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Doc# 2104257072 Fee \$88.00

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

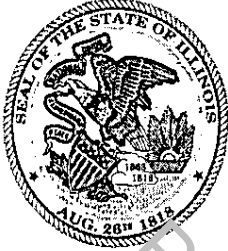
KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 02/11/2021 03:52 PM PG: 1 OF 30

Illinois Anti-Predatory  
Lending Database  
Program

CC# 2100146ALD NH 1 of 2  
Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

The property identified as: PIN: 25-05-126-024-0000

Address:

Street: 9036 S Bishop Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60620

Lender: IRP Advancing Company II, LLC

Borrower: 9036 S Bishop LLC

Loan / Mortgage Amount: \$1,440,000.00

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: 26CFA45B-AAD5-4AD0-B3C5-219E88C58C4B

Execution date: 2/4/2021

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This document prepared by  
and after recording return to:

Riemer & Braunstein LLP  
Times Square Tower, Suite 2506  
Seven Times Square  
New York, New York 10036  
Attention: David Brier, Esq.

Property Address:

9036 S Bishop Street  
Chicago, Illinois 60620

PIN Number(s): See Exhibit A

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

**9036 S BISHOP LLC**, an  
Illinois limited liability company  
as mortgagor

to

**IRP ADVANCING COMPANY II, LLC**, a  
Delaware limited liability company  
as mortgagee

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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**”) entered into as of February 4, 2021, between **9036 S BISHOP LLC**, an Illinois limited liability company, having an office located at c/o Chuhak & Tecson, P.C., 30 South Wacker Drive, Suite 2600, Chicago, Illinois 60606 (the “**Mortgagor**”) and **IRP ADVANCING COMPANY II, LLC**, a Delaware limited liability company with offices at 600 Third Avenue, Floor 2, New York, New York 10016 (the “**Lender**”).

### 1. MORTGAGE AND OBLIGATIONS

1.1 **Mortgage.** For valuable consideration paid and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby irrevocably and unconditionally mortgages, grants, bargains, transfers, sells, conveys, sets over and assigns to the Lender and its successors and assigns forever, all of Mortgagor’s right, title and interest in and to the Property (as hereinafter defined) to secure the prompt payment and performance of the Obligations (as hereinafter defined), including, without limitation, all amounts due and owing to the Lender and all obligations respecting the loan to Mortgagor and 9355 S Laflin, LLC, an Illinois limited liability company (“**Laflin LLC**”; Laflin LLC and Mortgagor, collectively, “**Borrower**”), in the original principal amount of One Million Four Hundred Forty Thousand and 00/100 Dollars (\$1,440,000.00) (the “**Loan**”) to be evidenced by a Note of even date herewith in the amount of \$1,440,000.00 made by Borrower as maker, in favor of Lender, as payee (together with all extensions, renewals, replacements, restatements or modifications thereof, the “**Note**”; this Mortgage, the Note, and all other agreements, documents, certificates and instruments delivered by Borrower or Guarantor in connection with the Loan, together with and any substitutions, modifications, extensions or amendments thereto, are hereinafter referred to collectively, as the “**Loan Documents**”). Capitalized terms not otherwise defined herein shall have the meaning given to such term in the Note.

1.2 **Security Interest in Fixtures.** As continuing security for the Obligations the Mortgagor hereby pledges, assigns and grants to the Lender, and its successors and assigns, a security interest in any of the Property constituting personal property or fixtures. This Mortgage is and shall be deemed to be a security agreement and financing statement pursuant to the terms of the Uniform Commercial Code of the State of Illinois (the “**Uniform Commercial Code**”) as to any and all personal property and fixtures and as to all such property the Lender shall have the rights and remedies of a secured party under the Uniform Commercial Code in addition to its rights hereunder. This Mortgage shall also constitute a “**fixture filing**” for the purposes of the Uniform Commercial Code with respect to all or part of the Property which constitute “**fixtures**” under the Uniform Commercial Code. Information concerning the security interests herein granted may be obtained from Mortgagor and Lender at the addresses set forth in the first paragraph of this Mortgage.

1.3 **Security Agreement in other Property.** As security for the payment of the Obligations and satisfaction by Mortgagor of all covenants and undertakings contained in this Mortgage and the other Loan Documents, Mortgagor hereby assigns and grants to Lender, a continuing lien on and security interest in, upon and to all assets of Mortgagor, including but not limited to the following property, all whether now owned or hereafter acquired, created or arising and wherever located (the “**Collateral**”): (a) Accounts; (b) Chattel Paper; (c) Documents; (d) Instruments; (e) Inventory; (f) General Intangibles; (g) Equipment; (h) All Deposit Accounts and Escrow Accounts; (i) Goods; (j) Letter of Credit Rights; (k) Supporting Obligations; (l) Investment Property; (m) Commercial Tort Claims; (n) all property of Mortgagor, now or hereafter in Lender’s possession, including monies now or hereafter held by Lender in connection with the loan represented by the Note; and (o) the Proceeds (including, without limitation, insurance proceeds),

whether cash or non-cash, of all of the foregoing property described in clauses (a) through (n), such terms having the meaning ascribed in the Uniform Commercial Code.

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1.4 **Power of Attorney.** Each of the officers of Lender is hereby irrevocably made, constituted and appointed the true and lawful attorney for Mortgagor during such time as any Obligations are outstanding (without requiring any of them to act as such) with full power of substitution to do the following: (a) endorse the name of Mortgagor upon any and all checks, drafts, money orders and other instruments for the payment of monies that are payable to Mortgagor and constitute collections on Mortgagor's Accounts or proceeds of other Collateral; (b) execute and/or file in the name of Mortgagor any financing statements, schedules, assignments, instruments, documents and statements that Mortgagor is obligated to give Lender hereunder or is necessary to perfect (or continue or evidence the perfection of such security interest or lien) Lender's security interest or lien in the Collateral; and (c) during the continuance of an Event of Default (as hereinafter defined), do such other and further acts and deeds in the name of Mortgagor that Lender may reasonably deem necessary or desirable to enforce any Account or other Collateral.

1.5 **Collateral Assignment of Leases and Rents.** The Mortgagor hereby irrevocably and unconditionally assigns to the Lender, and its successors and assigns, as collateral security for the Obligations all of the Mortgagor's rights and benefits under any and all Leases (as hereinafter defined) and any and all rents, income, issues, profits and other amounts now or hereafter owing with respect to the Leases or the use or occupancy of the Property ("**Rents**"). This collateral assignment shall be absolute and effective immediately, but the Mortgagor shall have a license, revocable by the Lender, to continue to collect the Rents owing under the Leases until an Event of Default occurs and the Lender exercises its rights and remedies to collect such Rents as set forth herein.

1.6 **Conditions to Grant.** The Lender shall have and hold the Property unto and to the use and benefit of the Lender, and its successors and assigns, forever; provided, however, the conveyances, grants and assignments contained in this Mortgage are upon the express condition that, if Mortgagor shall irrevocably pay and perform the Obligations in full, including, without limitation, all principal, interest and premium thereon and other charges, if applicable, in accordance with the terms and conditions in the Loan Documents and this Mortgage, shall pay and perform all other Obligations as set forth in this Mortgage and shall abide by and comply with each and every covenant and condition set forth herein and in the Loan Documents, the conveyances, grants and assignments contained in this Mortgage shall be appropriately released and discharged.

1.7 **Property.** The term "Property," as used in this Mortgage, shall mean that certain parcel of land at 9036 S Bishop Street, Chicago, Illinois 60620 and the fixtures, structures and improvements and all personal property constituting fixtures, as that term is defined in the Uniform Commercial Code, now or hereafter thereon located at the Property, as more particularly described in Exhibit A attached hereto, together with: (i) all rights now or hereafter existing, belonging, pertaining or appurtenant thereto; (ii) all judgments, awards of damages and settlements hereafter made as a result or in lieu of any Taking (as defined herein); (iii) all of the rights and benefits of the Mortgagor under any present or future leases and agreements relating to the Property, including, without limitation, Rents or the use or occupancy thereof together with any extensions and renewals thereof, specifically excluding all duties or obligations of the Mortgagor of any kind arising thereunder (the "**Leases**"); and (iv) all contracts, permits and licenses respecting the use, operation or maintenance of the Property.

