sale or other disposition of the Property be conducted, Mortgagee shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Mortgagee may designate, and no such sale shall terminate or otherwise affect the Lien of this Mortgage on any part of the Property not sold until all the Obligations have been satisfied in full. In the event Mortgagee elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, Mortgagor agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(f) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, in the Loan Agreement or in the other Loan Documents;

(g) subject to Section 10.1 of the Loan Agreement, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;

(h) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, any guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof;

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(i) the license granted to Mortgagor under Section 1.02 hereof shall automatically be revoked and Mortgagee may (subject to the rights of Tenants under any Lease at the Property) enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may (subject to the rights of Tenants under any Lease at the Property) (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction (or cause the completion thereof) on the Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment and performance of the Obligations (including, without limitation, the payment of the Debt), in such order, priority and proportion, as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all actual, out-of-pocket expenses (including reasonable attorneys' fees and costs) reasonably incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

(j) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and/or the Personal Property, or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Mortgagor, at its sole cost and expense, to assemble the Fixtures, the Equipment and/or the Personal Property and make it available to Mortgagee at a convenient place acceptable to Mortgagee (subject to the rights of Tenants under any Lease at the Property). Any notice of sale, disposition or other intended action by Mortgagee with respect to the Fixtures, the Equipment and/or the Personal Property sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor;

(k) apply any sums then deposited or held in escrow or otherwise by or on behalf of Mortgagee in accordance with the terms of the Loan Agreement, this Mortgage or any other Loan Document to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;

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- (ii) Insurance Premiums;
  - (iii) Interest on the unpaid principal balance of the Note;
  - (iv) Amortization of the unpaid principal balance of the Note; and/or
  - (v) All other sums payable pursuant to the Note, the Loan Agreement, this Mortgage and the other Loan Documents, including, without limitation, the Prepayment Fee, if applicable, and advances made by Mortgagee pursuant to the terms of this Mortgage;
- (l) pursue such other remedies as may be available at law or in equity; and/or
- (m) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Mortgagee shall deem to be appropriate in its sole discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Mortgage shall continue as a Lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

**Section 7.02 Application of Proceeds.** Upon the occurrence and during the continuance of any Event of Default, the purchase money proceeds and avails of any disposition of the Property or any part thereof, or any other sums collected by Mortgagee pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Mortgagee to the payment of the Obligations in such priority and proportions as Mortgagee in its discretion shall deem proper, to the extent consistent with law.

**Section 7.03 Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, perform the obligations in Default in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Subject to the rights of Tenants under any Lease at the Property, Mortgagee is authorized to enter upon the Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt, and the actual, out-of-pocket cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

**Section 7.04 Other Rights, Etc.**

(a) The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Mortgagee to comply with any request of Mortgagor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of



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the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Mortgagee's possession.

(c) Mortgagee may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Debt) to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce the Other Obligations or any covenant hereof, without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.05 Right to Release Any Portion of the Property.** Mortgagee may release any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the Lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and Mortgagee may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a Lien and security interest in the remaining portion of the Property.

**Section 7.06 Violation of Laws.** If the Property is not in material compliance with all Legal Requirements, Mortgagee may impose additional reasonable requirements upon Mortgagor in connection herewith, including, without limitation, monetary reserves or financial equivalents.

**Section 7.07 Right of Entry.** Upon reasonable notice (which may be given verbally) to Mortgagor and subject to the rights of Tenants under any Lease at the Property, Mortgagee and its agents shall have the right to enter and inspect the Property at all reasonable times.

## ARTICLE VIII.

### INDEMNIFICATION

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**Section 8.01 Mortgage and/or Intangible Tax.** Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless Mortgagee and any Person claiming by or through Mortgagee (collectively with Mortgagee, the “*Indemnified Parties*”) from and against any and all losses imposed upon or incurred by or asserted against any Indemnified Party and directly or indirectly arising out of or in any way relating to any mortgage, recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of this Mortgage or any of the Loan Documents (but excluding any income, franchise or other similar taxes).