1.8 **Obligations.** The term "Obligation(s)," as used in this Mortgage, shall mean without limitation, the unpaid principal balance of the Loan, accrued and unpaid interest on the Loan, all loans, advances, indebtedness, notes, liabilities, liquidated or unliquidated, now or hereafter owing by the Mortgagor to the Lender or any Lender Affiliate (as hereinafter defined) at any time, of each and every kind, nature and description, whether arising under this Mortgage or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Borrower to the Lender or any Lender Affiliate; or are due indirectly by the Borrower to the Lender or any Lender Affiliate as endorser, guarantor or other surety, or as obligor of obligations due third persons which have been endorsed or assigned to the Lender

or any Lender Affiliate, or otherwise), absolute or contingent, due or to become due, now existing or hereafter contracted, including, without limitation, payment of all amounts outstanding when due pursuant to the terms of any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Borrower or due from the Borrower to the Lender or any Lender Affiliate from time to time and all advances, costs and expenses referred to in this Mortgage, including without limitation the costs and expenses (including reasonable attorney's fees) of enforcement of the Lender's rights hereunder or pursuant to any document or instrument executed in connection herewith.

1.9 **Cross-Collateral.** It is the express intention of the Mortgagor that this Mortgage secure payment and performance of all of the Obligations, whether now existing or hereinafter incurred and regardless of whether such Obligations are or were contemplated by the parties at the time of the granting of this Mortgage. Notice of the continuing grant of this Mortgage shall not be required to be stated on the face of any document evidencing any of the Obligations, nor shall such documents be required to otherwise specify that they are secured hereby. This Mortgage secures, *inter alia*, present and future advances made by the Lender pursuant to the Loan Documents, including, without limitation, advances for the payment of taxes, assessments, maintenance charges, insurance premiums or costs actually incurred for the protection of the Property or the lien of this Mortgage, or expenses actually incurred by the Lender by reason of default by the Mortgagor, and to enable any completion of the improvements comprising the Property as may be contemplated by the Loan Documents. Nothing contained herein shall impose any obligation on the part of the Lender to make any such additional loan(s) to Mortgagor.

## 2. REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 **Representations and Warranties.** The Mortgagor represents and warrants that:

- (a) This Mortgage has been duly executed and delivered by the Mortgagor and is the legal, valid and binding obligation of the Mortgagor enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally;
- (b) The Mortgagor is the sole legal owner of the Property, holding good and marketable fee simple title to the Property, subject to no liens, encumbrances, leases, security interests or rights of others, other than as set forth in detail in Exhibit B hereto (the "**Permitted Encumbrances**");
- (c) The Mortgagor is the sole legal owner of the entire lessor's interest in Leases, if any, with full power and authority to encumber the Property in the manner set forth herein, and the Mortgagor has not executed any other assignment of Leases or any of the rights or Rents arising thereunder;
- (d) To Mortgagor's knowledge, as of the date hereof, there are no Hazardous Materials (as hereinafter defined) in, on or under the Property, except as disclosed in writing to and acknowledged by the Lender or disclosed in the environmental report delivered to Lender with respect to the Loan; and
- (e) Each Obligation is a commercial obligation and does not represent a loan used for personal, family or household purposes and is not a consumer transaction. In no event will Mortgagor or any member of his immediate family occupy the Property while this Mortgage is in effect.

2.2 **Recording; Further Assurances.** The Mortgagor covenants that it shall, at its sole cost and expense and upon the request of the Lender, cause this Mortgage, and each amendment, modification or supplement hereto, to be recorded and filed in such manner and in such places, and shall at all times comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the interest of the Lender in the Property and the rights of the Lender under this Mortgage. Mortgagor will from time to time execute and deliver to the Lender such documents, and take or cause to be taken, all such other or further action, as the Lender may request in order to effect and confirm or vest more securely in the Lender all rights contemplated by this Mortgage (including, without limitation, to correct clerical errors)

or to vest more fully in, or assure to the Lender the security interest in, the Property or to comply with applicable statute or law. To the extent permitted by applicable law, Mortgagor authorizes the Lender to file financing statements (including financing statements describing the collateral as "all assets of the debtor, wherever located, whether now owned or hereafter acquired, including any proceeds thereof" or words of like effect), continuation statements or amendments, and any such financing statements, continuation statements or amendments may be filed at any time in any jurisdiction. The Lender may at any time and from time to time file financing statements, continuation statements and amendments thereto that describe the Property as defined in this Mortgage and which contain any other information required by Article 9 of the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, Mortgagor also authorizes the Lender to file financing statements describing any agricultural liens or other statutory liens held by the Lender. Mortgagor agrees to furnish any such information to the Lender promptly upon request. In addition, Mortgagor shall at any time and from time to time, take such steps as the Lender may reasonably request for the Lender (i) to obtain an acknowledgment, in form and substance satisfactory to the Lender, or any bailee having possession of any of the Property that the bailee holds such Property for the Lender, and (ii) otherwise to insure the continued perfection and priority of the Lender's security interest in any of the Property and the preservation of its rights therein. Mortgagor hereby constitutes the Lender its attorney-in-fact to execute and file all filings required or so requested for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; and such power, being coupled with an interest, shall be irrevocable until this Mortgage terminates in accordance with its terms, all Obligations are paid in full and the Property is released.

2.3 **Restrictions on the Mortgagor.** The Mortgagor covenants that it will not, nor will it permit any other person to, directly or indirectly, without the prior written approval of the Lender in each instance:

- (a) Sell, convey, assign, transfer, mortgage, pledge, hypothecate, lease or dispose of all or any part of any direct or indirect legal or beneficial interest in the Mortgagor or the Property or any part thereof or permit any of the foregoing, except as expressly permitted by the terms of this Mortgage;
- (b) Mortgagor will not, and will not cause or permit any of its affiliates to, solicit offers for, advertise the Property for, or otherwise obtain any other debt or equity financing with respect to the Property with any party other than Lender, or take any action in furtherance of the foregoing, except that nothing herein shall prevent or preclude the Mortgagor from seeking to refinance the Loan secured by this Mortgage or pay off the Lender, in full;
- (c) Permit the use, generation, treatment, storage, release or disposition of any Hazardous Materials; or
- (d) Permit to be created or suffer to exist any mortgage, lien, security interest, attachment or other encumbrance or charge on the Property or any part thereof or interest therein (except for the Permitted Encumbrances), including, without limitation, (i) any lien arising under any federal, state or local statute, rule, regulation or law pertaining to the release or cleanup of Hazardous Materials and (ii) any mechanics' or materialmen's lien. The Mortgagor further agrees to give the Lender prompt written notice of the imposition, or notice, of any lien referred to in this Section and to take any action necessary to secure the prompt discharge, release, or bonding of the same. The Mortgagor agrees to defend its title to the Property and the Lender's interest therein against the claims of all persons and, unless the Lender requests otherwise, to appear in and diligently contest, at the Mortgagor's sole cost and expense, any action or proceeding that purports to affect the Mortgagor's title to the Property or the priority or validity of this Mortgage or the Lender's interest hereunder.

2.4 **Operation of Property.** The Mortgagor covenants and agrees as follows:



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- (a) The Mortgagor will not permit the Property to be used for any unlawful or improper purpose, will at all times comply with all Federal, state and local laws, ordinances and regulations, and the provisions of any Lease, easement or other agreement affecting all or any part of the Property, and will obtain and maintain all governmental or other approvals relating to the Mortgagor, the Property or the use thereof, including without limitation, any applicable zoning or building codes or regulations and any laws or regulations relating to the handling, storage, release or cleanup of Hazardous Materials, and will give prompt written notice to the Lender of (i) any violation of any such law, ordinance or regulation by the Mortgagor or relating to the Property; (ii) receipt of notice from any Federal, state or local authority alleging any such violation; and (iii) the presence or release on the Property of any Hazardous Materials;
- (b) The Mortgagor will at all times keep the Property insured or caused to be insured for such losses or damage, in such amounts and by such companies as may be required by law and which the Lender may require, provided that, in any case, the Mortgagor shall maintain: (i) physical hazard insurance on an "all risks" basis in an amount not less than 100% of the full replacement cost of the Property including costs of demolition and increased cost of construction, earthquake, vandalism, and malicious mischief, boiler and machinery, and such other insurable hazards as, under good insurance practices; (ii) flood insurance if and as required by applicable federal law and as otherwise required by the Lender; (iii) comprehensive commercial general liability insurance; (iv) rent loss and business interruption insurance; and (v) such other insurance as the Lender may reasonably require from time to time, including builder's risk insurance in the case of construction loans. All policies regarding such insurance shall be issued by companies licensed to do business in the state where the policy is issued and also in the state where the Property is located, be otherwise acceptable to the Lender, provide deductible amounts acceptable to the Lender, name the Lender as mortgagee, lender loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least thirty (30) days prior written notice to the Lender. Such policies shall include (i) a mortgage endorsement determined by the Lender in good faith to be equivalent to the "standard" mortgage endorsement so that the insurance, as to the interest of the Lender, shall not be invalidated by any act or neglect of the Mortgagor or the owner of the Property, any foreclosure or other proceedings or notice of sale relating to the Property, any change in the title to or ownership of the Property, or the occupation or use of the Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement; (iii) an agreed amount endorsement; and (v) such other endorsements as the Lender may request. The Mortgagor will furnish to the Lender upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to the Lender. The terms of all insurance policies shall be such that no coinsurance provisions apply, or if a policy does contain a coinsurance provision, the Mortgagor shall insure the Property in an amount sufficient to prevent the application of the coinsurance provisions;
- (c) Mortgagor will not enter into or modify any Leases in any material respect without the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed, execute any assignment of the Leases except in favor of the Lender, or accept any Rents under any Lease for more than one month in advance (excepting any security deposits, application fees and/or move-in/move-out fees) and will at all times perform and fulfill every term and condition of the Leases;
- (d) Mortgagor will at all times (i) maintain complete and accurate records and books regarding the Property in accordance with generally accepted accounting principles; and (ii) permit the Lender and the Lender's agents, employees and representatives, at such reasonable times as the Lender may request, to enter and inspect the Property and such books and records; and

- (e) Mortgagor will at all times keep the Property in good and first rate repair and condition (damage from casualty not excepted) and will not commit or permit any strip, waste, impairment, deterioration or alteration of the Property or any part thereof.
- (f) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is maintained in full force and effect, Lender shall have the right (but not the obligation), upon notice to Mortgagor, to take such action as Lender deems necessary to protect Lender's interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate and all Insurance Premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Mortgagor to Lender upon demand and until paid shall be secured by the Mortgage and shall bear interest at the Default Rate.
- (g) The Borrower shall not cause or permit any one or more of the following substances (collectively, "**Hazardous Materials**") to be disposed of in any manner in violation of applicable laws which might result in any material liability to the Borrower on, under, or at any real property which is operated by the Borrower or in which the Borrower has any interest:
1. those substances included within the definitions of "hazardous substances," "hazardous materials" or "toxic substances", in CERCLA, RCRA, Toxic Substances Control Act, Federal Insecticide, Fungicide and Rodenticide Act and the Hazardous Materials Transportation Act (49 U.S.C. §1801, et seq.);
  2. such other substances, materials and wastes which at the time in question are regulated as hazardous or toxic under applicable local, state or federal law, or which are classified as hazardous or toxic under federal, state, or local laws or regulations; and
  3. any material, waste or substance which is (i) asbestos, (ii) polychlorinated biphenyls, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1251, et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317), (iv) explosives, (v) radioactive materials, or (vi) petroleum, petroleum products or any fraction thereof.
- (h) The Borrower shall not use, nor knowingly allow any tenants or others to, use or lease any portion of the Property (i) in connection with any marijuana-related activity (including leasing such real property to any marijuana-related business), whether or not such activity is legal under applicable local or state law; and/or (ii) for any purpose that is not legal under any applicable federal or state laws.
- (i) Mortgagor shall not use the Property for family, personal, or household uses.

2.5 **Payments.** The Mortgagor covenants to pay when due: all federal, state and municipal real property and other taxes, betterment and improvement assessments and other governmental levies, water rates, sewer charges, insurance premiums and other charges on the Property, this Mortgage or any Obligation secured hereby that could, if unpaid, result in a lien on the Property or on any interest therein. If and when requested by the Lender, the Mortgagor shall deposit from time to time with the Lender sums determined by the Lender to be sufficient to pay when due the amounts referred to in this Section. The Mortgagor shall have the right to contest any notice, lien, encumbrance, claim, tax, charge, betterment assessment or premium filed or asserted against or relating to the Property; provided that it contests the same diligently and in good faith and by proper proceedings and, at the Lender's request, provides the Lender with adequate cash security, in the Lender's reasonable judgment, against the enforcement thereof. The Mortgagor shall furnish to the Lender the receipted real estate tax bills or other evidence of payment of real estate taxes for the Property within thirty (30) days prior to the date from which interest or penalty



would accrue for nonpayment thereof. The Mortgagor shall also furnish to the Lender evidence of all other payments referred to above within fifteen (15) days after written request therefor by the Lender. If Mortgagor shall fail to pay such sums, the Lender may, but shall not be obligated to, advance such sums. Any sums so advanced by the Lender shall be added to the Obligations, shall bear interest at the highest rate specified in any note evidencing the Obligations, and shall be secured by the lien of this Mortgage.

2.6 **Tax and Insurance Deposits.** Mortgagor has deposited (and will continue to deposit) with Lender sums to pay estimated charges for insurance premiums and taxes as provided in the Rider to Note. Subject to the terms of the Note (and the Rider to Note), all funds so deposited with the Lender shall be held by it, but not in escrow and, except to the extent required by applicable law, without interest, and shall be applied in payment of the insurance premiums and taxes when and as payable, to the extent the Lender shall have such funds on hand in each such fund provided that no "Event of Default", shall have occurred and be continuing. Should an Event of Default occur and be continuing, the funds deposited with the Lender, as aforementioned, may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Obligations or any other charges affecting the security of the Lender, as the Lender reasonably sees fit, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by the Lender as herein provided, nor shall any application be deemed to affect any right or remedy of the Lender hereunder or under any statute or rule of law. If deposits are being made with the Lender, the Mortgagor shall furnish the Lender with bills for the charges for which such deposits are required to be made hereunder and/or such other documents necessary for the payment of same, at least fifteen (15) days prior to the date on which the charges first become payable.

2.7 **Notices; Notice of Default.** The Mortgagor will deliver to the Lender, promptly upon receipt of the same, copies of all notices or other documents it receives that affect the Property or its use, or claim that the Mortgagor is in default in the performance or observance of any of the terms hereof or that the Mortgagor or any tenant is in default of any terms of the Leases. The Mortgagor further agrees to deliver to the Lender written notice promptly upon the occurrence of any Event of Default hereunder or event that with the giving of notice or lapse of time, or both, would constitute an Event of Default hereunder.

2.8 **Takings.** In case of any condemnation or expropriation for public use of, or any damage by reason of the action of any public or governmental entity or authority to, all or any part of the Property (a "Taking"), or the commencement of any proceedings or negotiations that might result in a Taking, the Mortgagor shall immediately give written notice to the Lender, describing the nature and extent thereof. The Lender may, at its option, appear in any proceeding for a Taking or any negotiations relating to a Taking and the Mortgagor shall immediately give to the Lender copies of all notices, pleadings, determinations and other papers relating thereto. The Mortgagor shall in good faith and with due diligence and by proper proceedings file and prosecute its claims for any award or payment on account of any Taking. The Mortgagor shall not settle any such claim without the Lender's prior written consent. The Mortgagor shall hold any amounts received with respect to such awards or claims, by settlement, judicial decree or otherwise, in trust for the Lender and immediately pay the same to the Lender. The Mortgagor authorizes any award or settlement due in connection with a Taking to be paid directly to the Lender in amounts not exceeding the Obligations. The Lender may apply such amounts to the Obligations in such order as the Lender may determine.

2.9 **Insurance Proceeds.** The proceeds of any insurance resulting from any loss with respect to the Property shall be paid to the Lender and, at the option of the Lender, be applied to the Obligations in such order as the Lender may determine; provided, however, that if the Lender shall require repair of the Property, the Lender may release all or any portion of such proceeds to the Mortgagor for such purpose pursuant to terms and conditions determined by Lender. Any insurance proceeds paid to the Mortgagor shall be held in trust for the Lender and promptly paid to it.