**Section 8.02 Duty to Defend; Attorneys’ Fees and Other Fees and Expenses.** Upon written request by any Indemnified Party, Mortgagor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Mortgagor and any Indemnified Party and Mortgagor and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or in addition to those available to Mortgagor, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party; provided that no compromise or settlement shall be entered on Mortgagor’s behalf without Mortgagor’s consent, which consent shall not be unreasonably withheld. Upon demand, Mortgagor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of the reasonable, out-of-pocket fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith. Without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld or delayed), Mortgagor shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought under this Section 8 (whether or not any Indemnified Party is an actual or potential party to such claim, action, suit or proceeding) unless Mortgagor shall have given Mortgagee reasonable prior written notice thereof and shall have obtained an unconditional release of each Indemnified Party from all liability arising out of such claim, action, suit or proceedings, and such settlement requires no statement as to, or an admission of, fault, culpability or a failure to act, by or on behalf of the Indemnified Party.

## ARTICLE IX.

### WAIVERS

**Section 9.01 Waiver of Counterclaim.** To the extent permitted by applicable law, Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee arising out of or in any way connected with this Mortgage, the Loan Agreement, the Note, any of the other Loan Documents or the Obligations.

**Section 9.02 Marshalling and Other Matters.** To the extent permitted by applicable law, Mortgagor hereby waives the benefit of all appraisal, valuation, stay, extension,

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reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Mortgage.

**Section 9.03 Waiver of Notice.** To the extent permitted by applicable law, Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee, except with respect to matters for which this Mortgage or the Loan Documents specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor, and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

**Section 9.04 Waiver of Statute of Limitations.** To the extent permitted by applicable law, Mortgagor hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment and performance of the Obligations (including, without limitation, the payment of the Debt).

**Section 9.05 Waiver of Jury Trial.** MORTGAGOR AND MORTGAGEE EACH HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE NOTE, THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR AND MORTGAGEE AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER.

**Section 9.06 Survival.** The indemnifications made pursuant to Article 2 herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by (a) any satisfaction, release or other termination of this Mortgage or any other Loan Document, (b) any assignment or other transfer of all or any portion of this Mortgage or any other Loan Document or Mortgagee's interest in the Property (but, in such case, such indemnifications shall benefit both the Indemnified Parties and any such assignee or transferee), (c) any exercise of Mortgagee's rights and remedies pursuant hereto, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Mortgagor or by Mortgagee following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), (d) any amendment to this Mortgage, the Loan Agreement, the Note or any other Loan Document, and/or (e) any act or

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omission that might otherwise be construed as a release or discharge of Mortgagor from the Obligations or any portion thereof.

## ARTICLE X.

### EXCULPATION

The provisions of Section 10.1 of the Loan Agreement are hereby incorporated by reference into this Mortgage to the same extent and with the same force as if fully set forth herein.

## ARTICLE XI.

### NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

## ARTICLE XII.

### APPLICABLE LAW

**Section 12.01 Governing Law; Jurisdiction; Service of Process. WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS MORTGAGE, THIS MORTGAGE SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE LAND AND IMPROVEMENTS ARE LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES SHALL GOVERN ALL MATTERS RELATING TO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.**

**Section 12.02 Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Mortgagor and Mortgagee are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Mortgagee shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Mortgagor to Mortgagee, and (c) if through any contingency or event, Mortgagee receives or is deemed to receive interest in excess of the Maximum Legal Rate,**

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any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Mortgagor to Mortgagee, or if there is no such indebtedness, shall immediately be returned to Mortgagor.

**Section 12.03 Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

## ARTICLE XIII.

### DEFINITIONS

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in the singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all actual, out-of-pocket attorneys' fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels, incurred or paid by Mortgagee in protecting its interest in the Property, the Leases and/or the Rents and/or in enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

## ARTICLE XIV.

### MISCELLANEOUS PROVISIONS

**Section 14.01 No Oral Change.** This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**Section 14.02 Successors and Assigns.** This Mortgage shall be binding upon, and shall inure to the benefit of, Mortgagor and Mortgagee and their respective successors and permitted assigns, as set forth in the Loan Agreement.

**Section 14.03 Inapplicable Provisions.** If any provision of this Mortgage is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Mortgage, such provision shall be fully severable and this Mortgage shall be construed and

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enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Mortgage, and the remaining provisions of this Mortgage shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Mortgage, unless such continued effectiveness of this Mortgage, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

**Section 14.04 Headings, Etc.** The headings and captions of the various Sections of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 14.05 Subrogation.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens, titles and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles and interests, if any, are not waived, but rather are continued in full force and effect in favor of Mortgagee and are merged with the Lien and security interest created herein as cumulative security for the payment, performance and discharge of the Obligations (including, but not limited to, the payment of the Debt).

**Section 14.06 Entire Agreement.** The Note, the Loan Agreement, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect thereto. Mortgagor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Mortgage and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Mortgagee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Mortgage and the other Loan Documents.

**Section 14.07 Limitation on Mortgagee's Responsibility.** No provision of this Mortgage shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Mortgagee, nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Property by the Tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Mortgagee a "mortgagee in possession."

**Section 14.08 Recitals.** The recitals hereof are a part hereof, form a basis for this Mortgage and shall be considered prima facie evidence of the facts and documents referred to therein.

## ARTICLE XV.

### STATE-SPECIFIC PROVISIONS

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**Section 15.01 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article 15 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 15 shall control and be binding.

**Section 15.02 Maturity Date.** In no event shall the maturity date of the Note be later than January 6, 2031.

**Section 15.03 Interest Rate.** The interest rate payable with respect to the Note (as more particularly set forth in the Loan Agreement) shall be equal to 3.475%.

**Section 15.04 Fixtures.** The following words are hereby inserted in Section 1.01(F) of this Mortgage following the words “fixtures (including, but not limited to, all heating, air conditioning, ventilating, waste disposal, sprinkler and fire and theft protection equipment, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon, or in, and used in connection with the Premises or the Improvements, or appurtenant thereto, and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor” and preceding the words “or in which Mortgagor has or shall have an interest”:

and all proceeds and products of and accessions to  
and substitutions and replacements for all such  
fixtures and other property owned by Mortgagor

The text of Section 1.03 entitled “SECURITY AGREEMENT” is hereby deleted and the following is substituted therefor: “Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the “*UCC*”) with respect to (i) all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of the Note, this Mortgage or the Other Security Documents and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Property or may not constitute a “fixture” (within the meaning of Section 9-313 of the UCC) (which property is hereinafter referred to as “*Personal Property*”), and all replacements of substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the “*Collateral*”), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor’s right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Debt. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(i) Mortgagor (being the Debtor as that term is used in the UCC) is and will be the true and lawful owner of the Collateral, except such incidental furnishings, fixtures and equipment which are leased by Mortgagor such as furniture in offices and club houses, and

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whose value, in the aggregate, is immaterial relative to the owned collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the Other Security Documents;

(ii) The Collateral is to be used by Mortgagor solely for business purposes;

(iii) The Collateral will be kept at the Property (except for normal replacement of Personal Property) and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the UCC). The Collateral may be affixed to the Property but will not be affixed to any other real estate;

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

(v) No financing statement (other than financing statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof, if any, is on file in any public office except pursuant hereto, and Mortgagor at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may reasonably request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Debt, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Mortgagee and no other party and liens and encumbrances, if any, expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable;