### 3. CERTAIN RIGHTS OF THE LENDER

- 3.1 **Legal Proceedings.** The Lender shall have the right, but not the duty, to intervene or otherwise participate in any legal or equitable proceeding that, in the Lender's reasonable judgment, might affect the Property or any of the rights created or secured by this Mortgage. The Lender shall have such right whether or not there shall have occurred an Event of Default hereunder.
- 3.2 **Appraisals/Assessments.** The Lender shall have the right, at the Mortgagor's sole cost and expense, to obtain appraisals, environmental site assessments or other inspections of the portions of the Property that are real estate at such times as the Lender deems necessary or as may be required by applicable law, or its prevailing credit or underwriting policies.
- 3.3 **Financial Statements.** The Lender shall have the right, at the Mortgagor's sole cost and expense, to require delivery of financial statements in form and substance acceptable to the Lender from the Mortgagor or any guarantor of any of the Obligations and the Mortgagor hereby agrees to deliver such financial statements and/or cause any such guarantor to so deliver any such financial statement when required by the Lender.
- 3.4 **Leases and Rent Roll.** The Mortgagor shall deliver to the Lender (i) during each calendar year and at such other times as the Lender shall request a rent roll for the Property, in form acceptable to the Lender, listing all tenants and occupants and describing all of the Leases; and (ii) at such times as the Lender shall request executed copies of all the Leases.
- 3.5 **Publicity.** The Lender and/or its affiliates shall have the right to post a sign on the Property stating that financing was provided by Lender and/or its affiliates. The Mortgagor further agrees that the Lender and/or its affiliates may release publicity articles or advertisements featuring the Property and the amount of the Loan.

### 4. DEFAULTS AND REMEDIES

- 4.1 **Events of Default.** The occurrence of any one or more of the following conditions or events shall constitute an "Event of Default":
- (a) failure of Borrower to pay in full when due any amounts due under the Note or this Mortgage or any of the other Loan Documents;
  - (b) breach by Borrower of any other obligation, covenant or agreement under this Mortgage or any of the other Loan Documents (including the Other Mortgage) which, if curable, is not cured within the required cure period;
  - (c) default by Borrower or Guarantor under any other agreement with Lender;
  - (d) failure of the Borrower or Guarantor to maintain aggregate collateral security value reasonably satisfactory to the Lender;
  - (e) default of any material liability, obligation or undertaking of the Mortgagor or any guarantor to any other party, including but not limited to any holder of a lien on the Property;
  - (f) if any statement, representation or warranty heretofore, now or hereafter made by the Mortgagor or Guarantor in connection with this Agreement or by Borrower under any Loan Document or in any Financial Statement of the Mortgagor, Borrower or Guarantor shall be determined by the Lender to have been false or misleading in any material respect when made;
  - (g) if the Mortgagor, Borrower or Guarantor is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;

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- (h) the death or incarceration of the Guarantor or, if the Mortgagor, Borrower or Guarantor of the Obligations is a partnership or limited liability company, the death or incarceration of any partner or member;
  - (i) the institution by or against the Borrower or Guarantor of any proceedings under the bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any Guarantor is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor of a trust mortgage for the benefit of creditors;
  - (j) a judgment or judgments for the payment of money shall be rendered against the Mortgagor, Borrower or Guarantor, and any such judgment shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;
  - (k) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Mortgagor or Guarantor;
  - (l) the termination or revocation of any guaranty of the Obligations by Guarantor;
  - (m) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Borrower, Mortgagor or any guarantor, or the occurrence of any other event or circumstance, such that the Lender, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Mortgagor or any guarantor to the Lender has been or may be impaired;
  - (n) title to the Property is or becomes unsatisfactory to the Lender by reason of any lien, charge, encumbrance, title condition or exception (including without limitation, any mechanic's, materialman's or similar statutory or common-law lien or notice thereof), and such matter causing title to be or become unsatisfactory is not cured or removed (including by bonding) within ten (10) days after notice thereof from the Lender to the Mortgagor; or
  - (o) a material default has occurred by Mortgagor or a tenant under any material Lease on the Property.

4.2 **Remedies.** On the occurrence of any Event of Default the Lender may, at any time thereafter, at its option and, to the extent permitted by applicable law, without notice, exercise any or all of the following remedies:

- (a) Declare the Obligations due and payable, and the Obligations shall thereupon become immediately due and payable, without presentment, protest, demand or notice of any kind, all of which are hereby expressly waived by the Mortgagor except for Obligations due and payable on demand, which shall be due and payable on demand whether or not an Event of Default has occurred hereunder;
- (b) Enter, take possession of, manage and operate the Property (including all personal property and all records and documents pertaining thereto) and any part thereof and exclude the Mortgagor therefrom, take all actions it deems necessary or proper to preserve the Property and operate the Property as a Lender in possession with all the powers as could be exercised by a receiver or as otherwise provided herein or by applicable law; provided, however, the entry by the Lender upon the Property for any reason shall not cause the Lender to be a Lender in possession, except upon the express written declaration of the Lender; Lender shall also be entitled to have a receiver appointed for the Property;
- (c) With or without taking possession, receive and collect all Rents from the Property (including all real estate and personal property and whether past due or thereafter accruing), including as may arise under the Leases, and the Mortgagor appoints the Lender as its true and lawful attorney with the power for the Lender in its own name and capacity to demand and collect

Rents and take any action that the Mortgagor is authorized to take under the Leases. The Lender shall, after payment of all costs and expenses incurred, apply any Rents received by it to the Obligations in such order as the Lender determines, or in accordance with any applicable statute, and the Mortgagor agrees that exercise of such rights and disposition of such funds shall not be deemed any default or constitute a waiver of any foreclosure once commenced nor preclude the later commencement of foreclosure for breach thereof. The Lender shall be liable to account only for such Rents actually received by the Lender. Lessees under the Leases are hereby authorized and directed, following notice from the Lender, to pay all amounts due the Mortgagor under the Leases to the Lender, whereupon such lessees shall be relieved of any and all duty and obligation to the Mortgagor with respect to such payments so made;

- (d) In addition to any other remedies, to sell the Property or any part thereof or interest therein pursuant to exercise of its power of sale or otherwise at public auction on terms and conditions as the Lender may determine, or otherwise foreclose this Mortgage in any manner permitted by law, and upon such sale the Mortgagor shall execute and deliver such instruments as the Lender may request in order to convey and transfer all of the Mortgagor's interest in the Property and the same shall operate to divest all rights, title and interest of the Mortgagor in and to the Property. In the event this Mortgage shall include more than one parcel of property or subdivision (each hereinafter called a "portion"), the Lender shall, in its sole and exclusive discretion and to the extent permitted by applicable law, be empowered to foreclose upon any such portion without impairing its right to foreclose subsequently upon any other portion or the entirety of the Property from time to time thereafter. In addition, the Lender may in its sole and exclusive discretion subordinate this Mortgage to one or more Leases for the sole purpose of preserving any such Lease in the event of a foreclosure;
- (e) Cause one or more environmental assessments to be taken, arrange for the cleanup of any Hazardous Materials or otherwise cure the Mortgagor's failure to comply with any statute, regulation or ordinance relating to the presence or cleanup of Hazardous Materials, and the Mortgagor shall provide the Lender or its agents with access to the Property for such purposes; provided that the exercise of any of such remedies shall not be deemed to have relieved the Mortgagor from any responsibility therefor or given the Lender "control" over the Property or cause the Lender to be considered to be a Lender in possession, "owner" or "operator" of the Property for purposes of any applicable law, rule or regulation pertaining to Hazardous Materials; and
- (f) Take such other actions or proceedings as the Lender deems necessary or advisable to protect its interest in the Property and ensure payment and performance of the Obligations, including, without limitation, appointment of a receiver (and the Mortgagor hereby waives any right to object to such appointment) and exercise of any of the Lender's remedies provided herein or in any other document evidencing, securing or relating to any of the Obligations or available to a secured party under the Uniform Commercial Code or under other applicable law.
- (g) In addition to all other rights, options and remedies granted or available to Lender under this Mortgage or the Loan Documents (each of which is also then exercisable by Lender), or otherwise available at law or in equity, upon or at any time after the acceleration of the Obligations following the occurrence of an Event of Default, Lender may, in its discretion, exercise all rights under the Uniform Commercial Code with respect to the Collateral and any other applicable law or in equity, and under all Loan Documents permitted to be exercised after the occurrence of an Event of Default, including the following rights and remedies (which list is given by way of example and is not intended to be an exhaustive list of all such rights and remedies):