(vi) Upon default hereunder, Mortgagee shall have the remedies of a secured party under the UCC, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the UCC); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the UCC. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Property. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least twenty (20) days' notice of time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor set forth on page one above set forth at least twenty (20) days before the time of the sale or disposition. Mortgagee may buy at



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any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If Mortgagee so elects, the Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Debt in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition;

(vii) The terms and provisions contained in this Section 15.05, unless the context otherwise requires, shall have the meanings and be construed as provided in the UCC;

(viii) This Mortgage is intended to be a financing statement within the purview of Section 9-402(c) of the UCC with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Property. The addresses of Mortgagor and Mortgagee are hereinabove set forth on page one of this Mortgage. This Mortgage is to be filed for recording with the recorder of deeds of the county or counties where the Property is located. Mortgagor is the record owner of the Property;

(ix) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder; and

(x) The address of Mortgagor, from which information concerning the security interests in the Collateral may be obtained, is set forth on page 1 of this Mortgage."

. The text of Section 9.05 of this Mortgage entitled "WAIVER OF JURY TRIAL" is hereby deleted and the following is substituted therefor:

**MORTGAGOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF MORTGAGEE, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

## **Section 15.07 Illinois Mortgage Foreclosure Law.**

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq., herein called the "*Foreclosure Act*"), the provisions of the Foreclosure Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or

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render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Act.

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

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee upon the occurrence and during the continuation of an Event of Default to the extent reimbursable under Sections 15-1510 and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage and included in the judgment of foreclosure.

(d) Mortgagor shall be responsible for and shall indemnify Mortgagee for, without limitation, all expenses (including reasonable attorneys' fees and expenses) incurred by Mortgagee, to the extent reimbursable under 735 ILCS 5/15-1510, 5/15-1512, or any other provision of the Foreclosure Act, whether incurred before or after any judgment of foreclosure.

(e) Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Foreclosure Act) or residential real estate (as defined in Section 15-1219 of the Foreclosure Act), and upon the occurrence and during the continuation of an Event of Default to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1601(b) of the Foreclosure Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

(f) Any references to "power of sale" and related provisions in this Mortgage are permitted only to the extent allowed by law.

## **Section 15.08 Collection of Rents**

(a) To the extent permitted by law and subject to Mortgagor's rights under this Mortgage, pursuant to the provisions of 765 ILCS 5/31.5, this Mortgage entitles Mortgagee immediately to collect and receive Rents upon the occurrence of an Event of Default, without first taking any acts of enforcement under applicable law, including providing notice to Mortgagee, filing foreclosure proceedings, or seeking the appointment of a receiver. Further, Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property as permitted under this Mortgage or the Assignment of Leases. In Mortgagee's sole discretion, Mortgagee may choose to collect Rents either with or without taking possession of the Property.

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(b) The powers of a receiver listed in 735 ILCS 5/15-1704 shall be added to all the powers of a receiver listed in this Mortgage and any other Loan Document.

## **Section 15.09 Mortgagor Waivers**

(a) Mortgagor agrees, to the fullest extent that Mortgagor may lawfully so agree, that upon the occurrence and during the continuation of an Event of Default, Mortgagor will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Mortgagor, for Mortgagor and all who may claim through or under Mortgagor, so far as Mortgagor or those claiming through or under Mortgagor now or hereafter lawfully may, hereby waives upon the occurrence and during the continuation of an Event of Default the benefit of all such laws. Mortgagor, to the extent Mortgagor may lawfully do so, hereby waives upon the occurrence and during the continuation of an Event of Default any and all right to have the Property marshaled upon any foreclosure of this Mortgage, or sold in inverse order of alienation, and agrees that Mortgagee or any court having jurisdiction to foreclose this Mortgage may sell the Property as an entirety. If any law now or hereafter in force referred to in this paragraph of which Mortgagor or Mortgagor's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph.

(b) In the event of the commencement of judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of Mortgagor, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Property subsequent to the date of this Mortgage: (i) expressly waives any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage; and (ii) to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefore, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefore.

**Section 15.10 Maximum Amount Secured.** The maximum principal indebtedness secured by this Mortgage shall not exceed \$21,450,000.00.

**Section 15.11 Business Loan.** Mortgagor hereby represents and agrees that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in the Illinois Interest Act, 815 ILCS 205/4(l), and the indebtedness secured hereby constitutes a business loan which comes within the purview of Section 205/4(1)(c) and a loan secured by a mortgage on real estate within the purview of Section 204/4(1)(l).

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**Section 15.12 Copy of Mortgage.** Mortgagor hereby declares and acknowledges that Mortgagor has received, without charge, a true copy of this Mortgage.

**Section 15.13 Certain Insurance Disclosures.** Pursuant to the Illinois Collateral Protection Act and the Illinois Financial Institution Insurance Sales Law, Mortgagee hereby notifies Mortgagor as follows:

You may obtain insurance required in connection with your loan or extension of credit from any insurance agent, broker, or firm that sells such insurance, provided the insurance requirements in connection with your loan are otherwise complied with. Your choice of insurance provider will not affect our credit decision or your credit terms. Unless you provide us with evidence of the insurance coverage required by your agreements with us, we may purchase insurance at your expense to protect our interest in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreements. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we 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 your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

**Section 15.14 Advances.** a) To the extent Mortgagee is obligated to make advances, Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 5/15-1302(b)(1) of the Foreclosure Act. That portion of the obligations which are advanced or applied in accordance with the terms of a revolving credit arrangement and secured by this Mortgage shall be a lien from the time this Mortgage is recorded, pursuant to Section 5/15-1302(b)(3) of the Foreclosure Act. Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made by Mortgagee, whether such loans and advances are made as of the date hereof, or at any time in the future, and whether such future advances are obligatory, or are to be made at the option of Mortgagee or otherwise (but not advances or loans made more than twenty (20) years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and, although there may be no other indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to the Debt and all Other Obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Property is located. The total amount of the Obligations may increase or decrease from time to time, but the total unpaid principal balance of the Obligations (including disbursements which Mortgagee may make under this Mortgage, or any other document or instrument evidencing or securing Obligations), at any time outstanding, shall not exceed three hundred percent (300%) of the face amount of the Note.

(b)(i) All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale,

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and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Foreclosure Act (collectively "Protective Advances") shall have the benefit of all applicable provisions of the Foreclosure Act, including those provisions of the Foreclosure Act hereinbelow referred to:

(A) all advances by Mortgagee in accordance with the terms of this Mortgage to: (1) preserve or maintain, repair, restore or rebuild the improvements upon the Land; (2) preserve the lien of this Mortgage or the priority thereof; or (3) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Foreclosure Act;

(B) payments by Mortgagee of: (1) when due installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (2) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any party thereof; (3) other obligations authorized by Mortgagee; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Foreclosure Act;

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

(D) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Foreclosure Act; (2) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (3) in the preparation for the commencement or defense of any such foreclosure or other action related to this Mortgage or the Property;

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

(F) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Foreclosure Act;

(G) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (2) if Mortgagee's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the

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lessee under the terms of the lease or sublease; (3) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or 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 Property imposed by Subsection (c)(1) of Section 15-1704 of the Foreclosure Act; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments required or deemed by Mortgagee acting reasonably to be for the benefit of the Property or required to be made by the owner of the mortgaged real estate 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 Property; (6) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (7) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (8) pursuant to any lease or other agreement for occupancy of the Improvements for amounts required to be paid by Mortgagor; and (9) if this Mortgage is insured, payments of FHA or private mortgage insurance required to keep insurance in force

(ii) All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Note.

(iii) 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 15-1302 of the Foreclosure Act.