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- (1) The right to take possession of, send notices regarding and collect directly the Collateral, with or without judicial process (including without limitation the right to notify the United States postal authorities to redirect mail addressed to Mortgagor to an address designated by Lender); or
  - (2) By its own means or with judicial assistance, enter Mortgagor's premises and take possession of the Collateral, or render it unusable, or dispose of the Collateral on such premises in compliance with subsection (5) below, without any liability for rent, storage, utilities or other sums, and Mortgagor shall not resist or interfere with such action;
  - (3) Require Mortgagor at Mortgagor's expense to assemble all or any part of the Collateral (other than real estate or fixtures) and make it available to Lender at any place designated by Lender; or
  - (4) In addition to all other rights, options and remedies granted or available to Lender under this Agreement or the Loan Documents (each of which is also then exercisable by Lender), or otherwise available at law or in equity, upon or at any time after the occurrence and during the continuance of an Event of Default, Mortgagor shall, at the request of Lender, notify Account Debtors (as defined in the Uniform Commercial Code) and other persons obligated on any of the Collateral of the security interest of Mortgagor in any Account, Chattel Paper, General Intangible, Instrument (each as defined in the Uniform Commercial Code) or other Collateral and that payment thereof is to be made directly to Lender or to any financial institution designated by Lender as Lender's agent therefor, and Lender may itself, without notice to or demand upon Mortgagor, so notify Account Debtors and other persons obligated on Collateral. After the making of such a request or the giving of any such notification, Mortgagor shall hold any proceeds of collection of Accounts, Chattel Paper, General Intangibles, Instruments and other Collateral received by Mortgagor as trustee for Lender without commingling the same with other funds of Mortgagor and shall turn the same over to Lender in the identical form received, together with any necessary endorsements or assignments. Lender shall apply the proceeds of collection of Accounts, Chattel Paper, General Intangibles, Instruments and other Collateral received by Lender to the Obligations, such proceeds to be immediately entered after final payment in cash or other immediately available funds of the items giving rise to them. All terms set forth in this Section shall have the meanings ascribed to them in the Uniform Commercial Code.
  - (5) Mortgagor hereby agrees that a notice received by it at least ten (10) days before the time of any intended public sale or of the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable inventory or Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Lender without prior notice to Mortgagor. Mortgagor covenants and agrees not to interfere with or impose any obstacle to Lender's exercise of its rights and remedies with respect to the Collateral, after the occurrence of an Event of Default hereunder. Lender shall have no obligation to clean up or prepare the Collateral for sale. If Lender sells any of the Collateral upon credit, Mortgagor will only be credited with payments actually made by the purchaser thereof, that are received by Lender. Lender may, in connection with any sale of the Collateral specifically disclaim any warranties of title or the like.



- (h) In addition, the Lender shall have all other remedies provided by applicable law, including, without limitation, the right to pursue a judicial sale of the Property or any portion thereof by deed, assignment or otherwise.

The Mortgagor agrees and acknowledges that the acceptance by the Lender of any payments from either the Mortgagor or any guarantor after the occurrence of any Event of Default, the exercise by the Lender of any remedy set forth herein or the commencement, discontinuance or abandonment of foreclosure proceedings against the Property shall not waive the Lender's subsequent or concurrent right to foreclose or operate as a bar or estoppel to the exercise of any other rights or remedies of the Lender. The Mortgagor agrees and acknowledges that the Lender, by making payments or incurring costs described herein, shall be subrogated to any right of the Mortgagor to seek reimbursement from any third parties, including, without limitation, any predecessor in interest to the Mortgagor's title or other party who may be responsible under any law, regulation or ordinance relating to the presence or cleanup of Hazardous Materials.

4.3 **Advances.** If the Mortgagor fails to pay or perform any of its obligations respecting the Property, the Lender may in its sole discretion do so without waiving or releasing Mortgagor from any such obligation. Any such payments may include, but are not limited to, payments for taxes, assessments and other governmental levies, water rates, insurance premiums, maintenance, repairs or improvements constituting part of the Property. Any amounts paid by the Lender hereunder shall be, until reimbursed by the Mortgagor, part of the Obligations and secured by this Mortgage, and shall be due and payable to the Lender, on demand, together with interest thereon at the Default Rate.

4.4 **Cumulative Rights and Remedies.** All of the foregoing rights, remedies and options (including without limitation the right to enter and take possession of the Property, the right to manage and operate the same, and the right to collect Rents, in each case whether by a receiver or otherwise) are cumulative and in addition to any rights the Lender might otherwise have, whether at law or by agreement, and may be exercised separately or concurrently and none of which shall be exclusive of any other. The Mortgagor further agrees that the Lender may exercise any or all of its rights or remedies set forth herein without having to pay the Mortgagor any sums for use or occupancy of the Property.

## 5. MISCELLANEOUS

5.1 **Costs and Expenses.** To the extent permitted by applicable law, the Mortgagor shall pay to the Lender, on demand, all reasonable expenses (including attorneys' fees and expenses and reasonable consulting, accounting, appraisal, brokerage and similar professional fees and charges) actually incurred by the Lender in connection with the Lender's interpretation, recordation of this Mortgage, exercise, preservation or enforcement of any of its rights, remedies and options set forth in this Mortgage and in connection with any litigation, proceeding or dispute whether arising hereunder or otherwise relating to the Obligations, together with interest thereon to the extent permitted by applicable law, until paid in full by the Mortgagor at the Default Rate. Any amounts owed by the Mortgagor hereunder shall be, until paid, part of the Obligations and secured by this Mortgage, and the Lender shall be entitled, to the extent permitted by law, to receive and retain such amounts in any action for a deficiency against or redemption by the Mortgagor, or any accounting for the proceeds of a foreclosure sale or of insurance proceeds.

5.2 **Survival of Claims for Costs and Expenses.** It is the parties' intent that the Lender's claim for legal fees, taxes and expenses, including without limitation all costs and insurance premiums, shall survive the entry of a foreclosure judgment. If Lender employs counsel for advice or representation after an Event of Default (whether or not formally declared) relating to the collection or enforcement of this Mortgage, the Note or other Loan Documents or Obligations (whether or not suit is actually instituted), Lender may collect from Mortgagor all of Lender's reasonable expenses and fees, including, without limitation: (a) all reasonable fees and disbursements of counsel to Lender (whether pre-judgment or post-judgment or both, as applicable); (b) all expenses of or in anticipation of litigation, including fees and expenses of witnesses, experts, stenographers, title and lien searchers; and (c) costs actually incurred by Lender in performing any duty or obligation on behalf of Mortgagor, including payment of any tax, government charge or insurance premium, making repairs to the Property, rendering the Property free of Hazardous Materials or liens or

performing any lien obligation. The expenses incurred by Lender in performing any of Mortgagor's duties or obligations shall be added to the monies owing under the Note with interest at Default Rate. All such sums shall be secured by this Mortgage and all collateral given to secure any Obligation. Any action taken by Lender pursuant to this Section shall not constitute a waiver of any Event of Default or undertaking to perform or complete any of Mortgagor's duties nor shall it impose any future responsibility on Lender to perform any of Mortgagor's duties in the future.

**5.3 Indemnification Regarding Leases.** The Mortgagor hereby agrees to defend, and does hereby indemnify and hold the Lender and each of its directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless from all losses, damages, claims, costs or expenses (including attorneys' fees and expenses) resulting from the assignment of the Leases and from all demands that may be asserted against such Indemnitees arising from any undertakings on the part of the Lender to perform any obligations under the Leases. It is understood that the assignment of the Leases shall not operate to place responsibility for the control or management of the Property upon the Lender or any Indemnitee or make them liable for performance of any of the obligations of the Mortgagor under Leases, respecting any condition of the Property or any other agreement or arrangement, written or oral, or applicable law.

**5.4 Indemnification Regarding Hazardous Materials.** The Mortgagor hereby agrees to defend, and does hereby indemnify and hold harmless each Indemnitee from and against any and all losses, damages, claims, costs or expenses, including, without limitation, litigation costs and attorneys' fees and expenses and fees or expenses of any environmental engineering or cleanup firm incurred by such Indemnitee and arising out of or in connection with the Property or resulting from the application of any current or future law, regulation or ordinance relating to the presence or cleanup of Hazardous Materials on or affecting the Property. The Mortgagor agrees its obligations hereunder shall be continuous and shall survive termination or discharge of this Mortgage and/or the repayment of all debts to the Lender including repayment of all Obligations.

**5.5 Indemnitee's Expenses.** If any Indemnitee is made a party defendant to any litigation or any claim is threatened or brought against such Indemnitee concerning this Mortgage or the Property or any part thereof or therein or concerning the construction, maintenance, operation or the occupancy or use thereof by the Mortgagor or other person or entity, then the Mortgagor shall indemnify, defend and hold each Indemnitee harmless from and against all liability by reason of said litigation or claims, including attorneys' fees and expenses actually incurred by such Indemnitee in connection with any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Lender in favor of the Mortgagor.