(iv) 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 Foreclosure Act, apply to and be included in:

(A) determination of the amount of indebtedness secured by this Mortgage at any time;

(B) the indebtedness found due and owing pursuant to this Mortgage 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;

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- (C) if right of redemption has not been waived by Mortgagor in this Security Agreement, computation of the amount required to redeem, pursuant to Subsections (d) and (e) of Section 15-1603 of the Foreclosure Act;
- (D) determination of the amount deductible from sale proceeds pursuant to Section 15-1512 of the Foreclosure Act;
- (E) application of income in the hands of any receiver or Mortgagee in possession; and
- (F) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 15-1508 and 15-1511 of the Foreclosure Act.

**Section 15.15 Possession; Receivership.** In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Foreclosure Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of the Foreclosure Act. Without limitation of the foregoing, a receiver appointed hereunder shall have the powers of a receiver under Section 15-1704 of the Foreclosure Act.

**Section 15.16 Fixture Filing.** THIS INSTRUMENT IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF THE COUNTY IN WHICH THE PREMISES IS LOCATED. THE ADDRESS OF MORTGAGEE AND THE MAILING ADDRESS OF MORTGAGOR ARE SET FORTH ON THE FIRST PAGE OF THIS MORTGAGE. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THIS INSTRUMENT SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

**[NO FURTHER TEXT ON THIS PAGE]**


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IN WITNESS WHEREOF, THIS MORTGAGE has been executed by Mortgagor as of the day and year first above written.

**MORTGAGOR:**

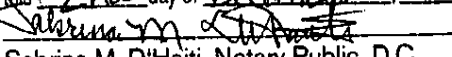
**NM RDY, L.L.C.**, a Delaware limited liability company

By: NM Net Lease Partners Manager, L.L.C., a Delaware limited liability company, its non-member manager

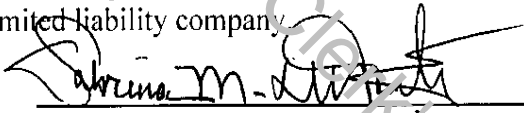
By:   
Name: Peter E. Kaplan, Jr.  
Title: President

Property of COOK COUNTY

STATE OF  
COUNTY OF

District of Columbia: SS  
Subscribed and sworn to before me, in my presence, this 2nd day of December, 2020  
  
Sabrina M. D'Haiti, Notary Public, D.C.  
My commission expires August 31, 2023.

The instrument was acknowledged before me on December 2nd, 2020, by Peter E. Kaplan Jr., the President of NM Net Lease Partners Manager, L.L.C., a Delaware limited liability company, the non-member manager of NM RDY L.L.C., a Delaware limited liability company and on behalf of such limited liability company.

  
Notary Public in the and for the State of District of Columbia  
My Commission Expires: 8/31/2023





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## Exhibit A

### Legal Description

#### PARCEL 1:

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 16, TOWNSHIP 35 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF A LINE 851.0 FEET EAST OF AND PARALLEL TO THE NORTH AND SOUTH CENTER LINE OF SECTION 16 WITH A LINE 50 FEET SOUTH OF AND PARALLEL TO THE EAST AND WEST CENTER LINE OF SECTION 16; THENCE WEST ALONG THE LAST DESCRIBED PARALLEL LINE A DISTANCE OF 80.81 FEET TO A POINT, SAID POINT BEING THE PLACE OF BEGINNING; THENCE SOUTHERLY ALONG A STRAIGHT LINE SAID LINE WHICH MAKES AN ANGLE OF 92 DEGREES 20 MINUTES WITH THE LAST DESCRIBED LINE WHEN TURNED FROM WEST TO SOUTH A DISTANCE OF 50 FEET TO A POINT; THENCE WEST ALONG A STRAIGHT LINE A DISTANCE OF 116.54 FEET TO THE POINT OF INTERSECTION WITH A STRAIGHT LINE 140 FEET EASTERLY OF AND PARALLEL TO THE CENTER LINE OF THE SOUTH BOUND MAIN LINE TRACK OF THE CHICAGO AND EASTERN ILLINOIS RAILROAD CO.; THENCE SOUTHWESTERLY ALONG THE LAST DESCRIBED PARALLEL LINE A DISTANCE OF 504.35 FEET TO A POINT; THENCE SOUTHERLY ALONG A STRAIGHT LINE, SAID LINE WHICH MAKES AN ANGLE OF 164 DEGREES 01 MINUTES 30 SECONDS WITH THE LAST DESCRIBED PARALLEL LINE WHEN TURNED FROM NORTHEAST THROUGH EAST TO SOUTH, A DISTANCE OF 193.44 FEET TO A POINT; THENCE SOUTHERLY ALONG A STRAIGHT LINE A DISTANCE OF 125.18 FEET TO THE POINT OF INTERSECTION WITH A STRAIGHT LINE 351.0 FEET EAST OF AND PARALLEL TO THE NORTH AND SOUTH CENTER LINE OF SECTION 16; THENCE NORTH ALONG THE LAST DESCRIBED PARALLEL LINE A DISTANCE OF 247.89 FEET TO THE POINT OF INTERSECTION WITH A LINE 100 FEET EASTERLY OF AND PARALLEL TO THE CENTER LINE OF THE SOUTH BOUND MAIN TRACK OF THE CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY THENCE NORTHEASTERLY ALONG THE LAST DESCRIBED PARALLEL LINE A DISTANCE OF 629.10 FEET TO THE POINT OF INTERSECTION WITH A STRAIGHT LINE 50 FEET SOUTH OF AND PARALLEL TO THE EAST AND WEST CENTER LINE OF SAID SECTION 16; THENCE EAST ALONG THE LAST PARALLEL LINE A DISTANCE OF 134.0 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

THAT PART OF THE SOUTH 1/2 OF SECTION 16, TOWNSHIP 35 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

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BEGINNING AT A POINT OF CURVE ON A LINE 851 FEET EAST OF AND PARALLEL TO THE NORTH AND SOUTH CENTERLINE OF SECTION 16, AND SAID LINE ALSO BEING 88 FEET WEST OF AND PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF THE CHICAGO HEIGHTS TERMINAL TRANSFER RAILROAD COMPANY, SAID POINT BEING 1,650 FEET SOUTH OF THE EAST AND WEST CENTERLINE OF SECTION 16; THENCE SOUTHWESTERLY ALONG A CURVED LINE, CONVEX TO THE SOUTHEAST, AND HAVING A RADIUS OF 509.92 FEET, AN ARC DISTANCE OF 803.33 FEET TO A POINT OF TANGENT WITH A LINE 100 FEET NORTH OF AND PARALLEL WITH THE CENTERLINE OF THE CHICAGO HEIGHTS TERMINAL TRANSFER RAILROAD COMPANY MAIN LINE TRACK, THENCE WEST ALONG SAID PARALLEL LINE A DISTANCE OF 715.05 FEET TO THE POINT OF INTERSECTION WITH A LINE 150 FEET EASTERLY OF AND PARALLEL TO THE CENTER LINE OF THE SOUTH BOUND MAIN TRACK OF THE CHICAGO EASTERN ILLINOIS RAILROAD; THENCE NORTHEASTERLY ALONG THE LAST DESCRIBED PARALLEL LINE, SAID LINE MAKING AN ANGLE OF 63 DEGREES 15 MINUTES 40 SECONDS WITH THE LAST DESCRIBED LINE WHEN TURNED FROM THE EAST TO THE NORTH, A DISTANCE OF 1,602.15 FEET TO A POINT ON A LINE 351 FEET EAST OF AND PARALLEL WITH THE AFOREMENTIONED NORTH AND SOUTH CENTER LINE OF SECTION 16; THENCE SOUTH ALONG SAID PARALLEL LINE WHICH MAKES AN ANGLE OF 26 DEGREES 59 MINUTES 20 SECONDS WITH THE LAST DESCRIBED LINE WHEN TURNED FROM THE SOUTHWEST TO THE SOUTH, A DISTANCE OF 920.80 FEET TO A POINT; THENCE EAST ALONG A STRAIGHT LINE WHICH MAKES AN ANGLE OF 90 DEGREES WITH THE LAST DESCRIBED LINE WHEN TURNED FROM THE NORTH TO THE EAST, A DISTANCE OF 500 FEET TO THE POINT OF BEGINNING; (EXCEPTING THEREFROM ALL THAT PART OF THE ABOVE DESCRIBED PARCEL LYING EAST OF THE AFOREMENTIONED LINE DRAWN PARALLEL WITH, AND 351 FEET EAST OF THE NORTH AND SOUTH CENTERLINE OF SECTION 16), IN COOK COUNTY, ILLINOIS.