**5.6 Waivers.** Except as expressly set forth in the Loan Documents, the Mortgagor waives notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof. No delay or omission of the Lender in exercising or enforcing any of its rights, powers, privileges, remedies, immunities or discretion (all of which are hereinafter collectively referred to as "the Lender's rights and remedies") hereunder shall constitute a waiver thereof; and no waiver by the Lender of any default of the Mortgagor hereunder or of any demand shall operate as a waiver of any other default hereunder or of any other demand. No term or provision hereof shall be waived, altered or modified except with the prior written consent of the Lender, which consent makes explicit reference to this Mortgage. Except as provided in the preceding sentence, no other agreement or transaction, of whatsoever nature, entered into between the Lender and the Mortgagor at any time (whether before, during or after the effective date or term of this Mortgage) shall be construed as a waiver, modification or limitation of any of the Lender's rights and remedies under this Mortgage (nor shall anything in this Mortgage be construed as a waiver, modification or limitation of any of the Lender's rights and remedies under any such other agreement or transaction) but all the Lender's rights and remedies not only under the provisions of this Mortgage but also under any such other agreement or transaction shall be

cumulative and not alternative or exclusive, and may be exercised by the Lender at such time or times and in such order of preference as the Lender in its sole discretion may determine.

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5.7 **Joint and Several.** If there is more than one Mortgagor, each of them shall be jointly and severally liable for payment and/or performance of all obligations secured by this Mortgage and the term "Mortgagor" shall include each as well as all of them.

5.8 **Severability.** If any provision of this Mortgage or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Mortgage (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

5.9 **Complete Agreement.** This Mortgage and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

5.10 **Binding Effect of Agreement.** This Mortgage shall run with the land and be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Lender shall be entitled to rely thereon) until all Obligations are fully and indefeasibly paid. The Lender may transfer and assign this Mortgage and deliver any collateral to the assignee, who shall thereupon have all of the rights of the Lender; and the Lender shall then be relieved and discharged of any responsibility or liability with respect to this Mortgage and such collateral. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Mortgage or the other Loan Documents.

5.11 **Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail return receipt requested, or sent by nationally recognized overnight courier service, to the address of the Lender or the Mortgagor set forth above or to such other address as the Lender or the Mortgagor may give to the other in writing for such purpose.

5.12 **Governing Law.** The laws of the State of Illinois shall govern all issues concerning matters relating to the creation, perfection and procedures relating to the enforcement of the liens created pursuant to this Mortgage. All other provisions of this Mortgage shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and performed in such State pursuant to Section 5-1401 of the New York General Obligations Law and any applicable law of the United States of America, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York.

5.13 **Reproductions.** This Mortgage and all documents which have been or may be hereinafter furnished by the Mortgagor to the Lender may be reproduced by the Lender by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

5.14 **Lender Affiliates.** The term "Lender Affiliate" as used in this Mortgage shall mean any "Affiliate" of the Lender. The term "Affiliate" shall mean with respect to any person, (a) any person which, directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such person, or (b) any person who is a director or officer (i) of such person; (ii) of any subsidiary of such person; or (iii) any person described in clause (a) above. For purposes of this definition, control of a person shall mean the power, direct or indirect, (x) to vote 5% or more of the Capital Stock having ordinary voting power for the election of directors (or comparable equivalent) of such person; or (y) to direct or cause the direction of the management and policies of such person whether by contract or otherwise. Control may be by ownership, contract, or otherwise.

5.15 **Jurisdiction and Venue.** The Mortgagor irrevocably submits to the nonexclusive jurisdiction of any Federal court in New York or any state court sitting in the county where the Property is located over any suit, action or proceeding arising out of or relating to this Mortgage. The Mortgagor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. The Mortgagor hereby consents to process being served in any such suit, action or proceeding (i) by the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the Mortgagor's address set forth herein or such other address as has been provided in writing to the Lender and (ii) in any other manner permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Mortgagor.

5.16 **JURY WAIVER. THE MORTGAGOR AND THE LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS MORTGAGE, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith; (B) AGREE NOT TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN WAIVED AND (C) THE RIGHT TO INTERPOSE ANY COUNTERCLAIM THEREIN. THE MORTGAGOR CERTIFIES THAT NEITHER THE LENDER NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.**

5.17 **Purchase Money Mortgage.** To the extent all or any part of the Obligations secured by this Mortgage were used in whole or in part to fund the acquisition of all or any part of the Property, this Mortgage shall be a "purchase money mortgage" and shall be accorded the lien priority provided for therein.

## 6. SPECIAL PROVISIONS-ILLINOIS

6.1 **Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article 6 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 6 shall control and be binding.

6.2 **Remedies Upon Default.** Notwithstanding anything to the contrary contained in this Mortgage, in addition to all other rights and remedies set forth in this Mortgage, upon an Event of Default, Lender shall have the following remedies:

(a) Upon the occurrence of any Event of Default, or at any time thereafter, Lender may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Property is located and to exercise any other remedies of Lender provided herein or in the other Loan Documents, or which Lender may have at law or in equity. Any failure by Lender to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

(b) In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Lender under the Note, this Mortgage, the other Loan Documents or in any other proceeding whatsoever in connection with the Property in which Lender is named as a party, there shall be allowed and included, as additional Obligations in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Lender, including, without limitation, reasonable attorneys' fees and expenses and court costs, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and any similar data and assurances with respect to title to the Property as Lender may deem reasonably necessary, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the Illinois Mortgage Foreclosure Law (as amended from time to time, 735 ILCS 5/15-1101, *et seq.*) (the "IMF Law") to be included in the decree of sale, either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to any such decree the true condition of the title to or value of the Property.



All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Property and the maintenance of the lien of this Mortgage thereon, including, without limitation, the reasonable fees and expenses of, and court costs incurred by, any attorney employed by Lender in any litigation affecting the Note, this Mortgage or any of the other Loan Documents or any of the Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Mortgagor with interest thereon at the Default Rate.

(c) In the event of any Event of Default, or in the event any action or proceeding is instituted which materially affects, or threatens to materially affect, Lender's interest in the Property, Lender may, but need not, make any payment or perform any act on Mortgagor's behalf in any form and manner deemed expedient by Lender, and Lender may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs, and any other monies advanced by Lender to protect the Property and the lien of this Mortgage, shall be so much additional Obligations, and shall become immediately due and payable by Mortgagor to Lender without notice and with interest thereon at the Default Rate from the date an advance is made to and including the date the same is paid. The action or inaction of Lender shall never be construed to be waiver of any right accruing to Lender by reason of any default by Mortgagor. Lender shall not incur any personal liability because of anything it may do or omit to do hereunder, nor shall any acts of Lender act as a waiver of Lender's right to accelerate the maturity of the Obligations or to proceed to foreclose this Mortgage.

(d) In any case in which, under the provisions of this Mortgage, Lender has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Mortgagor shall, forthwith upon demand of Lender, surrender to Lender, and Lender shall be entitled to take actual possession of, the Property or any part thereof, personally or by its agent or attorneys. In accordance with Sections 5-1701 and 5-1702 of the IMF Law, Lender, in its discretion, may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property relating thereto, and may exclude Mortgagor, such owner and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Lender and under the powers herein granted:

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

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

(iii) elect to disaffirm any lease or sublease of all or any part of the Property made subsequent to this Mortgage or subordinated to the lien hereof;

(iv) extend or modify any then existing leases and make new leases of all or any part of the Property, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Property are subject to



the lien hereof and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser; and

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

Without limiting the generality of the foregoing, Lender shall have all right, power, authority and duties as provided in the IMF Law. Nothing herein contained shall be construed as constituting Lender as Lender in possession in the absence of the actual taking of possession of the Property.

(c) Upon, or at any time prior or after, the filing of any complaint to foreclose the lien of this Mortgage or instituting any other foreclosure of the liens and security interests provided for in this Mortgage or any other legal proceedings under this Mortgage, Lender may, at Lender's sole option, make application to a court of competent jurisdiction for appointment of a receiver pursuant to Section 15-1702 of the IMF Law for all or any part of the Property, as a matter of strict right and without notice to Mortgagor, and Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Lender, but nothing herein is construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed; provided that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of all of the rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Mortgage. Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Obligations; without regard to the value of the Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the IMF Law, including the power to take possession, control and care of the Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Obligations, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then existing leases and make new leases of the Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of Obligations, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

(f) In the event of any foreclosure sale of the Property, the same may be sold in one or more parcels. Lender may be the purchaser at any foreclosure sale of the Property or any part thereof.

### 6.3 Compliance with the Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the IMF Law, the provision of the IMF Law shall take precedence over the provisions of this Mortgage,

but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF Law.

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(b) Mortgagor and Lender shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Law which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(c) If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Lender under the IMF Law in the absence of said provision, Lender shall be vested with the rights granted in the IMF Law to the full extent permitted by law.

(d) All advances, disbursements and expenditures made or incurred by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage, the other Loan Documents or by the IMF Law (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the IMF Law, including, without limitation, those provisions of the IMF Law herein below referred to:

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

(ii) payments by Lender of (A) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien or encumbrance); (B) 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 part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the IMF Law;

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien);

(iv) attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d) and 15-1510 of the IMF Law; (B) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Mortgage or arising from the interest of Lender hereunder; or (C) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Property;

(v) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection 15-1508(b)(1) of the IMF Law;

(vi) expenses deductible from proceeds of sales referred to in Subsections 15-1512(a) and (b) of the IMF Law;

(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) premiums for casualty and liability insurance paid by Lender whether or not Lender

or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Lender takes possession of the Property imposed by Subsection 15-1704(c)(1) of the IMF Law; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments deemed by Lender to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; and (D) 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.

All Protective Advances shall be so much additional Obligations 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 of interest payable after default under the terms of the Note.

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

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 IMF Law, apply to and be included in:

- (1) any determination of the amount of Obligations secured by this Mortgage at any time;
- (2) the Obligations found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional Obligations becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (3) if the right of redemption has not been waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections 15-1603(d)(2) and (e) of the IMF Law;
- (4) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the IMF Law;
- (5) application of income in the hands of any receiver or Lender in possession; and
- (6) computation of any deficiency judgment pursuant to Subsections 15-1508(b)(2), 15-1508(e) and Section 15-1511 of the IMF Law.

(e) In addition to any provision of this Mortgage authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the IMF Law, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMF Law.

**6.4 Waiver of Right of Redemption and Other Rights.** To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the Property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof.

To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and reinstatement under the IMF Law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor acknowledges that the Property does not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Law or residential real estate as defined in Section 5/15-1219 of the IMF Law.

6.5 **Use of Proceeds.** Mortgagor represents and warrants to Lender (i) that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(l) (or any substitute, amended or replacement statute), and that the Obligations secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(l), and (ii) that the Loan evidenced by the Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 *et seq.*

6.6 **No Lien Management Agreements and Broker Agreements.** Mortgagor shall include a “no lien” provision in any property management agreement hereafter entered into by Mortgagor with a property manager for the Property, whereby such property manager waives and releases any and all mechanics’ lien rights that such property manager, or anyone claiming through or under such property manager, may have pursuant to the Illinois Mechanics Lien Act, 770 ILCS 60/1 *et. seq.* Such property management agreement containing such “no lien” provision or a short form thereof shall, at Lender’s request, be recorded with the Recorder of Deeds of Cook County, Illinois, as appropriate. In addition, Mortgagor shall cause such property manager to enter into a subordination of management agreement with Lender, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager, to the lien of this Mortgage. Any agreement entered into hereafter by Mortgagor with any “broker” (as defined in the Real Estate License Act of 2000, 225 ILCS 454/1 *et. seq.*) that is an affiliate of Mortgagor for the purpose of selling, leasing or otherwise conveying an interest in the Property shall contain a “no lien” provision whereby such broker waives and releases any and all lien rights that such broker, or anyone claiming through or under such broker, may have pursuant to the Commercial Real Estate Broker Lien Act, 770 ILCS 15/1 *et. seq.* Mortgagor shall cause each such broker to enter into a subordination agreement with Lender, in recordable form, whereby such broker, on its own behalf or on behalf of any party claiming by, through or under such broker, subordinates present and future lien rights to the lien of this Mortgage.

6.7 **Fixture Financing Statement.** From the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Section 9-502(b) of the Uniform Commercial Code (as amended from time to time) with respect to the Collateral and the goods described herein, which goods are or are to become fixtures related to the Property. The addresses of Mortgagor (Debtor) and Lender (Secured Party) are set forth below. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or the counties where the Property is located. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

9036 S BISHOP LLC  
 c/o Chuhak & Tecson, P.C.  
 30 South Wacker Drive, Suite 2600  
 Chicago, Illinois 60606

- (b) Name and Address of Secured Party:

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 IRP ADVANCING COMPANY II, LLC  
 600 Third Avenue, Floor 2  
 New York, New York 10016

- (c) This document covers goods which are or are to become fixtures.
- (d) Debtor's state of formation is Illinois.
- (e) Debtor's exact legal name is as set forth in the first paragraph of this Mortgage.
- (f) Debtor's organizational identification number is 07728476.
- (g) Debtor agrees that:
- (i) Where Collateral is in possession of a third party, Mortgagor will join with Lender in notifying the third party of Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Lender;
  - (ii) Mortgagor will cooperate with Lender in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and
  - (iii) Until the Obligations is paid in full, Mortgagor will not change the state where it is located or change its limited liability company name without giving Lender at least thirty (30) days prior written notice in each instance.

**6.8 Interest Laws.** It being the intention of Lender and Mortgagor to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note, this Mortgage or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("**Excess Interest**") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the Obligations evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Mortgage or any of the other Loan Documents, then in such event: (a) the provisions of this Section 6.8 shall govern and control; (b) neither Mortgagor nor any other party obligated under the terms of the Note or any of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any Excess Interest that Lender may have received hereunder shall, at the option of Lender, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the Interest Rate shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Note, this Mortgage and the other Loan Documents shall be deemed to be automatically reformed and modified to reflect such reduction in the Interest Rate; and (e) neither Mortgagor nor any other party obligated under the terms of the Note or any of the other Loan Documents shall have any action against Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest.

**6.9 Other Amounts Secured; Maximum Obligations.** Mortgagor acknowledges and agrees that this Mortgage secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Lender in connection with the Loan, all in accordance with the loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total Obligations secured hereby exceed **Two**



**Million Eight Hundred Eighty Thousand and No/100 Dollars (\$2,880,000.00)** It is agreed that any future advances made by Lender for the benefit of Mortgagor from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Lender, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the Obligations secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.

6.10 **Adjustable Mortgage Loan Provision.** The Note which this Mortgage secures is an adjustable note on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Note.

6.11 **Deed in Trust.** If title to the Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

6.12 **Collateral Protection Act.** Unless Mortgagor provides Lender with evidence of the insurance required by this Mortgage or any other Loan Document, Lender may purchase insurance at Mortgagor's expense to protect Lender's interest in the Property or any other collateral for the Obligations secured hereby. This insurance may, but need not, protect Mortgagor's interests. The coverage Lender purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property or any other collateral for the Obligations secured hereby. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained insurance as required under this Mortgage or any other Loan Document. If Lender purchases insurance for the Property or any other collateral for the Obligations secured hereby, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations secured hereby. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 *et. seq.*, Mortgagor hereby acknowledges Lender's right pursuant to this paragraph to obtain collateral protection insurance.

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

6.14 **Construction Loan.** The Note evidences a debt created by one or more disbursements made by Lender to Mortgagor to finance the cost of the construction of certain capital improvements upon the Property and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the Uniform Commercial Code. All future advances shall be made within twenty (20) years of the date hereof.

## 7. SPECIAL PURPOSE ENTITY PROVISIONS

7.1 **Commitment to be a Single Purpose Entity.** Mortgagor represents, warrants and covenants to Lender as follows:

- (a) Mortgagor is a Single Purpose Entity and will continue to be a Single Purpose Entity at all times until the Loan has been paid in full.

- (b) The "Single Purpose Entity" provisions included in the organizational documents of Mortgagor shall not, without Lender's prior written consent, be amended, rescinded or otherwise revoked until the Loan has been paid in full.