## PARCEL 3:

THAT PART OF THE SOUTH 1/2 OF SECTION 16, TOWNSHIP 35 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT INTERSECTION OF A STRAIGHT LINE WHICH IS 100 FEET NORTH OF AND PARALLEL TO CENTER LINE OF THE MAIN EAST AND WEST TRACK OF THE CHICAGO HEIGHTS TERMINAL TRANSFER RAILROAD COMPANY AND SAID LINE EXTENDED WEST, AND A STRAIGHT LINE WHICH IS 150 FEET EASTERLY OF AND PARALLEL TO THE CENTERLINE OF THE SOUTH BOUND MAIN LINE TRACK OF THE CHICAGO AND EASTERN ILLINOIS RAILROAD; THENCE SOUTHWESTERLY ALONG THE LAST DESCRIBED PARALLEL LINE A DISTANCE OF 78.38 FEET TO A POINT ON A STRAIGHT LINE WHICH IS 30 FEET NORTH OF AND PARALLEL WITH THE CENTER LINE OF THE MAIN EAST AND WEST TRACK OF THE CHICAGO HEIGHTS TERMINAL TRANSFER RAILROAD COMPANY, AND SAID LINE EXTENDED WEST; THENCE EAST ALONG SAID PARALLEL LINE A DISTANCE OF

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854.27 FEET TO A POINT WHICH IS 442.80 FEET EAST OF THE NORTH AND SOUTH CENTER LINE OF SECTION 16, AS MEASURED ALONG SAID PARALLEL LINE; THENCE NORTH ALONG A STRAIGHT LINE WHICH FORMS AN ANGLE OF 90 DEGREES WITH THE LAST DESCRIBED PARALLEL LINE, A DISTANCE OF 80.68 FEET TO THE POINT OF INTERSECTION OF SAID STRAIGHT LINE WITH A CURVED LINE, CONVEX TO THE SOUTHEAST AND HAVING A RADIUS OF 509.92 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVED LINE, HAVING A CHORD DIMENSION OF 103.95 FEET, TO THE POINT OF TANGENCY OF SAID CURVED LINE WITH A STRAIGHT LINE WHICH IS 100 FEET, NORTH OF AND PARALLEL WITH THE CENTER LINE OF THE MAIN EAST AND WEST TRACK OF THE CHICAGO HEIGHTS TERMINAL TRANSFER RAILROAD COMPANY AND SAID CENTER LINE EXTENDED WEST; THENCE WEST ALONG THE AFOREDESCRIBED PARALLEL LINE AND SAID LINE EXTENDED, A DISTANCE OF 715.05 FEET, TO THE POINT OF BEGINNING; (EXCEPTING THEREFROM ALL THAT PART OF THE ABOVE DESCRIBED PARCEL LYING EAST OF A LINE DRAWN PARALLEL WITH AND 351.00 FEET EAST OF THE NORTH AND SOUTH CENTERLINE OF SECTION 16), IN COOK COUNTY, ILLINOIS.

Query of Cook County Clerk's Office