## 7.2 Definition of Single Purpose Entity.

- (a) With respect to Mortgagor, a "**Single Purpose Entity**" means a corporation, limited partnership or limited liability company which, at all times since its formation and thereafter:
- (b) shall not engage in any business or activity, other than the ownership, operation and maintenance of the Property and activities incidental thereto;
- (i) shall not acquire or own any assets other than with respect to Mortgagor, the Property and such incidental personal property as may be necessary for the operation of the Property;
  - (ii) shall preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization;
  - (iii) shall not merge or consolidate with any other Person;
  - (iv) shall not take any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; to change its legal structure; transfer or permit the direct or indirect transfer of any partnership, membership or other Equity Interests, as applicable, issue additional partnership, membership or other Equity Interests, as applicable; or seek to accomplish any of the foregoing;
  - (v) shall not: (A) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute; (B) seek or consent to the appointment of a receiver, liquidator or any similar official; or (C) make an assignment for the benefit of creditors;
  - (vi) shall not amend or restate its organizational documents if such change would adversely impact the requirements set forth in this Section;
  - (vii) shall not own any subsidiary or make any investment in, any other Person;
  - (viii) shall not commingle its assets with the assets of any other Person;
  - (ix) shall not incur any debt, secured or unsecured, direct or contingent (including, without limitation, guaranteeing any obligation), other than the Loan and customary unsecured trade payables incurred in the ordinary course of owning and operating the Property;
  - (x) shall maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person;
  - (xi) shall only enter into any contract or agreement with any general partner, member, shareholder, principal or Affiliate of Mortgagor, Borrower or Guarantor, or any general partner, member, principal or Affiliate thereof, upon terms and conditions

that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with third parties;

- (xii) shall not maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (xiii) shall not assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of another Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;
- (xiv) shall not make any loans or advances to any other Person;
- (xv) shall hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name and shall correct any known misunderstanding regarding its separate identity;
- (xvi) shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- (xvii) shall allocate shared expenses (including, without limitation, shared office space) and use separate stationery, invoices and checks;
- (xviii) shall pay (or cause a property manager to pay on behalf of Mortgagor from Mortgagor's funds) its own liabilities (including, without limitation, salaries of its own employees) from its own funds; and
- (xix) shall not acquire obligations or securities of its partners, members or shareholders, as applicable.

(c) As used herein, the following capitalized terms shall have meanings set forth below:

**"Affiliate"** of any Person means (a) any other Person which, directly or indirectly, is in Control of, is Controlled by or is under common Control with, such Person; (b) any other Person who is a director or officer of (i) such Person, (ii) any subsidiary of such Person, or (iii) any Person described in clause (a) above; or (c) any corporation, limited liability company or partnership which has as a director any Person described in clause (b) above.

**"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person whether through ownership of voting securities, beneficial interests, by contract or otherwise. The definition is to be construed to apply equally to variations of the word "Control" including "Controlled," "Controlling" or "Controlled by."

**"Person"** means an individual, partnership, limited partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

**"Equity Interests"** means (a) partnership interests (whether general or limited) in an entity which is a partnership; (b) membership interests in an entity which is a limited liability company; or (c) the shares or stock interests in an entity which is a corporation.

## 8. CROSS-COLLATERALIZATION

8.1 Cross-Collateralization. Mortgagor acknowledges that it is intended that the Obligations secured by this Mortgage shall be, additionally secured by that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, to be executed by 9355 S Laflin LLC in favor of Lender (to the extent entered into, the "Other Mortgage"), which shall encumber the real and personal property more particularly described in the Other Mortgage (such real and personal property, collectively, the "Other Property"). Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right to institute a proceeding or proceedings for the total or partial-foreclosure of this Mortgage and/or the Other Mortgage, whether by court action, power of sale, or otherwise, under any applicable law, and the lien and the security interest created by the Other Mortgage shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Obligations then due and payable but still outstanding. Mortgagor acknowledges and agrees that Lender shall be permitted to enforce payment of the Obligations and the performance of any term, covenant or condition of the Note, this Mortgage, the Loan Documents or the Other Mortgage and exercise any and all rights and remedies under the Note, this Mortgage, the other Loan Documents or the Other Mortgage, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Administrative Agent, in its sole discretion, in any one or more of the states or counties in which the Property or the Other Property are located. Neither the acceptance of this Mortgage, the other Loan Documents or the Other Mortgage nor the enforcement thereof in any one state or county, whether by court action, foreclosure, power of sale, or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale, or otherwise, of the Note, this Mortgage, the other Loan Documents, or any Other Mortgage through one or more additional proceedings in that State or county or in any other State or county. Any and all sums received by Lender under the Note, this Mortgage and the other Loan Documents shall be applied to the Obligations in such order and priority as Lender shall determine, in its sole discretion, without regard to any portion of the Loan allocated to the Property or the Other Property or the appraised value of the Property or the Other Property.

[SIGNATURES ON FOLLOWING PAGE]





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EXHIBIT A  
Property Description

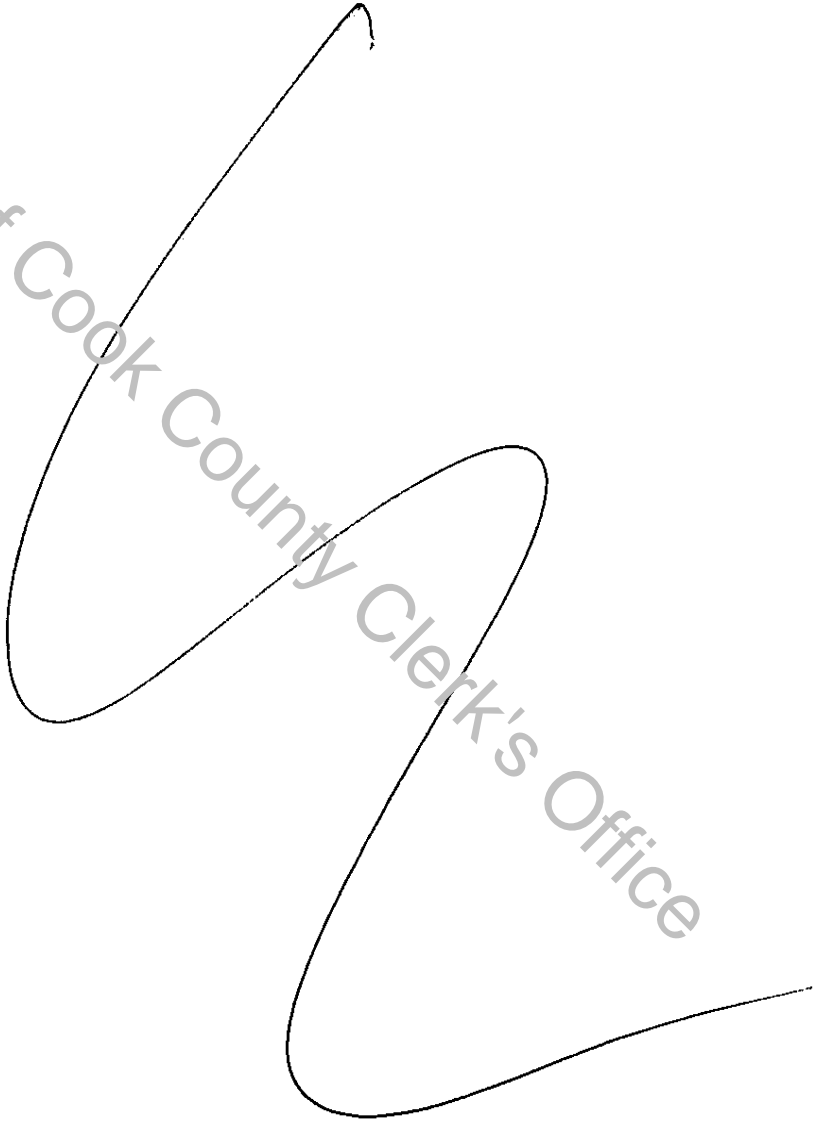
LOT 8 IN BLOCK 15 IN E. L. BRAINERD'S SUBDIVISION OF TELFORD BURNHAM'S SUBDIVISION (EXCEPT BLOCKS 1 AND 8 THEREOF) OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address:

9036 S Bishop Street  
Chicago, Illinois 60620

PIN Number(s): 25-05-126-024-0000

Property of Cook County Clerk's Office



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## EXHIBIT B

### Permitted Encumbrances

1. The liens, easements, restrictions, security interests and other matters (if any) expressly listed as special exceptions (i.e., not pre-printed or standard exceptions) to coverage in the title insurance policy insuring the lien of this Mortgage and the liens and security interests created by the Loan Documents.

Property of Cook County Clerk's Office

